I. DRAFT DECISION RECOMMENDED TO THE GENERAL ASSEMBLY FOR APPROVAL

The General Assembly, taking note of Human Rights Council resolution S-1/Res.1 of 6 July 2006, endorses the Council's decision to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

II. RESOLUTION ADOPTED BY THE HUMAN RIGHTS COUNCIL

S-1/Res.1. Human rights situation in the Occupied Palestinian Territory

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Affirming the applicability of the Geneva Convention relative to the Protection of Civil Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to other occupied Arab territories,

Expressing deep concern at the breaches by Israel, the occupying Power, of international humanitarian law and human rights law in the Occupied Palestinian Territory, including the arbitrary arrest of Palestinian ministers, members of the Palestinian Legislative Council and other officials, as well as the arbitrary arrest of other civilians, the military attacks against Palestinian ministries, including the office of the Premier, and the destruction of Palestinian infrastructure, including water networks, power plants and bridges,

1. *Expresses grave concern* at the violations of the human rights of the Palestinian people caused by the Israeli occupation, including the current extensive Israeli military operations against Palestinians in the Occupied Palestinian Territory;

2. *Demands* that Israel, the occupying Power, end its military operations in the Occupied Palestinian Territory, abide scrupulously by the provisions of international humanitarian law and human rights law, and refrain from imposing collective punishment on Palestinian civilians;

3. *Expresses grave concern* at the detrimental impact of the current Israeli military operation on the already deteriorating humanitarian conditions of the Palestinian people;

4. *Urges* Israel, the occupying Power, to immediately release the arrested Palestinian ministers, members of the Palestinian Legislative Council and other officials, as well as all other arrested Palestinian civilians;

5. *Urges* all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions;

6. *Decides* to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967;

7. *Calls* for a negotiated solution to the current crisis.

2nd meeting
6 July 2006

[Adopted by a recorded vote of 29 to 11, with 5 abstentions]

I. Resolution adopted by the Council at its third special session

S-3/1. Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun

The Human Rights Council,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at the continued violation by the occupying Power, Israel, of the human rights of the Palestinian people in the Occupied Palestinian Territory,

Recognizing that the Israeli military incursions in the Occupied Palestinian Territory, including the recent incursion in northern Gaza and the assault on Beit Hanoun, constitute a collective punishment of the civilians therein and exacerbate the severe humanitarian crisis in the Occupied Palestinian Territory,

Taking note of the sense of shock expressed by the Secretary-General on the Israeli military operations carried out in Beit Hanoun on 8 November 2006,

Emphasizing that the Israeli wilful killing of Palestinian civilians, including women and children, constitutes a gross violation of human rights law and international humanitarian law,

Affirming that, under international humanitarian law, the medical personnel and means of transport of the Palestine Red Crescent Society must be protected and respected in all circumstances,

1. *Expresses its shock* at the horror of Israeli killing of Palestinian civilians in Beit Hanoun while asleep and other civilians fleeing earlier Israeli bombardment;

2. *Condemns* the Israeli killing of Palestinian civilians, including women and children, as well as of medics in Beit Hanoun and other Palestinian towns and villages, and calls for bringing the perpetrators thereof to justice;

3. *Denounces* the Israeli massive destruction of Palestinian homes, property and infrastructure in Beit Hanoun;

4. *Expresses its alarm* at the gross and systematic violations of human rights of the Palestinian people in the Occupied Palestinian Territory by the occupying Power, Israel, and calls for urgent international action to put an immediate end to these violations, including those emanating from the series of incessant and repeated Israeli military incursions therein;

5. *Calls* for immediate protection of the Palestinian civilians in the Occupied Palestinian Territory in compliance with human rights law and international humanitarian law;

6. *Urges* all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions of 12 August 1949;

7. *Decides* to dispatch urgently a high-level fact-finding mission, to be appointed by the President of the Human Rights Council, to travel to Beit Hanoun to, inter alia: (a) assess the situation of victims; (b) address the needs of survivors; and (c) make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults;

8. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all administrative, technical and logistical assistance required to enable the fact-finding mission to fulfil its mandate promptly and efficiently;

9. *Requests* the fact-finding mission to report to the Council no later than the middle of December 2006 on progress made towards the fulfilment of its mandate.

2nd meeting
15 November 2006

[Resolution adopted by a recorded vote of 32 to 8, with 6 abstentions. The voting was as follows:

In favour: Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

Against: Canada, Czech Republic, Finland, Germany, Netherlands, Poland, Romania, United Kingdom of Great Britain and Northern Ireland.

Abstaining: France, Guatemala, Japan, Republic of Korea, Switzerland, Ukraine.

See chapter II.]

I. Resolutions and decisions adopted by the Council at its third session

A. Resolutions

3/1. Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolution S-1/1

The Human Rights Council,

Recalling its resolution S-1/1 of 6 July 2006,

Noting with regret that the resolution has not been implemented to date,

1. *Calls* for the speedy implementation of its resolution S-1/1, including the dispatching of the urgent fact-finding mission;

2. *Requests* the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to report to the Council on the implementation of the present resolution at its next session.

13th meeting
8 December 2006

[Resolution adopted by a recorded vote of 34 to 1, with 12 abstentions. See chap. III.]

3/2. Preparations for the Durban Review Conference

The Human Rights Council,

Underlining General Assembly resolution 52/111 of 12 December 1997 in which the Assembly decided to convene the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held at Durban from 31 August to 8 September 2001,

Recalling General Assembly resolution 57/195 of 18 December 2002, in which the Assembly outlined the important roles and responsibilities of the various organs of the United Nations and other stakeholders at the international, regional and national levels, including, in particular, the erstwhile Commission on Human Rights whose mandate and responsibilities now devolve in the Human Rights Council,

Recalling General Assembly resolution 58/160 of 22 December 2003 in which the Assembly decided to close the Third United Nations Decade to combat racism and racial discrimination, and placed emphasis on the concrete implementation of the Durban Declaration and Programme of Action as a solid foundation for a broad-based consensus for further actions and initiatives towards the total elimination of the scourge of racism,

4/2. Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1

The Human Rights Council,

Recalling its resolutions S-1/1 of 6 July 2006 and S-3/1 of 15 November 2006,

Noting with regret that Israel, the occupying Power, has not implemented to date these two resolutions and hindered the dispatching of the urgent fact-finding missions specified therein,

1. *Calls for* the implementation of its resolutions S-1/1 and S-3/1, including the dispatching of the urgent fact-finding missions;

2. *Requests* the President of the Human Rights Council and the United Nations High Commissioner for Human Rights to report to the Council at its fifth session on their efforts for the implementation of Council resolutions S-1/1 and S-3/1 and on the compliance of Israel, the occupying Power, with these two resolutions.

26th meeting
27 March 2007
[Adopted without a vote. See chap. III.]

4/3. Intergovernmental Working Group on the Review of Mandates

The Human Rights Council,

Bearing in mind paragraph 6 of General Assembly resolution 60/251 of 15 March 2006, in which the Assembly decided that the Council should improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure,

Recalling its decision 1/104 of 30 June 2006, in which it decided to establish an open-ended intergovernmental working group on the issue of reviewing and, where necessary, improving and rationalizing all human rights mandates, mechanisms, functions and responsibilities,

Recalling also its resolution 2/1 of 27 November 2006, in which it requested the Working Group to draft a code of conduct regulating the work of the special procedures, and also requested the Coordinating Committee of the special procedures to extend until the closure of the fourth session of the Human Rights Council the deadline for the submission of comments and inputs to the draft manual of special procedures,

Taking note of the draft manual of the United Nations human rights special procedures, revised by the Coordinating Committee of the special procedures, and the decision taken at the thirteenth meeting of the special procedures to submit the manual to Governments and other stakeholders for comments and inputs,

I. Resolutions and decisions adopted by the Human Rights Council at its organizational meeting

A. Resolutions

OM/1/1. Report of the United Nations High Commissioner for Human Rights on the follow-up to the report of the Commission of Inquiry on Lebanon

The Human Rights Council,

Recalling its resolution S-2/1 of 11 August 2006 on "The grave situation of human rights in Lebanon caused by Israeli military operations",

Recalling also its resolution 3/3 of 8 December 2006 in which it requested the United Nations High Commissioner for Human Rights to consult with the Government of Lebanon on the report of the Commission of Inquiry on Lebanon and its findings and on the relevant recommendations contained therein,

Having considered the report of the United Nations High Commissioner for Human Rights on the follow-up to the report of the Commission of Inquiry on Lebanon (A/HRC/5/9),

1. *Takes note with satisfaction* of the factual report of the United Nations High Commissioner for Human Rights (A/HRC/5/9);

2. *Requests* the High Commissioner to extend support to the activities and programmes of the Government of Lebanon, in particular those consistent with her report.

Organizational meeting 1,
20 June 2007
[Adopted without a vote. See chap. III.]

OM/1/2. Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1

The Human Rights Council,

Recalling its resolutions S-1/1 of 6 July 2006 and S-3/1 of 15 November 2006,

Noting with regret that Israel, the occupying Power, has not to date implemented these two resolutions and hindered the dispatching of the urgent fact-finding missions specified therein,

1. *Calls* for the implementation of its resolutions S-1/1 of 6 July 2006 and S-3/1 of 15 November 2006, including the dispatching of the urgent fact-finding missions;

2. *Requests* the President of the Human Rights Council and the United Nations High Commissioner for Human Rights to report to the Council at the next session to be held in September 2007, on their efforts for the implementation of Council resolutions S-1/1 and S-3/1 and on the compliance of Israel, the occupying Power, with these two resolutions.

Organizational meeting 1,
20 June 2007
[Adopted without a vote. See chap. III.]

OM/1/3. Follow-up to resolution 4/8 of 30 March 2007 adopted by the Human Rights Council at its fourth session entitled "Follow-up to decision S-4/101 of 13 December 2006, adopted by the Council at its fourth special session entitled 'Situation of human rights in Darfur'"

The Human Rights Council,

1. *Welcomes* the report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council in resolution 4/8 (A/HRC/5/6);

2. *Requests* the group of experts to continue its work for six months and to submit an update to the session of the Council in September 2007 and a final report to the following session of the Council.

Organizational meeting 1,
20 June 2007
[Adopted without a vote. See chap. III.]

B. Decisions

OM/1/101. Postponement of consideration of pending draft resolution and decisions

At its organizational meeting, on 20 June 2007, the Human Rights Council decided, without a vote, to postpone action on the following draft resolution and decisions deferred from previous sessions to its September session, pursuant to its decision 4/105 of 30 March 2007:

- A/HRC/2/L.19 entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination";

- A/HRC/2/L.30 entitled "World Programme for Human Rights Education";

- A/HRC/4/L.3 entitled "Israeli violations of religious and cultural rights in Occupied East Jerusalem".

6/17. Establishment of funds for the universal periodic review mechanism of the Human Rights Council

The Human Rights Council,

Bearing in mind that the universal periodic review is a cooperative mechanism with the full involvement of the country concerned and with consideration given to its capacity-building needs in accordance with General Assembly resolution 60/251 of 15 March 2006,

Underlining the fact that the institution-building text adopted on 18 June 2007 states that a universal periodic review Voluntary Trust Fund should be established to facilitate the participation of developing countries, particularly least developed countries, in the universal periodic review,

Recalling that the institution-building text also requests the Council to decide on the question whether to resort to existing financing mechanisms or to create a new mechanism,

1. *Requests* the Secretary-General to establish a universal periodic review Voluntary Trust Fund to facilitate the participation of developing countries, particularly least developing countries, in the universal periodic review mechanism;

2. *Also requests* the Secretary-General to establish a new financial mechanism called the Voluntary Fund for Financial and Technical Assistance to be administered jointly with the universal periodic review Voluntary Trust Fund mentioned in paragraph 1, in order to provide, in conjunction with multilateral funding mechanisms, a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review in consultation with, and with the consent of, the country concerned;

3. *Urges* all member States, observers and other stakeholders of the Council to support the operationalization of the above funds;

4. *Requests* the Office of the High Commissioner for Human Rights to take the necessary measures with a view to expeditiously operationalizing the mechanisms;

5. *Decides* to follow up on the matter under the same agenda item at its seventh session.

21st meeting
28 September 2007
[Adopted without a vote. See chap. VI.]

6/18. Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1

The Human Rights Council,

Recalling its resolutions S-1/1 of 6 July 2006 and S-3/1 of 15 November 2006,

Noting with regret that Israel, the occupying Power, has not implemented to date these two resolutions and hindered the dispatching of the urgent fact-finding missions specified therein,

1. *Calls* for the implementation of its resolutions S-1/1 and S-3/1, including the dispatching of the urgent fact-finding missions;

2. *Requests* the President of the Human Rights Council and the United Nations High Commissioner for Human Rights to report to the Council at its next session on their efforts for the implementation of Council resolutions S-1/1 and S-3/1 and on the compliance of Israel, the occupying Power, with these two resolutions.

21st meeting
28 September 2007
[Adopted without a vote. See chap. VII.]

6/19. Religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights,

Recalling also article 2 of the Universal Declaration of Human Rights which stipulates that everyone is entitled to all the rights and freedoms set forth in that Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that no distinction should be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Emphasizing the particularity of Occupied East Jerusalem in its rich religious and cultural heritage,

Recalling relevant Security Council resolutions on Occupied East Jerusalem,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Deeply concerned at the Israeli actions undermining the sanctity and inviolability of religious sites in the Occupied Palestinian Territory, including East Jerusalem,

Deeply concerned also at the Israeli policy of closures and the severe restrictions, including curfews and the permit regime, that continue to be imposed on the movement of Palestinians and their free access to their holy sites, including Al Aqsa Mosque,

1. *Stresses* that all policies and measures taken by Israel, the occupying Power, to limit access of Palestinians to their holy sites, particularly in Occupied East Jerusalem, on the basis of national origin, religion, birth, sex or any other status are in violation of the provisions of the above-mentioned instruments and resolutions and therefore must cease immediately;

2. *Calls upon* Israel, the occupying Power, to respect the religious and cultural rights enumerated in the Universal Declaration of Human Rights in the Occupied Palestinian Territory, including East Jerusalem, and to allow Palestinian worshippers unfettered access to their religious sites;

3. *Requests* the High Commissioner for Human Rights to report to the Council at its next session on the implementation of the present resolution.

21st meeting
28 September 2007
[Adopted by a recorded vote of 31 to 1, with 15 abstentions.

In favour: Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.

Against: Canada.

Abstaining: Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Madagascar, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.

See chap. VII.]

6/20. Regional arrangements for the promotion and protection of human rights

The Human Rights Council,

Recalling General Assembly resolution 32/127 of 16 December 1977 and the subsequent resolutions of the General Assembly concerning regional arrangements for the promotion and protection of human rights, the latest being 61/167 of 19 December 2006,

Recalling also Commission on Human Rights resolution 1993/51 of 9 March 1993 and its subsequent resolutions in this regard,

Noting with regret that Israel, the occupying Power, has not implemented to date these two resolutions and hindered the dispatching of the urgent fact-finding missions specified therein,

1. *Calls* for the implementation of its resolutions S-1/1 and S-3/1, including the dispatching of the urgent fact-finding missions;

2. *Requests* the President of the Human Rights Council and the United Nations High Commissioner for Human Rights to report to the Council at its next session on their efforts for the implementation of Council resolutions S-1/1 and S-3/1 and on the compliance of Israel, the occupying Power, with these two resolutions.

21st meeting
28 September 2007
[Adopted without a vote. See chap. VII.]

6/19. Religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights,

Recalling also article 2 of the Universal Declaration of Human Rights which stipulates that everyone is entitled to all the rights and freedoms set forth in that Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that no distinction should be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Emphasizing the particularity of Occupied East Jerusalem in its rich religious and cultural heritage,

Recalling relevant Security Council resolutions on Occupied East Jerusalem,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Deeply concerned at the Israeli actions undermining the sanctity and inviolability of religious sites in the Occupied Palestinian Territory, including East Jerusalem,

Deeply concerned also at the Israeli policy of closures and the severe restrictions, including curfews and the permit regime, that continue to be imposed on the movement of Palestinians and their free access to their holy sites, including Al Aqsa Mosque,

1. *Stresses* that all policies and measures taken by Israel, the occupying Power, to limit access of Palestinians to their holy sites, particularly in Occupied East Jerusalem, on the basis of national origin, religion, birth, sex or any other status are in violation of the provisions of the above-mentioned instruments and resolutions and therefore must cease immediately;

2. *Calls upon* Israel, the occupying Power, to respect the religious and cultural rights enumerated in the Universal Declaration of Human Rights in the Occupied Palestinian Territory, including East Jerusalem, and to allow Palestinian worshippers unfettered access to their religious sites;

3. *Requests* the High Commissioner for Human Rights to report to the Council at its next session on the implementation of the present resolution.

21st meeting
28 September 2007
[Adopted by a recorded vote of 31 to 1, with 15 abstentions.

In favour: Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.

Against: Canada.

Abstaining: Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Madagascar, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.

See chap. VII.]

6/20. Regional arrangements for the promotion and protection of human rights

The Human Rights Council,

Recalling General Assembly resolution 32/127 of 16 December 1977 and the subsequent resolutions of the General Assembly concerning regional arrangements for the promotion and protection of human rights, the latest being 61/167 of 19 December 2006,

Recalling also Commission on Human Rights resolution 1993/51 of 9 March 1993 and its subsequent resolutions in this regard,

I. Resolution adopted by the Council at its sixth special session

S-6/1. Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Recognizing that the Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip and the West Bank city of Nablus, constitute grave violations of the human and humanitarian rights of the Palestinian civilians therein, exacerbate the severe humanitarian crisis in the Occupied Palestinian Territory and undermine international efforts, including the Annapolis Conference and the Paris Donors' Conference for the Palestinian State, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recognizing also that the Israeli siege imposed on the occupied Gaza Strip, including the closure of the border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of the Palestinian civilians and leads to disastrous humanitarian and environmental consequences,

1. *Expresses grave concern* at the repeated Israeli military attacks carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which have resulted in loss of life and injuries among Palestinian civilians, including women and children;

2. *Calls for* urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip;

3. *Demands* that the occupying Power, Israel, lift immediately the siege it has imposed on the occupied Gaza Strip, restore continued supply of fuel, food and medicine and reopen the border crossings;

4. *Calls for* immediate protection of the Palestinian civilians in the Occupied Palestinian Territory in compliance with human rights law and international humanitarian law;

5. *Urges* all parties concerned to respect the rules of human rights law and international humanitarian law and to refrain from violence against the civilian population;

6. *Requests* the United Nations High Commissioner for Human Rights to report to the Council, at its next session, on the progress made in the implementation of the present resolution.

2nd meeting
24 January 2008

Resolution adopted by a recorded vote of 30 to 1, with 15 abstentions; see chapter II. The voting was as follows:

In favour:	Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, China, Cuba, Djibouti, Egypt, India, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.
Against:	Canada.
Abstaining:	Bosnia and Herzegovina, Cameroon, France, Germany, Ghana, Guatemala, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.

Part One: Resolutions adopted by the Council at its seventh session

7/1. Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Guided also by the rights of all peoples to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter of the United Nations,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Affirming also the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

Recognizing that the Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, constitute violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts, including the Annapolis Conference and the Paris International Donors' Conference for the Palestinian State, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recognizing also that the recent Israeli attacks and incursions in the occupied Gaza Strip have led to a considerable loss of life and injuries among Palestinian civilians, including women, children and infants,

1. *Condemns* the persistent Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which resulted in the loss of more than 125 lives and hundreds of injuries among Palestinian civilians, including women, children and infants;

2. *Expresses* its shock at the Israeli bombardment of Palestinian homes and the killing of civilians therein and at the Israeli policy of inflicting collective punishment against the civilian population, which is contrary to international humanitarian law, and calls for bringing the perpetrators to justice;

3. *Calls for* the immediate cessation of all Israeli military attacks throughout the Occupied Palestinian Territory and the firing of crude rockets, which resulted in the loss of two civilian lives and some injuries in southern Israel;

4. *Also calls for* urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip;

5. *Reiterates* its calls for immediate protection of the Palestinian people in the Occupied Palestinian Territory in compliance with international human rights law and international humanitarian law;

6. *Urges* all parties concerned to respect the rules of international human rights law and international humanitarian law and to refrain from violence against civilian populations;

7. *Requests* the United Nations High Commissioner for Human Rights to report to the Council, at its next session, on the progress made in the implementation of the present resolution.

10th meeting
6 March 2008

Adopted by a recorded vote of 33 to 1, with 13 abstentions. The voting was as follows:

In favour: Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Switzerland, Uruguay, Zambia;

Against: Canada;

Abstaining: Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland.

See chapter VII.

7/2. Composition of the staff of the Office of the United Nations High Commissioner for Human Rights

The Human Rights Council,

Recalling paragraph 5 (*g*) of General Assembly resolution 60/251 of 15 March 2006, in which the Assembly decided that the Council should assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the Assembly in its resolution 48/141 of 20 December 1993,

Taking note of all relevant resolutions on this issue adopted by the General Assembly, the Commission on Human Rights and the Council,

18. *Also requests* the Special Rapporteur to further ensure effective follow-up and to foster the implementation of the remaining recommendations identified by the Group of Experts through an open and constructive dialogue with the Government of the Sudan, and to include information in that regard in her next report;

19. *Further requests* the Special Rapporteur to present to the Council an annual report at its eleventh session;

20. *Calls upon* the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable her to discharge her mandate fully, including by enabling any required consultations in this regard;

21. *Decides* to pursue consideration of the matter in accordance with its annual programme of work.

23rd meeting
24 September 2008

Adopted without a vote.

9/18. Follow-up to resolution S-3/1: human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory and the shelling of Beit Hanoun

The Human Rights Council,

Recalling its resolution S-3/1 of 15 November 2006, in which the Council decided to dispatch urgently a high-level fact-finding mission, to be appointed by the President of the Human Rights Council, to travel to Beit Hanoun to, inter alia, assess the situation of victims, address the needs of survivors, and make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults,

1. *Welcomes* the report of the high-level fact-finding mission on Beit Hanoun (A/HRC/9/26);

2. *Calls upon* all concerned parties to ensure the full and immediate implementation of the recommendations of the fact-finding mission contained in its report;

3. *Recommends* that the General Assembly consider the report with the participation of the members of the mission;

4. *Regrets* the delay in the fulfilment of the mission owing to the non-cooperation of Israel, the occupying Power;

5. *Calls upon* Israel, the occupying Power, to abide by its obligations under international law, international humanitarian law and international human rights law;

6. *Requests* the Secretary-General to report to the Council at its next session on the implementation of the recommendations contained in the report of the mission;

7. *Decides* to remain seized of the matter.

23rd meeting
24 September 2008

Adopted by a recorded vote of 32 to 9, with 5 abstentions. The voting was as follows:

In favour: Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia;

Against: Canada, France, Germany, Italy, Japan, Netherlands, Slovakia, Slovenia, United Kingdom of Great Britain and Northern Ireland;

Abstaining: Bosnia and Herzegovina, Cameroon, Republic of Korea, Switzerland, Ukraine.

9/19. Advisory services and technical assistance for Burundi

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights treaties,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,

Recalling General Assembly resolution 60/251 of 15 March 2006,

Bearing in mind Commission on Human Rights resolution 2004/82 of 21 April 2004 and Council resolution 6/5 of 29 September 2007,

Recognizing the efforts made by the United Nations, the African Union, the European Union, the Political Directorate, South Africa, in its capacity as facilitator, and the countries of the Regional Peace Initiative to help Burundi to fully re-establish peace and security in its national territory,

Cognizant of the commitment of the Government of Burundi to engage in dialogue with its political partners,

1. *Takes note with satisfaction* of the report of the independent expert on the situation of human rights in Burundi (A/HRC/9/14);

2. *Welcomes* the cooperation established between the independent expert and the Government of Burundi;

I. Resolution adopted by the Council at its ninth special session

S-9/1 The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations and the Universal Declaration of Human Rights,

Acknowledging that peace, security, development and human rights are the pillars of the United Nations system,

Guided by the right to self-determination of the Palestinian people and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter of the United Nations,

Recalling General Assembly resolution 60/251 of 15 March 2006,

Affirming the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

Affirming also the applicability of international humanitarian law, namely the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, to the Occupied Palestinian Territory, including East Jerusalem,

Emphasizing that international human rights law and international humanitarian law are complementary and mutually reinforcing,

Recalling the obligations of the High Contracting Parties to the Fourth Geneva Convention,

Reaffirming that each High Contracting Party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War is under the obligation to respect and ensure the respect for the obligations arising from that Convention,

Stressing that the right to life constitutes the most fundamental of all human rights,

Expressing serious concern at the lack of implementation by the occupying Power, Israel, of previously adopted resolutions and recommendations of the Council relating to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem,

Recognizing that the massive ongoing Israeli military operation in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, has caused grave violations of the human rights of the Palestinian civilians therein, exacerbated the severe humanitarian crisis in the Occupied Palestinian Territory and undermined international efforts towards achieving a just and lasting peace in the region,

Condemning all forms of violence against civilians and deploring the loss of human lives in the context of the current situation,

Recognizing that the Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences,

1. *Strongly condemns* the ongoing Israeli military operation carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which has resulted in massive violations of the human rights of the Palestinian people and systematic destruction of Palestinian infrastructure;

2. *Calls for* the immediate cessation of Israeli military attacks throughout the Palestinian Occupied Territory, particularly in the occupied Gaza Strip, which to date have resulted in the killing of more than nine hundred and injury to more than four thousand Palestinians, including a large number of women and children, and the end to the launching of crude rockets against Israeli civilians, which have resulted in the loss of four civilian lives and some injuries;

3. *Demands* that the occupying Power, Israel, immediately withdraw its military forces from the occupied Gaza Strip;

4. *Calls upon* the occupying Power, Israel, to end its occupation of all Palestinian lands occupied since 1967 and to respect its commitment within the peace process towards the establishment of the independent sovereign Palestinian State, with East Jerusalem as its capital, living in peace and security with all its neighbours;

5. *Demands* that the occupying Power, Israel, stop the targeting of civilians and medical facilities and staff and the systematic destruction of the cultural heritage of the Palestinian people, in addition to the destruction of public and private properties, as laid down in the Fourth Geneva Convention;

6. *Also demands* that the occupying Power, Israel, lift its siege, open all borders to allow access and free movement of humanitarian aid to the occupied Gaza Strip, including the immediate establishment of humanitarian corridors, in compliance with its obligations under international humanitarian law, and ensure free access of the media to areas of conflict through media corridors;

7. *Calls upon* the international community to support the current initiative aiming at putting an immediate end to the current military aggression in Gaza;

8. *Calls for* urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip;

9. *Also calls for* immediate international protection of the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights law and international humanitarian law;

10. *Urges* all parties concerned to respect the rules of international human rights law and international humanitarian law and to refrain from violence against the civilian population;

11. *Requests* the United Nations High Commissioner for Human Rights to report on the violations of human rights of the Palestinian people by the occupying Power, Israel, by:

(*a*) Strengthening the field presence of the Office of the High Commission in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, and deploying the necessary personnel and expertise to monitor and document Israeli violations of the human rights of Palestinians and the destruction of their properties;

(*b*) Submitting periodic reports to the Council on the implementation of the present resolution;

12. *Requests* all relevant special procedures mandate holders, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, arbitrary or summary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty, to urgently seek and gather information on violations of the human rights of the Palestinian people and submit their reports to the Council at its next session;

13. *Requests* the occupying Power, Israel, to fully cooperate with all the above-mentioned special procedures mandate holders and to desist from any further hindrance to the work of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967;

14. *Decides* to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the current aggression, and calls upon Israel not to obstruct the process of investigation and to fully cooperate with the mission;

15. *Requests* the Secretary-General and the High Commissioner to provide all administrative, technical and logistical assistance required to enable the above-mentioned special procedures mandate holders and the fact-finding mission to fulfil their mandates promptly and efficiently;

16. *Requests* the Secretary-General to investigate the latest targeting of facilities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Gaza, including schools, which resulted in the killing of tens of Palestinian civilians, including women and children, and to submit a report to the General Assembly thereon;

17. *Decides* to follow up on the implementation of the present resolution at its next session.

3rd meeting
12 January 2009

Resolution adopted by a recorded vote of 33 to 1, with 13 abstentions; see chapter II. The voting was as follows:

In favour:	Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia
Against:	Canada
Abstaining:	Bosnia and Herzegovina, Cameroon, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland

the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

7. *Also calls upon* Israel to implement the recommendations regarding the settlements made by the United Nations High Commissioner for Human Rights in her report to the Commission on Human Rights on her visit to the Occupied Palestinian Territory, Israel, Egypt and Jordan (E/CN.4/2001/114);

8. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

9. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State and to implement fully the road map endorsed by the Security Council in its resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) and 338 (1973), and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo accords and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

10. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 46 to 1, with no abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Egypt, France, Gabon, Germany, Ghana, India, Indonesia, Italy, Japan, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against:

Canada.]

10/19
Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Guided also by the right of the Palestinian people to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Affirming also the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

Expressing serious concern at the lack of implementation by the occupying Power, Israel, of previously adopted resolutions and recommendations of the Council relating to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem,

Condemning all forms of violence against civilians and deploring the loss of human lives in the context of the current situation,

Recognizing that the Israeli military attacks and operations in the Occupied Palestinian Territory have caused severe violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts towards achieving a just and lasting peace in the region based on the two-State solution,

Recognizing also that the Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings, leads to disastrous humanitarian, economic and environmental consequences,

1. *Demands* that the occupying Power, Israel, end its occupation of the Palestinian land occupied since 1967, and to respect its commitments within the peace process towards the establishment of the independent sovereign Palestinian State, with East Jerusalem as its capital, living in peace and security with all its neighbours;

2. *Strongly condemns* the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which have resulted in the killing and injury of thousands of Palestinian civilians, including a large number of women and children, and also condemns the firing of crude rockets on Israeli civilians;

3. *Demands* that the occupying Power, Israel, stop the targeting of civilians and the systematic destruction of the cultural heritage of the Palestinian people, in addition to the destruction of public and private properties, and the targeting of United Nations facilities, as laid down in the Fourth Geneva Convention;

4. *Also demands* that Israel, the occupying Power, cease immediately all current excavations beneath and around the Al-Aqsa Mosque compound, and refrain from any act that may endanger the structure or change the nature of the holy sites both Islamic and Christian, in the Occupied Palestinian Territory, particularly in and around Jerusalem;

5. *Calls for* immediate protection of all civilians, including an international protection for the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights and humanitarian law, both applicable in the Occupied Palestinian Territory, including East Jerusalem;

6. *Also calls for* the immediate cessation of all Israeli military attacks and operations throughout the Occupied Palestinian Territory and of the firing of crude rockets by Palestinian combatants against southern Israel;

7. *Demands* that the occupying Power, Israel, immediately stop its illegal decision to demolish a large number of Palestinian houses in the East Jerusalem neighbourhood of Al-Bustan in the Selwan area, near the Al-Aqsa Mosque, which will result in the displacement of more than 1,500 Palestinian residents of East Jerusalem;

8. *Demands* that the occupying Power, Israel, release Palestinian prisoners and detainees;

9. *Calls upon* the occupying Power, Israel, to lift checkpoints and to open all crossing points and borders in accordance with international agreements;

10. *Urges* all parties concerned to respect the rules of international human rights and humanitarian law and to refrain from violence against civilian populations;

11. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 35 to 4, with 8 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Switzerland, Uruguay, Zambia;

Against:

Canada, Germany, Italy, Netherlands;

Abstaining:

Cameroon, France, Japan, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/20
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) on 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the latest being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009
[Adopted without a vote. See part II, chap. VII.]

10/21
Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

The Human Rights Council,

Recalling its resolution S-9/1 of 12 January 2009,

Recalling also its decision to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the latest aggression, and that it called upon Israel not to obstruct the process of investigation and to fully cooperate with the mission,

Expressing with regret that resolution S-9/1 has not been fully implemented to date,

1. *Requests* the President of the Council to continue his tireless efforts to appoint the independent international fact-finding mission;

2. *Calls upon* the occupying Power, Israel, to abide by its obligations under international law, international humanitarian law and international human rights law;

3. *Demands* that the occupying Power, Israel, fully cooperate with all relevant special procedures mandate holders in the discharge of their mandates;

4. *Also demands* that the occupying Power, Israel, facilitate and provide unhindered access to the members of the independent international fact-finding mission;

5. *Decides* to remain seized of the matter.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 33 to 1, with 13 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia;

Against:

Canada;

Abstaining:

Bosnia and Herzegovina, Cameroon, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/22
Combating defamation of religions

The Human Rights Council,

Reaffirming the pledge made by all States under the Charter of the United Nations to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming also that all human rights are universal, indivisible, interdependent and interrelated,

Recalling the 2005 World Summit Outcome adopted by the General Assembly in its resolution 60/1 of 16 September 2005, in which the Assembly emphasized the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind, and acknowledged the importance of respect and understanding for religious and cultural diversity throughout the world,

Recognizing the valuable contribution of all religions to modern civilization and the contribution that dialogue among civilizations can make towards improved awareness and understanding of the common values shared by all humankind,

UNITED NATIONS **A**

General Assembly

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A/HRC/RES/S-12/1
21 October 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Twelfth special session
15 – 16 October 2009

Resolution adopted by the Human Rights Council*

S-12/1. The human rights situation in the Occupied Palestinian Territory, including East Jerusalem

A

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights,

Affirming the responsibility of the international community to promote human rights and ensure respect for international law,

Emphasizing the particularity of The Occupied East Jerusalem in its rich religious and cultural heritage,

Recalling all relevant United Nations resolutions including Security Council resolutions on Occupied East Jerusalem,

* The resolution and decision adopted by the Human Rights Council will be contained in the report of the Council on its twelfth special session (A/HRC/S-12/1), chap. I.

Deeply concerned at the actions by Israel undermining the sanctity and inviolability of religious sites in the Occupied Palestinian Territory including East Jerusalem,

Deeply concerned also at the policy of closure and severe restrictions of Israel, including the permit regime, which continue to be imposed on the movement of Palestinians hindering their free access to their Christian and Muslim holy sites, including Al- Aqsa Mosque,

1. *Strongly condemns* all policies and measures taken by Israel, the occupying Power, including those limiting access of Palestinians to their properties and holy sites particularly in Occupied East Jerusalem, on the basis of national origin, religion, sex, age or any other discriminatory ground, which are in grave violation of the Palestinian People's civil, political, economic, social and cultural rights;

2. *Condemns further* the recent violations of human rights by Israel in Occupied East Jerusalem, particularly the confiscation of lands and properties, the demolishing of houses and private properties, the construction and expansion of settlements, the continuous construction of the separation Wall, changing the demographic and geographic character of East Jerusalem, the restrictions on the freedom of movement of the Palestinian citizens of East Jerusalem, as well as the continuous digging and excavation works in and around Al-Aqsa mosque and its vicinity;

3. *Demands* Israel, the occupying Power, to respect the religious and cultural rights in the Occupied Palestinian Territory as provided for in the Universal Declaration of Human Rights, the core international human rights instruments, the Hague Conventions, and the Geneva Conventions, and to allow Palestinian citizens and worshippers unhindered access to their properties and religious sites therein;

4. *Also demands* that Israel, the occupying Power, immediately cease all digging and excavation works and activities beneath and around Al-Aqsa Mosque and its vicinity, and refrain from any acts or operations that may endanger the structure or foundations or change the nature of holy sites both Christian and Islamic in the Occupied Palestinian Territory, including East Jerusalem;

5. *Requests* the United Nations High Commissioner for Human Rights, pursuant to resolution S-9/1 of 12 January 2009 and in the context of her periodic reports, to monitor,

document and report on the state of implementation by Israel, the occupying Power, of its human rights obligations in and around East Jerusalem;

B

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations and the Universal Declaration of Human Rights,

Considering that the promotion of respect for the obligations arising from the Charter and other instruments and rules of international law is among the basic purposes and principles of the United Nations,

Reaffirming the right of the Palestinian people to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter of the United Nations,

Acknowledging that peace, security, development and human rights are the pillars of the United Nations system,

Affirming the applicability of international human rights law and the international humanitarian law, namely the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, to the Occupied Palestinian Territory, including East Jerusalem,

Expressing serious concern at the lack of implementation by the occupying Power, Israel, of previously adopted resolutions and recommendations of the Council relating to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem,

Recalling its resolution S-9/1 of 12 January 2009, in which the Council decided to dispatch an urgent, independent international fact-finding mission, and its call upon the occupying Power, Israel, not to obstruct the process of investigation and to fully cooperate with the mission,

Condemning all targeting of civilians and stressing the urgent need to ensure accountability for all violations of international human rights law and international humanitarian law to prevent further violations;

1. *Condemns* the non-cooperation by the occupying Power, Israel, with the independent international fact-finding mission;

2. Welcomes the report of the Independent International Fact-Finding Mission (A/HRC/12/48);

3. Endorses the recommendations contained in the report of the Independent International Fact-Finding Mission, and calls upon all concerned parties including United Nations bodies, to ensure their implementation in accordance with their respective mandates;

4. Recommends that the General Assembly consider the report of the Independent International Fact-Finding Mission, during the main part of its sixty-fourth session*;*

5. Requests the United Nations Secretary-General to submit to the Council, at its thirteenth session, a report on the status of implementation of paragraph 3. above;

C

The Human Rights Council,

Emphasizing that international human rights law and international humanitarian law are complementary and mutually reinforcing,

Recalling the obligations of the High Contracting Parties to the Fourth Geneva Convention, and *reaffirming* that each High Contracting Party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War is under the obligation to respect and ensure the respect for the obligations arising from that Convention,

Stressing that the right to life constitutes the most fundamental of all human rights,

Recognizing that the siege by Israel imposed on the occupied Gaza Strip, including its closure of border crossings and the cutting of the supply of fuel, food and medicine, constitutes collective punishment of Palestinian civilians and leads to disastrous humanitarian and environmental consequences,

1. *Welcomes* the first periodic report of the United Nations High Commissioner for Human Rights on the implementation of the Human Rights Council resolution S-9/1(A/HRC/12/37**)**;

2. *Endorses* the recommendations contained in the first periodic report of the High Commissioner, and calls upon all concerned parties including United Nations bodies to ensure their implementation in accordance with their respective mandates;

3. *Requests* the High Commissioner for Human Rights to submit to the Council, at its thirteenth session, a report on the status of implementation of this resolution;

4. *Decides* to follow up on the implementation of section A, section B and section C of the present resolution at its thirteenth session.

2nd meeting
16 October 2009

[Adopted by a recorded vote of 25 to 6, with 11 abstentions. The voting was as follows:

In favour:	Argentina, Bahrain, Bangladesh, Bolivia, Brazil, Chile, China, Cuba, Djibouti, Egypt, Ghana, India, Indonesia, Jordan, Mauritius, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Zambia;
Against:	Hungary, Italy, Netherlands, Slovakia, Ukraine, United States of America;
Abstaining:	Belgium, Bosnia and Herzegovina, Burkina Faso, Cameroon, Gabon, Japan, Mexico, Norway, Republic of Korea, Slovenia, Uruguay.]

United Nations A/HRC/RES/13/8

General Assembly

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Human Rights Council
Thirteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

13/8
The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Considering that the promotion of respect for the obligations arising from the Charter and other instruments and rules of the international law is among the basic purposes and principles of the United Nations,

Affirming the responsibility of the international community to promote human rights and ensure respect for international law,

Acknowledging that peace, security, development and human rights are the pillars of the United Nations system,

Affirming the applicability of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the obligations of the High Contracting Parties to the Fourth Geneva Convention and reaffirming that each High Contracting Party to the Fourth Geneva Convention is under the obligation to respect and ensure respect of their obligations arising from that convention,

Affirming the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

* The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.

Please recycle

Emphasizing that international human rights law and international humanitarian law are complementary and mutually reinforcing,

Guided by the right of the Palestinian people to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter,

Stressing that the right to life constitutes the most fundamental of all human rights,

Deeply concerned at the illegal actions by Israel undermining the sanctity and inviolability of religious sites in the occupied Palestinian territories, in particular in the holy city of Jerusalem,

Expressing serious concern at the lack of implementation by the occupying Power, Israel, of the resolutions and recommendations of the Security Council, the General Assembly and the Human Rights Council relating to the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem,

Condemning all forms of violence against civilians and deploring the loss of human lives in the context of the current situation,

Recognizing that the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, have caused severe violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts towards achieving a just and lasting peace in the region based on the two-States solution,

Recognizing also that the Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings, constitutes collective punishment and leads to disastrous humanitarian, economic, social and environmental consequences,

1. *Demands* that the occupying Power, Israel, end its occupation of the Palestinian land occupied since 1967, and that it respect its commitments within the peace process towards the establishment of the independent sovereign Palestinian State, with East Jerusalem as its capital, living in peace and security with all its neighbours;

2. *Strongly condemns* the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which have resulted in the killing and injury of thousands of Palestinian civilians, including a large number of women and children;

3. *Demands* that the occupying Power, Israel, stop the targeting of civilians and the systematic destruction of the cultural heritage of the Palestinian people, in addition to the destruction of public and private properties, as laid down in the Fourth Geneva Convention;

4. *Condemns* the disrespect for religious and cultural rights provided for in core human rights instruments and humanitarian law by the occupying Power, Israel, in the occupied Palestinian territories, including its recent announcement that it would add al-Haram al Ibrahimi in Hebron and Bilal Mosque ("Tomb of Rachel") in Bethlehem and the walls of the old city of Jerusalem to its list of national heritage sites;

5. *Demands* that Israel, the occupying Power, respect the religious and cultural rights in the occupied Palestinian territories, particularly in occupied East Jerusalem, as provided for in the Universal Declaration of Human Rights, the core international human rights instruments, the Hague Conventions and the Geneva Conventions, and that it allow Palestinian citizens and worshippers unhindered access to their properties and religious sites therein;

6. *Expresses its grave concern* at the excavation of ancient tombs and removal of hundreds of human remains from part of the historic Ma'man Allah (Mamila) Cemetery

in the holy city of Jerusalem in order to construct a “museum of tolerance”, and calls upon the Government of Israel to immediately desist from such illegal activities therein;

7. *Demands* that Israel, the occupying Power, immediately cease all diggings and excavation works beneath and around Al-Aqsa mosque compound and other religious sites in the old city of Jerusalem, and refrain from any act that may endanger the structure or foundations or change the nature of the holy sites, both Islamic and Christian, in the Occupied Palestinian Territory, particularly in and around Jerusalem;

8. *Calls for* the immediate international protection for the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights and humanitarian law, both applicable in the Occupied Palestinian Territory, including East Jerusalem;

9. *Also calls for* the immediate cessation of all Israeli military attacks and operations throughout the Occupied Palestinian Territory;

10. *Demands* that the occupying Power, Israel, immediately stop its illegal decision to demolish a large number of Palestinian houses in East Jerusalem, including in the neighbourhood area of Al-Bustan in Selwan, and the evacuation of Palestinian families in the Al-Sheikh Jarrah area of East Jerusalem, which is resulting in the displacement of more than two thousand resident Palestinians of East Jerusalem;

11. *Also demands* that the occupying Power, Israel, release Palestinian prisoners and detainees including women, children and members of the Palestinian Legislative Council;

12. *Calls upon* the occupying Power, Israel, to lift checkpoints and open all crossing points and borders according to relevant international agreements;

13. *Demands* that Israel, the occupying Power, immediately lift the siege imposed on the occupied Gaza Strip, and that it open all borders and crossing points, and allow the free access of fuel, humanitarian needs and medicine in addition to all necessary materials and equipment needed for the reconstruction and rehabilitation of Gaza as agreed upon at the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, held in Sharm el-Sheikh, Egypt, on 2 March 2009;

14. *Decides* to continue the consideration of this question at its sixteenth session.

41st meeting
24 March 2010

[Adopted by a recorded vote of 31 to 9, with 7 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Kyrgyzstan, Madagascar, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia;

Against:

Belgium, France, Hungary, Italy, Netherlands, Norway, Slovakia, United Kingdom of Great Britain and Northern Ireland, United States of America;

Abstaining:

Bosnia and Herzegovina, Burkina Faso, Cameroon, Japan, Republic of Korea, Slovenia, Ukraine.]

United Nations A/HRC/RES/13/9

General Assembly

Distr.: General
14 April 2010

Original: English

Human Rights Council
Thirteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

13/9
Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict

The Human Rights Council,

Recalling its relevant resolutions, including resolution S-9/1, adopted on 12 January 2009, and resolution S-12/1, adopted on 16 October 2010, in follow-up to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict,

Recalling also relevant General Assembly resolutions, including resolution 64/10, adopted on 5 November 2009, and resolution 64/254, adopted on 26 February 2010, in follow-up to the report of the Fact-Finding Mission,

Recalling further the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the Universal Declaration of Human Rights and other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Reaffirming the obligation of all parties to respect international humanitarian law and international human rights law,

Reiterating the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

* The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.

Please recycle

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

Convinced that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of comprehensive, just and lasting peace and stability in the Middle East,

1. *Takes note* of the report of the Secretary-General (A/64/651), submitted pursuant to paragraph 6 of General Assembly resolution 64/10;

2. *Welcomes* the report of the Secretary-General on the status of implementation of paragraph 3 of section B of Council resolution S-12/1 (A/HRC/13/55);

3. *Also welcomes* the report of the United Nations High Commissioner for Human Rights on the implementation of Council resolutions S-9/1 and S-12/1 (A/HRC/13/54) and endorses the recommendations contained therein;

4. *Also reiterates* its call upon all concerned parties, including United Nations bodies, to ensure their implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

5. *Further reiterates* the call by the General Assembly upon the Government of Israel to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, with a view to ensuring accountability and justice;

6. *Reiterates* the urging by the General Assembly for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, with a view to ensuring accountability and justice;

7. *Welcomes* the recommendation made by the General Assembly to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene, as soon as possible, a conference of High-Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999 as well as the reconvening of the conference and the declaration adopted on 5 December 2001, and recommends that the Government of Switzerland reconvene the above-mentioned conference before the end of 2010;

8. *Calls upon* the High Commissioner to explore and determine the appropriate modalities for the establishment of an escrow fund for the provision of reparations to the Palestinians who suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the military operations conducted from December 2008 to January 2009;

9. *Decides*, in the context of the follow-up to the report of the Independent International Fact-Finding Mission, to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards;

10. *Requests* the High Commissioner to appoint the members of the committee of independent experts and to provide them with all the administrative, technical and logistic assistance required to enable them to fulfil their mandate promptly and efficiently;

11. *Requests* the Secretary-General to transmit all the information submitted by the Government of Israel and the Palestinian side pursuant to paragraphs 2 and 3 of General Assembly resolution 64/254 to the committee of independent experts;

12. *Requests* the committee of independent experts to present its report to the Council at its fifteenth session;

13. *Calls upon* the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza conflict, drawing, inter alia, on the expertise of the International Committee of the Red Cross;

14. *Requests* the Secretary-General to present a comprehensive report on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of resolution S-12/1, to the Council at its fifteenth session;

15. *Requests* the High Commissioner to present a report on the implementation of the present resolution to the Council at its fifteenth session;

16. *Also requests* the High Commissioner to submit to the Council, at its fourteenth session, a progress report on the implementation of the present resolution;

17. *Decides* to follow up on the implementation of the present resolution at its fifteenth session.

42nd meeting
25 March 2010

[Adopted by a recorded vote of 29 to 6, with 11 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, China, Cuba, Djibouti, Egypt, Ghana, India, Indonesia, Jordan, Kyrgyzstan, Mauritius, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Uruguay, Zambia;

Against:

Hungary, Italy, Netherlands, Slovakia, Ukraine, United States of America;

Abstaining:

Belgium, Burkina Faso, Cameroon, Chile, France, Japan, Madagascar, Mexico, Norway, Republic of Korea, United Kingdom of Great Britain and Northern Ireland.]

United Nations A/HRC/RES/15/6

General Assembly

Distr.: General
6 October 2010

Original: English

Human Rights Council
Fifteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

15/6
Follow-up to the report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, S-12/1 of 16 October 2009 and 13/9 of 25 March 2010, adopted in follow-up to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict,[1]

Recalling also relevant General Assembly resolutions, including resolutions 64/10 of 5 November 2009 and 64/254 of 26 February 2010, adopted in follow-up to the report of the Fact-Finding Mission,

Recalling further relevant rules and principles of international law, including international humanitarian law and international human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the Universal Declaration of Human Rights and other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its fifteenth session (A/HRC/15/60), chap. I.

[1] A/HRC/12/48.

Please recycle

Reaffirming the obligation of all parties to respect international humanitarian law and international human rights law,

Reiterating the importance of the safety and well-being of all civilians, and reaffirming the obligation of the international community to ensure the protection of civilians in armed conflicts,

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

1. *Takes note* of the report of the Secretary-General,[2] and requests the Secretary-General to follow up on the implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict,[1] in accordance with Human Rights Council resolution S-12/1;

2. *Also takes note* of the report of the United Nations High Commissioner for Human Rights,[3] and requests the High Commissioner to follow up on the implementation of the recommendations contained in the report of the Fact-Finding Mission, in accordance with Human Rights Council resolution S-12/1;

3. *Welcomes* the report of the Committee of independent experts in international humanitarian and human rights law to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, including the independence, effectiveness and genuineness of these investigations and their conformity with international standards;[4]

4. *Warmly welcomes* the cooperation of the Palestinian National Authority with the Committee of independent experts, and the report submitted to the Secretary-General on the investigations carried out by the Palestinian Independent Investigation Commission established pursuant to the Goldstone report;[5]

5. *Urges* the Palestinian Independent Investigation Commission to complete its investigations in order to cover the allegations relating to the occupied Gaza Strip, as contained in the report of the Fact-Finding Mission;

6. *Condemns* the non-cooperation by Israel, the occupying Power, which hampered the assessment by the Committee of independent experts of Israel's response to the call by the General Assembly and the Council to conduct investigations that are independent, credible and in conformity with international standards;

7. *Urges* Israel, the occupying Power, in compliance with its duties to complete investigations in conformity with international standards of independence, thoroughness, effectiveness and promptness into the serious violations of international humanitarian law and international human rights law reported by the Fact-Finding Mission;

8. *Decides* to renew and resume the mandate of the Committee of independent experts, established pursuant to Council resolution 13/9, and requests the Committee to submit its report to the Council at its sixteenth session, and requests the High Commissioner to continue to provide the members of the Committee with all administrative, technical and logistic assistance required to enable them to fulfil their mandate promptly and efficiently;

[2] A/HRC/15/51.
[3] A/HRC/15/52.
[4] A/HRC/15/50.
[5] See A/64/890, annex II.

9. *Requests* the High Commissioner to present a report on the implementation of the present resolution to the Council at its sixteenth session;

10. *Decides* to remain seized of this matter.

30th meeting
29 September 2010

[Adopted by a recorded vote of 27 to 1, with 19 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Brazil, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Jordan, Kyrgyzstan, Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mauritius, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay

Against:

United States of America

Abstaining:

Belgium, Burkina Faso, Cameroon, Chile, France, Guatemala, Hungary, Japan, Mexico, Norway, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zambia]

United Nations A/HRC/RES/16/29

General Assembly

Distr.: General
13 April 2011

Original: English

Human Rights Council
Sixteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

16/29
Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Considering that the promotion of respect for the obligations arising from the Charter and other instruments and rules of international law is among the basic purposes and principles of the United Nations,

Affirming the responsibility of the international community to promote human rights and ensure respect for international law,

Acknowledging that peace, security, development and human rights are the pillars of the United Nations system,

Affirming the applicability of the fourth Geneva Convention relative to the protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the obligations of the High Contracting Parties to the Fourth Geneva Convention, and reaffirming that each High Contracting Party to the Fourth Geneva Convention is under the obligation to respect and ensure respect of their obligations arising from that Convention, in all circumstances,

Affirming the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

Please recycle

Emphasizing that international human rights law and international humanitarian law are complementary and mutually reinforcing,

Guided by the right of the Palestinian people to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter,

Reaffirming that all human rights are universal, indivisible, interdependent and interrelated,

Deeply concerned at the illegal actions by Israel undermining the sanctity and inviolability of religious sites in the occupied Palestinian territories, in particular in and around the holy city of Jerusalem,

Expressing serious concern at the lack of implementation by all parties to the conflict of the resolutions and recommendations of the Security Council, the General Assembly and the Human Rights Council relating to the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem,

Condemning all forms of violence against civilians by all the parties to the conflict, and deploring the loss of human lives in the context of the current situation,

Recognizing that the continuous Israeli military attacks and operations in the Occupied Palestinian Territory have caused severe violations of international humanitarian law and of the human rights of the Palestinian people therein, and undermine international efforts to achieve a just and lasting peace in the region based on the two-State solution,

Recognizing also that the continuous launching of rockets from the occupied Gaza Strip against civilians constitutes a severe violation of international humanitarian and human rights law and undermines international efforts to achieve a peace settlement,

Recognizing further that the Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings, constitutes collective punishment and leads to disastrous humanitarian, economic, social and environmental consequences,

1. *Demands* that the occupying Power, Israel, end its occupation of the Palestinian land occupied since 1967 and that it respect its commitments within the peace process towards the establishment of the independent sovereign Palestinian State, with East Jerusalem as its capital, living in peace and security with all its neighbours;

2. *Strongly condemns* the continuous Israeli military attacks and operations in the Occupied Palestinian Territory, including its regular military incursions, and calls for their immediate cessation;

3. *Condemns* the indiscriminate rocket and mortar fire from the occupied Gaza Strip against civilians, and calls for their immediate cessation;

4. *Demands* that the occupying Power, Israel, stop the targeting of civilians and halt its administrative decisions and practices that directly or indirectly coerce Palestinian citizens to leave East Jerusalem, including evictions, demolitions, forced displacements, cancelation of residence permits and the systematic destruction of the cultural heritage of the Palestinian people, in addition to the destruction of public and private properties, as laid down in the Fourth Geneva Convention;

5. *Condemns* the disrespect of the religious and cultural rights provided for in core human rights instruments and humanitarian law by the occupying Power, Israel, in the Occupied Palestinian Territory, including al-Haram al Ibrahimi in Hebron and Bilal Mosque (“Tomb of Rachel”) in Bethlehem and the walls of the old city of Jerusalem, which are on its list of national heritage sites;

6. *Demands* that Israel, the occupying Power, respect religious and cultural rights in the occupied Palestinian territories, particularly in occupied East Jerusalem, as provided for in the Universal Declaration of Human Rights, the core international human rights instruments, the Hague Conventions and the Geneva Conventions, and that it allow Palestinian citizens and worshippers unhindered access to their properties and religious sites therein;

7. *Expresses its grave concern* at the excavation of ancient tombs and removal of hundreds of human remains from part of the historic Ma'man Allah (Mamila) Cemetery in the holy city of Jerusalem in order to construct a "museum of tolerance", and calls upon the Government of Israel to immediately desist from such illegal activities therein;

8. *Demands* that Israel, the occupying Power, immediately cease all ongoing diggings and excavation work beneath and around the Al-Aqsa mosque compound and other religious sites in the old city of Jerusalem, and refrain from any act that may endanger the structure or foundations or change the nature of the holy sites, both Islamic and Christian, in the Occupied Palestinian Territory, particularly in and around Jerusalem;

9. *Calls for* immediate international protection for the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights and humanitarian law, applicable in the Occupied Palestinian Territory, including East Jerusalem;

10. *Demands* that the occupying Power, Israel, take the necessary measures to ensure the respect of internationally recognized sports principles as enshrined in the Charter of the International Olympic Committee, particularly the free movement and circulation of Palestinian sports teams and athletes within the Occupied Palestinian Territory, including administrative staff, and in relation with the external world, and facilitate the access of internationally donated equipment and sports materials, and that it grant regional and international teams and sports figures unhindered access to the Occupied Palestinian Territory and desist from imposing illegal measures on the construction of sports facilities throughout the Occupied Palestinian Territory, including in East Jerusalem;

11. *Also demands* that the occupying Power, Israel, immediately stop its illegal decisions to demolish a large number of Palestinian houses in East Jerusalem, including in the neighbourhood area of Al-Bustan in Selwan, and the evacuation of Palestinian families in Al-Sheikh Jarrah and Beit Hanina areas of East Jerusalem, which is resulting in the displacement of a large number of resident Palestinians of East Jerusalem;

12. *Further demands* that the occupying Power, Israel, release Palestinian prisoners and detainees, including women, children and elected members of the Palestinian Legislative Council;

13. *Calls upon* the occupying Power, Israel, to lift checkpoints and open all crossing points and borders according to relevant international agreements;

14. *Demands* that Israel, the occupying Power, immediately lift the siege imposed on the occupied Gaza Strip and that it open all borders and crossing points and allow the free access of fuel, humanitarian needs and medicine in addition to all necessary materials and equipment for the reconstruction and rehabilitation of Gaza, as agreed upon at the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, held in Sharm el-Sheikh, Egypt, on 2 March 2009;

15. *Decides* to continue the consideration of this question at its nineteenth session.

48th meeting
25 March 2011

[Adopted by a recorded vote of 30 to 1, with 15 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Switzerland, Thailand, Uganda, Uruguay

Against:

United States of America

Abstaining:

Belgium, Cameroon, France, Guatemala, Hungary, Japan, Norway, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zambia]

United Nations A/HRC/RES/16/32

General Assembly

Distr.: General
13 April 2011

Original: English

Human Rights Council
Sixteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

16/32
Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The Human Rights Council,

Recalling its relevant resolutions, including resolution S-9/1, adopted on 12 January 2009, and resolution S-12/1, adopted on 16 October 2009, in follow-up to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Fact-Finding Mission on the Gaza Conflict,

Recalling also relevant General Assembly resolutions, including resolution 64/10, adopted on 5 November 2009, and resolution 64/254, adopted on 26 February 2010, in follow-up to the report of the Fact-Finding Mission,

Recalling further the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the Universal Declaration of Human Rights and other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Reaffirming the obligation of all parties to respect international humanitarian law and international human rights law,

Reiterating the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

Please recycle

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

Convinced that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of comprehensive, just and lasting peace and stability in the Middle East,

Recalling the report of the Secretary-General submitted to the General Assembly pursuant to paragraph 6 of Assembly resolution 64/10,[1]

Recalling also the report of the Secretary-General on the status of implementation of paragraph 3 of section B of Human Rights Council resolution S-12/1,[2]

1. *Takes note* of the reports of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1,[3] and endorses the recommendations contained therein*;*

2. *Also takes note* of the reports of the committee of independent experts in international humanitarian and human rights law to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254,[4] and calls for the implementation of its conclusions;

3. *Reiterates its call* upon all concerned parties, including United Nations bodies, to ensure the full and immediate implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

4. *Regrets* the non-cooperation by the occupying power, Israel, with the members of the committee of independent experts, and its failure to comply with the calls of the Human Rights Council and the General Assembly to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, and calls on all the parties to the conflict including the Palestinian side, to take into account the conclusions of the committee;

5. *Welcomes* the efforts made by the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene, as soon as possible, a conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999, as well as the reconvening of the conference and the declaration adopted on 5 December 2001, and recommends that the Government of Switzerland continue to pursue its efforts with the aim of resuming the above-mentioned conference before September 2011;

6. *Calls upon* the High Commissioner to follow up on the determination of the appropriate modalities for the establishment of an escrow fund for the provision of reparations to Palestinians who suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the military operations conducted from December

[1] A/64/651.
[2] A/HRC/13/55.
[3] A/HRC/13/54 and A/HRC/16/71.
[4] A/HRC/15/50 and A/HRC/16/24.

2008 to January 2009, also taking into consideration Israelis who suffered loss and damage as a result of unlawful acts attributable to the Palestinian side;

7. *Reiterates its call* to the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions, as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, drawing on, inter alia, the expertise of the International Committee of the Red Cross;

8. *Recommends* that the General Assembly reconsider the report of the United Nations Fact-Finding Mission on the Gaza Conflict at its sixty-sixth session, and urges the Assembly to submit that report to the Security Council for its consideration and appropriate action, including consideration of referral of the situation in the Occupied Palestinian Territory to the prosecutor of the International Criminal Court, pursuant to article 13 (b) of the Rome Statute;

9. *Also recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action has been taken at the domestic or international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers is required in the interests of justice;

10. *Requests* the Secretary-General to present a comprehensive report on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of Human Rights Council resolution S-12/1, to the Council at its eighteenth session;

11. *Requests* the High Commissioner to submit a progress report on the implementation of the present resolution to the Human Rights Council at its eighteenth session;

12. *Decides* to follow up on the implementation of the present resolution at its nineteenth session.

48th meeting
25 March 2011

[Adopted by a recorded vote of 27 to 3, with 16 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Brazil, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay

Against:

Slovakia, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Belgium, Burkina Faso, Cameroon, France, Guatemala, Hungary, Japan, Mexico, Norway, Poland, Republic of Korea, Republic of Moldova, Spain, Switzerland, Ukraine, Zambia]

United Nations A/HRC/RES/19/16

General Assembly

Distr.: General
10 April 2012

Original: English

Human Rights Council
Nineteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

19/16
Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights,

Recalling also the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and affirming that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling further relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur of the Human Rights Council on the situation of human rights in the Palestinian territories occupied since 1967, as well as of other relevant recent reports of the Human Rights Council,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its nineteenth session (A/HRC/19/2), chap. I.

Please recycle

Reaffirming also the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming further the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Reaffirming that all States have the right and the duty to take actions in conformity with international law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Stressing also the need to end the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, taking into account Israeli concerns,

Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned in particular about the critical humanitarian and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic and movement restrictions that in effect amount to a blockade and the military operations between December 2008 and January 2009, which caused extensive loss of life and injury, particularly among Palestinian civilians, including children and women, widespread destruction and damage to Palestinian homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities and the internal displacement of civilians, as well as about the firing of rockets into Israel,

Expressing deep concern about the short- and long-term detrimental impact of such widespread destruction and the continued impeding of the reconstruction process by Israel, the occupying Power, on the human rights situation and on the socio-economic and humanitarian conditions of the Palestinian civilian population,

Also expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions, checkpoints, several of which have been transformed into structures akin to permanent border crossings, and a permit regime, all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, and at the consequent violation of the human rights of the Palestinian people and the negative impact on their socio-economic situation and the efforts aimed at rehabilitating and developing the Palestinian economy, which remains that of a humanitarian crisis in the Gaza Strip, while taking note of recent developments with regard to the situation of access there,

Further expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including, inter alia, unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also about the ill-treatment and harassment of any Palestinian prisoners and all reports of torture,

Expressing concern about the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties implement the agreements reached and, in this regard, recalling the positive contribution of the Temporary International Presence in Hebron,

Taking note of the continued efforts and tangible progress made in the security sector by the Palestinian Authority, calling upon the parties to continue cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council, are illegal and have no validity;

2. *Demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, including the killing and injury of civilians, the arbitrary detention and imprisonment of civilians and the destruction and confiscation of civilian property, and that it fully respect human rights law and comply with its legal obligations in this regard;

3. *Also demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Further demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

5. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, which have caused extensive loss of life and vast numbers of injuries, including among children, massive damage and destruction to homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities, and agricultural lands, mosques and private media institutions, and internal displacement of civilians;

6. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

7. *Demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socio-economic living conditions of the Palestinian people;

8. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

9. *Calls upon* Israel, the occupying Power, to cease its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, and, in this regard, to fully implement the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

10. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socio-economic and humanitarian situation, particularly in the Gaza Strip;

11. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

12. *Decides* to remain seized of the matter.

53rd meeting
22 March 2012

[Adopted by a recorded vote of 44 to 1, with 2 abstentions. The voting was as follows:

In favour:

Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Chile, China, Congo, Costa Rica, Cuba, Czech Republic, Djibouti, Ecuador, Hungary, India, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Philippines, Poland, Qatar, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, Uganda, Uruguay,

Against:

United States of America

Abstaining:

Cameroon, Guatemala]

United Nations A/HRC/RES/19/18

General Assembly

Distr.: General
10 April 2012

Original: English

Human Rights Council
Nineteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council[*]

19/18
Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The Human Rights Council,

Recalling its relevant resolutions, including resolution S-9/1, adopted on 12 January 2009, and resolution S-12/1, adopted on 16 October 2010, in follow-up to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Fact-Finding Mission on the Gaza Conflict,[1]

Recalling also relevant General Assembly resolutions, including resolutions 64/10, adopted on 5 November 2009, and 64/254, adopted on 26 February 2010, in follow-up to the report of the Fact-Finding Mission on the Gaza Conflict,

Recalling further the relevant rules and principles of international law, including international humanitarian law and international human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling the Universal Declaration of Human Rights and the other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Reaffirming the obligation of all parties to respect international humanitarian law and international human rights law,

Reiterating the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

[*] The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its nineteenth session (A/HRC/19/2), chap. I.

[1] A/HRC/12/48.

Please recycle

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

Convinced that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of comprehensive, just and lasting peace and stability in the Middle East,

1. *Reiterates its call* upon all concerned parties, including United Nations bodies, to ensure their full and immediate implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

2. *Welcomes* the efforts made by the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene, as soon as possible, a conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999, as well as the reconvening of the conference and the declaration adopted on 5 December 2001, and recommends that the Government of Switzerland continue to pursue its efforts with the aim of resuming the above-mentioned conference as soon as possible;

3. *Recommends* that the General Assembly consider launching an urgent discussion on the legality of the use of certain munitions, with the assistance of the relevant international organizations and specialized agencies and interested parties and stakeholders, as recommended by the Fact-Finding Mission in its report;

4. *Also recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations made by the Fact-Finding Mission in its report has been taken at the domestic or international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers is required in the interests of justice;

5. *Requests* the Secretary-General to present to the Human Rights Council, at its twenty-first session, a comprehensive report on the progress made in the implementation of the recommendations of the Fact-Finding Mission, particularly by providing detailed information on non-implementation and the measures required to ensure the most adequate and effective implementation of the recommendations by all parties concerned, including United Nations bodies, in accordance with section B, paragraph 3, of Council resolution S-12/1;

6. *Requests* the United Nations High Commissioner for Human Rights to submit to the Human Rights Council, at its twentieth session, a progress report on the implementation of the present resolution;

7. *Decides* to follow up on the implementation of the present resolution at its twentieth session.

53rd meeting
22 March 2012

[Adopted by a recorded vote of 29 to 1, with 17 abstentions. The voting was as follows:

In favour:

Angola, Bangladesh, Benin, Botswana, Chile, China, Congo, Cuba, Djibouti, Ecuador, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Nigeria, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda

Against:

United States of America

Abstaining:

Austria, Belgium, Burkina Faso, Cameroon, Costa Rica, Czech Republic, Guatemala, Hungary, Italy, Mexico, Norway, Poland, Republic of Moldova, Romania, Spain, Switzerland, Uruguay]

United Nations A/HRC/RES/22/25

General Assembly

Distr.: General
12 April 2013

Original: English

Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/25. Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict

The Human Rights Council,

Recalling its relevant resolutions, including resolution S-9/1, adopted on 12 January 2009, and resolution S-12/1, adopted on 16 October 2010, in follow-up of the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Fact-Finding Mission on the Gaza Conflict,[1]

Recalling further the relevant rules and principles of international law, including international humanitarian law and international human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

1. *Renews* its recommendation that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations contained in the report of the Independent International Fact-Finding Mission on the Gaza Conflict is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators, and to remain also ready to consider whether additional action within its powers is required in the interests of justice;

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

[1] A/HRC/12/48.

Please recycle

2. *Decides* to remain seized of the matter.

49th meeting
22 March 2013

[Adopted by a recorded vote of 43 to 1, with 3 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Ecuador, Estonia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America

Abstaining:

Czech Republic, Ethiopia, Kenya]

United Nations A/HRC/RES/22/28

General Assembly

Distr.: General
16 April 2013

Original: English

Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/28. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights,

Recalling also the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and affirming that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling further relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, as well as of other relevant recent reports of the Human Rights Council,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

Please recycle

Reaffirming also the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming further the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Reaffirming that all States have the right and the duty to take actions in conformity with international human rights law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Stressing also the need to end the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, taking into account Israeli concerns,

Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned in particular about the critical humanitarian and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic and movement restrictions that in effect amount to a blockade and the military operations between December 2008 and January 2009, which caused extensive loss of life and injury, particularly among Palestinian civilians, including children and women, widespread destruction and damage to Palestinian homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities and the internal displacement of civilians, as well as about the firing of rockets into Israel,

Expressing deep concern about the short- and long-term detrimental impact of such widespread destruction and the continued impeding of the reconstruction process by Israel, the occupying Power, on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population,

Expressing deep concern also at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, and a permit regime, all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, and at the consequent violation of the human rights of the Palestinian people and the negative impact on their socioeconomic situation and the efforts aimed at rehabilitating and developing the Palestinian economy, which remains that of a humanitarian crisis in the

Gaza Strip, while taking note of recent developments with regard to the situation of access there,

Expressing deep concern further that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including, inter alia, unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also about the ill-treatment and harassment of any Palestinian prisoners and all reports of torture,

Expressing concern about the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties implement the agreements reached and, in this regard, recalling the positive contribution of the Temporary International Presence in Hebron,

Taking note of the continued efforts and tangible progress made in the security sector by the Palestinian Government, calling upon the parties to continue cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council, are illegal and have no validity;

2. *Demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, including the killing and injury of civilians, the arbitrary detention and imprisonment of civilians and the destruction and confiscation of civilian property, and that it fully respect human rights law and comply with its legal obligations in this regard;

3. *Expresses deep concern* over the conditions of the Palestinian prisoners and detainees in Israeli jails and detention centres, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, and further expresses its concern about the continued extensive use of administrative detention, calls for a full implementation of the agreement reached in May 2012, for a prompt and independent investigation into all cases of death custody, and also calls upon Israel to release any Palestinian prisoner whose detention is not in accordance with international law;

4. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

5. *Also demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

6. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, which have caused extensive loss of life and vast numbers of injuries, including among children, massive damage and destruction to homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities, and agricultural lands, mosques and private media institutions, and internal displacement of civilians;

7. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

8. *Demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

9. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

10. *Calls upon* Israel, the occupying Power, to cease its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, and, in this regard, to fully implement the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

11. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

12. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

13. *Requests* the Secretary-General to report on the implementation of the present resolution to the Human Rights Council at its twenty-fourth session;

14. *Decides* to remain seized of the matter.

50th meeting
22 March 2013

[Adopted by a recorded vote of 46 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America]

United Nations A/HRC/RES/22/29

General Assembly

Distr.: General
15 April 2013

Original: English

Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/29. Follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling relevant Human Rights Council resolutions, including resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling further the relevant rules and principles of international law, including international humanitarian law and international human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to the Occupied Palestinian Territory, including East Jerusalem, and to which Israel is a party,

Recalling the Universal Declaration of Human Rights and the other international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

Please recycle

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, are illegal under international law and constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein, and undermine international efforts aimed at invigorating the peace process and realizing the two-State solution,

1. *Welcomes* the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the occupied Palestinian Territories, including East Jerusalem,[1] and requests that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained therein in accordance with their respective mandates;

2. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

3. *Requests* the Working Group on the issue of human rights and transnational corporations and other business enterprises, including in consultation with relevant special procedures mandate holders, to fulfil its mandate accordingly;

4. *Requests* the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Occupied Palestinian Territory, including in East Jerusalem, to the Human Rights Council at its twenty-fifth session;

[1] A/HRC/22/63.

5. *Decides* to remain seized of the matter.

50th meeting
22 March 2013

[Adopted by a recorded vote of 45 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, Estonia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America]

United Nations A/HRC/RES/25/29

General Assembly

Distr.: General
11 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

25/29. Human rights situation in Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, as well as of other relevant recent reports of the Human Rights Council,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Mindful of the failure by Israel, the occupying Power, to live up to its obligations as set forth in international law and as reaffirmed in all relevant United Nations resolutions and the advisory opinion rendered on 9 July 2004 by the International Court of Justice,

Reaffirming that all States have the right and the duty to take actions in conformity with international human rights law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory*;* the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned in particular about the critical humanitarian and security situation in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and the military operations between December 2008 and January 2009 and in November 2012, which caused extensive loss of life and injury, particularly among Palestinian civilians, including children and women, widespread destruction and damage to Palestinian homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities and the internal displacement of civilians, as well as about the firing of rockets into Israel,

Expressing deep concern about the short- and long-term detrimental impact of such widespread destruction and the continued impeding of the reconstruction process by Israel, the occupying Power, on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, taking into account Israeli concerns,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only, and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, and deeply concerned also at the consequent violation of the human rights of the Palestinian people and the negative impact on their socioeconomic situation and the efforts aimed at rehabilitating and developing the Palestinian economy,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Emphasizing that the destruction of property and the permanent displacement of Palestinian communities in the Occupied Palestinian Territory, including East Jerusalem, from their initial locations constitute, in all but the most limited cases as specified under international law, violations of the prohibitions on destruction of property and forcible transfer, respectively, under articles 53 and 49 of the Fourth Geneva Convention,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including, inter alia, unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also about the ill-treatment and harassment of any Palestinian prisoner and all reports of torture,

Expressing concern about the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population, and to help the parties implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron,

Taking note of the continued efforts and tangible progress made in the security sector by the Palestinian Government, calling upon the parties to continue cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

2. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

3. *Stresses* the need for Israel, the occupying Power, to withdraw from the Palestinian Territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

4. *Demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

5. *Also demands* that Israel, the occupying Power, cease its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

6. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

7. *Expresses grave concern* at the confiscation and damage by Israel of fishing nets in the Gaza Strip for which there is no discernible security justification;

8. *Condemns* the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, and in the context of peaceful protests in the West Bank, resulting in extensive loss of life and vast numbers of injuries;

9. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

10. *Further condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, including the torching of places of worship and the destruction of olive trees and crops by Israeli settlers;

11. *Calls upon* Israel to cease all violations of the right to education of Palestinians, including those stemming from restrictions on movement and incidents of harassment and attacks on school children and educational facilities by Israeli settlers and as a result of Israeli military action;

12. *Also calls upon* Israel to end any harassment, intimidation and reprisals against human rights defenders who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies;

13. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees in Israeli jails and detention centres, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, and also expresses its concern at the continued extensive use of administrative detention, calls for a full implementation of the agreement reached in May

2012 for a prompt and independent investigation into all cases of death custody, and also calls upon Israel to release any Palestinian prisoner whose detention is not in accordance with international law;

14. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

15. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

16. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

17. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

18. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings, and to ensure adequate housing and legal security of tenure;

19. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

20. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including home demolitions, evictions of Palestinian residents, excavations in and around religious and historic sites, and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole;

21. *Expresses grave concern* at:

(*a*) The restrictions imposed by Israel that impede access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

(*b*) The increasing tensions in occupied East Jerusalem and the wider region, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

22. *Expresses serious concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

23. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

24. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

25. *Stresses* the need for Israel to abide by all relevant United Nations resolutions and to cooperate with the Human Rights Council, all special procedures and the Office of the United Nations High Commissioner for Human Rights;

26. *Requests* the Secretary-General to report on the implementation of the present resolution to the Human Rights Council at its twenty-eighth session;

27. *Decides* to remain seized of the matter.

56th meeting
28 March 2014

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

Algeria, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Montenegro, Morocco, Namibia, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America]

United Nations A/HRC/RES/25/30

General Assembly

Distr.: General
15 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

25/30. Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict

The Human Rights Council,

Recalling its relevant resolutions, including resolution S-9/1, adopted on 12 January 2009, and resolution S-12/1, adopted on 16 October 2010, in follow-up to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the report of the United Nations Fact-Finding Mission on the Gaza Conflict,[1]

Recalling also the relevant rules and principles of international law, including international humanitarian and international human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

1. *Renews* its recommendation that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations contained in the report of the Independent International Fact-Finding Mission on the Gaza Conflict is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators, and to remain also ready to consider whether additional action within its powers is required in the interests of justice;

2. *Decides* to remain seized of the matter.

56th meeting
28 March 2014

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

[1] A/HRC/12/48.

Algeria, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Montenegro, Morocco, Namibia, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America]

United Nations A/HRC/RES/S-21/1

General Assembly

Distr.: General
24 July 2014

Original: English

Human Rights Council
Twenty-first special session
23 July 2014

Resolution adopted by the Human Rights Council

S-21/1
Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Recalling General Assembly resolution 60/251 of 15 March 2006 and Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007,

Reaffirming the right to self-determination of the Palestinian people and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter,

Affirming the applicability of international human rights law and international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[1] to the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that all High Contracting Parties to the Fourth Geneva Convention[1] are under the obligation to respect and ensure respect for the obligations arising from the said Convention in relation to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming their obligations under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties,

Gravely concerned at the lack of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict of 2009,[2] and convinced that lack of accountability for violations of international law reinforces a culture of impunity, leading to a recurrence of violations and seriously endangering the maintenance of international peace,

Noting that 9 July 2014 marked the tenth anniversary of the adoption of the advisory opinion by the International Court of Justice on the legal consequences of the construction

[1] United Nations, *Treaty Series*, vol. 75, No. 973.
[2] A/HRC/12/48.

of a wall in the Occupied Palestinian Territory and that no progress has been made on its implementation, and affirming the urgent need to respect and ensure respect for international humanitarian law and international human rights law in this regard,

Firmly convinced that justice and respect for the rule of law are the indispensable bases for peace, and stressing that prevailing long-standing and systemic impunity for international law violations has created a justice crisis in the Occupied Palestinian Territory that warrants action, including accountability for international crimes,

Noting the systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way, as required by international law, on violence and offences carried out against Palestinians by the occupying forces and settlers and to establish judicial accountability over its military actions in the Occupied Palestinian Territory, including East Jerusalem,

Emphasizing the obligations of Israel as the occupying Power to ensure the welfare and safety of the Palestinian civilian population under its occupation in the West Bank, including East Jerusalem, and in the Gaza Strip, and noting Israel's wilful abdication and rejection of its obligations in this regard,

Noting that the deliberate targeting of civilians and other protected persons and the perpetration of systematic, flagrant and widespread violations of applicable international humanitarian law and international human rights law in situations of armed conflict constitute grave breaches and a threat to international peace and security,

Deploring the massive Israeli military operations in the Occupied Palestinian Territory, including East Jerusalem, since 13 June 2014, which have involved disproportionate and indiscriminate attacks and resulted in grave violations of the human rights of the Palestinian civilian population, including through the most recent Israeli military assault on the occupied Gaza Strip, the latest in a series of military aggressions by Israel, and actions of mass closure, mass arrest and the killing of civilians in the occupied West Bank,

Expressing grave concern at the critical humanitarian situation in the Gaza Strip, including in particular the forced displacement of tens of thousands of Palestinian civilians, the crisis in access to adequate water and sanitation services affecting nearly 1 million people, and the extensive damage to electricity infrastructure resulting in 80 per cent of the population receiving electricity only four hours a day, and underlining the importance of providing emergency humanitarian assistance to them and other victims,

Welcoming the establishment of the Palestinian national consensus Government on 2 July 2014 as an important step towards Palestinian reconciliation, which is crucial for achieving a two-State solution based on the pre-1967 borders and lasting peace, and emphasizing that the situation of the occupied Gaza Strip is unsustainable as long as it remains geographically, politically and economically separated from the West Bank,

1. *Strongly condemns* the failure of Israel, the occupying Power, to end its prolonged occupation of the Occupied Palestinian Territory, including East Jerusalem, in accordance with international law and relevant United Nations resolutions;

2. *Condemns in the strongest terms* the widespread, systematic and gross violations of international human rights and fundamental freedoms arising from the Israeli military operations carried out in the Occupied Palestinian Territory since 13 June 2014, particularly the latest Israeli military assault on the occupied Gaza Strip, by air, land and sea, which has involved disproportionate and indiscriminate attacks, including aerial bombardment of civilian areas, the targeting of civilians and civilian properties in collective punishment contrary to international law, and other actions, including the targeting of medical and humanitarian personnel, that may amount to international crimes, directly resulting in the killing of more than 650 Palestinians, most of them civilians and more than

170 of whom are children, the injury of more than 4,000 people and the wanton destruction of homes, vital infrastructure and public properties;

3. *Condemns* all violence against civilians wherever it occurs, including the killing of two Israeli civilians as a result of rocket fire, and urges all parties concerned to respect their obligations under international humanitarian law and international human rights law;

4. *Calls for* an immediate cessation of Israeli military assaults throughout the Occupied Palestinian Territory, including East Jerusalem, and an end to attacks against all civilians, including Israeli civilians;

5. *Welcomes* the initiative of Egypt, supported by the League of Arab States, and calls for all regional and international actors to support this initiative in view of securing a comprehensive ceasefire;

6. *Demands* that Israel, the occupying Power, immediately and fully end its illegal closure of the occupied Gaza Strip, which in itself amounts to collective punishment of the Palestinian civilian population, including through the immediate, sustained and unconditional opening of the crossings for the flow of humanitarian aid, commercial goods and persons to and from the Gaza Strip, in compliance with its obligations under international humanitarian law;

7. *Calls upon* the international community, including the States Members of the United Nations, international financial institutions and intergovernmental and non-governmental organizations, as well as regional and interregional organizations, to provide urgently needed humanitarian assistance and services to the Palestinian people in the Gaza Strip, including by supporting the emergency appeal launched by the United Nations Relief and Works Agency for Palestine Refugees in the Near East on 17 July 2014;

8. *Expresses grave concern* at the rising number of incidents of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers illegally transferred to the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, and condemns in the strongest terms the resulting perpetration of hate crimes;

9. *Expresses deep concern* at the condition of Palestinian prisoners and detainees in Israeli jails and detention centres, in particular following the arrest by Israel of more than 1,000 Palestinians since 13 June 2014, and calls upon Israel, the occupying Power, to immediately release all Palestinian prisoners whose detention is not in accordance with international law, including all children and all members of the Palestinian Legislative Council;

10. *Underlines* the importance of ensuring the protection of all civilians, emphasizes the continued failure of Israel to protect the Palestinian civilian population under its occupation as demanded by international law, and in this context calls for immediate international protection for the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of the Charter of the United Nations, international humanitarian law and international human rights law;

11. *Recommends* that the Government of Switzerland, in its capacity as depositary of the Fourth Geneva Convention,[1] promptly reconvene the conference of High Contracting Parties to the Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1 common to the four Geneva Conventions,[3] bearing in mind the

[3] United Nations, *Treaty Series*, vol. 75, Nos. 970–973.

statement adopted by the Conference of the High Contracting Parties on 15 July 1999, and the Declaration adopted by the Conference on 5 December 2001;

12. *Requests* all relevant special procedures mandate holders to urgently seek and gather information on all human rights violations in the Occupied Palestinian Territory, including East Jerusalem, according to their respective mandates, and to include their observations in their annual reports to the Human Rights Council;

13. *Decides* to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults, and to report to the Council at its twenty-eighth session;

14. *Requests* the cooperation, as appropriate, of other relevant United Nations bodies with the commission of inquiry to carry out its mission, and requests the assistance of the Secretary-General and the United Nations High Commissioner for Human Rights in this regard, including in the provision of all administrative, technical and logistical assistance required to enable the commission of inquiry and special procedures mandate holders to fulfil their mandates promptly and efficiently;

15. *Requests* the High Commissioner to report on the implementation of the present resolution, including on measures taken with regard to ensuring accountability for the serious violations of international humanitarian law and human rights in the Occupied Palestinian Territory, including East Jerusalem, to the Human Rights Council at its twenty-seventh session;

16. *Decides* to remain seized of the matter.

2nd meeting
23 July 2014

[Adopted by a recorded vote of 29 to 1, with 17 abstentions. The voting was as follows:

In favour:

Algeria, Argentina, Brazil, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Morocco, Namibia, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, United Arab Emirates, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Austria, Benin, Botswana, Burkina Faso, Czech Republic, Estonia, France, Gabon, Germany, Ireland, Italy, Japan, Montenegro, Republic of Korea, Romania, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland]

United Nations A/HRC/RES/28/27

General Assembly

Distr.: General
13 April 2015

Original: English

Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

28/27. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, and of other relevant recent reports of the Human Rights Council,

Noting the recent accession by Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Deploring Israel's recurrent practice of withholding Palestinian tax revenues,

Aware of the responsibility of the international community to promote human rights and to ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Reaffirming that all States have the right and the duty to take actions in conformity with international human rights law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Stressing the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern at the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring the conflict in and around the Gaza Strip in July and August 2014 and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and any violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of the military operations between December 2008 and January 2009, in November 2012 and in July and August 2014, as well as about the firing of rockets into Israel,

Stressing that the situation in the Gaza Strip is unsustainable and that a durable ceasefire agreement must lead to a fundamental improvement in the living conditions of the Palestinian people in the Gaza Strip, including through the sustained and regular opening of crossing points, and ensure the safety and well-being of civilians on both sides,

Affirming the need to support the Palestinian national consensus government in its assumption of full government responsibilities in both the West Bank and the Gaza Strip, in all fields, and through its presence at Gaza crossing points,

Expressing deep concern at the short- and long-term detrimental impact of such widespread destruction and the continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, compounded by the fact that only about 5 per cent of pledged donations for reconstruction have reached the Gaza Strip, and calling upon the international community to step up its efforts in order to provide the Gaza Strip with the assistance that it requires,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, taking into account Israeli concerns,

Stressing the need also for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only, and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, and deeply concerned also at the consequent violation of the human rights of the Palestinian people and the negative impact on their socioeconomic situation and the efforts aimed at rehabilitating and developing the Palestinian economy,

Deploring all policies and practices whereby Israeli settlers who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Emphasizing that the destruction of property and the forced displacement of Palestinian communities in the Occupied Palestinian Territory, including East Jerusalem,

constitute, in all but the most limited cases as specified under international law, violations of the prohibitions on destruction of property and forcible transfer, respectively under articles 53 and 49 of the Fourth Geneva Convention,

Deeply concerned at reports of the hampering and destruction of humanitarian assistance by Israel, contributing to a coercive environment that can lead to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also about the ill-treatment and harassment of any Palestinian prisoner and all reports of torture,

Expressing concern about the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron,

Recognizing the continued efforts and tangible progress made in the Palestinian security sector, noting the continued cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the International Covenants on Human Rights,

1. *Stresses* the need for Israel, the occupying Power, to withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Also demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

5. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

6. *Stresses* the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

7. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

8. *Expresses grave concern* at the confiscation and damage by Israel of fishing nets in the Gaza Strip for which there is no discernible security justification;

9. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, and United Nations facilities, and agricultural lands, and large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of peaceful protests in the West Bank;

10. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

11. *Calls upon* Israel to cease all violations of the right to education of Palestinians, including those stemming from restrictions on movement and incidents of harassment and attacks on school children and educational facilities by Israeli settlers and as a result of Israeli military action;

12. *Also calls upon* Israel to end any harassment, intimidation and reprisals against human rights defenders who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies;

13. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, and also expresses its concern at the continued extensive use of administrative detention, calls for a full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death custody, and also calls upon Israel to release any Palestinian prisoner whose detention is not in accordance with international law;

14. *Calls upon* Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment;

15. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

16. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

17. *Deplores* Israel's resumption of the policy of punitive home demolitions and the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws, and the demolition of residential structures and the forced eviction of Palestinian families, in violation of their basic right to adequate housing and in violation of international humanitarian law;

18. *Expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

19. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

20. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded in General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

21. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings and to ensure adequate housing and legal security of tenure;

22. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

23. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including home demolitions, evictions of Palestinian residents, excavations in and around religious and historic sites, and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole;

24. *Expresses grave concern* at:

(*a*) The restrictions imposed by Israel that impede access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

(*b*) The increasing tensions in occupied East Jerusalem and the wider region, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

25. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

26. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

27. *Deplores* the persistent non-cooperation of Israel with special procedures mandate holders and other United Nations mechanisms, and stresses the need for Israel to abide by all relevant United Nations resolutions and to cooperate with the Human Rights Council, all special procedures and the Office of the United Nations High Commissioner for Human Rights;

28. *Requests* the Office of the High Commissioner to strengthen further the presence of its office in the Occupied Palestinian Territory by, inter alia, deploying the necessary personnel and expertise;

29. *Requests* the Secretary-General to report on the implementation of the present resolution to the Human Rights Council at its thirty-first session;

30. *Decides* to remain seized of the matter.

57th meeting
27 March 2015

[Adopted by a recorded vote of 43 to 1, with 3 abstentions. The voting was as follows:

In favour:

Albania, Algeria, Argentina, Bangladesh, Bolivia (Plurinational State of), Brazil, China, Congo, Côte d'Ivoire, Cuba, El Salvador, Estonia, Ethiopia, France, Gabon, Germany, Ghana,[*] India, Indonesia, Ireland, Japan, Kazakhstan, Kenya, Latvia, Maldives, Mexico, Montenegro, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Botswana, Paraguay, the former Yugoslav Republic of Macedonia]

[*] The delegation of Ghana subsequently stated that there had been an error in its voting and that it had intended to abstain.

United Nations A/HRC/RES/29/25

General Assembly

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22 July 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 7

Resolution adopted by the Human Rights Council on 3 July 2015

29/25. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further its relevant resolutions, including resolutions S-9/1 of 12 January 2009 and S-21/1 of 23 July 2014, and the report of the United Nations Fact-Finding Mission on the Gaza Conflict,[1]

Expressing its appreciation to the independent commission of inquiry on the 2014 Gaza conflict for its comprehensive report,[2]

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians, reaffirming the obligation to ensure the protection of civilians in armed conflict, and deploring the civilian deaths that resulted from the conflict in and around the Gaza Strip in July and August 2014, including the killing of 1,462 Palestinian civilians, including 551 children and 299 women, and six Israeli civilians,

[1] A/HRC/12/48.
[2] A/HRC/29/52.

Please recycle

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes, including the findings of the United Nations Fact-Finding Mission on the Gaza Conflict, of the independent commission of inquiry on the 2014 Gaza conflict, and of the boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and of international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967,

Deploring the non-cooperation by Israel with the independent commission of inquiry on the 2014 Gaza conflict and the refusal to grant access to or to cooperate with international human rights bodies seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict, which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Emphasizing the need for States to investigate grave breaches of the Geneva Conventions of 1949 to end impunity, uphold their obligations to ensure respect, and promote international accountability,

Noting the accession by Palestine to the Rome Statute of the International Criminal Court on 2 January 2015,

1. *Welcomes* the report of the independent commission of inquiry on the 2014 Gaza conflict;[2]

2. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of all recommendations contained in the report of the commission of inquiry, in accordance with their respective mandates;

3. *Notes* the importance of the work of the commission of inquiry and of the United Nations Fact-Finding Mission on the Gaza Conflict of 2009 and the information collected regarding grave violations in support of future accountability efforts, in particular, information on alleged perpetrators of violations of international law;

4. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate fair and independent domestic or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including reparations, and stresses the need to pursue practical steps towards these goals;

5. *Calls upon* the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened;

6. *Calls upon* all States to promote compliance with human rights obligations and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure

respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties;

7. *Recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report has been or is being taken appropriately at the domestic or international levels to ensure justice for victims and accountability for perpetrators;

8. *Requests* the United Nations High Commissioner for Human Rights to present, as part of the reporting requested by the Human Rights Council in its resolutions S-9/1 and S-12/1, a report on the implementation of the present resolution and of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict, to the Council at its thirty-first session;

9. *Decides* to remain seized of the matter.

46th meeting
3 July 2015

[Adopted by a recorded vote of 41 to 1, with 5 abstentions. The voting was as follows:

In favour:

Albania, Algeria, Argentina, Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, China, Congo, Côte d'Ivoire, Cuba, El Salvador, Estonia, France, Gabon, Germany, Ghana, Indonesia, Ireland, Japan, Kazakhstan, Latvia, Maldives, Mexico, Montenegro, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Ethiopia, India, Kenya, Paraguay, the former Yugoslav Republic of Macedonia]

United Nations A/HRC/RES/31/34

General Assembly

Distr.: General
20 April 2016

Original: English

Human Rights Council
Thirty-first session
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2016

31/34. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, and of other relevant recent reports of the Human Rights Council,

Noting the recent accession by Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Deploring Israel's recurrent practice of withholding Palestinian tax revenues,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Reaffirming that all States have the right and the duty to take actions in conformity with international human rights law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Also stressing the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, and to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned in this regard by the ongoing demolition of Palestinian homes by Israel, the occupying Power, in particular in Occupied East Jerusalem, including when carried out as an act of collective punishment in violation of international humanitarian law, and by the revocation of residence permits and the eviction of Palestinian residents of the city,

Deploring the conflict in and around the Gaza Strip in July and August 2014 and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and any violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of the military operations between December 2008 and January 2009, in November 2012 and in July and August 2014, and about the firing of rockets into Israel,

Stressing that the situation in the Gaza Strip is unsustainable and that a durable ceasefire agreement must lead to a fundamental improvement in the living conditions of the Palestinian people in the Gaza Strip, including through the sustained and regular opening of crossing points, and ensure the safety and well-being of civilians on both sides,

Affirming the need to support the Palestinian national consensus Government in its assumption of full government responsibilities in both the West Bank and the Gaza Strip, in all fields, and through its presence at Gaza crossing points,

Expressing deep concern about the short- and long-term detrimental impact of such widespread destruction and the continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, and calling upon the international community to step up its efforts to provide the Gaza Strip with the assistance that it requires,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli concerns,

Stressing also the need for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only, and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, and deeply concerned also at the consequent violation of the human rights of the Palestinian people and the negative impact on their socioeconomic situation and the efforts aimed at rehabilitating and developing the Palestinian economy,

Convinced that the Israeli occupation has gravely impeded the efforts to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem, and expressing grave concern at the consequent deterioration of economic and living conditions,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Emphasizing that the destruction of property and the forced displacement of Palestinian communities in the Occupied Palestinian Territory, including East Jerusalem, constitute, in all but the most limited cases as specified under international law, violations of the prohibitions on the destruction of property and on forcible transfers, respectively, under articles 53 and 49 of the Fourth Geneva Convention,

Deeply concerned at reports of the hampering and destruction of humanitarian assistance by Israel, contributing to a coercive environment that can lead to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including, inter alia, unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of any Palestinian prisoner and all reports of torture,

Expressing deep concern also at the recent hunger strikes by numerous Palestinian prisoners in protest at the harsh conditions of their imprisonment and detention by the occupying Power, while taking note of the agreement reached in May 2012 on conditions of detention in Israeli prisons and calling for its full and immediate implementation,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Expressing concern at the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron,

Recognizing the continued efforts and tangible progress made in the Palestinian security sector, noting the continued cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Stresses* the need for Israel, the occupying Power, to withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Calls for* urgent measures to ensure the safety and protection of the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of international humanitarian law and as called for by the Security Council in its resolution 904 (1994) of 18 March 1994;

5. *Demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

6. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

7. *Also reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate access of medical supplies and medical practitioners to all areas under occupation, including the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

8. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

9. *Expresses grave concern* at the confiscation and damage by Israel of fishing nets in the Gaza Strip for which there is no discernible security justification;

10. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, and United Nations facilities, and agricultural lands, and large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of peaceful protests in the West Bank;

11. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

12. *Calls upon* Israel to cease all violations of the right to education of Palestinians, including those stemming from restrictions on movement and incidents of harassment and attacks on school children and educational facilities by Israeli settlers and as a result of Israeli military action;

13. *Also calls upon* Israel to end all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, and underscores the need to investigate all such acts, to ensure accountability and effective remedies, and to take steps to prevent any further such threats, attacks, reprisals or acts of intimidation;

14. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, and also expresses its concern at the continued extensive use of administrative detention, calls for a full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death custody, and also calls upon Israel to release all Palestinian prisoners detained in violation of international law;

15. *Calls for* urgent attention to the plight and the rights, in accordance with international law, of Palestinian prisoners and detainees in Israeli jails, and calls for respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

16. *Calls upon* Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment;

17. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

18. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

19. *Deplores* Israel's resumption of the policy of punitive home demolitions and the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws, and the demolition of residential structures and the forced eviction of Palestinian families, in violation of their basic right to adequate housing and in violation of international humanitarian law;

20. *Expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

21. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

22. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded by the General Assembly in its resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory,

including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

23. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings and to ensure adequate housing and legal security of tenure;

24. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

25. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including home demolitions, evictions of Palestinian residents, excavations in and around religious and historic sites, and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole;

26. *Expresses grave concern* at:

(*a*) The restrictions imposed by Israel that impede access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

(*b*) The increasing tensions in occupied East Jerusalem and the wider region, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

27. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

28. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

29. *Deplores* the persistent non-cooperation of Israel with special procedure mandate holders and other United Nations mechanisms, and stresses the need for Israel to abide by all relevant United Nations resolutions and to cooperate with the Human Rights Council, all special procedures and the Office of the United Nations High Commissioner for Human Rights;

30. *Requests* the Secretary-General to place the presence of the Office of the High Commissioner in the Occupied Palestinian Territory on a firmer basis under the regular budget, including by, inter alia, deploying the necessary personnel and expertise;

31. *Also requests* the Secretary-General to report on the implementation of the present resolution to the Human Rights Council, with a particular focus on the recurrence

and persistence of human rights violations and the underlying policies leading to such patterns, including those involving forcible displacement, at its thirty-fourth session;

32. *Decides* to remain seized of the matter.

66th meeting
24 March 2015

[Adopted by a recorded vote of 42 to 0, with 5 abstentions. The voting was as follows:

In favour:

Albania, Algeria, Bangladesh, Belgium, Bolivia (Plurinational State of), Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, El Salvador, Ethiopia, France, Georgia, Germany, India, Indonesia, Kenya, Kyrgyzstan, Latvia, Maldives, Mexico, Mongolia, Morocco, Namibia, Netherlands, Nigeria, Panama, Philippines, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Slovenia, South Africa, Switzerland, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Abstaining:

Botswana, Ghana, Paraguay, the former Yugoslav Republic of Macedonia, Togo]

United Nations A/HRC/RES/31/35

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Resolution adopted by the Human Rights Council on 24 March 2016

31/35. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and on 17 December 2014 by the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, aimed at ensuring respect for the Convention in the Occupied Palestinian Territory, including East Jerusalem,[1]

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, 19/17 of 22 March 2012 and S-21/1 of 23 July 2014,

Expressing its appreciation to the independent commission of inquiry on the 2014 Gaza conflict, and all other relevant United Nations mechanisms, as well as the treaty bodies and other United Nations bodies, for their reports,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

[1] See A/69/711-S/2015/1, annex.

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Emphasizing the importance of the safety and well-being of all civilians, reaffirming the obligation to ensure the protection of civilians in armed conflict, and deploring the civilian deaths that resulted from the conflict in and around the Gaza Strip in, inter alia, July and August 2014, including the killing of 1,462 Palestinian civilians, including 551 children and 299 women, and six Israeli civilians,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes, including the findings of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, of the independent commission of inquiry on the 2014 Gaza conflict and of the boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused in the Occupied Palestinian Territory, including East Jerusalem,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967,

Deploring the non-cooperation by Israel with all Human Rights Council fact-finding missions and the independent commission of inquiry on the 2014 Gaza conflict, and its refusal to grant access to and cooperate with international human rights bodies and a number of United Nations special procedures seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Regretting the lack of progress in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli civil and criminal legal system contributing to the denial of the right of Palestinian victims to effective judicial remedy,

Emphasizing the need for States to investigate grave breaches of the Geneva Conventions of 1949, to end impunity, to uphold their obligations to ensure respect, and to promote international accountability,

Noting the accession by Palestine on 2 January 2015 to the Rome Statute of the International Criminal Court,

1. *Welcomes* the report of the independent commission of inquiry on the 2014 Gaza conflict;[2]

2. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

3. *Notes* the importance of the work of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict and the information collected regarding grave violations in support of future accountability efforts, in particular, information on alleged perpetrators of violations of international law;

4. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate fair and independent national or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including full reparations, and stresses the need to pursue practical steps towards these goals;

5. *Calls upon* the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened;

6. *Calls upon* all States to promote compliance with international law, and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties;

7. *Recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report has been or is being taken at the national or international levels to ensure justice for victims and accountability for perpetrators;

8. *Requests* the United Nations High Commissioner for Human Rights to conduct a comprehensive review detailing the status of implementation of the recommendations addressed to all parties since 2009 by the relevant Human Rights Council mechanisms, namely previous fact-finding missions, the commission of inquiry and special procedures, and by United Nations treaty bodies, the Office of the High Commissioner and the Secretary-General in his reports to the Human Rights Council, and to identify patterns of non-compliance, non-implementation and non-cooperation, to propose follow-up measures to ensure implementation, and to present a report to the Council at its thirty-fifth session;

[2] A/HRC/29/52.

9. *Also requests* the High Commissioner to present an oral update on the progress of the above-mentioned review to the Human Rights Council at its thirty-fourth session;

10. *Decides* to remain seized of the matter.

66th meeting
24 March 2016

[Adopted by a recorded vote of 32 to 0, with 15 abstentions. The voting was as follows:

In favour:

Algeria, Bangladesh, Belgium, Bolivia (Plurinational State of), Burundi, China, Cuba, Ecuador, El Salvador, France, Indonesia, Kenya, Kyrgyzstan, Maldives, Mexico, Mongolia, Morocco, Namibia, Nigeria, Panama, Philippines, Portugal, Qatar, Russian Federation, Saudi Arabia, Slovenia, South Africa, Switzerland, the former Yugoslav Republic of Macedonia, United Arab Emirates, Venezuela (Bolivarian Republic of), Viet Nam

Abstaining:

Albania, Botswana, Congo, Côte d'Ivoire, Ethiopia, Georgia, Germany, Ghana, India, Latvia, Netherlands, Paraguay, Republic of Korea, Togo, United Kingdom of Great Britain and Northern Ireland]

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Resolution adopted by the Human Rights Council on 24 March 2017

34/28. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and on 17 December 2014 by the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, at which the High Contracting Parties reaffirmed, inter alia, their commitment to uphold their obligation to ensure respect for the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, 19/17 of 22 March 2012 and S-21/1 of 23 July 2014,

Recalling also the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Expressing its appreciation to the independent commission of inquiry on the 2014 Gaza conflict, and all other relevant United Nations mechanisms, as well as the treaty bodies and other United Nations bodies, for their reports,

Recognizing the work of Palestinian, Israeli and international civil society actors and human rights defenders in documenting and countering violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes, including the findings of the United Nations Fact-Finding Mission on the Gaza Conflict, of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, of the independent commission of inquiry on the 2014 Gaza conflict, and of the boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and of international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused in the Occupied Palestinian Territory, including East Jerusalem,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967, and affirming that this is necessary in order to uphold human rights and international law,

Deploring the non-cooperation by Israel with all Human Rights Council fact-finding missions and the independent commission of inquiry on the 2014 Gaza conflict and the refusal to grant access to, and cooperate with, international human rights bodies and a number of United Nations special procedures seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the report of the independent commission of inquiry on the 2014 Gaza conflict,[1] the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Regretting the lack of progress in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli civil and criminal legal system contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

[1] A/HRC/29/52.

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect, and to promote international accountability,

Noting the accession by the State of Palestine on 2 January 2015 to the Rome Statute of the International Criminal Court,

1. *Welcomes* the report of the independent commission of inquiry on the 2014 Gaza conflict;[1]

2. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[2] and the United Nations Fact-Finding Mission on the Gaza Conflict,[3] in accordance with their respective mandates;

3. *Notes* the importance of the work of the independent commission of inquiry on the 2014 Gaza conflict, the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, and the information collected regarding grave violations in support of future accountability efforts, in particular information on alleged perpetrators of violations of international law;

4. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account, through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

5. *Stresses* that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law, and should ensure credible and comprehensive accountability for all violations of international law in order to bring about sustainable peace;

6. *Calls upon* the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened;

7. *Denounces* all acts of intimidation and threats directed at civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem, and calls upon all States to ensure their protection;

8. *Calls upon* all States to promote compliance with international law, and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil

[2] A/HRC/22/63.
[3] A/HRC/12/48.

their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties, including by ensuring that they do not become involved in internationally unlawful conduct;

9. *Recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report[3] has been or is being taken appropriately at the national or international levels to ensure justice for victims and accountability for perpetrators;

10. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the present resolution to the Human Rights Council at its thirty-seventh session;

11. *Decides* to remain seized of the matter.

58th meeting
24 March 2017

[Adopted by a recorded vote of 30 to 2, with 15 abstentions. The voting was as follows:

In favour:

Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ghana, Indonesia, Iraq, Kyrgyzstan, Mongolia, Nigeria, Philippines, Portugal, Qatar, Republic of Korea, Saudi Arabia, Slovenia, South Africa, Switzerland, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Togo, United States of America

Abstaining:

Albania, Croatia, Ethiopia, Georgia, Germany, Hungary, India, Japan, Kenya, Latvia, Netherlands, Panama, Paraguay, Rwanda, United Kingdom of Great Britain and Northern Ireland]

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34/30. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[1] and other relevant recent reports of the Human Rights Council,

Deeply regretting the onset of the fiftieth year of the Israeli occupation, and stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine,

Noting the accession by Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

[1] A/71/554 and A/HRC/34/70.

Deploring Israel's recurrent practice of withholding Palestinian tax revenues,

Aware of the responsibility of the international community to promote human rights and ensure respect for international law,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads and the wall, and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties,

Reaffirming that all States have the right and the duty to take actions in conformity with international human rights law and international humanitarian law to counter deadly acts of violence against their civilian population in order to protect the lives of their citizens,

Stressing the need for full compliance with the Israeli-Palestinian agreements reached within the context of the Middle East peace process, including the Sharm el-Sheikh understandings, and the implementation of the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,

Stressing also the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern at the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, and to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the arbitrary detention of Palestinians, some of whom have been detained for decades; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the forcible displacement of civilians, including of Bedouin communities; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned by the ongoing demolition by Israel, the occupying Power, of Palestinian homes and of structures provided as humanitarian aid, in particular in occupied East Jerusalem, including when carried out as an act of collective punishment in violation of international humanitarian law, the occurrence of which has escalated at unprecedented rates, and by the revocation of residence permits and the eviction of Palestinian residents of the City,

Deploring the conflict in and around the Gaza Strip in July and August 2014 and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and any violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of the military operations between December 2008 and January 2009, in November 2012 and in July and August 2014, and about the firing of rockets into Israel,

Stressing that the situation in the Gaza Strip is unsustainable and that a durable ceasefire agreement must lead to a fundamental improvement in the living conditions of the Palestinian people in the Gaza Strip, including through the sustained and regular opening of crossing points, and ensure the safety and well-being of civilians on both sides,

Affirming the need to support the Palestinian national consensus Government in its assumption of full government responsibilities in both the West Bank and the Gaza Strip, in all fields, and through its presence at Gaza crossing points,

Expressing deep concern at the short- and long-term detrimental impact of such widespread destruction and the continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, and calling upon the international community to step up its efforts in order to provide the Gaza Strip with the assistance that it requires,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli concerns,

Stressing also the need for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East

Jerusalem, and impair the Territory's contiguity, consequently violating the human rights of the Palestinian people and negatively affecting their socioeconomic and humanitarian situation, which remains dire in the Gaza Strip, and the efforts aimed at rehabilitating and developing the Palestinian economy,

Convinced that the Israeli occupation has gravely impeded the efforts to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem, and expressing grave concern at the consequent deterioration of economic and living conditions,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Emphasizing that the destruction of property and the forced displacement of Palestinian communities in the Occupied Palestinian Territory, including East Jerusalem, constitute, in all but the most limited cases as specified under international law, violations of the prohibitions on the destruction of property and on forcible transfers, respectively, under articles 53 and 49 of the Fourth Geneva Convention,

Deeply concerned at reports of the hampering and destruction of humanitarian assistance by Israel, contributing to a coercive environment that can lead to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of any Palestinian prisoner and all reports of torture,

Expressing deep concern also at the recent hunger strikes by numerous Palestinian prisoners in protest at the harsh conditions of their imprisonment and detention by the occupying Power, while taking note of the agreement reached in May 2012 on conditions of detention in Israeli prisons and calling for its full and immediate implementation,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and human rights law,

Expressing concern at the possible consequences of the enactment by Israel, the occupying Power, of military orders regarding the detention, imprisonment and deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem, and recalling in this regard the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Stressing the need for the protection of human rights defenders engaged in the promotion of human rights issues in the Occupied Palestinian Territory, including East

Jerusalem, to allow them to carry out their work freely and without fear of attacks, harassment, arbitrary detention or criminal prosecution,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron,

Recognizing the continued efforts and tangible progress made in the Palestinian security sector, noting the continued cooperation that benefits both Palestinians and Israelis, in particular by promoting security and building confidence, and expressing the hope that such progress will be extended to all major population centres,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Stresses* the need for Israel, the occupying Power, to withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Calls for* urgent measures to ensure the safety and protection of the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of international humanitarian law and as called for by the Security Council in its resolution 904 (1994) of 18 March 1994;

5. *Demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

6. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

7. *Also reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, their equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

8. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic

sustainability and development throughout Gaza, aggravating the state of de-development in Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

9. *Expresses grave concern* at the confiscation and damage by Israel of fishing nets in the Gaza Strip for which there is no discernible security justification;

10. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, and United Nations facilities, and agricultural lands, and large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of peaceful protests in the West Bank;

11. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

12. *Calls upon* Israel to cease all violations of the right to education of Palestinians, including those stemming from restrictions on movement and incidents of harassment and attacks on school children and educational facilities by Israeli settlers and as a result of Israeli military action;

13. *Also calls upon* Israel to end all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, and underscores the need to investigate all such acts, to ensure accountability and effective remedies, and to take steps to prevent any further such threats, attacks, reprisals or acts of intimidation;

14. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, and also expresses its concern at the continued extensive use of administrative detention, calls for the full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death custody, and also calls upon Israel to release immediately all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

15. *Calls for* urgent attention to the plight and the rights, in accordance with international law, of Palestinian prisoners and detainees in Israeli jails, including those on hunger strikes, and calls for respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

16. *Calls upon* Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment;

17. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

18. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

19. *Deplores* the resumption by Israel of the policy of punitive home demolitions and the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws, and the demolition of residential structures and the forced eviction of Palestinian families, in violation of their basic right to adequate housing and in violation of international humanitarian law;

20. *Expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

21. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

22. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded by the General Assembly in its resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

23. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings and to ensure adequate housing and legal security of tenure;

24. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

25. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including home demolitions, evictions of Palestinian residents, excavations in and around religious and historic sites, and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole;

26. *Expresses grave concern* at:

(*a*) The restrictions imposed by Israel that impede access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

(*b*) The increasing tensions in occupied East Jerusalem and the wider region, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

27. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

28. *Emphasizes* the need to preserve and develop the Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

29. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination, as a matter of urgency, in the light of the onset of the fiftieth year of the Israeli occupation and the continued denial and violation of the human rights of the Palestinian people;

30. *Deplores* the persistent non-cooperation of Israel with special procedure mandate holders and other United Nations mechanisms, and stresses the need for Israel to abide by all relevant United Nations resolutions and to cooperate with the Human Rights Council, all special procedures and the Office of the United Nations High Commissioner for Human Rights;

31. *Requests* the High Commissioner to report on the implementation of the present resolution to the Human Rights Council, with a particular focus on the factors perpetuating the arbitrary detention of Palestinian prisoners and detainees in Israeli jails in consultation with the Working Group on Arbitrary Detention, at its thirty-seventh session;

32. *Decides* to remain seized of the matter.

58th meeting
24 March 2017

[Adopted by a recorded vote of 41 to 2, with 4 abstentions. The voting was as follows:

In favour:

Albania, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Georgia, Germany, Ghana, Hungary, India, Indonesia, Iraq, Japan, Kenya, Kyrgyzstan, Latvia, Mongolia, Netherlands, Nigeria, Philippines, Portugal, Qatar, Republic of Korea, Saudi Arabia, Slovenia, South Africa, Switzerland, Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Togo, United States of America

Abstaining:

Congo, Panama, Paraguay, Rwanda]

United Nations A/HRC/RES/37/35

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Human Rights Council
Thirty-seventh session
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Agenda item 7

Resolution adopted by the Human Rights Council on 23 March 2018

37/35. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[1] and other relevant recent reports of the Human Rights Council,

Stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

[1] A/72/556 and A/HRC/37/75.

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties and to ensure respect for international humanitarian law,

Stressing the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern at the continuing violation of international humanitarian law and the systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, and to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the arbitrary detention of Palestinians, some of whom have been detained for decades; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the forcible displacement of civilians, including of Bedouin communities; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the revocation of residency permits from Palestinians of East Jerusalem and their eviction from their city; the destruction of property and infrastructure, inter alia, homes of Palestinians; the hampering of humanitarian assistance and the destruction of, inter alia, structures provided as humanitarian aid, contributing to a coercive environment that leads to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory, including when carried out as an act of collective punishment in violation of international humanitarian law; incidents of harassment of and attacks on school children and attacks on educational facilities by Israeli settlers and as a result of Israeli military action; and all other actions designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring all conflicts in and around the Gaza Strip and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and all violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of previous Israeli military operations, and about the firing of rockets into Israel,

Expressing deep concern at the detrimental impact of continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, and calling upon the international community to step up its efforts to provide the Gaza Strip with the assistance that it requires,

Stressing the need for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Stressing the need also to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli concerns,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Convinced that the Israeli occupation has gravely impeded the efforts made to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem, and expressing grave concern at the consequent deterioration of economic and living conditions,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoner**s** and all reports of torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of the deportation of civilians from occupied territories,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and human rights law,

Stressing the need for the protection of human rights defenders engaged in the promotion of human rights issues in the Occupied Palestinian Territory, including East Jerusalem, to allow them to carry out their work freely and without fear of attack, harassment, arbitrary detention or criminal prosecution,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to

help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Stresses* the need for Israel, the occupying Power, to withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Also demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

5. *Calls for* urgent measures to ensure the safety and protection of the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of international humanitarian law and as called for by the Security Council in its resolution 904 (1994) of 18 March 1994;

6. *Deplores* the persistent non-cooperation of Israel with special procedure mandate holders and other United Nations mechanisms, and calls for full cooperation by Israel with the Human Rights Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

7. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

8. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded by the General Assembly in its resolutions ES-10/15 of 20 July 2004 and ES-10/13 of 21 October 2003, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

9. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings and to ensure adequate housing and legal security of tenure;

10. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including the construction of settlements in various areas; the demolition of residential structures, the forced eviction of Palestinian inhabitants and the application of the policy of punitive home demolitions, in violation of their basic right to adequate housing and in violation of

international humanitarian law; the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws; excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

11. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

12. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

13. *Expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

14. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

15. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, aggravating the state of de-development in Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

16. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where the bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, United Nations facilities, and agricultural lands, the large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of peaceful protests in the West Bank;

17. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

18. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, their equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical

treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

19. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

20. *Calls upon* Israel to end all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, and underscores the need to investigate all such acts, ensure accountability and effective remedies, and to take steps to prevent any further such threats, attacks, reprisals or acts of intimidation;

21. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, expresses its concern at the continued extensive use of administrative detention, calls for the full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody, and calls upon Israel to immediately release all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

22. *Calls for* urgent attention to be paid to the plight and the rights, in accordance with international law, of Palestinian prisoners and detainees in Israeli jails, and also calls for respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

23. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

24. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

25. *Emphasizes* the need to preserve and develop Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

26. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination, as a matter of urgency, in the light of the onset of the fiftieth year of the Israeli occupation and the continued denial and violation of the human rights of the Palestinian people;

27. *Decides* to remain seized of the matter.

56th meeting
23 March 2018

[Adopted by a recorded vote of 41 to 3, with 2 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Georgia, Germany, Hungary, Iraq, Japan, Kenya, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Switzerland, Tunisia, Ukraine, United Arab

Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Australia, Togo, United States of America

Abstaining:

Democratic Republic of the Congo, Rwanda]

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Resolution adopted by the Human Rights Council on 23 March 2018

37/37. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, at which the High Contracting Parties reaffirmed, inter alia, their commitment to uphold their obligation to ensure respect for the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, 19/17 of 22 March 2012 and S-21/1 of 23 July 2014,

Recalling also the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Expressing its appreciation to the independent commission of inquiry on the 2014 Gaza conflict, and all other relevant United Nations mechanisms, as well as the treaty bodies and other United Nations bodies, for their reports,

Recognizing the work of Palestinian, Israeli and international civil society actors and human rights defenders in documenting and countering violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians and reaffirming the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes, including the findings of the United Nations Fact-Finding Mission on the Gaza Conflict, of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, of the independent commission of inquiry on the 2014 Gaza conflict, and of the boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and of international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused in the Occupied Palestinian Territory, including East Jerusalem,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967, and affirming that this is necessary in order to uphold human rights and international law,

Deploring the non-cooperation by Israel with all Human Rights Council fact-finding missions and the independent commission of inquiry on the 2014 Gaza conflict, and the refusal to grant access to and cooperate with international human rights bodies and a number of United Nations special procedures seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict,[1] the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[2] and the United Nations Fact-Finding Mission on the Gaza Conflict,[3] which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Regretting the lack of progress in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli civil and criminal legal system contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Noting the accession by the State of Palestine on 2 January 2015 to the Rome Statute of the International Criminal Court,

1. *Welcomes* the report of the independent commission of inquiry on the 2014 Gaza conflict;[1]

2. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict,[1] the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political,

[1] A/HRC/29/52.
[2] A/HRC/22/63.
[3] A/HRC/12/48.

economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[2] and the United Nations Fact-Finding Mission on the Gaza Conflict,[3] in accordance with their respective mandates;

3. *Notes* the importance of the work of the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, and of the information collected regarding grave violations in support of future accountability efforts, in particular information on alleged perpetrators of violations of international law;

4. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

5. *Stresses* that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law and should ensure credible and comprehensive accountability for all violations of international law in order to bring about sustainable peace;

6. *Calls upon* the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened;

7. *Denounces* all acts of intimidation, threats and delegitimization directed at civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem, and calls upon all States to ensure their protection;

8. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties, including by ensuring that their public authorities and private entities do not become involved in internationally unlawful conduct, inter alia, the provision of arms to end users that could use the arms to commit or facilitate serious violations of international humanitarian and/or human rights law;

9. *Recommends* that the General Assembly remain apprised of the matter until it is satisfied that appropriate action with regard to implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report has been or is being taken appropriately at the national or international levels to ensure justice for victims and accountability for perpetrators;

10. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the present resolution to the Human Rights Council at its fortieth session;

11. *Decides* to remain seized of the matter.

56th meeting
23 March 2018

[Adopted by a recorded vote of 27 to 4, with 15 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d'Ivoire, Cuba, Ecuador, Egypt, Iraq, Kyrgyzstan, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Senegal, Slovenia, South Africa,

Switzerland, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Australia, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Croatia, Democratic Republic of the Congo, Ethiopia, Georgia, Germany, Hungary, Japan, Kenya, Mexico, Panama, Republic of Korea, Rwanda, Slovakia, Spain, Ukraine]

United Nations A/HRC/RES/S-28/1

General Assembly

Distr.: General
22 May 2018

Original: English

Human Rights Council
Twenty-eighth special session
18 May 2018

Resolution adopted by the Human Rights Council on 18 May 2018

S-28/1. Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Recalling General Assembly resolution 60/251 of 15 March 2006, Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, and all other relevant United Nations resolutions,

Affirming the applicability of international human rights law and international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that all High Contracting Parties to the Fourth Geneva Convention are under the obligation to respect and ensure respect for the obligations arising from the said Convention in relation to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming also their obligations under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties,

Convinced that the lack of accountability for violations of international law reinforces a culture of impunity, leading to a recurrence of violations and seriously endangering international peace,

Noting the systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way, as required by international law, into the violence and offences against Palestinians by the occupying forces, and to establish judicial accountability for its actions in the Occupied Palestinian Territory, including East Jerusalem,

Emphasizing the obligations of Israel as the occupying Power to ensure the safety, well-being and protection of the Palestinian civilian population under its occupation in the Occupied Palestinian Territory, including East Jerusalem,

Emphasizing also that the intentional targeting of civilians and other protected persons in situations of armed conflict, including foreign occupation, constitutes a grave

breach of international humanitarian law and international human rights law, and poses a threat to international peace and security,

Recognizing the importance of the right to life and the right to freedom of peaceful assembly and association to the full enjoyment of all human rights,

1. *Condemns* the disproportionate and indiscriminate use of force by the Israeli occupying forces against Palestinian civilians, including in the context of peaceful protests, particularly in the Gaza Strip, in violation of international humanitarian law, international human rights law and relevant United Nations resolutions, and expresses its grief at the extensive loss of life, including of children, women, health workers and journalists, and at the high number of injuries;

2. *Calls for* an immediate cessation of all attacks, incitement and violence against civilians throughout the Occupied Palestinian Territory, including East Jerusalem;

3. *Calls upon* all parties to ensure that future demonstrations remain peaceful and to abstain from actions that could endanger the lives of civilians;

4. *Demands* that Israel, the occupying Power, immediately and fully end its illegal closure of the occupied Gaza Strip, which amounts to collective punishment of the Palestinian civilian population, including through the immediate, sustained and unconditional opening of crossings to the flow of humanitarian aid, commercial goods and persons, especially those in need of urgent medical attention, to and from the Gaza Strip, in compliance with its obligations under international humanitarian law;

5. *Decides* to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, whether before, during or after; to establish the facts and circumstances, with assistance from relevant experts and special procedure mandate holders, of the alleged violations and abuses, including those that may amount to war crimes; to identify those responsible; to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility, for such violations and abuses, and on protecting civilians against any further assaults; and to present an oral update thereon to the Council at its thirty-ninth session and a final, written report at its fortieth session;

6. *Calls upon* Israel, the occupying Power, and all relevant parties to cooperate fully with the commission of inquiry and to facilitate its access, requests the cooperation, as appropriate, of other relevant United Nations bodies with the commission of inquiry to carry out its mission, and requests the assistance of the Secretary-General and the United Nations High Commissioner for Human Rights in this regard, including in the provision of all administrative, technical and logistical assistance required to enable the commission of inquiry and special procedure mandate holders to fulfil their mandates promptly and efficiently;

7. *Decides* to remain seized of the matter.

2nd meeting
18 May 2018

[Adopted by a recorded vote of 29 to 2, with 14 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Ecuador, Egypt, Iraq, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Australia, United States of America

Abstaining:

Croatia, Ethiopia, Georgia, Germany, Hungary, Japan, Kenya, Panama, Republic of Korea, Rwanda, Slovakia, Switzerland, Togo, United Kingdom of Great Britain and Northern Ireland]

United Nations A/HRC/RES/40/13

General Assembly

Distr.: General
3 April 2019

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 2

Resolution adopted by the Human Rights Council on 22 March 2019

40/13. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, at which the High Contracting Parties reaffirmed, inter alia, their commitment to uphold their obligation to ensure respect for the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, 19/17 of 22 March 2012, S-21/1 of 23 July 2014 and S-28/1 of 18 May 2018,

Recalling also the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Expressing its appreciation to the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the independent commission of inquiry on the 2014 Gaza conflict, and all other relevant United Nations mechanisms, as well as the treaty bodies and other United Nations bodies, for their reports,

Recognizing the work of Palestinian, Israeli and international civil society actors and human rights defenders in documenting and countering violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians and reaffirming the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes and crimes against humanity, including the findings of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, of the independent commission of inquiry on the 2014 Gaza conflict, of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, of the United Nations Fact-Finding Mission on the Gaza Conflict, and of the boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and of international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused in the Occupied Palestinian Territory, including East Jerusalem,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967, and affirming that this is necessary in order to uphold human rights and international law,

Deploring the non-cooperation by Israel with all Human Rights Council fact-finding missions, the independent commission of inquiry on the 2014 Gaza conflict and the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, and the refusal to grant access to and cooperate with international human rights bodies and a number of United Nations special procedures seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict, [1] the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[2] and the United Nations Fact-Finding Mission on the Gaza Conflict,[3] which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Regretting the lack of progress in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli civil and criminal legal system contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Noting the accession by the State of Palestine on 2 January 2015 to the Rome Statute of the International Criminal Court,

[1] A/HRC/29/52.
[2] A/HRC/22/63.
[3] A/HRC/12/48.

Recognizing the importance of the right to life and the right to freedom of peaceful assembly and association to the full enjoyment of all human rights,

1. *Welcomes* the report of the independent commission of inquiry on the protests in the Occupied Palestinian Territory;[4]

2. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained in the reports of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

3. *Notes* the importance of the work of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, and of the information collected regarding grave violations in support of future accountability efforts, in particular information on alleged perpetrators of violations of international law;

4. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

5. *Stresses* that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law, and should ensure credible and comprehensive accountability for all violations of international law in order to bring about sustainable peace;

6. *Calls upon* the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened;

7. *Denounces* all acts of intimidation, threats and delegitimization directed at human rights organizations, civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem, and calls upon all States to ensure their protection;

8. *Condemns* the apparent intentional use of unlawful lethal and other excessive force by Israel, the occupying Power, against civilians, including against civilians with special protected status under international law, notably children, journalists, health workers and persons with disabilities, who pose no imminent threat to life;

9. *Calls upon* all parties to ensure that future demonstrations remain peaceful and to abstain from actions that could endanger the lives of civilians;

10. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to

[4] A/HRC/40/74.

penal sanctions, grave breaches and the responsibilities of the High Contracting Parties, including by ensuring that they do not become involved in internationally unlawful conduct;

11. *Requests* the United Nations High Commissioner for Human Rights to strengthen the field presence of the Office of the High Commissioner in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, and to deploy the personnel and expertise necessary to monitor and document the ongoing violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, in accordance with the findings of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, to follow up on the implementation of the recommendations contained in the report of the commission of inquiry and to provide the Human Rights Council with an oral update at its forty-second session, and to present a report to the Council at its forty-third session, to be followed by an interactive dialogue;

12. *Decides* to remain seized of the matter.

53rd meeting
22 March 2019

[Adopted by a recorded vote of 23 to 8, with 15 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Bahrain, Bangladesh, Burkina Faso, Chile, China, Cuba, Egypt, Eritrea, Iraq, Mexico, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Senegal, Somalia, South Africa, Spain, Tunisia

Against:

Australia, Austria, Brazil, Bulgaria, Czechia, Fiji, Hungary, Ukraine

Abstaining:

Argentina, Bahamas, Croatia, Democratic Republic of the Congo, Denmark, Iceland, India, Italy, Japan, Nepal, Rwanda, Slovakia, Togo, United Kingdom of Great Britain and Northern Ireland, Uruguay]

United Nations A/HRC/RES/40/23

General Assembly

Distr.: General
16 April 2019

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 7

Resolution adopted by the Human Rights Council on 22 March 2019

40/23. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[1] and other relevant recent reports of the Human Rights Council,

Stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

[1] A/73/447 and A/HRC/40/73.

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Fourth Geneva Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties and to ensure respect for international humanitarian law,

Stressing the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern at the continuing violations of international humanitarian law and the systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, and to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the arbitrary detention of Palestinians, some of whom have been detained for decades; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the forcible displacement of civilians, including of Bedouin communities; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the revocation of residency permits from Palestinians of East Jerusalem and their eviction from their city; the destruction of property and infrastructure, inter alia, homes of Palestinians; the hampering of humanitarian assistance and the destruction of, inter alia, structures provided as humanitarian aid, contributing to a coercive environment that leads to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory, including when carried out as an act of collective punishment in violation of international humanitarian law; incidents of harassment of and attacks on schoolchildren and attacks on educational facilities by Israeli settlers and as a result of Israeli military action; and all other actions designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring all conflicts in and around the Gaza Strip and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and all violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of previous Israeli military operations, and about the firing of rockets into Israel,

Expressing deep concern at the detrimental impact of continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, and calling upon the international community to step up its efforts to provide the Gaza Strip with the assistance that it requires,

Stressing the need for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the rapid and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Stressing also the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli concerns,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Convinced that the Israeli occupation has gravely impeded the efforts made to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem, and expressing grave concern at the consequent deterioration of economic and living conditions,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoners and all reports of torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of transfers and deportations of civilians from or to occupied territories,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and human rights law,

Stressing the need for the protection of human rights defenders engaged in the promotion of human rights issues in the Occupied Palestinian Territory, including East Jerusalem, to allow them to carry out their work freely and without fear of attack, harassment, arbitrary detention or criminal prosecution,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to

help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron, and regretting the unilateral decision by Israel not to renew its mandate, thereby dispensing with one of the few established mechanisms for conflict resolution between Israelis and Palestinians, which may therefore have a negative impact on the situation,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Demands* that Israel, the occupying Power, withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention of 1949 and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Also demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

5. *Calls for* urgent measures to ensure the safety and protection of the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of international humanitarian law and as called for by the Security Council in its resolution 904 (1994) of 18 March 1994;

6. *Deplores* the persistent non-cooperation of Israel with special procedure mandate holders and other United Nations mechanisms, and calls for full cooperation by Israel with the Human Rights Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

7. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a peaceful settlement;

8. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and as demanded by the General Assembly in its resolutions ES-10/15 and ES-10/13, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

9. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings and to ensure adequate housing and legal security of tenure;

10. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including the construction of settlements in various areas; the demolition of residential structures, the

forced eviction of Palestinian inhabitants and the application of the policy of punitive home demolitions; the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws; the excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the city and of the territory as a whole, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

11. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites;

12. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

13. *Expresses concern* about the so-called Basic Law: Israel as the Nation-State of the Jewish People, adopted by the Knesset, currently under judicial review, which has raised further concerns regarding compliance with international law, including the law of occupation, insofar as it applies to the Occupied Palestinian Territory, including East Jerusalem;

14. *Also expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

15. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

16. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, aggravating the state of de-development in Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

17. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where the bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, United Nations facilities, and agricultural lands, the large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of protests in the West Bank and in the Gaza Strip;

18. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury;

19. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, their equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

20. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

21. *Calls upon* Israel to end all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, and underscores the need to investigate all such acts, to ensure accountability and effective remedies, and to take steps to prevent any further such threats, attacks, reprisals or acts of intimidation;

22. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, expresses its concern at the continued extensive use of administrative detention, calls for the full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody, and calls upon Israel to immediately release all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

23. *Calls for* urgent attention to be paid to the plight and the rights, in accordance with international law, of Palestinian prisoners and detainees in Israeli jails, and also calls for respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

24. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

25. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

26. *Emphasizes* the need to preserve and develop Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

27. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination, as a matter of urgency, in the light of the onset of the fiftieth year of the Israeli occupation and the continued denial and violation of the human rights of the Palestinian people;

28. *Decides* to remain seized of the matter.

54th meeting
22 March 2019

[Adopted by a recorded vote of 39 to 3, with 5 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, China, Croatia, Cuba, Czechia, Egypt, Eritrea, Fiji, Iceland, India, Iraq, Italy, Japan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Senegal, Slovakia, Somalia, South Africa, Spain, Tunisia, Ukraine, Uruguay

Against:

Australia, Denmark, United Kingdom of Great Britain and Northern Ireland

Abstaining:

Cameroon, Democratic Republic of the Congo, Hungary, Rwanda, Togo]

United Nations A/HRC/RES/43/3

General Assembly

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Human Rights Council
Forty-third session
24 February–13 March and 15–23 June 2020
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Resolution adopted by the Human Rights Council on 19 June 2020

43/3. Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian law and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights and the other human rights covenants, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, at which the High Contracting Parties reaffirmed, inter alia, their commitment to uphold their obligation to ensure respect for the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling its relevant resolutions, including resolutions S-9/1 of 12 January 2009, 19/17 of 22 March 2012, S-21/1 of 23 July 2014 and S-28/1 of 18 May 2018,

Recalling also the reports of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory,[1] the independent commission of inquiry on the 2014 Gaza conflict,[2] the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural

[1] A/HRC/40/74.
[2] A/HRC/29/52.

rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[3] and the United Nations Fact-Finding Mission on the Gaza Conflict,[4]

Recalling further the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Recognizing the work of Palestinian, Israeli and international civil society actors and human rights defenders in documenting and countering violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law, including possible war crimes and crimes against humanity, including the findings of the independent international commissions of inquiry, fact-finding missions and boards of inquiry convened by the Secretary-General,

Condemning all violations of human rights and of international humanitarian law, and appalled at the widespread and unprecedented levels of destruction, death and human suffering caused in the Occupied Palestinian Territory, including East Jerusalem,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967, and affirming that this is necessary in order to uphold human rights and international law,

Deploring the non-cooperation by Israel with all Human Rights Council fact-finding missions and independent commissions of inquiry, and its refusal to grant access to and cooperate with international human rights bodies and a number of United Nations special procedures seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Regretting the lack of implementation of the recommendations contained in the reports of the independent commissions of inquiry and fact-finding missions, which follows a pattern of lack of implementation of recommendations made by United Nations mechanisms and bodies,

Alarmed that long-standing systemic impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice, deter further violations, protect civilians and promote peace,

Regretting the lack of progress in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli civil and criminal legal system contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Noting the accession by the State of Palestine on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recognizing the importance of the right to life and the right to freedom of peaceful assembly and association to the full enjoyment of all human rights,

[3] A/HRC/22/63.
[4] A/HRC/12/48.

1. *Calls upon* all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained in the reports of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, in accordance with their respective mandates;

2. *Notes* the importance of the work of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict, and of the information collected regarding grave violations in support of future accountability efforts, in particular information on alleged perpetrators of violations of international law;

3. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of effective remedy to all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

4. *Stresses* that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law, and should ensure credible and comprehensive accountability for all violations of international law in order to bring about sustainable peace;

5. *Takes note* of the conclusion by the International Criminal Court of its preliminary examination into the situation in Palestine on 20 December 2019, with the determination that all statutory criteria under the Rome Statute for the opening of an investigation had been met, emphasizes the importance of respecting the Court's mandate and the Prosecutor's independence, and calls upon the parties concerned to cooperate fully with any investigation that may be opened;

6. *Denounces* all acts of intimidation, threats and delegitimization directed at human rights organizations, civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem, and calls upon all States to ensure their protection;

7. *Condemns* the use of unlawful lethal and other excessive force against civilians, including against civilians with special protected status under international law, who pose no imminent threat to life;

8. *Calls upon* all parties to ensure that future demonstrations remain peaceful and to abstain from actions that could endanger the lives of civilians;

9. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties, including by ensuring that they do not become involved in internationally unlawful conduct, and to assess the potential that arms could be used to commit or facilitate a serious violation of international humanitarian or human rights law;

10. *Requests* the United Nations High Commissioner for Human Rights to report on how all parties can fulfil their obligations in implementing the recommendations reviewed

by the High Commissioner in 2017,[5] including measures of accountability and legal measures to be taken by states to ensure respect by Israel, and all other relevant parties, of their obligations under international law in the Occupied Palestinian Territory including East Jerusalem, and to present a report to the Council at its forty-sixth session, to be followed by an interactive dialogue;

11. *Decides* to remain seized of the matter.

44th meeting
19 June 2020

[Adopted by a recorded vote of 22 to 8, with 17 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Armenia, Bahrain, Bangladesh, Burkina Faso, Chile, Eritrea, Indonesia, Libya, Mauritania, Mexico, Namibia, Nigeria, Pakistan, Peru, Qatar, Senegal, Somalia, Sudan, Venezuela (Bolivarian Republic of)

Against:

Australia, Austria, Brazil, Bulgaria, Czechia, Fiji, Togo, Ukraine

Abstaining:

Bahamas, Cameroon, Democratic Republic of the Congo, Denmark, Germany, India, Italy, Japan, Marshall Islands, Nepal, Netherlands, Philippines, Poland, Republic of Korea, Slovakia, Spain, Uruguay]

[5] See A/HRC/35/19.

United Nations A/HRC/RES/43/32

General Assembly

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3 July 2020

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Human Rights Council
Forty-third session
24 February–13 March and 15–23 June 2020
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 22 June 2020

43/32. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

The Human Rights Council,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and all relevant conventions, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also relevant resolutions of the Human Rights Council,

Taking note of the recent report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[1] and other relevant recent reports of the Human Rights Council,

Stressing the urgent need for efforts to reverse the negative trends on the ground and to restore a political horizon for advancing and accelerating meaningful negotiations aimed at the achievement of a peace agreement that will bring a complete end to the Israeli occupation that began in 1967 and the resolution of all core final status issues, without exception, leading to a peaceful, just, lasting and comprehensive solution of the question of Palestine, on the basis of international law,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

[1] A/74/507.

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through the construction of settlements, settler roads, the wall and other measures that are tantamount to de facto annexation of Palestinian land,

Emphasizing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), to the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the obligation of the States parties to the Convention under articles 146, 147 and 148 with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties and to ensure respect for international humanitarian law,

Stressing the importance of accountability in preventing future conflicts and ensuring that there is no impunity for violations and abuses, thereby contributing to peace efforts and avoiding the recurrence of violations of international law, including international humanitarian law and international human rights law,

Expressing grave concern at the continuing violations of international humanitarian law and the systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children and women, and to non-violent, peaceful demonstrators and to journalists, including through the use of live ammunition; the arbitrary detention of Palestinians, some of whom have been detained for decades; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the forcible displacement of civilians, including of Bedouin communities; the policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem; the discriminatory allocation of water resources between Israeli settlers, who reside illegally in the Occupied Palestinian Territory, and the Palestinian population of the said Territory; the violation of the basic right to adequate housing, which is a component of the right to an adequate standard of living; the revocation of residency permits from Palestinians of East Jerusalem and their eviction from their city; the destruction of property and infrastructure, inter alia, homes of Palestinians; the hampering of humanitarian assistance and the destruction of, inter alia, structures provided as humanitarian aid, contributing to a coercive environment that leads to the forcible transfer of Palestinian civilians in the Occupied Palestinian Territory, including when carried out as an act of collective punishment in violation of international humanitarian law; incidents of harassment of and attacks on schoolchildren and attacks on educational facilities by Israeli settlers and as a result of Israeli military action; and all other actions designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring all conflicts in and around the Gaza Strip and the civilian casualties caused, including the killing and injury of thousands of Palestinian civilians, including children, women and elderly persons, the widespread destruction of thousands of homes and of civilian infrastructure, including schools, hospitals, water sanitation and electricity networks, economic, industrial and agricultural properties, public institutions, religious sites and United Nations schools and facilities, the internal displacement of hundreds of thousands of civilians, and all violations of international law, including humanitarian and human rights law, in this regard,

Gravely concerned in particular about the disastrous humanitarian situation and the critical socioeconomic and security situations in the Gaza Strip, including that resulting from the prolonged continuous closures and severe economic and movement restrictions that in effect amount to a blockade, and from the continuing and vastly negative repercussions of previous Israeli military operations, and about the firing of rockets into Israel,

Expressing deep concern at the detrimental impact of continued impediments to the reconstruction process on the human rights situation and on the socioeconomic and humanitarian conditions of the Palestinian civilian population, and calling upon the

international community to step up its efforts to provide the Gaza Strip with the assistance that it requires,

Stressing the need for all parties, in conformity with the relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the rapid and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Stressing also the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli security concerns,

Expressing deep concern at the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Convinced that the Israeli occupation has gravely impeded the efforts made to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem, and expressing grave concern at the consequent deterioration of economic and living conditions,

Deploring all policies and practices whereby Israeli settlers, who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population in terms of access to roads, infrastructure, land, property, housing, natural resources and judicial mechanisms, resulting in widespread human rights violations of Palestinians,

Expressing deep concern that thousands of Palestinians, including many children and women, and elected members of the Palestinian Legislative Council continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, lack of proper medical care, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoners and all reports of torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of transfers and deportations of civilians from or to occupied territories,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and human rights law,

Stressing the need for the protection of human rights defenders engaged in the promotion of human rights issues in the Occupied Palestinian Territory, including East Jerusalem, to allow them to carry out their work freely and without fear of attack, harassment, arbitrary detention or criminal prosecution,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron, and regretting the unilateral decision by Israel not to renew its mandate, thereby dispensing with one of the few

established mechanisms for conflict resolution between Israelis and Palestinians, which may therefore have a negative impact on the situation,

Emphasizing the right of all people in the region to the enjoyment of human rights as enshrined in the international human rights covenants,

1. *Demands* that Israel, the occupying Power, withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise its universally recognized right to self-determination;

2. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

3. *Demands* that Israel, the occupying Power, comply fully with the provisions of the Fourth Geneva Convention and cease immediately all measures and actions taken in violation and in breach of the Convention;

4. *Also demands* that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions;

5. *Calls for* urgent measures to ensure the safety and protection of the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, in accordance with the relevant provisions of international humanitarian law and as called for by the Security Council in its resolution 904 (1994) of 18 March 1994;

6. *Deplores* the persistent non-cooperation of Israel with special procedure mandate holders and other United Nations mechanisms, and calls for full cooperation by Israel with the Human Rights Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

7. *Demands* that Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospect of a peaceful settlement;

8. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and demanded by the General Assembly in its resolutions ES-10/15 and ES-10/13, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

9. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings, and to ensure adequate housing and legal security of tenure;

10. *Deplores* the illegal Israeli actions in occupied East Jerusalem, including the construction of settlements in various areas; the demolition of residential structures, the forced eviction of Palestinian inhabitants and the application of the policy of punitive home demolitions; the ongoing policy of revoking the residency permits of Palestinians living in East Jerusalem through various discriminatory laws; the excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and

demographic composition of the city and of the territory as a whole, including those stemming from attempts aimed at illegally changing the status quo of holy sites;

11. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to include guarantees for non-discrimination on grounds of religion or belief as well as for the preservation of and peaceful access to all religious sites;

12. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory and does not result in water shortages disproportionately affecting the Palestinian population of the West Bank, and to take urgent steps to facilitate the restoration of the water infrastructure of the West Bank, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

13. *Expresses concern* about the so-called "Basic Law: Israel as the Nation-State of the Jewish People", adopted by the Knesset, currently under judicial review, which has raised further concerns regarding compliance with international law, including the law of occupation, insofar as it applies to the Occupied Palestinian Territory, including East Jerusalem;

14. *Also expresses concern* at the Citizenship and Entry into Israel Law adopted by the Knesset, which suspends the possibility, with certain rare exceptions, of family reunification between Israeli citizens and persons residing in the Occupied Palestinian Territory, including East Jerusalem, thus adversely affecting the lives of many families;

15. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

16. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions, that have a direct impact on livelihoods, economic sustainability and development throughout Gaza, aggravating the state of de-development in Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip;

17. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, especially the excessive use of force by the Israeli occupying forces against Palestinian civilians, particularly in the Gaza Strip, where the bombardment of populated areas has caused extensive loss of life and a vast number of injuries, including among thousands of children and women, massive damage and destruction to homes, economic, industrial and agricultural properties, vital infrastructure, including water, sanitation and electricity networks, religious sites and public institutions, including hospitals and schools, United Nations facilities, and agricultural lands, the large-scale internal displacement of civilians, and the excessive use of force by the Israeli occupying forces against Palestinian civilians in the context of protests in the West Bank and in the Gaza Strip;

18. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury, while encouraging an end to all actions contrary to international law;

19. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, their equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical

treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

20. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

21. *Calls upon* Israel to end all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, and underscores the need to investigate all such acts, to ensure accountability and effective remedies, and to take steps to prevent any further such threats, attacks, reprisals or acts of intimidation;

22. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment, demands that Israel, the occupying Power, fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, expresses its concern at the continued extensive use of administrative detention, calls for the full implementation of the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody, and calls upon Israel to immediately release all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

23. *Calls for* urgent attention to be paid to the plight and the rights, in accordance with international law, of Palestinian prisoners and detainees in Israeli jails, and also calls for respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

24. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

25. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

26. *Emphasizes* the need to preserve and develop Palestinian institutions and infrastructure for the provision of vital public services to the Palestinian civilian population and the promotion of human rights, including civil, political, economic, social and cultural rights;

27. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination, as a matter of urgency, in the light of the onset of the fiftieth year of the Israeli occupation and the continued denial and violation of the human rights of the Palestinian people;

28. *Requests* the United Nations High Commissioner for Human Rights to prepare a report on the allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, and to recommend measures to ensure the implementation of equitable access to safe drinking water in the Occupied Palestinian Territory, including East Jerusalem, in accordance with international law, and to present the report to the Human Rights Council at its forty-eighth session;

29. *Decides* to remain seized of the matter.

46th meeting
22 June 2020

[Adopted by a recorded vote of 42 to 2, with 3 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, Czechia, Denmark, Eritrea, Fiji, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Senegal, Slovakia, Somalia, Spain, Sudan, Ukraine, Uruguay, Venezuela (Bolivarian Republic of)

Against:

Australia, Marshall Islands

Abstaining:

Cameroon, Democratic Republic of the Congo, Togo]

United Nations A/HRC/RES/46/3

General Assembly

Distr.: General
31 March 2021

Original: English

Human Rights Council
Forty-sixth session
22 February–24 March 2021
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Resolution adopted by the Human Rights Council on 23 March 2021

46/3. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and all relevant conventions, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the relevant rules and principles of international law, including international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling relevant resolutions of the Human Rights Council, the General Assembly and the Security Council,

Recalling also relevant United Nations reports, including the outcome reports of fact-finding missions and commissions of inquiry, and the important recommendations made therein, and calling upon all duty bearers and United Nations bodies to pursue the implementation of those recommendations,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law,

Please recycle

to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Regretting the lack of progress made in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli and Palestinian civil and criminal legal systems contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through settlement activities and other measures that are tantamount to de facto annexation of Palestinian land,

Gravely concerned that long-standing impunity for international law violations has allowed for the recurrence of grave violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure justice and access to effective remedy**,** deter further violations, protect civilians and promote peace,

Expressing grave concern at reports of serious human rights violations and grave breaches of international humanitarian law, including of possible war crimes and crimes against humanity, in the Occupied Palestinian Territory, including East Jerusalem, and all other actions designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring the continuing and negative consequences of the conflicts in and around the Gaza Strip, including all casualties, particularly among Palestinian civilians, including children, and ongoing violations of international law, and calling for full respect for international humanitarian and human rights law and for the principles of legality, distinction, precaution and proportionality,

Gravely concerned about the dire humanitarian, socioeconomic and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic and movement restrictions that in effect amount to a blockade, and about the short- and long-term detrimental impact of this situation, and the widespread destruction and continued impediments to the reconstruction process by Israel, the occupying Power, on the human rights situation,

Expressing grave concern at the firing of rockets into Israel,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli security concerns,

Stressing also the need to end the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian

goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Stressing further the need for all parties, in conformity with relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the rapid and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Deploring all policies and practices whereby Israeli settlers who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population, and deploring also the widespread violations of the human rights of Palestinian civilians,

Expressing deep concern that thousands of Palestinians, including many children and women and elected members of the Palestinian Legislative Council, continue to be detained and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, restricted access to proper medical care, including in a time of pandemic, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoners and all reports of torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of individual and mass forcible transfers, and of the deportation of protected persons, from occupied territory, and the prohibition of deportation or transfer by the occupying Power of parts of its own civilian population into the territory it occupies,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and human rights law,

Recognizing the work of Palestinian, Israeli and international civil society actors and human rights defenders in documenting and countering violations of international law in the Occupied Palestinian Territory, including East Jerusalem,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and in this regard recalling the positive contribution of the Temporary International Presence in Hebron, and regretting the unilateral decision by Israel not to renew its mandate,

1. *Demands* that Israel, the occupying Power, withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, and stresses that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law and relevant United Nations resolutions;

2. *Stresses* the imperative of credible and comprehensive accountability for all violations of international law in order to establish a sustainable peace;

3. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Fourth Geneva Convention, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

4. *Deplores* the persistent non-cooperation of Israel with the special procedures of the Human Rights Council and other United Nations mechanisms seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem, and calls for full cooperation with the Council and all its special procedures,

relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

5. *Demands* that Israel, the occupying Power, cease all illegal actions in the Occupied Palestinian Territory, including East Jerusalem, including the construction of settlements; the demolition of residential structures, including punitive home demolitions; the forced eviction of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the territory as a whole, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a just and peaceful settlement;

6. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and demanded by the General Assembly in its resolutions ES-10/13 of 21 October 2003 and ES-10/15 of 20 July 2004, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

7. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, to facilitate the return of those Palestinian communities already subjected to forcible transfer or eviction to their original dwellings, and to ensure adequate housing and legal security of tenure;

8. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to ensure non-discrimination on grounds of religion or belief and the preservation of and peaceful access to all religious sites;

9. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory, which has a broad impact on human rights, including in the Jordan Valley, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

10. *Demands* that Israel, the occupying Power, comply fully with international law, including international humanitarian law and human rights law, and that it cease all measures and actions taken in breach of these bodies of law, and discriminatory legislation, policies and actions in the Occupied Palestinian territory that violate the human rights of the Palestinian people, including if carried out as collective punishment in violation of international humanitarian law, and any obstruction of humanitarian assistance, and that it fully respect human rights law and comply with its legal obligations in this regard;

11. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

12. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic rights, and which has a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip, while taking into account Israeli security concerns;

13. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, including unlawful lethal and other excessive use of force by Israeli occupying forces against Palestinian civilians, including against civilians with special protected status under international law and who pose no imminent threat to life;

14. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury, and calls for an end to all actions by militants and armed groups contrary to international law;

15. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect and ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the said Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties;

16. *Urges* all States to refrain from transferring arms when, in accordance with applicable national procedures and international obligations and standards, they assess that there is a clear risk that such arms might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law;

17. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, their equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

18. *Calls upon* Israel, the occupying Power, to comply immediately with its international law obligations to the protected occupied population, and ensure non-discriminatory access to vaccines for immunization against the coronavirus disease (COVID-19) in the Occupied Palestinian Territory, including East Jerusalem, including in coordination with the Government of the State of Palestine;

19. *Urges* Member States to continue to provide emergency assistance to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

20. *Calls* for an end to all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of Palestinians in the Occupied Palestinian Territory, including by cooperating with United Nations human rights bodies, calls for their protection, and underscores the need to investigate all such acts and to ensure accountability and effective remedies;

21. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, and at the continued use of administrative detention, and calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment; to fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, including ensuring access to medical care and vaccinations, including in the context of the ongoing pandemic; to implement fully the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody; and to release immediately all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

22. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

23. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall

short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

24. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of an effective remedy for all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

25. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the present resolution to the Human Rights Council at its forty-ninth session, to be followed by an interactive dialogue;

26. *Decides* to remain seized of the matter.

48th meeting
23 March 2021

[Adopted by a recorded vote of 32 to 6, with 8 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Bangladesh, Bolivia (Plurinational State of), Burkina Faso, China, Côte d'Ivoire, Cuba, Denmark, Eritrea, Fiji, France, Gabon, Germany, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Netherlands, Pakistan, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Uruguay, Uzbekistan and Venezuela (Bolivarian Republic of)

Against:

Austria, Brazil, Bulgaria, Cameroon, Malawi and Togo

Abstaining:

Bahamas, Czechia, India, Marshall Islands, Nepal, Philippines, Ukraine and United Kingdom of Great Britain and Northern Ireland]

United Nations A/HRC/RES/S-30/1

General Assembly

Distr.: General
28 May 2021

Original: English

Human Rights Council
Thirtieth special session
27 May 2021

Resolution adopted by the Human Rights Council on 27 May 2021

S-30/1. Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as affirmed in the Charter and in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Reaffirming also the applicability of international human rights law and international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming further that all High Contracting Parties to the Fourth Geneva Convention are under the obligation to respect and ensure respect for the obligations arising from the said Convention in relation to the Occupied Palestinian Territory, including East Jerusalem, and recalling their obligations under articles 146, 147 and 148 with regard to penal sanctions and grave breaches,

Recalling all relevant resolutions of the Human Rights Council, the General Assembly and the Security Council,

Recalling also the report of the Secretary-General submitted to the General Assembly pursuant to Assembly resolution ES-10/20 of 13 June 2018,[1] and the need for the operationalization of the protection options contained therein,

Recalling further the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict,

Firmly convinced that justice and respect for the rule of law and human rights are the indispensable bases for peace, and stressing that long-standing and systemic impunity for international law violations has thwarted justice, created a protection crisis and undermined all efforts to achieve a just and peaceful solution that warrants action in line with international law and relevant United Nations resolutions,

[1] A/ES-10/794.

Please recycle

1. *Decides* to urgently establish an ongoing independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity;

2. *Also decides* that the commission of inquiry shall:

(a) Establish the facts and circumstances that may amount to such violations and abuses and of crimes perpetrated;

(b) Collect, consolidate and analyse evidence of such violations and abuses and of crimes perpetrated, and systematically record and preserve all information, documentation and evidence, including interviews, witness testimony and forensic material, in accordance with international law standards, in order to maximize the possibility of its admissibility in legal proceedings;

(c) Have the capacity to document and verify relevant information and evidence, including through field engagement and by cooperating with judicial and other entities, as appropriate;

(d) Identify, where possible, those responsible, with a view to ensuring that perpetrators of violations are held accountable;

(e) Identify patterns of violations over time by analysing the similarities in the findings and recommendations of all United Nations fact-finding missions and commissions of inquiry on the situation;

(f) Make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility, for such violations, and justice for victims;

(g) Make recommendations on measures to be taken by third States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and in fulfilment of their obligations under articles 146, 147 and 148 of the Fourth Geneva Convention, including by ensuring that they do not aid or assist in the commission of internationally wrongful acts;

(h) Report on its main activities on an annual basis to the Human Rights Council under agenda item 2 as of its fiftieth session, and to the General Assembly as of its seventy-seventh session;

3. *Calls upon* all relevant parties to cooperate fully with the commission of inquiry and to facilitate its access;

4. *Calls upon* all States, and encourages civil society, the media and other relevant stakeholders, to cooperate fully with the commission of inquiry to allow it to effectively fulfil its mandate and, in particular, to provide it with any information or documentation they may possess or come to possess, as well as any other form of assistance pertaining to their respective mandates;

5. *Calls upon* relevant organs, bodies and agencies of the United Nations system to cooperate fully with the commission of inquiry and to respond promptly to any request made by it, including with regard to access to all relevant information and documentation;

6. *Requests* the Secretary-General to allocate the resources necessary for the implementation of the present resolution and for the Office of the United Nations High Commissioner for Human Rights to provide the logistical and technical resources necessary to support the functioning of the commission of inquiry;

7. *Urges* all States to refrain from transferring arms when they assess, in accordance with applicable national procedures and international obligations and standards, that there is a clear risk that such arms might be used to commit or facilitate serious violations

or abuses of international human rights law or serious violations of international humanitarian law;

8. *Calls upon* all States, international agencies and other donors to urgently mobilize humanitarian support for the Palestinian civilian population in the Occupied Palestinian Territory, including East Jerusalem, and to address their prevailing needs, and calls upon Israel, the occupying Power, to ensure the unimpeded delivery of that humanitarian assistance;

9. *Requests* the United Nations High Commissioner for Human Rights to provide an oral update on the progress made in the implementation of the present resolution to the Human Rights Council at its forty-eighth session;

10. *Decides* to remain seized of the matter.

2nd meeting
27 May 2021

[Adopted by a recorded vote of 24 to 9, with 14 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Bahrain, Bangladesh, Bolivia (Plurinational State of), Burkina Faso, China, Côte d'Ivoire, Cuba, Eritrea, Gabon, Indonesia, Libya, Mauritania, Mexico, Namibia, Pakistan, Philippines, Russian Federation, Senegal, Somalia, Sudan, Uzbekistan and Venezuela (Bolivarian Republic of)

Against:

Austria, Bulgaria, Cameroon, Czechia, Germany, Malawi, Marshall Islands, United Kingdom of Great Britain and Northern Ireland and Uruguay

Abstaining:

Bahamas, Brazil, Denmark, Fiji, France, India, Italy, Japan, Nepal, Netherlands, Poland, Republic of Korea, Togo and Ukraine]

United Nations A/HRC/RES/49/4

General Assembly

Distr.: General
11 April 2022

Original: English

Human Rights Council
Forty-ninth session
28 February–1 April 2022
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Resolution adopted by the Human Rights Council on 31 March 2022

49/4. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and all relevant conventions, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the relevant rules and principles of international law, including international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling relevant resolutions of the Human Rights Council, the General Assembly and the Security Council,

Recalling also relevant United Nations reports, including the outcome reports of fact-finding missions and commissions of inquiry, and the important recommendations made therein, and calling upon all duty bearers and United Nations bodies to pursue the implementation of those recommendations,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law,

Please recycle

to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Regretting the lack of progress made in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli and Palestinian civil and criminal legal systems contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through settlement activities and other measures that are tantamount to de facto annexation of Palestinian land,

Gravely concerned that long-standing impunity for international law violations has allowed for the recurrence of grave breaches and serious violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure the access of victims to justice and effective remedies**,** deter further violations, protect civilians and promote peace,

Expressing grave concern at reports of serious human rights violations and grave breaches of international humanitarian law, including of possible war crimes and crimes against humanity, in the Occupied Palestinian Territory, including East Jerusalem, and all other actions designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring the continuing and negative consequences of the conflicts in and around the Gaza Strip, including all casualties, particularly among Palestinian civilians, including children, and ongoing violations of international law, and calling for full respect for international humanitarian and human rights law and for the principles of legality, distinction, precaution and proportionality,

Gravely concerned about the dire humanitarian, socioeconomic and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic impediments and movement restrictions that in effect amount to a blockade, and about the short- and long-term detrimental impact of this situation, and the widespread destruction and continued impediments to the construction and reconstruction process imposed by Israel, the occupying Power, on the human rights situation,

Expressing grave concern at the firing of rockets into Israel,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli security concerns,

Stressing also the need to end the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian

goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Stressing further the need for all parties, in conformity with relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the rapid and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Deploring all policies and practices whereby Israeli settlers who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population, and deploring also the widespread violations of the human rights of Palestinian civilians, including as a result of recurrent and escalating settler attacks,

Expressing deep concern that thousands of Palestinians, including many children, women, elected members of the Palestinian Legislative Council and human rights defenders, continue to be detained, including under terms of administrative detention with limited or no judicial recourse, and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, restricted access to proper medical care, including in a time of pandemic, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoners and all reports of inhumane treatment and torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of individual and mass forcible transfers, and of the deportation of protected persons, from occupied territory, and the prohibition of deportation or transfer by the occupying Power of parts of its own civilian population into the territory it occupies,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and international human rights law,

Recognizing the work of Palestinian, Israeli and international civil society actors, humanitarian agencies and human rights defenders in documenting and countering violations of international law and providing relief to affected persons in the Occupied Palestinian Territory, including East Jerusalem,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and stressing the importance of non-governmental organizations, which have been instrumental to human rights monitoring, protection and relief efforts undertaken by the international community, and expressing concern about the decision taken by Israel to proscribe certain Palestinian non-governmental organizations,

1. *Demands* that Israel, the occupying Power, withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, and stresses that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law and relevant United Nations resolutions;

2. *Stresses* the imperative of credible, timely and comprehensive accountability for all violations of international law in order to attain justice for the victims and establish a just and sustainable peace;

3. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

4. *Affirms* that no State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law, nor render aid or assistance in maintaining that situation, and that all States shall cooperate to bring to an end through lawful means any serious breach;

5. *Deplores* the persistent non-cooperation of Israel with the special procedures of the Human Rights Council and other United Nations mechanisms seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem, and calls for full cooperation with the Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

6. *Demands* that Israel, the occupying Power, cease all illegal actions in the Occupied Palestinian Territory, including East Jerusalem, including the establishment and expansion of settlements; the demolition of privately owned and residential structures belonging to Palestinians, including punitive home demolitions; the forcible transfer of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the territory as a whole, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a just and peaceful settlement;

7. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and demanded by the General Assembly in its resolutions ES-10/13 of 21 October 2003 and ES-10/15 of 20 July 2004, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

8. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, to facilitate the return of Palestinian families and communities already subjected to forcible transfer or eviction to their original dwellings, and to ensure adequate housing and legal security of tenure;

9. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to ensure non-discrimination on grounds of religion or belief and the preservation of and peaceful access to all religious sites;

10. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory, which has a broad impact on human rights, including in the Jordan Valley area, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

11. *Demands* that Israel, the occupying Power, comply fully with international law, including international humanitarian law and international human rights law, and that it cease all measures and actions taken in breach of these bodies of law, and discriminatory legislation, policies and actions in the Occupied Palestinian territory that violate the human rights of the Palestinian people, including if carried out as collective punishment in violation of international humanitarian law, and any obstruction of humanitarian assistance and independent and impartial action of civil society, and that it fully respect international human rights law and comply with its legal obligations in this regard;

12. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East

Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

13. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic rights, and which has a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip, while taking into account Israeli security concerns;

14. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, including unlawful lethal and other excessive use of force by Israeli occupying forces against Palestinian civilians, including against civilians with special protected status under international law and who pose no imminent threat to life;

15. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury, and calls for an end to all actions by militants and armed groups contrary to international law;

16. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect and ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the Fourth Geneva Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties;

17. *Urges* all States to refrain from transferring arms when, in accordance with applicable national procedures and international obligations and standards, they assess that there is a clear risk that such arms might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law;

18. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, the entry of humanitarian equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

19. *Calls upon* Israel, the occupying Power, to comply immediately with its international law obligations to the protected occupied population, and ensure non-discriminatory access to vaccines for immunization against the coronavirus disease (COVID-19) in the Occupied Palestinian Territory, including East Jerusalem, including in coordination with the Government of the State of Palestine;

20. *Urges* Member States to continue to provide emergency assistance, including humanitarian relief and development assistance, to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

21. *Calls* for an end to all harassment, threats, intimidation and reprisals against human rights defenders and civil society actors who peacefully advocate for the rights of the Palestinian people, including by cooperating with United Nations human rights bodies, calls for their protection, and underscores the need to investigate all such acts and to ensure accountability and effective remedies;

22. *Calls upon* Israel to revoke any unsubstantiated designations of Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations, and to

refrain from using anti-terrorism legislation to undermine civil society and its valuable work and contributions to the pursuit of accountability;

23. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, and at the continued use of administrative detention, and calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment; to fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, including by ensuring access to medical care and vaccinations, including in the context of the ongoing pandemic; to implement fully the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody; and to release immediately all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

24. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

25. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

26. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of an effective remedy for all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

27. *Requests* the United Nations High Commissioner for Human Rights to end the reporting on the implementation of Human Rights Council resolutions S-9/1 of 12 January 2009 and S-12/1 of 16 October 2009;

28. *Also requests* the United Nations High Commissioner for Human Rights to report on the implementation of the present resolution to the Human Rights Council at its fifty-second session, to be followed by an interactive dialogue;

29. *Decides* to remain seized of the matter.

55th meeting
31 March 2022

[Adopted by a recorded vote of 37 to 3, with 7 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Benin, Bolivia (Plurinational State of), China, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, Indonesia, Japan, Kazakhstan, Libya, Lithuania, Luxembourg, Malaysia, Mauritania, Mexico, Montenegro, Namibia, Netherlands, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, United Arab Emirates, Uzbekistan, Venezuela (Bolivarian Republic of)

Against:

Brazil, Malawi, United States of America

Abstaining:

Cameroon, Honduras, India, Marshall Islands, Nepal, Ukraine, United Kingdom of Great Britain and Northern Ireland]

United Nations A/HRC/RES//52/3

General Assembly

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Human Rights Council
Fifty-second session
27 February–4 April 2023
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Resolution adopted by the Human Rights Council on 3 April 2023

52/3. Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and all relevant conventions, and affirming that these human rights instruments, among others, are applicable to and must be respected in the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the relevant rules and principles of international law, including international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention), which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling further the statement of 15 July 1999 and the declarations adopted on 5 December 2001 and 17 December 2014 at the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem,

Recalling relevant resolutions of the Human Rights Council, the General Assembly and the Security Council,

Recalling also relevant United Nations reports, including the outcome reports of fact-finding missions and commissions of inquiry, and the important recommendations made therein, and calling upon all duty bearers and United Nations bodies to pursue the implementation of those recommendations,

Stressing the urgency of achieving without delay an end to the Israeli occupation that began in 1967,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the obligation of States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian

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law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability,

Regretting the lack of progress made in the conduct of domestic investigations in accordance with international law standards, and aware of the existence of numerous legal, procedural and practical obstacles in the Israeli and Palestinian civil and criminal legal systems contributing to the denial of access to justice for Palestinian victims and of their right to an effective judicial remedy,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory,

Noting in particular the Court's reply, including that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary to international law,

Reaffirming the principle of the inadmissibility of the acquisition of territory by force and the prohibition on discrimination, and deeply concerned at the fragmentation of the Occupied Palestinian Territory, including East Jerusalem, through settlement activities and other measures that are tantamount to de facto annexation of Palestinian land,

Gravely concerned that long-standing impunity for international law violations has allowed for the recurrence of grave breaches and serious violations without consequence, and stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to end impunity, ensure the access of victims to justice and effective remedies**,** deter further violations, protect civilians and promote peace,

Expressing grave concern at reports of serious human rights violations and grave breaches of international humanitarian law, including of possible war crimes and crimes against humanity, in the Occupied Palestinian Territory, including East Jerusalem, and all other actions designed to change the legal status, geographical character and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Deploring the continuing and negative consequences of the conflicts in and around the Gaza Strip, including all casualties, particularly among Palestinian civilians, including children, and ongoing violations of international law, and calling for full respect for international humanitarian and human rights law and for the principles of legality, distinction, precaution and proportionality,

Gravely concerned about the dire humanitarian, socioeconomic and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic impediments and movement restrictions that in effect amount to a blockade, and about the short- and long-term detrimental impact of this situation, and the widespread destruction and continued impediments to the construction and reconstruction process imposed by Israel, the occupying Power, on the human rights situation,

Expressing grave concern at the firing of rockets into Israel,

Stressing the need to end immediately the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, both of 15 November 2005, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, while taking into account Israeli security concerns,

Stressing also the need to end the Israeli policy of closures and the imposition of severe restrictions and checkpoints, several of which have been transformed into structures akin to permanent border crossings, other physical obstacles and a permit regime, which are applied in a discriminatory manner affecting the Palestinian population only and all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian

goods, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory's contiguity, violating the human rights of the Palestinian people,

Stressing further the need for all parties, in conformity with relevant provisions of international humanitarian law, to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the rapid and unhindered access of humanitarian personnel, and the delivery of supplies and equipment, in order to allow such personnel to perform efficiently their task of assisting affected civilian populations, including refugees and internally displaced persons,

Deploring all policies and practices whereby Israeli settlers who reside illegally in the Occupied Palestinian Territory, including East Jerusalem, are accorded preferential treatment over the Palestinian population, and deploring also the widespread violations of the human rights of Palestinian civilians, including as a result of recurrent and escalating settler attacks,

Expressing deep concern that thousands of Palestinians, including many children, women, elected members of the Palestinian Legislative Council and human rights defenders, continue to be detained, including under terms of administrative detention with limited or no judicial recourse, and held in Israeli prisons or detention centres under harsh conditions, including unhygienic conditions, solitary confinement, restricted access to proper medical care, including in a time of pandemic, denial of family visits and denial of due process, that impair their well-being, and expressing deep concern also at the ill-treatment and harassment of Palestinian prisoners and all reports of inhumane treatment and torture,

Recalling the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and calling for respect for those rules,

Recalling also the prohibition under international humanitarian law of individual and mass forcible transfers, and of the deportation of protected persons, from occupied territory, and the prohibition of deportation or transfer by the occupying Power of parts of its own civilian population into the territory it occupies,

Deploring the practice of withholding the bodies of those killed, and calling for the release of the bodies that have not yet been returned to their relatives, in accordance with international humanitarian law and international human rights law,

Recognizing the work of Palestinian, Israeli and international civil society actors, humanitarian agencies and human rights defenders in documenting and countering violations of international law and providing relief to affected persons in the Occupied Palestinian Territory, including East Jerusalem,

Convinced of the need for an international presence to monitor the situation, to contribute to ending the violence and protecting the Palestinian civilian population and to help the parties to implement the agreements reached, and stressing the importance of non-governmental organizations, which have been instrumental to human rights monitoring, protection and relief efforts undertaken by the international community, and expressing concern about the decision taken by Israel to proscribe certain Palestinian non-governmental organizations,

1. *Demands* that Israel, the occupying Power, end its occupation of the Palestinian territory occupied since 1967, including East Jerusalem, and stresses that all efforts to end the Israeli-Palestinian conflict should be grounded in respect for international humanitarian law and international human rights law and relevant United Nations resolutions;

2. *Stresses* the imperative of credible, timely and comprehensive accountability for all violations of international law in order to attain justice for the victims and establish a just and sustainable peace;

3. *Expresses grave concern* regarding the decision of the Government of Israel to impose punitive measures on the Palestinian people, leadership and civil society following the adoption by the General Assembly of its resolution 77/247 of 30 December 2022;

4. *Reiterates* that all measures and actions taken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, in violation of the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and contrary to the relevant resolutions of the Security Council are illegal and have no validity;

5. *Affirms* that no State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law, nor render aid or assistance in maintaining that situation, and that all States shall cooperate to bring to an end through lawful means any serious breach;

6. *Deplores* the persistent non-cooperation of Israel with the special procedures of the Human Rights Council and other United Nations mechanisms seeking to investigate alleged violations of international law in the Occupied Palestinian Territory, including East Jerusalem, and calls for full cooperation with the Council and all its special procedures, relevant mechanisms and inquiries, and with the Office of the United Nations High Commissioner for Human Rights;

7. *Demands* that Israel, the occupying Power, cease all illegal actions in the Occupied Palestinian Territory, including East Jerusalem, including the establishment and expansion of settlements; the demolition of privately owned and residential structures belonging to Palestinians, including punitive home demolitions; the forcible transfer of Palestinian inhabitants and the revocation of residency permits of Palestinians living in East Jerusalem through various discriminatory laws; excavations in and around religious and historic sites; and all other unilateral measures aimed at altering the character, status and demographic composition of the territory as a whole, all of which have, inter alia, a grave and detrimental impact on the human rights of the Palestinian people and the prospects for a just and peaceful settlement;

8. *Also demands* that Israel, the occupying Power, comply with its legal obligations under international law, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice and demanded by the General Assembly in its resolutions ES-10/13 of 21 October 2003 and ES-10/15 of 20 July 2004, and that it immediately cease the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, dismantle forthwith the structure situated therein, repeal or render ineffective all legislative and regulatory acts relating thereto, and make reparation for all damage caused by the construction of the wall, which has had a grave impact on the human rights and the socioeconomic living conditions of the Palestinian people;

9. *Calls upon* Israel to immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, to facilitate the return of Palestinian families and communities already subjected to forcible transfer or eviction to their original dwellings, and to ensure adequate housing and legal security of tenure;

10. *Expresses grave concern* at the restrictions imposed by Israel that impede the access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem, and calls upon Israel to ensure non-discrimination on grounds of religion or belief and the preservation of and peaceful access to all religious sites;

11. *Urges* Israel to ensure that water resource allocation in the Occupied Palestinian Territory is not discriminatory, which has a broad impact on human rights, including in the Jordan Valley area, affected by the destruction of the wells of local civilians, roof water tanks and other water and irrigation facilities under military and settler operation since 1967;

12. *Demands* that Israel, the occupying Power, comply fully with international law, including international humanitarian law and international human rights law, and that it cease all measures and actions taken in breach of these bodies of law, and discriminatory legislation, policies and actions in the Occupied Palestinian territory that violate the human rights of the Palestinian people, including if carried out as collective punishment in violation of international humanitarian law, and any obstruction of humanitarian assistance and

independent and impartial action of civil society, and that it fully respect international human rights law and comply with its legal obligations in this regard;

13. *Reiterates* the need for respect for the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory and for guarantees of the freedom of movement of persons and goods within the Palestinian territory, including movement into and from East Jerusalem, into and from the Gaza Strip, between the West Bank and the Gaza Strip, and to and from the outside world;

14. *Demands* that Israel, the occupying Power, cease immediately its imposition of prolonged closures and economic and movement restrictions, including those amounting to a blockade on the Gaza Strip, which severely restricts the freedom of movement of Palestinians within, into and out of Gaza and their access to basic rights, and which has a direct impact on livelihoods, economic sustainability and development throughout Gaza, and in this regard calls upon Israel to implement fully the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing in order to allow for the sustained and regular movement of persons and goods and for the acceleration of long overdue reconstruction in the Gaza Strip, while taking into account Israeli security concerns;

15. *Condemns* all acts of violence, including all acts of terror, provocation, incitement and destruction, including unlawful lethal and other excessive use of force by Israeli occupying forces against Palestinian civilians, including against civilians with special protected status under international law and who pose no imminent threat to life;

16. *Also condemns* the firing of rockets against Israeli civilian areas resulting in loss of life and injury, and calls for an end to all actions by militants and armed groups contrary to international law;

17. *Calls upon* all States to promote compliance with international law and all High Contracting Parties to the Fourth Geneva Convention to respect and ensure respect for international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, in accordance with article 1 common to the Geneva Conventions, and to fulfil their obligations under articles 146, 147 and 148 of the Fourth Geneva Convention with regard to penal sanctions, grave breaches and the responsibilities of the High Contracting Parties;

18. *Urges* all States to refrain from transferring arms when, in accordance with applicable national procedures and international obligations and standards, they assess that there is a clear risk that such arms might be used to commit or facilitate serious violations or abuses of international human rights law or serious violations of international humanitarian law;

19. *Reiterates* the responsibility of Israel, the occupying Power, to respect the right to health of all persons within the Occupied Palestinian Territory and to facilitate the immediate, sustained and unfettered passage of humanitarian relief, including the access of medical personnel, the entry of humanitarian equipment, transport and supplies to all areas under occupation, including the Gaza Strip, and the granting of exit permits for patients in need of medical treatment outside the Gaza Strip, and stresses the need for the unhindered passage of ambulances at checkpoints, especially in times of conflict;

20. *Urges* Member States to continue to provide emergency assistance, including humanitarian relief and development assistance, to the Palestinian people to alleviate the financial crisis and the dire socioeconomic and humanitarian situation, particularly in the Gaza Strip;

21. *Calls* for an end to all ongoing policies of harassment, threats, intimidation and reprisals against human rights defenders, journalists, media workers and civil society actors who peacefully advocate for the rights of the Palestinian people, including by cooperating with United Nations human rights bodies, calls for their protection, and underscores the need to investigate all such acts and to ensure accountability and effective remedies;

22. *Calls upon* Israel to revoke any unsubstantiated designations of Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations, and to

refrain from using anti-terrorism legislation to undermine civil society and its valuable work and contributions to the pursuit of accountability;

23. *Expresses deep concern* at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, and at the continued use of administrative detention, and calls upon Israel to explicitly prohibit torture, including psychological torture and other cruel, inhuman or degrading treatment or punishment; to fully respect and abide by its international law obligations towards all Palestinian prisoners and detainees in its custody, including by ensuring access to medical care and vaccinations, including in the context of the ongoing pandemic; to implement fully the agreement reached in May 2012 for a prompt and independent investigation into all cases of death in custody; and to release immediately all Palestinian prisoners, including Palestinian legislators, detained in violation of international law;

24. *Demands* that Israel cease its policy of transferring prisoners from the Occupied Palestinian Territory into the territory of Israel, and respect fully its obligations under article 76 of the Fourth Geneva Convention;

25. *Urges* Israel to ensure that any arrest, detention and/or trial of Palestinian children is in line with the Convention on the Rights of the Child, including by refraining from holding criminal proceedings against them in military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights and that infringe upon their right to non-discrimination;

26. *Emphasizes* the need to ensure that all those responsible for violations of international humanitarian law and international human rights law are held to account through appropriate, fair and independent national or international criminal justice mechanisms, and to ensure the provision of an effective remedy for all victims, including full reparations, and stresses the need to pursue practical steps towards these goals to ensure justice for all victims and to contribute to the prevention of future violations;

27. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the present resolution to the Human Rights Council at its fifty-fifth session, to be followed by an interactive dialogue;

28. *Decides* to remain seized of the matter.

55th meeting
3 April 2023

[Adopted by a recorded vote of 38 to 2, with 7 abstentions. The voting was as follows:

In favour:

Algeria, Argentina, Bangladesh, Belgium, Benin, Bolivia (Plurinational State of), Chile, China, Costa Rica, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, Honduras, Kazakhstan, Kyrgyzstan, Lithuania, Luxembourg, Malaysia, Maldives, Mexico, Montenegro, Morocco, Pakistan, Paraguay, Qatar, Romania, Senegal, Somalia, South Africa, Sudan, United Arab Emirates, Uzbekistan and Viet Nam

Against:

Malawi and United States of America

Abstaining:

Cameroon, Czechia, Georgia, India, Nepal, Ukraine and United Kingdom of Great Britain and Northern Ireland]

UNITED NATIONS **A**

General Assembly

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HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 7

HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Human Rights Council resolution 6/19 on religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem

Note of the High Commissioner for Human Rights*

1. The present note is submitted pursuant to Human Rights Council resolution 6/19 of 28 September 2007 on religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its seventh session, on the implementation of that resolution.

2. The issue of access of Palestinians to their holy sites is dealt with, albeit to a limited extent, in the report that the High Commissioner recently submitted to the Council pursuant to its resolution S-6/1. The High Commissioner intends, however, to report in greater detail on any policies or measures taken by Israel which limit access of Palestinian residents in the Occupied Palestinian Territory (both Christians and Muslims) to their religious sites located in the Occupied Palestinian Territory, including East Jerusalem.

* Late submission.

3. From 20 to 27 January 2008, Asma Jahangir, the Special Rapporteur on freedom of religion or belief, visited Israel and the Occupied Palestinian Territory. Following her visit, the Permanent Observer Mission of Palestine and the Permanent Mission of Israel to the United Nations Office at Geneva were requested to share any comments or observations in relation to resolution 6/19 with the Office of the United Nations High Commissioner for Human Rights. In order to benefit from the visit of the Special Rapporteur and her conclusions as well as from the information on the issue that might be provided by the respective permanent missions, and in the light of the report before the seventh session following resolution S-6/1, the report of the High Commissioner pursuant to resolution 6/19 will be submitted to the Council at its eighth session.

UNITED NATIONS **A**

General Assembly

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14 March 2008

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HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 7

HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip

Report of the High Commissioner for Human Rights on the implementation of resolution S-6/1*

* The present report was submitted late in order to include the most recent information.

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I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution S-6/1 on human rights violations emanating from Israeli military attacks and incursions, in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its seventh session, on the progress made in the implementation of that resolution.

2. In its resolution S-6/1, the Council expressed grave concern at the repeated Israeli military attacks carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which resulted in loss of life and injuries among Palestinian civilians, including women and children; called for urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip; demanded that the occupying Power, Israel, lift immediately the siege it had imposed on the occupied Gaza Strip, restore continued supply of fuel, food and medicine and reopen the border crossings; called for the immediate protection of the Palestinian civilians in the Occupied Palestinian Territory, in compliance with human rights law and international humanitarian law; and urged all parties concerned to respect the rules of human rights law and international humanitarian law and to refrain from violence against the civilian population.

3. In the present report, the High Commissioner assesses the implementation of the resolution for a one-month period, from the day that it was adopted on 24 January 2008. In accordance with resolution S-6/1, the High Commissioner provides the general context of the situation and focuses on the situation in and around Gaza, particularly in the context of its closure and of violence against the civilian population, during the period from 24 January to 24 February 2008. She also addresses the related issue of freedom of movement in the West Bank and provides recommendations to the Council.

II. CONTEXT

4. On 25 January 2006, elections for the Palestinian Legislative Council were held in the West Bank and Gaza. The Hamas movement won the elections over the Fatah movement, which had dominated the Palestinian institutions until then. Ismail Haniyeh of Hamas became Prime Minister of the Palestinian Authority. Shortly thereafter, the international community, supported by the Quartet, redirected international aid from the Palestinian Authority to the United Nations and humanitarian agencies. Israel imposed economic sanctions, including by withholding tax revenues it collected on imports, and introducing additional restrictions on the movement of goods to, from and within the Palestinian territory. Israel declared that sanctions would be lifted only when the new Palestinian Government renounced violence, recognized Israel and accepted previous agreements between Israel and the Palestinian Authority.

5. In March 2006, Fatah refused to join the new Palestinian Authority Government; later in 2006, supporters of the two groups clashed in both the Gaza Strip and the West Bank. However, on 8 February 2007, Hamas and Fatah signed the Mecca Agreement, sponsored by the Government of Saudi Arabia. After a short period of calm, armed clashes escalated between

security forces and armed groups loyal to Hamas and Fatah throughout the period of March to May 2007, despite the Agreement. Some 350 people were reportedly killed and more than 2,000 injured in the first half of 2007 as a direct result of Palestinian internal armed clashes.[1]

6. By 14 June 2007, Hamas forces and armed groups attacked and seized Fatah-controlled Palestinian Authority security installations and government buildings in the Gaza Strip. After a three-day siege, the security and military intelligence headquarters of the Palestinian Authority were taken over by Hamas. On 14 June, President Mahmud Abbas dismissed the Government of Prime Minister Haniyeh, declared a state of emergency, established an emergency government based in the West Bank and appointed Finance Minister Salam Fayyad as Prime Minister. Hamas refused to recognize the emergency government and set up a Hamas de facto administration in the Gaza Strip, whose legitimacy has never been recognized by the international community.

7. Following the Hamas takeover of the Gaza Strip, the West Bank-based cabinet formed by President Abbas gained widespread international support. The European Union and the United States of America normalized ties and resumed direct aid to the West Bank. Israel agreed to transfer hundreds of millions of dollars in tax revenues it had seized, while tightening the economic and trade blockade of the Gaza Strip.

8. The European Union suspended the few aid projects it still maintained in the Gaza Strip, while Israel prevented the European Union border assistance mission at the Rafah crossing from operating, citing security reasons, resulting in the Rafah crossing being mostly closed ever since. Egypt, Jordan and Saudi Arabia declared that the West Bank-based cabinet was the sole legitimate Palestinian Government.

9. While the Hamas Government in the Gaza Strip faced international diplomatic and economic isolation, efforts by the international community, in particular the Quartet, to support and strengthen the West Bank cabinet led, on 27 November, to the organization of the Annapolis Conference. At the Conference, President Abbas and Israeli Prime Minister Ehud Olmert agreed to resume negotiations by the end of 2007. In addition, the two sides agreed to work continuously to reach a two-State solution by the end of 2008, a commitment that was repeated on the occasion of United States President George Bush's visit to Jerusalem on 9 January 2008. The visit was preceded by an agreement between the Israeli Prime Minister and the Palestinian President to create negotiation teams to address the five core issues of the conflict: settlements, Jerusalem, refugees, security and borders.

10. In the section below, the High Commissioner examines violations committed by three actors: the State of Israel as the occupying Power; the Palestinian Authority; and the de facto authorities of the Gaza Strip under the effective control of Hamas.

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[1] "Occupied Palestinian Territories Torn Apart by Factional Strife". Amnesty International, October 2007. AI Index: MDE 21/020/2007.

III. PROGRESS IN THE IMPLEMENTATION OF THE RESOLUTION

A. Closure of Gaza

General situation

11. Following the Hamas takeover of the Gaza Strip in June 2007, Israel closed its borders with Gaza to exports and severely limited imports. The declaration of Israel of Gaza as a "hostile territory", on 19 September 2007, resulted in a further reduction of the supply of fuel and electricity to the Strip. Israel has explained the declaration and its decision to restrict the movement of people and goods (notably fuel and electricity) by referring to the duty of the Government of Israel to protect the lives of its citizens, declaring that no Government could be expected to fail to react when its towns and cities were subjected to deliberate bombardment from a neighbouring territory.[2]

12. As a result of the restrictions, all six crossings into the Gaza Strip have been opened only sporadically since June 2007. All crossings were completely closed on 18 January. During the reporting period, the Sufa crossing was opened on average five days per week, but only 40 to 50 truck loads per day were allowed through. The Karni crossing was open on average one day per week, but only one of 34 lanes was operating to allow the passage of animal feed and grains. Erez remained open for international humanitarian workers and medical evacuations. Nahal Oz was open on average six days per week to allow the passage of limited quantities of fuel. No goods crossed Kerem Shalom from 24 January onwards.[3] Rafah, on the border with Egypt, has been almost completely closed since June 2007. On 23 January, Palestinian militants destroyed several parts of the wall dividing Gaza and Egypt in the town of Rafah. Hundreds of thousands of Gazans crossed the border seeking food and supplies. Egyptian President Hosni Mubarak ordered his troops to allow the Palestinians in, but to ensure that they did not take weapons back. The border was resealed on 3 February.

13. With few exceptions, all legitimate trade with Gaza virtually came to a halt as a result of the closure of the crossings into Gaza, which had devastating effects on the economy and on livelihoods before and during the reporting period. The isolation of Gaza, the regular military incursions and the lack of effective coordination between the Palestinian Authority in Ramallah and Hamas authorities in Gaza resulted in shortages of food, medical and relief items, spare parts for critical health and water sanitation installations, materials for humanitarian projects and raw materials for commerce and industry in Gaza. According to the Under-Secretary-General for

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[2] "Security cabinet declares Gaza hostile territory", 19 September 2007, and "Behind the headlines: Israel designates Gaza a 'hostile territory'", 24 September 2007, available from the website of the Ministry of Foreign Affairs of Israel at www.mfa.gov.il.

[3] See Humanitarian Weekly Briefing Notes, 13-19 February 2008, of the Office for the Coordination of Humanitarian Affairs at www.ochaopt.org.

Humanitarian Affairs, only 10 per cent of the amount of goods that entered Gaza a year ago were being permitted to enter by 15 February 2008. As a result, the Gaza Strip was on the brink of a humanitarian disaster.[4]

14. With regard to access to fuel and electricity, several factors prior to the reporting period led to a significant reduction in the availability of electricity, including the bombing, on 28 June 2006, of the six transformers of the Gaza Strip power plant and the restrictions of fuel supplies to Gaza, which began on 28 October 2007 in the context of sanctions designed to pressure Palestinian militants into stopping launching rockets and mortars from Gaza into Israel. The situation became more critical on 19 January, when Israel decided to impose a total cut on fuel supplies to the Strip in response to a series of rocket attacks by Palestinian militants against southern Israel over several days. On 20 January, the main power plant in Gaza completely shut down. On 22 January, Israel once again allowed fuel and medical supplies into Gaza.[5]

15. On 30 January 2008, the Israeli High Court of Justice rejected a petition against the Israeli plan to reduce the supply of electricity and fuel to the Gaza Strip, which had already been in force for several months.[6] Following the Israeli High Court ruling, on 7 February, the Ministry of Defense ordered the Israel Electricity Company to reduce its supply to Gaza by around 0.5 megawatts per day. The cut was less than the 1.5 megawatts originally proposed, but still compounded the existing shortfall of 60 megawatts per day.

16. According to the Israeli Ministry of Defense, electricity cuts to Gaza were made in response to the continued and indiscriminate firing of rockets from Gaza into Israel. The Ministry also declared that the economic sanctions were part of a policy of "economic warfare as a life-saving alternative to large-scale ground operations". The Ministry further argued that the only obligation of Israel to the civilian population in Gaza was to avoid a humanitarian crisis, and that it was up to the authorities in Gaza to prioritize the distribution of electricity, with

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[4] Visiting Ramallah, United Nations Humanitarian Chief Voices Solidarity with Suffering People, at www.un.org/news.

[5] The Humanitarian Monitor, January 2008. See www.ochaopt.org/documents/Humanitarian_Monitor_Jan_08.pdf.

[6] While the Court confirmed that the State of Israel was obligated to act against terrorist organizations in the framework of the law and in accordance with the provisions of international law, and to refrain from intentionally harming the civilian population of the Gaza Strip, it found that, "in light of all the information presented before [the Court] with regard to the supply of electricity to the Gaza Strip, we are of the opinion that the amount of industrial diesel that the State declared that it intends to supply, as well as the electricity supplied on an ongoing basis through the electrical lines from Israel, are sufficient to meet the essential humanitarian needs of the Gaza Strip at this time", High Court ruling 9132/07, para. 22. (Unofficial translation into English by Gisha-Legal Center for Freedom of Movement.)

priority to humanitarian needs. According to the Ministry of Defense, the authorities in Gaza could ensure that electricity reached homes and hospitals but not workshops, where rockets were produced.[7]

Impact on the enjoyment of human rights

17. During the reporting period, the above-mentioned restrictions on the movement of people and goods had a negative effect on the Gaza Strip population's enjoyment of a wide range of their human rights, notably their economic, social and cultural rights, but also the rights to life and human dignity and their freedom of movement.

18. The electricity shortages had a significant effect on the Gazans' right to an adequate standard of living during the reporting period. According to the Office for the Coordination of Humanitarian Affairs, in the period from 18 to 24 January, power cuts, which were frequent prior to 19 January, were extended in duration to 12 hours per day everywhere in Gaza, except Rafah.[8] Access to electricity is an important component of the rights to adequate housing and an adequate standard of living, and also has a serious impact on other rights such as the right to water, food and an adequate standard of health.

19. As concerns the right to water, during the second half of January almost half of the population of Gaza of 1.4 million had no access to running water.[9]

20. With regard to the right to food, as a result of the closure and restrictions, during the reporting period, the Office for the Coordination of Humanitarian Affairs estimated that 80 per cent of Gazans lived beneath the poverty line and depended on food aid from international organizations. In January 2008, the World Food Programme (WFP) was unable to provide any food to 10,000 of its beneficiaries and a further 50,000 received only a part of their monthly allocation. While 1.1 million Gazans are provided with food by WFP and the United Nations Relief and Works Agency for Palestine and Refugees in the Near East, only 7.6 per cent of them received 100 per cent of their calorie requirements; the rest relied on the commercial market to supplement their diets. However, the lockdown of Gaza led to a further reduction of stocks in the

[7] See also the website of the Gisha Legal Center for Freedom of Movement at www.gisha.org.

[8] OCHA "Gaza closure: situation report", 18-24 January 2008.

[9] The right to water is essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. The right to water is also inextricably linked to the right to the highest attainable standard of health and rights to adequate housing and food. See general comment No. 15 of the Committee on Economic, Social and Cultural Rights, para. 3.

commercial sector, and meat, frozen fish and vegetables were rarely available in shops.[10] It should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself through an adequate livelihood.

21. Regarding the right to the enjoyment of the highest attainable standard of physical and mental health, the World Health Organization highlighted, in January, a serious shortage of essential drugs and increasing difficulties for patients requiring emergency care not available in Gaza to leave the Strip, sometimes resulting in the death of the patients concerned. A Palestinian human rights organization documented four cases of patients who died between 29 January and 19 February as a result of not being able to travel abroad to seek needed medical attention or owing to their referral for treatment outside the Gaza Strip being delayed or denied.[11]

22. According to an Israeli human rights organization, on 27 January, a patient who had obtained an exit permit to be treated in an Israeli facility was arrested at the Erez crossing. On 30 January, another patient was released by Israeli security after a 10-hour-long incommunicado interrogation.[12]

23. Moreover, power cuts forced hospitals to suspend operations in order to ensure emergency services; children, who make up 56 per cent of the population in Gaza, were at risk of health problems related to contaminated water and non-functioning sanitation and heating systems. During the reporting period, hospitals relied on emergency generators to maintain normal services. As at 4 February, all 12 hospitals of the Palestinian Ministry of Health were functioning at full capacity; however, none of the primary health-care facilities had received any fuel. The provision of diagnostic and dental services was interrupted in primary health-care facilities, which had no functioning generators during hours of electricity outage. The facilities that provide immunization services and did not have generators transferred vaccines to other facilities with functioning generators to prevent breaking the cold chain of the vaccines. According to Ministry of Health officials, 49 of 57 ambulances from the emergency department stopped working owing to the lack of fuel during the third week of February. Without fuel, hospital generators and vital equipment such as incubators would have to shut down.

24. The Office for the Coordination of Humanitarian Affairs reported that, without power, the Coastal Municipalities Water Utility, the Gaza water authority, could not pump and distribute water nor process sewage; for that reason, it had no choice but to release waste water into the sea at a rate of 40 million litres per day. According to the Office for the Coordination of

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[10] Office for the Coordination of Humanitarian Affairs, Gaza Strip Humanitarian Fact Sheet, January 2008.

[11] "Patient dies due to inability to reach a hospital" (17 February 2008) and "Further Deterioration to Health Conditions in the Gaza Strip: 3 Patients Die and Ambulances Stopped Operation Due to the Lack of Fuels" (21 February 2008), Palestinian Center for Human Rights.

[12] Physicians for Human Rights Israel, "January 2008 in Gaza; no justice, no hope for patients", 1 February 2008.

Humanitarian Affairs, from 18 to 24 January, 30 million litres of raw sewage water were released into the sea per day, creating risks for both public health and the environment.

25. During the reporting period, schools in Gaza reopened after the winter break, although the scarcity of fuel and power forced many institutions to operate without heating and electricity. Students also lacked basic materials, including chalk and textbooks, as a result of the restrictions on the entry of goods, negatively affecting their right to education.

26. According to academic and media sources, corroborated by Palestinian mental health practitioners during the period, a large proportion of the population in the Gaza Strip suffered from various levels of permanent anxiety, fear and tension, or showed symptoms of post-traumatic stress disorders. Evidence showed that a large percentage of children in the Gaza Strip were no longer able to perform their school and family duties; moreover, many suffered from psychosomatic pain. Signs of fear, anger, anxiety and sleeping disorders were also apparent among the children.

27. The closure of Gaza also affected the inhabitants' freedom of religion or belief by preventing them from worshipping at some of the most sacred Muslim and Christian sites, such as the Al-Aqsa Mosque and the Church of the Holy Sepulchre in Jerusalem and the Church of the Nativity in Bethlehem.

28. Under article 33 of the Fourth Geneva Convention, collective punishment of civilians under occupation is categorically prohibited: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." The International Committee of the Red Cross has clarified in its authoritative commentary on article 33 of the Fourth Geneva Convention that "the concept of collective punishment must be understood in the broadest sense: it covers not only legal sentences but sanctions and harassment of any sort".

29. The blockade of Gaza by Israel was recently condemned by the international community and humanitarian agencies as constituting collective punishment. On 19 February 2008, the Secretary-General stated that it was vital that Israel cease actions of collective punishment and allow all legitimate and necessary humanitarian and commercial supplies to reach the population.[13]

30. The negative effects on the enjoyment of human rights resulting from the Israeli closure of Gaza were in some cases exacerbated by actions by other parties. On 7 February, at least 10 trucks with humanitarian aid sent to the Gaza Strip by the Jordanian Red Crescent Society were confiscated by Hamas security forces allegedly because the aid was addressed to the rival

[13] Message to the United Nations Seminar on Assistance to the Palestinian People, Amman, 19-20 February 2008 (SG/SM/11429; PAL/2098).

Fatah party.[14] International humanitarian law requires that humanitarian relief personnel and objects used for humanitarian relief operations be protected. Passage of humanitarian relief must be allowed and facilitated by the parties to the conflict.

B. Violence against the civilian population

Background

31. Israeli security forces continued military incursions into Gaza and the West Bank throughout 2007. According to the Office for the Coordination of Humanitarian Affairs, 392 Palestinians were killed in the Israeli-Palestinian conflict in the Occupied Palestinian Territory (91 in the West Bank, 301 in Gaza); in addition, 1,180 Palestinians were injured in the West Bank and 661 in the Gaza Strip. During the same period, 13 Israelis were killed and 322 injured. The Office also reported that, from mid-June to 25 December, 632 Qassam rockets and 921 mortar shells were fired from Gaza.[15]

32. In January 2008, the situation escalated: as at midday 22 January, as hostilities continued, around 70 Palestinians and 1 Ecuadorian kibbutz worker had been reported killed, 23 on 15 and 16 January alone. On 15 and 16 January, in Gaza, five Palestinian civilians were killed during operations of the Israeli army and another three died when an Israeli aircraft fired a missile at their car, an incident that Israel declared was a mistake. On 18 January, a Palestinian civilian woman was killed and around 30 civilians injured, including several children, when an Israeli air strike targeted an empty building of the Ministry of the Interior. Israeli military operations also continued in the West Bank. From the beginning of the year until midday 22 January, Palestinian militants fired around 230 mortar shells and 110 rockets into the northern Negev, including the cities of Sderot and Ashkelon.

Operations of Palestinian militants during the period from 24 January to 24 February 2008

33. During the reporting period, one Israeli was killed due to the Israeli-Palestinian conflict. On 4 February, a suicide bomb attack took place in a shopping mall in the southern Israeli city of Dimona; one civilian woman was killed and several other people sustained injuries. While

[14] A similar incident took place on 10 February in the West Bank, when Palestinian security forces prevented the distribution of humanitarian assistance through a civil society organization allegedly affiliated to Hamas. At least in this last case, the humanitarian agency was able to negotiate with Palestinian Authority officials the release of the goods and the resumption of distribution to its beneficiaries.

[15] Office for the Coordination of Humanitarian Affairs, The Humanitarian Monitor, December 2007; see www.ochaopt.org.

condemned by the Palestinian Authority, a number of Palestinian factions hailed the attack and responsibility for the bombing was claimed by various Palestinian military groups.[16]

34. At the time of writing, reliable statistics had not been published for the period from 24 January to 24 February 2008. It is however estimated that Palestinian militants fired hundreds of mortar shells and around 210 rockets, the majority of which of the *Qassam* type, into the western Negev, including the cities of Sderot and Ashkelon. Though most of the rocket and mortar attacks carried out by Palestinian militants were indiscriminate, some of the short-distance mortar shells reportedly targeted Israeli military installations or personnel located just across the border. Some 10 Israelis sustained injuries as a result of rockets and mortar shells fired by Palestinian militants and many Israeli residents of Sderot and the western Negev, including children, suffered from shock. On 8 and 9 February, more than 40 rockets were fired at the western Negev. One of the rockets landed in central Sderot, seriously injuring two brothers, one of whom, an eight-year old boy, lost a limb in the attack.

35. The firing of rockets and mortars by Palestinian militants against Israeli civilian targets is a clear violation of international humanitarian law.

Israeli military operations during the period from 24 January to 24 February 2008

36. During the reporting period, Israeli security forces conducted at least 9 military incursions into Gaza and 106 into various locations of the West Bank.

37. Some 41 Palestinians, including two children, were reportedly killed due to the Israeli-Palestinian conflict, a decrease when compared to the first three weeks of 2008.

38. The number of wounded also decreased; approximately 88 Palestinians, including 12 children and 11 women, were injured as result of operations by Israeli security forces in the Gaza Strip and the West Bank.

39. Palestinian human rights organizations documented several cases of Israeli military operations that resulted in the death of civilians. On 7 February, an Israeli ground-to-ground missile landed in the courtyard of an agricultural school in Beit Hanoun in the Gaza Strip. The missile hit the structure when teachers and students were entering the school; one teacher was killed and two students were injured. An Israeli human rights organization called for an investigation into the death on 7 February of a mentally disabled Palestinian man who had been wounded by the Israeli Defence Forces during an arrest operation in the West Bank town of Qabatiya. According to Palestinian health sources, on 17 February, a civilian was killed and several others were injured during clashes between Palestinian militants and undercover troops of the Israeli Defence Forces backed by aircraft and tanks in the southern Gaza Strip. On 18 February, a 10-year old boy was shot and killed during armed clashes between Palestinian militants and the Israeli Defence Forces near Deir el-Balah, inside the Gaza Strip.

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[16] The armed wing of Hamas claimed responsibility for a Palestinian suicide bombing. The Al-Aqsa Martyrs Brigade and the Popular Front for the Liberation of Palestine also claimed responsibility for the attack. *Haaretz*, 4 February 2008.

40. The Israeli policy of targeted killings of Palestinian militants and security personnel continued. According to Palestinian human rights organizations, a total of 18 Palestinian militants and security personnel were killed while they were not directly taking part in hostilities; of these, 16 were allegedly killed in Gaza and 2 in the West Bank. In different incidents, on 5 February, seven police officers of the de facto Hamas authorities in Gaza were killed and eight others injured when a ground-to-ground missile was fired at their station in Abassan village in the Gaza Strip. On 23 February, three Palestinians were killed in an Israeli army missile strike in the northern Gaza Strip. No militant group immediately claimed them as members. An Israeli army spokesman stated that ground forces had attacked a squad that was on its way to fire mortar shells into Israel.[17] During the reporting period, at least three Palestinian civilians were allegedly killed as an indirect result of such operations.

41. According to Israeli media sources, the Government of Israel was working towards the establishment of a panel to investigate targeted killing operations that involved the death of civilians. The same sources reported that that decision was in line with the Israeli High Court ruling of December 2006, which called on the Government of Israel to investigate any incident leading to the death of civilians, under the condition that the incidents occurred after the date of the ruling. In spite of this, the Israeli State Prosecutor's Office and the Military Advocate General recently rejected a request by an Israeli human rights organization to investigate six such incidents in the Gaza Strip in the past two years.[18]

42. With regard to Israeli military operations, it should be noted that, while Israel has a right to defend itself, disproportionate use of force is prohibited under international humanitarian law. Israel, as the occupying Power, bears a special responsibility under international human rights and humanitarian law to protect the civilian population and civilian installations in Gaza.

Other incidents, including intra-Palestinian violence, during the period from 24 January to 24 February 2008

43. The violence in the Israeli-Palestinian conflict added to the already critical situation in both the Gaza Strip and West Bank that had resulted from the closure imposed by Israel and the breakdown of law and order. Several incidents were reported involving unidentified armed groups in Gaza. The state of institutions continued to deteriorate, especially in Gaza, as the population increasingly relied on informal mechanisms of dispute resolution. Local clans and families have formed militias and vigilante squads to protect their affiliates.

44. On 3 February, a 16-year-old Palestinian was killed by a stray bullet while he was travelling with his father in Gaza City. On 15 February, unidentified militants broke into the building of the Young Men's Christian Association in the centre of Gaza City. The militants damaged the administration office and blew up the library. According to different sources, as at mid-February, 23 violent incidents had been recorded during operations by the Palestinian security forces against Hamas affiliates in the West Bank. One incident resulted in the death of

[17] Palestinian Centre for Human Rights, 24 February 2008, press release ref. 12/2008.

[18] See *Haaretz* on 20 January 2008, at www.haaretz.com.

one person. On 24 February, Hamas security forces entered the Prisoners Association in Deir El Balah, in the Gaza Strip, confiscating official documents and assets. One Palestinian was killed during clashes with the Egyptian border police at the Rafah crossing.

45. According to a number of witnesses, on 15 February, a powerful blast went off in the home of a senior Jihad military leader in Bureij Camp in the Gaza Strip. The militant was killed along with his wife, three of his sons and three neighbours. According to an official from the Palestinian Ministry of Health, as result of the explosion, at least 40 people were wounded, 12 of them critically, including one of the militant's daughters. The house was totally destroyed and six nearby homes were also badly damaged. The cause of the blast was still undetermined at the time of writing. Two Palestinian human rights organizations have called for an investigation into the incident.

46. On 22 February, a Hamas affiliate died in the custody of the Palestinian intelligence service in Ramallah. Members of his family, citing reports from fellow detainees, alleged that he had been tortured. The Hamas affiliate had been arrested a week earlier. The Palestinian President and the Palestinian Legislative Council announced two separate investigations into the death, which came among repeated complaints by Hamas-affiliated detainees of ill-treatment by the Palestinian Authority security forces. In a statement published in Palestinian newspapers, the Palestinian Authority intelligence service said that the Hamas affiliate had complained of chest and abdominal pains and had been examined by a hospital doctor two days before his death.

C. Situation in the West Bank

47. The section below focuses on the issue of freedom of movement. Restrictions on the movement of Palestinians continued in the West Bank, where measures associated with the Wall,[19] the Israeli checkpoints established within the West Bank and the extended curfews severely limited freedom of movement. The route of the Wall, the settlements, the closure regime and associated controls severely damaged the social and economic structures of the West Bank, contributed to increased aid reliance, poverty and unemployment and had a serious impact on the enjoyment of civil, political, economic, social and cultural rights of the population both before and during the reporting period.

48. Since 2002, the Government of Israel has been constructing the Wall, which it states is a security measure to protect Israeli civilians from Palestinian militant attacks. It consists of 8-metre-high concrete walls, ditches, trenches, wire fences, patrol roads and barbed wire. The Wall does not follow the 1949 armistice line - "the Green Line" - but significantly veers eastwards into the heart of the West Bank. In January 2008, 57 per cent of the total length of the

[19] As concerns the issue whether to use the term "wall", "barrier", or "security fence", the present report uses "wall", which is the term used by the International Court of Justice, which in its advisory opinion stated that "the 'wall' in question is a complex construction, so that that term cannot be understood in a limited physical sense. However, the other terms used, either by Israel ("fence") or by the Secretary-General ("barrier"), are no more accurate if understood in the physical sense. In this opinion, the Court has therefore chosen to use the terminology employed by the General Assembly." International Court of Justice advisory opinion, para. 67.

projected barrier (723 km) was completed. It is estimated that, when the structure is finalized, around 80 per cent of it will be inside West Bank territory. This has created closed areas: 10.1 per cent of West Bank and East Jerusalem land lies between the Wall and the Green Line. Once the Wall is completed, a total of 49,400 West Bank Palestinians living in 38 villages will be included in these areas.

49. Coupled with the difficulty of movement caused by checkpoints and the requirement of permits and identity cards, the construction of the Wall in the West Bank affected thousands of Palestinians both before and during the reporting period. Owing to the Wall, agricultural land, houses, water sources, schools, and health-care clinics that belong to Palestinians had either been confiscated or are now out of reach for their owners.

50. In its advisory opinion, the International Court of Justice concluded that the Wall severely impeded the exercise by the Palestinian people of their right to self-determination, and was therefore a breach of the obligation of Israel to respect that right.[20] It also found that the Wall deprived a significant number of Palestinians of the freedom to choose their residence and that it impeded the liberty of movement of the inhabitants of the Occupied Palestinian Territory.[21] The Wall and its associated regime were also found to impede the exercise by the persons concerned of the rights to work, health, education and an adequate standard of living, as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. Moreover, the International Court of Justice found a violation of articles 49 and 53 of the Fourth Geneva Convention. In sum, according to the Court, the Wall gravely infringed a number of rights of Palestinians residing in the Occupied Palestinian Territory that could not be justified by military exigencies or by the requirements of national security and order.[22] The Court therefore concluded that Israel was obliged to put an end to the violation of its international obligations and that it should therefore dismantle the parts of the Wall situated within the Occupied Palestinian Territory. It also concluded that Israel had the obligation to make reparation for the damage caused to all natural and legal persons concerned.[23] No steps towards the fulfilment of these obligations were taken by Israel during the reporting period.

51. During the reporting period, over 560 blockages of various sorts prevented ordinary Palestinians from enjoying their right to freedom of movement within the West Bank. According to a Palestinian human rights organization, on 13 February, the Israeli Defence Forces closed dozens of roads and agricultural roads with large boulders and earth barriers. Checkpoints were erected or re-established on main roads, especially in the northern West Bank and around Nablus. According to the organization, very strict measures were implemented at the checkpoints, including banning people under 35 years of age from the northern West Bank from moving between governorates, and occasionally inside the same governorate.

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[20] International Court of Justice advisory opinion on the Wall of 9 July 2004, paras. 115-122.

[21] Ibid., paras. 123-137, International Covenant on Civil and Political Rights, para. 12.

[22] Ibid., paras. 123-137.

[23] Ibid., paras. 149-154.

52. On 14 February, international humanitarian organizations reported that the village of Beit Ummar in the South Hebron region had been under curfew of the Israeli Defence Forces for several days and that the army had declared it a closed military zone. According to the same organizations, the Israeli Defence Forces distributed leaflets stating that a week-long curfew was to be enforced. Seven streets inside the village were closed off during the curfew, and a store at the entrance of the village, adjacent to a military watchtower, was demolished. On the same day, a 5-day curfew of the northern West Bank town of Azzoun, near Qalqilyah, came to an end. Although town residents were allowed to walk in the streets, roadblocks barring movement to a neighbouring Palestinian village and to a major road remained in place. According to United Nations sources, the Israeli Defence Forces distributed leaflets in Azzoun threatening village residents that, if youngsters did not stop throwing stones at Israeli settler vehicles travelling near the village, they would carry out arrests, close the main entrance to the village, close the shops and open fire on stone throwers. Following further incidents of stone throwing, the Israeli Defence Forces reimposed the curfew for one day on 16 February. On 18 February, the main entrance of the village was closed with earth mounds and wires.

53. In relation to the right to the enjoyment of the highest attainable standard of physical and mental health, according to medical sources, on 14 February, a Palestinian woman who was refused access to an ambulance at an Israeli checkpoint died in her village in the West Bank. Local witnesses said that the husband of the woman pleaded with soldiers at the Jarushiya checkpoint near the town of Tulkarem to let his wife get to an ambulance waiting to take her to a Palestinian hospital but was ignored. A source of the Israeli Defence Forces said that the soldiers at the checkpoint were unaware of the woman's circumstances because her family had not informed the local military coordination office for humanitarian cases of the ambulance's arrival.

54. On 27 January, following her recent visit to Israel and the Occupied Palestinian Territory, the Special Rapporteur on freedom of religion or belief expressed her concern over the fact that Muslims and Christians were impeded from worshipping at some of their most holy sites because of an elaborate system of permits, visas, checkpoints and the Wall, declaring that the intrusive restrictions were disproportionate to their aim and discriminatory and arbitrary in their implementation.[24] In addition to impeding access to places of worship, the restrictions also prevented a number of Palestinians from gathering during marriages and funerals, which constitute important religious events for both Muslims and Christians.

55. In 2007, the Committee on the Elimination of Racial Discrimination also expressed its deep concern at the Wall, checkpoints, restricted roads and permit systems, which targeted a particular national or ethnic group, and which have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their right to freedom of movement, family life, work, education and health.[25]

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[24] Statement by the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Jerusalem, 27 January 2008. The International Court of Justice also noted that Israel must ensure freedom of access to the holy places that came under its control following the 1967 war; see International Court of Justice advisory opinion on the Wall, paras. 149-154.

[25] CERD/C/ISR/CO/13, para. 34.

IV. RECOMMENDATIONS TO THE HUMAN RIGHTS COUNCIL

A. Accountability

56. **In view of the grave and worsening human rights situation in the Occupied Palestinian Territory, the protection of both Palestinian and Israeli civilians requires immediate action by all parties and the international community.**

57. **First, all parties to the conflict should immediately cease all actions violating international human rights and humanitarian law.**

58. **Second, Israel, the Palestinian Authority and the de facto Government of the Gaza Strip under the effective control of Hamas should establish accountability mechanisms providing for law-based, independent, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law in accordance with their respective obligations. Such investigations must hold perpetrators to account and provide redress to victims where violations of law are found to have occurred. Existing mechanisms which lack impartiality, accessibility or transparency should be replaced by accountability mechanisms that meet international standards. In order to bring about a change in approach in the use of force, and thus ensure compliance with international law, such an effective system of accountability, the inclusion of personal accountability where negligence, recklessness or intent is established is indispensable. Such investigations should be established urgently and without delay, in particular to address allegations of grave breaches of international humanitarian law and serious violations of international human rights law, such as indiscriminate attacks and incursions, indiscriminate firing of rockets or mortars, suicide bombings, targeted killings and torture.**

59. **Third, the international community should actively promote the implementation of the decisions, resolutions and recommendations of international accountability mechanisms such as the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special rapporteurs.**

B. Closure of Gaza

60. **The 1.4 million people of Gaza live under the most abhorrent conditions. The current human rights crisis in Gaza is man-made, and urgent action by all parties is required to end the closure and the suffering which has resulted from the deprivation of their human rights.**

61. **Israel must cease all action violating international human rights and humanitarian law obligations and in particular the prohibition of collective punishment. The de facto Government in Gaza under the effective control of Hamas should take all measures within its power to minimize the negative effects of the siege on the enjoyment of human rights by Gazans, and ensure that all action which violates the rights of both Palestinian and Israeli civilians ceases, notably the indiscriminate firing of rockets into Israel. The Palestinian Authority should take all measures in its power to alleviate the situation.**

C. Peace process

62. **Throughout negotiations on final status issues, full account should be taken of international legal obligations, as well as General Assembly and Security Council resolutions and the advisory opinion of the International Court of Justice on the Wall. International human rights and humanitarian obligations cannot, as a matter of principle and in practice, be subject to political negotiations. The international community should take action to ensure that all such standards and decisions are met and implemented.**

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip

Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1*

* Late submission. The footnotes to the present report are circulated as received, in the language of submission only.

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Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 7/1 of 6 March 2008 on human rights violations emanating from Israeli military attacks and incursions, in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its eighth session, on the progress made in the implementation of that resolution.

2. In its resolution 7/1, the Council "condemns the persistent Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which resulted in the loss of more than 125 lives and hundreds of injuries among Palestinian civilians, including women, children and infants; expresses its shock at the Israeli bombardment of Palestinian homes and the killing of civilians therein and at the Israeli policy of inflicting collective punishment against the civilian population, which is contrary to international humanitarian law, and calls for bringing the perpetrators to justice; calls for the immediate cessation of all Israeli military attacks throughout the Occupied Palestinian Territory and the firing of crude rockets, which resulted in the loss of two civilian lives and some injuries in southern Israel; also calls for urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip; reiterates its calls for immediate protection of the Palestinian people in the Occupied Palestinian Territory in compliance with international human rights law and international humanitarian law"; and "urges all parties concerned to respect the rules of international human rights law and international humanitarian law and to refrain from violence against civilian populations".

3. The present report assesses the progress made in the implementation of the resolution for a two-month period (25 February to 25 April 2008), from the end of the reporting period of the previous report on human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip (A/HRC/7/76). In accordance with Council resolution 7/1, the present report primarily focuses on the situation in and around Gaza (particularly in the context of its closure) and on violence against the civilian populations. It also addresses other actions taken by the parties during the reporting period which affect the human rights situation in the Occupied Palestinian Territory (OPT), sets out briefly the legal obligations of all parties under international human rights law and international humanitarian law and provides recommendations to the Council.

I. LEGAL CONTEXT: OBLIGATIONS OF THE PARTIES TO RESPECT THE RULES OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

4. Human Rights Council resolution 7/1 calls on all parties concerned to respect the rules of international human rights law and international humanitarian law. As set out briefly below, both Israel and the Palestinian Authority, as well as Hamas in Gaza, carry obligations under international humanitarian law and international human rights law vis-à-vis the civilian populations in both Israel and the OPT.

A. International humanitarian law

5. The most relevant international humanitarian law standards concerning Israel's responsibilities in the OPT as the Occupying Power are set out in The Hague Regulations and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (hereinafter the "Wall Opinion"), the International Court of Justice (ICJ) recalled that while Israel is not a party to The Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention IV), to which The Hague Regulations are annexed, the provisions of The Hague Regulations have become part of customary international law. It also concluded that the Fourth Geneva Convention is applicable in the Palestinian territories which before the 1967 conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel.[1]

6. In relation to the Palestinian Authority (PA), the Palestinian Liberation Organization (PLO) made a unilateral undertaking, by a declaration on 7 June 1982, to apply the Fourth Geneva Convention and the Protocol Additional thereto relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Switzerland, as depositary State, considered that unilateral undertaking valid.[2] In 1989, the PLO made an additional written undertaking to "adhere to the four Geneva Conventions of 12 August 1949 and the two Protocols Additional thereto". Concerning Hamas, it is bound by international humanitarian law obligations concerning, inter alia, the conduct of hostilities and the rights of civilians and other protected persons. In addition, Hamas has confirmed its commitment to respect "international law and international humanitarian law insofar as they conform with our character, customs and original traditions".[3]

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[1] This fact has not been altered by Israel's 2005 unilateral withdrawal of its forces from the strip, as confirmed repeatedly since then by the General Assembly (most recently in its resolution 62/107 of 17 December 2007) and by the United Nations Secretary-General (notably in this message to the United Nations Seminar on Assistance to the Palestinian People, Amman, Jordan, 19 February 2008; and in his message to the opening of the 2008 session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York, 14 February 2008).

[2] ICJ Wall Opinion, para 9.

[3] Text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council, 17 March 2007. http://www.islamicnews.net/Document/ShowDoc09.asp?DocID=91477&TypeID=9&TabIndex=2.

B. International human rights law

7. In relation to Israel's responsibilities under its international human rights treaty obligations with regard to the OPT, in its Advisory Opinion on the Wall, they concluded that the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) are applicable.[4] The position of United Nations human rights treaty bodies mirrors that of the ICJ, namely that as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the OPT, to the extent that it continues to exercise jurisdiction in those territories.[5] The ICJ also noted that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[6]

8. The Palestinian Authority, as recognized in a number of public undertakings whereby the PA, the PLO and the Palestinian Legislative Council (PLC) have declared their commitment to respect international human rights law, is also bound to abide by international human rights obligations.[7] These undertakings have included assurances, decrees and declarations and various agreements under the Oslo Accords signed with Israel, which stated that both parties would exercise their powers and responsibilities with "due regard to internationally accepted norms and principles of human rights and the rule of law". Similarly, article XIV of the 1994 agreement on the Gaza Strip and the Jericho Area provides for both Israel and Palestine to respect human

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[4] ICJ Advisory Opinion paras. 102-113 (where ICJ concluded that the protection offered by human rights conventions do not cease in cases of armed conflict and that the ICCPR, the ICESCR and the CRC are applicable in respect of individuals within its jurisdiction, even concerning those individuals under its jurisdiction outside its own territory).

[5] An examination of the concluding observations of different United Nations treaty bodies confirms this view: In its concluding observations of 2003, the Human Rights Committee (HRC) reiterated that the ICCPR provisions apply "to the benefit of the population of the Occupied Territories for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant…". Similarly in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control" (E/C.12/1/Add.90) The Committee on the Elimination of Racial Discrimination (CERD) drew a similar conclusion in its concluding observations of March 2007 (CERD/C/ISR/CO/13, para. 32).

[6] ICJ Advisory Opinion, para. 112.

[7] PLO chairman Yasser Arafat repeatedly stated that he and his Government were committed to respecting to all international human rights standards, for instance, to representatives of Amnesty International on 2 Oct 1993 and 7 Feb 1996.

rights.[8] Moreover, the Palestinian Basic Law[9] contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments (the relevant articles came into force on 7 July 2002 and were amended in 2003). Article 10 of the Basic Law states that "basic human rights and liberties shall be protected and respected" and that the "Palestinian National Authority shall work without delay to become a party to regional and international covenants and declarations that protect human rights". Its title two on "public rights and liberties" (arts. 9-33) guarantee a range of civil rights to all persons (such as freedom from unlawful arrest, the right to fair trial, prohibition of torture and collective punishment, freedom of expression, freedom of religion, etc.) as well as the main economic and social rights. The setting up of the Palestinian Independent Commission for Citizens' Rights (PICCR) in 1993 through a Presidential Decree issued by the late President Yasser Arafat represented another step in the direction of respect of human rights.[10] Moreover, under the Protocol Concerning Redeployment of the Interim Agreement of 28 September 1995, the PA also undertook that its police would exercise powers and responsibilities with due regard to internationally accepted human rights and the rule of law, and that it would be guided by the need to protect the public, respect human dignity, and avoid harassment.[11]

9. With respect to Hamas, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights

[8] In addition, the PA has undertaken to respect specific human rights obligations in the context of its membership of the Euro Mediterranean partnership, which was established in November 1995 with the adoption of Barcelona Declaration and which contains a human rights component, stating that members should respect fundamental human rights and freedom, and act in accordance with United Nations Charter and UDHR, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party (Barcelona Declaration, 27-28 November 1995; http://ec.europa.eu/external_relations/euromed/bd.htm).

[9] http://www.palestinianbasiclaw.org/2002-basic-law.

[10] Furthermore, article 31 of the Palestinian Basic Law provides for the establishment by law of an independent commission for human rights. In May 2005, PICCR submitted before the PLC a draft law for discussion and approval. This draft law confirms PICCR as the National Human Rights Commission in Palestine with Ombudsman function at its core.

[11] Article XIX; The Israel-Palestinian Interim Agreement on the West Bank and the Gaza Strip.

norms when their conduct affects the human rights of the individuals under their control.[12] Moreover, Hamas has indicated that it "is determined (...) to promote the rule of law, the respect for the judiciary, the separation of powers, the respect for human rights, the equality among citizens; to fight all forms of discrimination; to protect public liberties, including the freedom of the press and opinion ...".[13] Hamas has also confirmed its commitment to "respect (...) public liberties; to strengthen the establishment of democracy; to protect human rights (...); and its respect for international law and international humanitarian law insofar as they conform with our character, customs and original traditions".[14] It has further declared that "rights and public liberties are sacred to us, and that the respect for the law is a firm principle that we do not breach".[15]

II. PROGRESS IN THE IMPLEMENTATION OF THE RESOLUTION

A. Closure of Gaza

General situation

10. During the reporting period, the Gaza Strip remained closed to the outside world, with the exception of limited humanitarian imports and movements of a small number of international visitors, patients requiring emergency care and Palestinians who received exit permits from Israel. The crossing with Egypt at Rafah was exceptionally opened for medical cases between 2 and 12 March 2008. The Karni crossing opened sporadically and only for grain and animal

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[12] By way of example, in the joint report on Lebanon and Israel, a group of four Special Rapporteurs concluded that: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. (…) It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure" Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari,(A/HRC/2/7), para. 19. See A/HRC/6/76, paras 4-9 for a brief overview of relevant events leading up to Hamas' takeover of the Gaza strip.

[13] Speech delivered by Prime Minister Isma'il Hanya at the conference organized by the PCHR on "The New Government and the Agenda for Human Rights". Gaza, June 2006.

[14] Text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council, 17 March 2007. http://www.islamicnews.net/Document/ShowDoc09.asp?DocID=91477&TypeID=9&TabIndex=2.

[15] Letter to PCHR by Isma'il Hanya on 01 October 2007.

feed and the Erez crossing was opened for a limited number of Palestinian traders, aid workers and medical cases who were granted special permits.[16] Between 20 February and 25 April, the Sufa crossing was opened for 38 days letting 2,424 truckloads inside Gaza, whereas the Kerem Shalom crossing was opened for 33 days letting 875 truckloads inside Gaza. The total amount of humanitarian supplies allowed into Gaza during the same period was 521 truckloads.[17]

11. Fuel shortages (exacerbated by the already existing electricity shortage in Gaza that resulted from the destruction of some of Gaza's electricity transformers in June 2006) had a profound effect on all aspects of life in Gaza during the reporting period, as private reserves were depleted and the needs of the harvest and fishing season increased demand. According to the Office for the Coordination of Humanitarian Affairs, in March, the supply of diesel and gasoline by Israel was 57 per cent and 80 per cent less, respectively, compared to the same period in 2007.[18]

12. Following an attack by Palestinian militants on the crossing point of Nahal Oz on 9 April, in which two Israeli civilians were killed, Israel further curtailed the passage of fuel into Gaza. Gaza's residents are completely dependent on fuel delivered via the Nahal Oz crossing - as Israel does not permit Gaza residents to receive fuel from any other source or by any other means. In the weeks following the attack, Israel reduced the quantity of petrol that Gazans were allowed to receive by around 80 per cent and the amount of diesel fuel by 43 per cent.

13. Meanwhile, Israel allowed Gaza's power plant to receive 2.2 million litres of industrial diesel per week, which allowed the plant to produce electricity at only around two thirds of its normal capacity of 80 megawatts.[19] Consequently, Gaza experienced a deficit of up to 20 per cent in electricity supply during peak periods, causing power outages which stood at four to six hours per day.[20] Limited deliveries of industrial gasoline for the Gaza Power Plant and cooking gas resumed on 16 April.

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[16] OCHA, Report No. 61 Implementation of the Agreement on Movement and Access (5-18 March 2008).

[17] OCHA, Implementation of the Agreement on Movement and Access, Reports 60 and 61, covering the period between 20 February and 25 April. Also, Israeli Ministry of Defense, Unit of Coordination of Government Activities in the Territories (COGAT), from 1 April to 23 April 2008.

[18] OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

[19] Gaza Fuel Restrictions: Walking Toward Crisis, Gisha-Legal Centre for Freedom of Movement, 17 April 2008.

[20] Ibid.

14. On 11 April, the Israeli defence forces and Palestinian Authority officials alleged that Hamas was seizing half of the quantity of fuel that Israel transfers weekly to the Strip for its military purposes.[21]

15. The activities of the United Nations agencies working in the Gaza Strip were also seriously hampered by the fuel shortage. In a joint statement issued on 15 April, United Nations agencies called for the cessation of all acts of violence, such as attacks on the Nahal Oz crossing, and for the immediate resumption of flow and distribution of fuel supplies. On 23 April, the Assistant Secretary-General for Political Affairs, Ms. Angela Kane, in a briefing to the Security Council stated that UNRWA's fuel supplies "will be exhausted on 24 April", and unless petrol is allowed in, "UNRWA will discontinue its food assistance to 650,000 refugees as well as its garbage collection services benefiting 500,000 Gazans".[22]

Impact on the enjoyment of human rights

16. During the reporting period, the above-mentioned restrictions on the movement of people and goods (notably fuel) had a negative effect on the Gaza Strip population's enjoyment of a wide range of their human rights, particularly their economic, social and cultural rights, but also the rights to life, human dignity and freedom of movement.

17. In relation to the right to water, fuel shortages and the absence of spare parts and equipment continued to paralyse the water and sewage networks. Around 30 per cent of Gazan households had access to water for only a few hours every second day. The Gaza sewage system was forced to dump around 30,000-50,000 cubic metres of partially treated waste water and 20,000 cubic metres of raw sewage in the sea on a daily basis, compromising the enjoyment of the right to health and to an adequate standard of living.[23] Some other 10,000-30,000 cubic metres of partially treated sewage ended up in the ground, in some cases reaching the aquifer, polluting Gaza's already poor drinking water resources.[24]

18. Fuel shortages, unpaid wages and the lack of spare parts also caused the suspension of garbage collection for the 600,000 inhabitants of Gaza City since the beginning of April.[25] Gaza produces 1,200 metric tons of solid waste per day. UNRWA collected 200 tons of solid waste per day and provided 53,850 litres of fuel in March to municipalities to assist in their rubbish collection. Nonetheless, garbage was piling up in the streets, creating additional risks for public health.[26]

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[21] Haaretz, 11 April 2008, http://www.haaretz.com/hasen/spages/974043.html.

[22] Briefing to the Security Council on the situation of the Middle East, 23 April 2008.

[23] IRIN/OCHA OPT: Gaza's Sewage System in Crisis, 25 March 2008.

[24] Ibid.

[25] OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

[26] Ibid.

19. In regard to the right to food, the cost of the basic food basket in Gaza (wheat flour, rice, pulses, vegetable oil, olive oil, sugar and milk powder) increased by 31 per cent since June 2007.[27] A group of British aid organizations reported that, as a result of severe restrictions on the movement of goods and people, food prices were rising and wheat flour, baby milk, and rice, among other essential goods, were increasingly scarce. Some 80 per cent of Gaza Strip's population was relying on aid assistance, with official unemployment rates close to 40 per cent and set to rise to 50 per cent.[28] It should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself through an adequate livelihood.

20. The closure on Gaza impacted also on the right to health, negatively affecting access to health care as well as the availability of medicines in the Gaza Strip. According to WHO, should the situation deteriorate further, threats to health such as increased risks of maternal, infant and under-5 deaths, of waterborne disease and of trauma and depression could follow.[29] WHO reported that 55 of the 416 essential drugs and 142 of the 596 essential medical supplies were not available in March due to the lack of financial resources.[30]

21. The closure also impacted on patients' access to health care outside the Gaza Strip. Following the complicated referral process, in March, four patients died after being denied permits to cross Erez: a 12-month female infant with a liver disease died on 2 March; a 54-year-old male with lung cancer died on 14 March; a 48-year-old male with cardiac problems died on 20 March; and a 58-year-old woman with liver cancer died on 22 March.[31] Meanwhile, according to WHO, a total of 257 patients were evacuated through the Rafah border crossing between 1-12 March.

22. Israeli human rights organizations condemned the Israeli security service for its lengthy procedures for issuing permits to cancer and heart patients to receive treatment in Israel or to cross Israel for treatment in Jordan or Egypt. According to Physicians for Human Rights (PHR), from the beginning of April until 21 April, 12 additional cancer patients were prevented from receiving life-saving treatment in Israel.[32] In response to the criticism received, the Israeli

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[27] Ibid.

[28] The Gaza Strip: A Humanitarian Implosion, 6 March 2008, Catholic Agency for Overseas Development, Amnesty International, CARE International UK, Christian Aid, Médecins du Monde UK, Oxfam, Save the Children UK and Trocaire.

[29] WHO, Health Action in Crises at http://www.who.int/hac/.

[30] OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

[31] Ibid.

[32] Physicians for Human Rights, 21 April 2008, at http://www.phr.org.il/phr/article.asp?articleid =566&catid=55&pcat=-1&lang=ENG.

Internal Security Service reported that there had been an increase in the exploitation of Israel's humanitarian policy by way of Gazan doctors issuing fraudulent medical permits in return for bribes, claiming that requests of "terrorist activists" to enter Israel for medical treatment had increased the danger to State security.[33]

23. Moreover, according to the Palestinian Ministry of Health in Ramallah, on 21 April most ambulances in Gaza stopped working due to the lack of fuel. According to the Ministry, fuel shortages and the constant electricity outages also resulted in a diminished ability to sterilize medical equipment, and in non-operational medical equipment. The Ministry also stressed that back-up generators used to maintain the function of life-sustaining medical equipment only had capacity to operate for a very limited period of time.[34]

24. In relation to the right of everyone to the enjoyment of the highest attainable standard of mental health, the closure and the frequent military incursions had a negative effect on the psychosocial well-being of Gazans. During the first two weeks of March, UNRWA's Community Mental Health Programme screened 39,000 students from UNRWA schools in the north of Gaza to determine the extent of exposure and reaction to the military incursions in February and March 2008. UNRWA found that 790 students were exposed to traumatic events, including 281 who had a relative killed, 199 who saw mutilated bodies and 101 whose homes were damaged.[35] During the same period, UNRWA counsellors provided group and individual counselling to these 790 children, 94 per cent of whom showed significant post-traumatic reactions and potential for developing Post-Traumatic Stress Disorder. A study conducted by the Islamic University Psychology Department on 244 families of the Gaza Strip in February 2008, showed behavioural changes and increased psychosocial problems among children: fears (61 per cent), anxiety (63 per cent), anger (45 per cent), sleeping difficulties (43 per cent), school absenteeism (40 per cent), lack of concentration at school (50 per cent), difficulties completing homework (47 per cent) and no desire to engage in recreational or educational activities (51 per cent).[36]

25. Regarding access to education, the fuel shortages resulting from the restrictions on the quantities of fuel available to Gaza residents, the strike declared by the Gaza Petrol and Gas Station Owners Association, and the continued closure of the Nahal Oz crossing to supplies of petrol and diesel, almost entirely paralysed Gaza's transportation system.[37] According to

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[33] Jerusalem Post, 21 April 2008, http://www.jpost.com/servlet/Satellite?cid=1208422652388&pagename=JPost%2FJPArticle%2FshowFull.

[34] Ministry of Health press release, 21 April 2008.

[35] OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

[36] Ibid.

[37] Gaza Fuel Restrictions: Walking Toward Crisis, Gisha-Legal Centre for Freedom of Movement, 17 April 2008. See also PCHR, Press Release, 14 April 2008.

Palestinian human rights organizations, 50 per cent of the Gaza educational sector was paralysed as students and teachers could not reach schools. Absenteeism in schools and universities varied from 20 to 50 per cent, compromising the full enjoyment of the right to education.[38]

26. The closure of Gaza also impacted on the residents' freedom of religion or belief by preventing them from worshipping at some of the most sacred Muslim and Christian sites, such as the Al-Aqsa Mosque and the Church of the Holy Sepulchre in Jerusalem and the Church of the Nativity in Bethlehem.

27. The closure also affected negatively the situation of detainees both before and during the reporting period. Following the Hamas takeover of the Gaza Strip in June 2007, the Israeli security forces decided to suspend family visits for Palestinian detainees from the Gaza Strip. By April 2008, 760 detainees from Gaza (including 4 women) were affected by this decision. In addition, the International Committee of the Red Cross visits programme, running since 1968, stopped shortly before the Hamas takeover in June 2007, during a period of intense violence. Since then, Israel has not agreed to resume the system, through which the ICRC coordinates and facilitates the visits of close relations to the imprisoned Gazans. Since June 2007, communication between detainees and their families has been reduced to letters from prison, which take about six weeks to arrive in Gaza. The ICRC stated that before June, it relayed only about 10 messages a month between prisoners and their families, but now that number had risen to up to 300 a month - stressing that these short messages, subject to military censors, are hardly ideal.[39]

28. The negative effects on the enjoyment of human rights resulting from the Israeli closure of Gaza were reportedly in some cases exacerbated by interferences with the humanitarian work of a number of aid agencies and developmental organizations operating in the Gaza Strip, who lamented that political pressure not to collaborate with Hamas officials in Gaza hampered their effectiveness.

B. Violence against the civilian populations

Background

29. According to the Office for the Coordination of Humanitarian Affairs, in the period between 25 February and 25 April 2008, 221 Palestinians were killed as a result of the international armed Israeli-Palestinian conflict in the Occupied Palestinian Territory (19 in the West Bank, 202 in Gaza). In addition, approximately 160 Palestinians were injured in the West Bank and 300 in the Gaza Strip. During the same period, 10 Israeli civilians were killed and around 25 injured. The Israeli air force conducted at least 75 air strikes on different targets within the Gaza Strip during the reporting period.

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[38] Palestinian Centre for Human Rights, Press Release, 14 April 2008.

[39] IRIN/OCHA, 22 April 2008, http://www.irinnews.org/Report.aspx?ReportId=77862.

Operations of Palestinian militants during the period from 25 February to 25 April 2008

30. On 6 March 2008, 8 Israeli civilians were killed and 11 wounded when a Palestinian gunman opened fire inside a Jewish religious school in West Jerusalem.[40] An Orthodox Rabbi was stabbed near Damascus Gate of Jerusalem's old city on 18 March. A militant Palestinian group based inside Israel, *Ahrar Al-Jalil,* claimed responsibility for this attack.[41]

31. In Gaza, on 8 April, two Israeli civilians and one soldier were killed during an operation by Palestinian militants into Nahal Oz, one of Gaza's crossing points. A number of organizations claimed responsibility for the military operation, including Islamic Jihad and the Popular Front for the Liberation of Palestine (PFLP) military wing. The operation was allegedly aimed at abducting Israeli soldiers.

32. It is estimated that during the reporting period, Palestinian militants fired around 640 mortar shells and 450 rockets, the majority of which were of the *Qassam* type, from Gaza into southern Israel including the cities of Sderot and Ashkelon. Though most of the rocket and mortar attacks carried out by Palestinian militants were indiscriminate, some of the short-distance mortar shells reportedly targeted Israeli military installations or personnel located just across the border. Some 12 Israelis sustained injuries as a result of rockets and mortar shells fired by Palestinian militants and many residents of Sderot and other localities in southern Israel, including children, suffered from shock. Rockets also caused damage to buildings, including homes and other installations.

33. In addition, in the West Bank, two Israeli security guards were killed on the night of 25 April in a shooting attack at the Nitzanei Shalom industrial zone, near the city of Tulkarm. A third guard managed to flee after the gunman opened fire.

Israeli military operations during the period from 25 February to 25 April 2008

34. During the reporting period, Israeli security forces conducted at least 30 military incursions into Gaza and 348 into various locations of the West Bank. Although the number of incursions in the West Bank was considerably higher than in Gaza, the number of injuries and deaths were significantly less in the West Bank than in Gaza. This could be attributed to the nature of the methods and weaponry used in the relevant operations.

35. In total, some 221 Palestinians, including 7 women and 51 children, were reportedly killed due to the international armed Israeli-Palestinian conflict. The number of wounded

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[40] Haaretz, 7 March 2008, http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtm1?itemNo=961767.

[41] Israel National News, 18 March 2008, http://www.israelnationalnews.com/News/News.aspx/125596.

also increased; approximately 460 Palestinians, including 145 children and 20 women, were injured as a result of operations by Israeli security forces in the Gaza Strip and the West Bank.

36. The Israeli policy of targeted killings of Palestinian militants and security personnel continued. According to Palestinian human rights organizations, a total of 16 Palestinian militants and security personnel were killed while they were not directly taking part in hostilities during the reporting period. Of these, 10 were allegedly killed in Gaza and 6 in the West Bank. In addition, at least 12 Palestinian civilians, including 2 children and a disabled person, were allegedly injured as an indirect result of such operations. On 12 March, four wanted Palestinian militants were killed by Israeli Special Forces in Bethlehem. An Israeli NGO called for a criminal investigation into the killings, as well as for an investigation into the alleged demolition by the Israeli security forces of one of the four victims' houses. Allegedly, the house was not demolished in the context of operational needs, but in order to punish the victim's wife and seven children.[42]

37. The vast majority of the Palestinians killed died during an Israeli military wide-scale operation inside Gaza between 27 February and 3 March. As a result of this operation, 120 Palestinians were killed while 269 were injured.[43] In this single military operation 34 minors and 6 women were killed. Palestinian organizations affirmed that seven of the children were reportedly killed while inside their house. Five children were below the age of 12, including a 6-month-old baby. According to Palestinian human rights organizations, four of these children may have been involved in combat activities.[44] In addition, two West Bank children (from Hebron and Ramallah respectively) were killed while participating in protests against Israel's military operations in Gaza.

38. Furthermore, large-scale destruction of land, infrastructure and buildings, as well as of religious and educational institutions was reported to have taken place during the 27 February to 3 March operation. Reportedly, 21 homes were completely destroyed, leaving 147 Palestinians homeless. Eighty-eight homes were severely or partially damaged, affecting an additional 616 people.[45] On 28 February, a missile attack by Israeli warplanes directed at the Palestinian General Federation of the Trade Unions, located in a large residential area of Jabalia, in the north Gaza Strip, caused the total destruction of a five-story building (which Israel claimed was used by Hamas to store weapons) and the partial damage of tens of other houses in the vicinity. Forty-four people, including 12 children and 6 women, were injured in this attack.

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[42] B'Tselem, Press Release, 27 March 2008, at http://www.btselem.org/english/Press_Releases/20080327.asp.

[43] OCHA, Protection of Civilians Weekly Report, 27 February-4 March 2008, at http://www.ochaopt.org/documents/Weekly_Briefing_Notes_249_English.pdf.

[44] Defence for Children International/Palestine Section, 6 March 2008, at http://www.dci-pal.org/english/display.cfm?DocId=696&CategoryId=16.

[45] Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

39. Media and human rights organizations reported that medical crews and ambulances were also targeted. Reportedly, in three different incidents, ambulances and medical personnel were fired at while trying to reach the wounded, resulting in the death of the injured. Also, a paramedic was seriously wounded when the Israeli military fired on ambulances on their way to reach the wounded at the site of a helicopter rocket attack.[46]

40. Israeli security forces claimed that Palestinian militants exploited the Palestinian population for their purposes, namely that militants deliberately launched rockets from populated areas; used civilian homes to hide arms and explosives manufacturing facilities; and that they used civilians as human shields against anticipated air strikes.[47] Israeli security forces also reported that in order to avoid civilian casualties, they send warning messages before attacking targets advising civilians to leave.[48]

41. Following the 27 February to 3 March 2008 operation, a relative calm prevailed for a few weeks, with no large-scale Israeli military offensive or air strikes on Gaza, and a lesser number of rockets and mortar shells fired by Palestinian militants into Israel. On 8 April, however, after two Israeli civilian drivers were killed by Palestinian militants at the Nahal Oz gas terminal, the Israeli Defense Force renewed its incursions into the northern and eastern parts of the Gaza Strip, killing 7 Palestinians (including one 16-year-old from Gaza City) and injuring 15 others.

42. On 16 April, after an ambush opposite Kibbutz Be'eri near the border with Gaza in which three Israeli soldiers were killed, the Israeli security forces carried out attacks on Gaza that killed an estimated 18 Palestinians, 13 of whom were allegedly non-combatants. In one of the strikes, a Reuters cameraman and three other persons, two of whom were minors,[49] were killed by a tank shell (the first while filming the tank and two while cycling nearby the journalists' car, which was clearly marked with a "Press" sign). Human rights organizations alleged, based on

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[46] Al-Mezan Centre for Human Rights: Report on IOF's Operation Warm Winter in the Gaza Strip (27 February-3 March, 2008), March 2008.

[47] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Hamas+exploitation+of+civilians+as+human+shields+-+Photographic+evidence.htm.

[48] A similar conduct of hostilities was witnessed during the war in Lebanon in 2006. As the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in the report following the mission to Lebanon, "Israel's responsibility to distinguish between combatants and civilians is in no way discharged by warning civilians that they will be targeted. Warnings are required for the benefit of civilians, but civilians are not obligated to comply with them. A decision to stay put - freely taken or due to limited options - in no way diminishes a civilian's legal protections. It is categorically and absolutely prohibited to target civilians not taking a direct part in hostilities".(A/HRC/2/7), para. 41, p. 10.

[49] PCHR identified them as Ahmed 'Aaref Farajallah, 14, Ghassan Khaled Abu 'Otaiwi, 17, and Khalil Isma'il Dughmosh, 22.

on-site investigations, that the Israeli tank crew fired recklessly or deliberately at the journalist's team. Human rights organizations also gathered evidence showing that the tank fired a flechette shell, which unleashes hundreds of dart-like projectiles before the shell hits the ground. Human rights groups in Israel and Palestine have long urged the Israeli military to stop using flechette shells in Gaza because they spread over a wide area and are thus more likely to indiscriminately hit civilians.[50] On 20 April, the Israeli Army announced that it will be conducting an official investigation into the circumstances surrounding the death of the Reuters cameraman.

43. In the West Bank, some 100 Palestinians were reportedly injured due to Israeli security forces firing in connection to widespread demonstrations and protests against Israeli military operations in Gaza. Three Palestinians were killed, including two children, and 13 other civilians injured during protests and incursions in the West Bank. On 16 April, the naked and mutilated body of a 15-year-old male was found in lands under the control of settlers inhabiting Al-Hamra settlement, near Nablus in the northern West Bank. An investigation by the Israeli Police has already been initiated.[51]

44. One Palestinian was killed and six injured in separate shooting incidents with Israeli settlers. On 31 March 2008, an Israeli settler shot dead a Palestinian university student while he was waiting for a taxi on route 60. The victim was attacked by two Israeli settlers waiting at a bus station near the entrance of "Shilu" settlement north of Ramallah City.[52] On 9 April, two Israeli settlers attacked a Palestinian vehicle near Nablus City, and two women were injured as a result.[53] Attacks by Israeli settlers reportedly also took place in March near Qalqilia: settlers allegedly threw stones at Palestinian vehicles carrying civilians.[54] On 14 April, at least 40 Israeli settlers from the Gilad settlement, south-west of Nablus, uprooted some 30 almond trees belonging to Palestinians in the village of Til.[55] A number of Israeli human rights NGOs as well

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[50] Human Rights Watch Press Release, 20 April 2008.

[51] It was reported that, based on the interviews with many people in the area, that the 15 year old had tried to return home via the Al-Hamra checkpoint, but was refused passage through as being only 15 years old, he had no identification (IDs are only issued to Palestinians aged 16 years and over). It appears that he was then forced to walk around the long way home and there probably "abducted" on 15 April. Reference: http://sabbah.biz/mt/archives/2008/04/19/body-palestinian-boy-found-mutilated-israeli-settlement/.

[52] PCHR Weekly Report No. 14/2008. http://www.pchrgaza.org/files/W_report/English/2008/03-04-2008.htm. Israeli sources claimed that the victim attempted to attack the two settlers using a knife.

[53] PCHR Weekly Report No. 15/2008. http://www.pchrgaza.org/files/W_report/English/2008/10-04-2008.htm.

[54] For instance, on 14 April on the Nablus- Qalqilia Road, bypassing the Qedumim settlement.

[55] PCHR Weekly Report No.: 16/2008. http://www.pchrgaza.org/files/W_report/English/2008/17-04-2008.htm.

as international NGOs approached the village council and documented the incident. The head of the village council reported that he was unaware of any investigations initiated by the Israeli Police at the time of writing.

Other incidents, including intra-Palestinian violence, during the period from 25 February to 24 April 2008

45. During the reporting period, around 30 Palestinians, of whom allegedly 9 were civilians (including 5 children), were killed, and approximately 26 others injured in intra-Palestinian violence, according to Palestinian human rights organizations.

46. Several incidents were reported involving unidentified armed groups in Gaza while law and order continued to deteriorate. Incidents of intra-clan fighting, abductions, attacks on public institutions and civil freedoms, prevailed to claim further fatalities among civilians. According to Palestinian human rights organizations, 28 Palestinians were killed in Gaza as a result of these incidents.[56]

47. Among the incidents in Gaza the following are noteworthy: on 2 March 2008, unknown gunmen assaulted the Director of the Gaza Community Mental Health Programme, in Deir el Balah town in the central Gaza Strip. The circumstances of the incident remain unclear.[57] On 19 March, local newspapers reported that Hamas security forces arrested the director of the Nasser Hospital in Khan Younis and removed the Deputy Minister of Transportation from his position, before taking over his office and confiscating his car.[58] On 23 March, the police in Gaza arrested a member of the PFLP politburo.[59] On 13 April, unknown gunmen abducted a former officer of the Palestinian General Intelligence, and took him to an unknown destination. On 15 April, the police informed his family that his body had been found in the Sheikh Ejlin area south-west of Gaza City. According to local human rights organizations, clear signs of physical abuse were found on his body. In a statement published by local newspapers on 17 April, Fatah blamed Hamas for his death, and called for a fair and objective investigation into the incident. The authorities in Gaza announced that the incident will be investigated, the findings made public, and legal measures to redress abuses and bring perpetrators to justice will be taken. Local newspapers reported that a parliamentary committee was also set up to investigate the death of the former intelligence officer. Moreover, local human rights organizations recorded a total of 10 attacks on public institutions and peaceful assemblies in the Gaza Strip over the reporting period.

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[56] Interview with Al-Mezan Centre for Human Rights, Gaza, April 2008.]

[57] See, Al-Mezan Centre for Human Rights, Press Release, 6 March 2008.

[58] Ibid. 19 March 2008.

[59] Al-Hayat Al-Jadida on 24 March 2008.

48. In the West Bank, intra-Palestinian violence also prevailed to claim further fatalities and injuries. According to different sources, PA security forces arrested six Hamas members in the West Bank on 3 March 2008,[60] two others were arrested on 18 March.[61] On 28 March, at least three Palestinians were killed in violent incidents in the village of Kufur Thuluth, south-east of the West Bank city of Qalqilya. On 12 April, clashes erupted between students affiliated with Fatah and Hamas in the campus of Hebron University, after Hamas-affiliated students distributed leaflets accusing the PA security forces of arresting four of their colleagues. Several students were injured while university assets were damaged during the clashes. On 8 April, an exchange of fire erupted between PA security forces and several members of the Al-Aqsa Martyrs Brigades who escaped from the Jneid prison in Nablus, where they had been held after turning themselves in as part of an amnesty deal. A total of five Palestinian security personnel, one member of the Al-Aqsa Martyrs Brigades, and two civilians (a mother and her son) were wounded. On 13 April, Palestinian gunmen attacked the car of Nablus' governor, with no fatalities or injuries.

C. Other actions taken by the parties which affect the human rights situation in the Occupied Palestinian Territory

49. In relation to the freedom to manifest one's religion[62] and the right to education, between 26 February and 6 March 2008, the Israeli Defence Forces ordered the closure and confiscation of establishments owned by the Islamic Charitable Society in the city of Hebron, alleging links with Hamas. The establishments affected include a school under construction for 1,500 girls, the Al Huda market building , which includes a children's library, eights shops, a physiotherapy centre, a dental and a cardiology clinic, three NGOs, including the Muslim Youth Society, the Islamic Charitable Society's warehouse, a restaurant and two bakeries. The charitable society employs close to 550 staff, including teachers and counsellors, and it also runs two orphanages.

50. Although no written orders were issued by the IDF relating to these orphanages, the IDF issued oral instructions to close these institutions and to evict their residents. These instructions were allegedly followed by two raids on the orphanages. In one of these raids (on 6 March) the IDF apparently confiscated all the clothing, food, stationary and other supplies of the children. A second raid was reportedly carried out in the middle of the night within a week after the first one, causing harassment and fear among the children. These orphanages accommodate and care for 3,192 children, out of whom 95 cannot return home due to severe economic hardship and

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[60] Ma'an News, 4 March 2008 at http://www.maannews.net/en/index.php?opr=ShowDetails&Do=Print&ID=28147.

[61] Ma'an News, 18 March 2008 at http://www.maannews.net/en/index.php?opr=ShowDetails&Do=Print&ID=28351.

[62] The freedom to manifest one's religion includes the freedom to establish seminaries or religious schools, as set out in the Human Rights Committee's general comment No. 22 (1993), para. 4.

55 have no family at all. The remaining 3,042 children have either one single parent or only extended family. At the time of the writing of the present report, the Hebron Islamic Charitable Society has no contingency plans for shelter or humanitarian assistance for these children, should they be forcibly evicted. On 7 April, the Israeli High Court of Justice temporarily suspended the implementation of the order until further hearing and gave the Israeli security forces an indefinite time to provide a legal justification for closure. Given the vulnerability of the affected persons, most of whom are children, the humanitarian and human rights implications of the charity's closure could be particularly severe.

51. In relation to the right to an adequate standard of living, notably adequate housing, a number of house demolitions and evictions across the West Bank occurred during the reporting period. In March, the Israeli Defence Forces destroyed residential and animal structures as well as farm equipment in the Jordan Valley, Qalqilya, Jericho, Hebron and Jerusalem districts, leaving a total of 131 people homeless. The affected communities include: al-Hadidiya and Frush Beit Dajan in the Jordan Valley; Al-Jiftlik in Jericho; Arab ar-Ramadin[63] and Izbit At-Tabib[64] in Qalqilia; Ad Deirat, Umm Lasafa, Qaqawia and Imneizel settlement in Hebron; and finally Hizma, Al Jib and Anata in Jerusalem. In April, one house was demolished in the village of Anata in the Jerusalem area. The house, which was home to a family of 12 members, including 5 children, had been demolished in December 2005, and was rebuilt by international volunteers in 2007.

52. In relation to the prohibition of torture, on 26 February 2008, Palestinian human rights organizations[65] and the Palestinian Independent Commission for Citizens' Rights (PICCR) called for independent investigations into the death of Sheikh Majid 'Abdul 'Aziz Mustafa al-Barghouti, a 44-year-old, who died on 22 February, while being detained by the Palestinian Authority's General Intelligence Service (GIS) in Ramallah. Reportedly, he had been arrested on 14 February, by four masked men when he emerged from a local mosque. The forensic medical report, ordered by the Palestinian Attorney General, called the sudden death "natural" and listed the cause of death as heart failure, due to an abnormally enlarged heart. It was alleged that there was evidence "including photographs" indicating that prior to his death, he had been subjected to torture and ill-treatment, and that he might also have been a victim of medical negligence during his detention. On 3 April 2008, a fact-finding mission formed by the Palestinian Legislative

[63] See also: OCHA Weekly Report (12-18 March 2008), http://www.ochaopt.org/documents/WBN251.pdf.

[64] Stop The Wall, Briefing: 12.03.08, Continuous demolitions in Jordan Valley and Qalqilia district require international action.

[65] Report, United Against Torture Coalition, 3 March 2008; Al Haq: the findings of the PLC investigating the death of Majd abdel Aziz Bhargouthi must be implemented, 10 April 2008, http://www.alhaq.org/etemplate.php?id=360; PCHR, 26 February 2008, http://www.emhrn.net/pages/512/news/focus/51380.

Council to investigate the death of Majid al-Barghouti, released a report[66] which concluded that there were indications that torture and beatings had taken place and that there was no evidence that the deceased suffered from any pre-existing illness before detention; adding that the medical services that had been offered to the prisoner were not adequate. Based on this report, Palestinian President Mahmoud Abbas, requested an internal investigation to clarify any violation occurring in relation to the detention of al-Barghouti. He also called for the perpetrators to be punished and for the general prosecutor's office to step up inspections of all places of detention.[67]

53. Regarding freedom of expression and opinion and the right of peaceful assembly, the following incidents were reported: on 4 March 2008, the Ministry of the Interior in Gaza decided to prevent correspondents of Palestine TV from working in Gaza.[68] On 5 March, the Popular Struggle Front, a PLO faction, alleged that Hamas police banned a popular demonstration against Israeli aggressions in the Gaza Strip.[69] On 10 March, the Fatah Youth Organization alleged that Hamas police banned a Fatah-organized youth meeting in Gaza City and threatened to arrest the attendees.[70] On 12 March, a number of Preventive Security Forces personnel in Ramallah stormed the headquarters of Ramttan Press Agency, before arresting one of its editors, confiscating his computer and some of his belongings.[71] He was released the following day (through mediation).

54. Regarding freedom of movement, the restrictions on the movement of Palestinians between the West Bank, Gaza and East Jerusalem as well as within the West Bank itself continued and even increased.[72] During the reporting period, over 600 closures of various sorts prevented Palestinians from enjoying their right to freedom of movement within the West Bank. The route of the Wall, settlements, curfews, the closure regime and associated controls severely damaged the social and economic structures of the West Bank, contributed to increased aid reliance, poverty and unemployment and had a serious impact on the enjoyment of civil, political, economic, social and cultural rights of the population.

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[66] Unofficial translation of PLC committee findings: http://www.unitedagainsttorture.org/more.asp?NewsID=39.

[67] Al Quds (in Arabic), 18 March 2008, http://www.alquds.com/node/18544.

[68] Palestinian Centre for Human Rights, Press Release. 5 March 2008.

[69] Maan News Agency, 5 March 2008. http://www.maannews.net/ar/index.php?opr=ShowDetails&Do=Print&ID=103500.

[70] Maan News Agency. 11 March 2008. http://www.maannews.net/ar/index.php?opr=ShowDetails&Do=Print&ID=28249.

[71] Palestinian Centre for Human Rights, Press Release, 13 March 2008.

[72] A more detailed description of these restrictions was included in A/HRC/7/76.

III. CONCLUSION

55. **The human rights situation in the Occupied Palestinian Territory remains grave, particularly in Gaza. The recommendations made by the High Commissioner for Human Rights in her most recent report[73] on human rights violations in the Occupied Palestinian Territory, notably concerning the establishment of accountability mechanisms and the closure of Gaza, have not been implemented. On the contrary, during the reporting period, actions taken by the parties continued to violate international human rights and humanitarian law. Against this background, all previous recommendations made by the High Commissioner remain valid and should be urgently implemented by the parties.**

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[73] A/HRC/7/76, paras. 56-62.

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem

Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 6/19*

* Late submission. The footnotes to the present report are circulated as received, in the language of submission only.

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I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution 6/19 on religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its next session, on the implementation of that resolution.

2. In its resolution 6/19, the Council stressed that all policies and measures taken by Israel, the Occupying Power, to limit access of Palestinians to their holy sites, particularly in Occupied East Jerusalem, on the basis of national origin, religion, birth, sex or any other status were in violation of a number of human rights standards and resolutions and therefore should cease immediately. It also called upon Israel, the Occupying Power, to respect the religious and cultural rights enumerated in the Universal Declaration of Human Rights in the Occupied Palestinian Territory, including East Jerusalem, and to allow Palestinian worshippers unfettered access to their religious sites.

3. In accordance with resolution 6/19, the present report assesses legislative and policy measures taken by Israel that have had an adverse impact on the enjoyment of religious and cultural rights in the Occupied Palestinian Territory. It focuses in particular on those measures that have limited the access of Palestinian residents in the Occupied Palestinian Territory (both Christians and Muslims) to religious sites located in the Territory, including East Jerusalem. The present report is not mandated to deal with the situation of religious and cultural rights in Israel or the issue of access of Palestinians to religious sites located in Israel. Nor does resolution 6/19 cover the issue of access of Israeli citizens to Jewish holy sites located in the Occupied Palestinian Territory. A note setting out the scope of the report was submitted to the Council at its seventh session in March 2008.[1]

4. On 28 February 2008, in view of the preparation of the present report, notes verbales were sent to the Permanent Mission of Israel and the Permanent Observer Mission of Palestine by the Office of the United Nations High Commissioner for Human Rights (OHCHR), seeking comments and observations on the resolution by 4 April. The Permanent Observer Mission of Palestine submitted its reply on 2 April. Reference to the reply is included in the present report. No reply was received from the Permanent Mission of Israel.

II. LEGAL FRAMEWORK

A. Context

5. The international legal framework applicable to the exercise of religious and cultural rights in the Occupied Palestinian Territory referred to in resolution 6/19 includes the following international instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

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[1] A/HRC/7/77.

B. Freedom of religion or belief under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

6. The Universal Declaration of Human Rights outlines the main elements of the exercise of freedom of religion or belief. Article 18 provides that everyone has the right "either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance". According to article 18 (1) of the International Covenant on Civil and Political Rights, the freedom to manifest one's religion includes freedom of "worship, observance, practice and teaching",[2] which could be exercised "either individually or in community with others and in public or private".

7. The freedom to manifest one's religion may be subject to certain limitations, envisaged in paragraph 18 (3) of the International Covenant on Civil and Political Rights. Such limitations must be "prescribed by law" and "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others". The Human Rights Committee has emphasized that limitations imposed must not be applied in a manner that would vitiate the rights guaranteed in article 18. According to the Committee, paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.[3]

8. Freedom of movement, as set out in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights, is an important precondition for the exercise of many rights and freedoms, including the freedom to manifest one's religion. According to article 12, paragraph 3, freedom of movement may be subject to certain restrictions; however these must be "consistent with the other rights recognized in the Covenant".

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[2] See Human Rights Committee, general comment 22, paragraph 4: "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."

[3] Human Rights Committee, general comment 22, paragraph 8.

C. Cultural rights under the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights

9. Article 27 of the Universal Declaration of Human Rights stipulates that everyone "has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". Article 15 of the International Covenant on Economic, Social and Cultural Rights includes the rights (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; and (c) to benefit from the protection of the moral and material interests. Furthermore, under paragraph 3 of article 15, States parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity. Under paragraph 4 of the same article, they recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields. Through its reporting guidelines, the Committee on Economic, Social and Cultural Rights has provided further clarification of the content of article 15 of the Covenant.[4]

D. Protection of religious freedom under the Fourth Geneva Convention

10. With regard to the rights of the civilian population during a period of occupation, article 27 of the Fourth Geneva Convention provides that the protected persons are entitled to respect for "their religious convictions and practices, and their manners and customs". According to the authoritative commentary of the International Committee of the Red Cross (ICRC) to that article, "religious freedom is closely connected with the idea of freedom to practice religion through religious observances, services and rites. Protected persons […] in the occupied territory must be able to practise their religion freely, without any restrictions other than those necessary for the maintenance of public law and morals".[5] The ICRC interpretation of the article further states that

[4] Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights E/C.12/1991/1. In particular, States are requested to provide information on (a) availability of funds for the promotion of cultural development and popular participation in cultural life; (b) the institutional infrastructure established for the implementation of policies to promote popular participation in culture; (c) promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions; (d) promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples; (e) Role of mass media and communications media in promoting participation in cultural life; (f) Preservation and presentation of mankind's cultural heritage; (g) legislation protecting the freedom of artistic creation and performance; (h) professional education in the field of culture and art; and (i) other measures taken for the conservation, development and diffusion of culture. States are also required to report on measures taken to realize the right of everyone to enjoy the benefits of scientific progress and its applications, including those aimed at the preservation of mankind's natural heritage and those taken to promote the diffusion of information on scientific progress. On the issue of international contacts and co-operation in the scientific and cultural fields, States are to report on measures taken for, i.a., participation by scientists, writers, artists and others involved in scientific research or creative activity, in international scientific and cultural conferences, seminars, symposiums, etc.

[5] http://www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument.

the measures of constraint should not affect the fundamental rights of the persons concerned.[6] It also underlines that these fundamental rights must be respected, even when measures of control are justified. Furthermore, article 58 of the Fourth Geneva Convention provides that the "Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities".

E. Applicability of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Fourth Geneva Convention with regard to actions by Israel in the Occupied Palestinian Territory

11. With regard to the responsibilities of Israel under its international human rights treaty obligations with regard to the Occupied Palestinian Territory, the International Court of Justice, in its 2004 advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, concluded that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were applicable.[7] The position of United Nations human rights treaty bodies mirrors that of the International Court of Justice, and affirms that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction in those territories.[8] The International Court of Justice also noted that the obligations of Israel under the International Covenant on Economic, Social and Cultural Rights included "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[9]

12. With regard to the responsibilities of Israel in the Occupied Palestinian Territory as the Occupying Power under the Fourth Geneva Convention Concerning the Protection of Civilian

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[6] Ibid.

[7] ICJ Advisory Opinion paragraphs 102-113 (where ICJ concluded that the protection offered by human rights conventions do not cease in cases of armed conflict and that the ICCPR, the ICESCR and the CRC are applicable in respect of individuals within its jurisdiction, even concerning those individuals under its jurisdiction outside its own territory).

[8] An examination of the Concluding Observations of different UN treaty bodies confirms this view: In its Concluding Observations of 2003, the Human Rights Committee (HRC) reiterated that the ICCPR provisions apply "to the benefit of the population of the Occupied Territories for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant…". Similarly in its 2003 Concluding Observations, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control" (E/C.12/1/Add.90) CERD drew a similar conclusion in its Concluding Observations of March 2007 (CERD/C/ISR/CO/13, paragraph 32).

[9] ICJ Advisory Opinion, paragraph 112.

Persons in Time of War, in its advisory opinion, the International Court of Justice concluded that the Fourth Geneva Convention was applicable in the Palestinian territories, which before the conflict in 1967 lay to the east of the Green Line and which, during that conflict, were occupied by Israel.[10]

III. PROGRESS IN THE IMPLEMENTATION OF RESOLUTION 6/19

A. Observance of religious rights by Israel in the Occupied Palestinian Territory

1. Religious demography

13. The total number of Palestinians living in the Occupied Palestinian Territory is approximately 3.8 million.[11] Islam is the religion of around 97 per cent of the Palestinian population, while Palestinian Christians in the West Bank, including East Jerusalem, and the Gaza Strip are estimated to range between 1.5 and 3 per cent.[12] The Occupied Palestinian Territory is also home to the small Samaritan religious community.

2. Access of Palestinians to religious sites in the Occupied Palestinian Territory

Closure regime

14. The elaborate Israeli regime of closures in the West Bank before and during the reporting period included the designation of roads as reserved primarily for Israeli nationals; settlements, many of which were constructed within areas with a traditionally high Palestinian population; and a system of physical obstacles, such as checkpoints, closed areas, road barriers, earth walls, roadblocks and trenches, etc.[13] These physical obstacles, combined with the Wall, flying

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[10] This fact has not been altered by Israel's 2005 unilateral withdrawal of its forces from the strip, as confirmed repeatedly since then by the United Nations General Assembly (most recently in its resolution 62/107 of 17 December 2007) and the United Nations Secretary General (notably in the Secretary-General's message to the United Nations Seminar on Assistance to the Palestinian People, Amman, Jordan, 19 February 2008; and in the Secretary-General's message to the opening of the 2008 session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York, 14 February 2008).

[11] Palestinian Bureau of Statistic, Preliminary results, 2007 Population, Housing and Establishment Census.

[12] Historically the number of the Palestinian Christian population has been higher however. According to British mandate census in 1931, Christian Palestinians were 9 per cent of the total population.

[13] The relevant reporting period is 28 September 2007 (the day of the adoption of Human Rights Council resolution 6/19) to 4 April 2008. In its reply to the OHCHR request to provide comments and observations on resolution 6/19, the Permanent Observer Mission of Palestine included detailed information regarding the road and settlement constructions around the city of Jerusalem which disrupt "the fabric of life of more than 250,000 Palestinians".

checkpoints and a complex system of permits, formed an integrated, multifaceted system that restricted the movement of around 2.4 million Palestinians in the West Bank. According to the Office for the Coordination of Humanitarian Affairs, approximately 38 per cent of the West Bank territory has been subsumed in Israeli settlements, outposts,[14] "closed areas" west of the Wall, closed military areas, Israeli-declared nature reserves or other Israeli infrastructure. As a result, the West Bank has been fragmented into a series of Palestinian enclaves.

15. The number of closures increased considerably prior to and during the reporting period. The Office for the Coordination of Humanitarian Affairs reported 367 closures in the West Bank in August 2005. In October 2007, there were 561 closures;[15] by 18 March 2008, the closures had increased to 612.[16]

16. Curfews introduced by the Israeli security forces also impeded freedom of movement. The total number of hours under curfew in the West Bank increased during the reporting period. While the total hours under curfew in 2006 and 2007 amounted to 696 and 873, respectively, in the period from January to March 2008, the total number of hours under curfew amounted to 776.[17]

17. The Gaza Strip remained isolated during the reporting period, with the exception of limited humanitarian imports and the movement of a small number of international visitors, patients and Israeli-approved Palestinians.[18]

18. During the period under review, travel in the West Bank was generally time-consuming, unpredictable and at times costly as a result of impediments imposed by the closure regime. These included permit restrictions, the requirement of travel by indirect routes, hours spent waiting at checkpoints and humiliating searches. Travellers were also often required to change their means of transport en route owing to obstacles blocking the road, such as earth mounds. This situation posed a significant challenge to inhabitants of the West Bank who wished to attend religious services in the Occupied Palestinian Territory. The closure regime especially caused difficulties during the religious holidays of Ramadan and Christmas in 2007, when the number of people wishing to pass the checkpoints in order to attend religious services increased manifold. The delays and congestion experienced as a result of the closures were particularly detrimental for Muslims during Ramadan, who were frequently unable to reach their destination in time to

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[14] An outpost is a settlement, which has been set up without proper authorization by the Government of Israel.

[15] OCHA closure update, October 2007.

[16] OCHA Report No. 61 Implementation of the Agreement on Movement and Access (5-18 March 2008) and OCHA Access and Movement Report (19 March-1 April 2008).

[17] OCHA-OPT: Protection of Civilians. Summary Data Tables. Reports to the End of March 2008, p. 15.

[18] OCHA Gaza Strip interagency humanitarian fact sheet, March 2008.

break the fast and observe the special Ramadan prayers in the mosque of their choice. Owing to the long queues, many people were obliged to offer their prayers and break the fast at checkpoints.[19]

19. Meanwhile in Gaza, the closure prevented the inhabitants from worshipping at sacred sites such as al-Haram al-Sharif/Temple Mount, the Ibrahimi mosque/Tomb of the Patriarchs, the Church of the Holy Sepulchre, the Church of Nativity and other holy places in Jerusalem and the West Bank.

The Wall

20. In 2001, the Government of Israel announced its intention to build a barrier to separate Israel from the West Bank. The current planned length of the most recently approved route of the Wall is approximately 723 kilometres. As at March 2008, approximately 57 per cent of the planned route had been constructed.

21. When completed, some 80 per cent of the Wall's length will run inside the West Bank. Approximately 250,000 Palestinians reside in villages and towns that will be totally or partially surrounded by the Wall, and about 9.5 per cent of West Bank land will be isolated by it.[20] For Palestinians living in the closed area between the Wall and the Green Line, the Wall not only restricted their access to places of worship, but also affected their social relations, since family and friends on the "Palestinian side" required visitor permits to enter the closed areas, a fact which entailed significant distress for the population during times of particular religious and social importance, such as the Eid festivals, marriages and funerals.

22. Furthermore, prior to and during the reporting period, the construction of the Wall prevented access to, and endangered the preservation of, religious and cultural sites along its route or close by.[21] The Wall also further separated Jerusalem from the rest of the West Bank. Only West Bank residents with special permits could pass on foot through the four main checkpoints open for Palestinians. Thus, access to holy sites in Jerusalem for both Muslims and Christians residing in the West Bank and Gaza Strip became increasingly problematic.[22]

23. In its advisory opinion, the International Court of Justice concluded that the Wall gravely infringed a number of fundamental rights of Palestinians residing in the Occupied Palestinian Territory that could not be justified by military exigencies or by the requirements of national

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[19] OCHA, East Jerusalem, The Humanitarian Impact of the West Bank Barrier on Palestinian Communities, January 2008, p. 38.

[20] OCHA: Consolidated Appeal 2008, Occupied Palestinian Territory, p. 15.

[21] See paragraph 55 below and "Monitoring Israeli Colonizing activities in the Palestinian West Bank and Gaza", a joint project between the Applied Research Institute in Jerusalem (ARIJ) and the Land Research Center (LRC), funded by the European Union, 9 June 2005, http://www.poica.org/editor/case_studies/view.php?recordID=604.

[22] OCHA. East Jerusalem. The Humanitarian Impact ..., p. 38.

security and order.[23] The Court therefore concluded that Israel was obliged to put an end to the violation of its international obligations and that it should therefore dismantle the parts of the Wall situated within the Occupied Palestinian Territory. It also concluded that Israel had the obligation to make reparation for the damage caused to all natural and legal persons concerned. No steps were taken by Israel towards the fulfilment of these obligations during the reporting period.

Permit regime

24. The permit system imposed in the early 1990s continued to be applied to all Palestinian identity cardholders within the Occupied Palestinian Territory during the reporting period. Palestinian identity cardholders required a permit to enter East Jerusalem and Israel. The procedure for issuing permits was unclear, time-consuming and lacked transparency. For Palestinian residents of the Gaza Strip, permits to enter Israel (and hence to travel to East Jerusalem or the West Bank) were very difficult to obtain, except in rare circumstances. Consequently, the permit system constituted a substantial impediment to access by Palestinian Muslims and Christians to their holy sites.[24]

25. On religious holidays, special permits were issued by the Israeli authorities. However, the number of worshippers declined dramatically before and during the reporting period. During Ramadan in 2005, some 150,000 worshippers were expected to attend the important last Friday of Ramadan prayer, but only 50,000 were permitted to do so. During Ramadan of 2006, attendance at Friday prayers showed a further sharp decrease compared to previous years.[25] During Ramadan in 2007, access was hampered to both the al-Aqsa mosque in Jerusalem and the Ibrahimi mosque in Hebron. No Palestinians were permitted to attend the Friday prayers at the al-Aqsa mosque on the second Friday of Ramadan and access to the three other Friday communal prayers was restricted to Palestinian men over the age of 50 and women over 45. On one occasion during the second week of Ramadan, Israeli border police stationed at the Ibrahimi mosque closed the entrance, trapping several worshippers inside for two hours. At Lailat al-Qader, Israeli settlers threw rubbish at Palestinians who were trying to reach the Ibrahimi mosque to pray. Members of the Israel Defense Forces fired sound bombs inside the mosque grounds, interrupting prayers and creating chaos among the worshippers.[26]

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[23] As concerns access to Christian, Jewish and Islamic Holy Places, the Court said the account also had to be taken of specific guarantees of access made in a number of instruments, dating from the Treaty of Berlin of 13 July 1878 to the 1994 Peace Treaty between Israel and Jordan, article 9, paragraph 1 of which provides that "Each party will provide freedom of access to places of religious and historical significance." ICJ advisory opinion paragraph 129.

[24] B'Tselem, Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank (August 2007), p. 24-27.

[25] OCHA, East Jerusalem. The Humanitarian Impact, January 2008, p. 38.

[26] OCHA Humanitarian Monitor, September 2007.

26. In general, restrictions on entrance to al-Haram al-Sharif/Temple Mount varied during the reporting period. Sometimes only Palestinians over the age of 45 were permitted; at other times, only Jerusalem identity cardholders over the age of 50 were allowed entrance. At other times, restrictions permitted only residents of the Old City over the age of 50 to enter al-Haram al-Sharif/Temple Mount.

27. Many Christian churches also experienced a significant decline in the number of worshippers attending services, as Palestinian Christians tended to avoid travelling because of the burdensome permit system and long waits experienced at checkpoints. While permits were often granted for special Christian holidays, it was generally difficult to obtain permits to attend regular services. Jerusalem was frequently closed, even to permit holders. In 2007, 37 days of closure were reported.[27] Holders of permits for specific Christian holidays were usually allowed access to Jerusalem, even when access to the city was restricted to holders of work permits.

28. Palestinian Christian clergy and religious staff experienced increasing difficulties in serving their parishes owing to the obstacles connected with travelling between various religious locations, both before and during the reporting period. At times, religious congregations reportedly preferred to appoint a foreign priest to serve their communities, as foreign nationals were generally not subject to the same travel restrictions as Palestinian clergy. However, Christian foreign clergy working in Gaza and the West Bank (including East Jerusalem) encountered difficulties in obtaining or renewing their Israeli visas. In October 2007, the Ministry of the Interior of Israel reportedly declared that it had cancelled all re-entry visas for Christian clergy in the Occupied Palestinian Territory. Those who wished to return to their parishes in the Occupied Palestinian Territory were required to apply for new entry visas in Israeli consulates abroad, which often entailed a lengthy waiting time. Some clergy refused to leave the Occupied Palestinian Territory, fearing that they might not be allowed back; others who did leave were turned back by border officials. It was further reported that there was a usual practice of granting 90-day tourist visas to priests and nuns, thus compelling the clergy to travel to neighbouring countries and re-apply for a new tourist visa at regular intervals, thereby interrupting their work. This created considerable obstacles for the Christian clergy in serving their often scattered communities and in performing their religious duties.[28]

29. Regarding the opportunity to travel abroad for religious or other purposes, West Bank and Gaza Palestinians were generally not allowed to use the Israeli airport in Tel Aviv. In order to perform *Hajj*, they had to obtain a Saudi Hajj visa and travel by land to Amman (for West Bank residents) and to Egypt (for Gaza residents).

Identity cards

30. Four kinds of identity cards are issued by the Israeli authorities to Palestinians over 16 years of age: (a) for West Bank residents; (b) for Gaza residents; (c) for Jerusalem residents; and (d) for Israeli citizens. Palestinian holders of Jerusalem identity cards are

[27] OCHA, Humanitarian Monitor, January 2008, February 2008.

[28] Ha'aretz, 26 October 2007.

permanent residents of Israel. Holders of West Bank and Gaza resident identity cards require a permit to enter Jerusalem. The permits indicate the length of stay, the duration of the permit and, in many cases, specify the checkpoint through which the bearer is permitted to cross. Since 2000, these permits have become increasingly difficult to obtain. It is further estimated that some 50,000 Palestinians do not hold any identification at all.[29] They are therefore regarded by the Israeli authorities as illegally staying in the Occupied Palestinian Territory and consequently are not authorized to visit holy places in the Territory or abroad.

31. The West Bank and Gaza identity cards indicate whether the cardholder is Muslim or Christian, with no possible alternatives. The identity cards of those who are not believers, for example, indicate that they have the same religion as their parents; in contrast, cards of Jerusalem residents and Israeli citizens do not contain information about religion. Following her visit to Israel and the Occupied Palestinian Territory in January 2008, the Special Rapporteur on freedom of religion or belief stated that, in her opinion, "to indicate the religious affiliation on official identity cards carries a serious risk of abuse, which has to be weighed against the possible reasons for disclosing the holder's religion".[30]

Consequences of the closure regime for access to religious sites, notably in Hebron and Nablus

32. The above-mentioned closure regime created a serious impediment to travel for Palestinians, and consequently denied the majority of inhabitants of all religions of the Occupied Palestinian Territory access to many places of worship. The difficulties facing Palestinians in their attempt to have access to religious sites in the Occupied Palestinian Territory were of a particularly severe nature in the cities of Hebron and Nablus during the reporting period.

33. Hebron, the second largest city in the West Bank, is the location of the Ibrahimi mosque/Tomb of the Patriarchs - considered to be the burial place of Abraham/Ibrahim, Isaac, and Jacob and their wives Sarah, Rebecca and Leah - and is of great significance for many Muslims, Jews and Christians.

34. Since 1967, more than 24 Israeli settlements have been established in the Hebron governorate, creating a ring around its urban centre and fragmenting the outlying lands. Between 1979 and 1983, Israeli settlers established four settlements inside the Old City of

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[29] In terms of the reasons for the situation, some have had their IDs revoked by Israeli authorities; others have been refused family reunification applications since 2000, with the exception of a few thousand that have been issued in the last couple of years (OCHA, East Jerusalem, January 2008, p. 23).

[30] http://www.unhchr.ch/huricane/huricane.nsf/view01/7581E47DA4564001C12573DE0038E551?opendocument.

Hebron itself. Some 600 settlers live there protected by 1,500 soldiers of the Israel Defense Forces, entailing severe restrictions on the freedom of movement of the city's 165,000 Palestinian inhabitants. This situation has had an enormous economic impact on the city centre and has induced many Palestinians to abandon the Old City.[31]

35. During the reporting period, Israeli authorities left only one entrance only for local residents and visitors of at least six main routes that lead to the section of the Ibrahimi mosque/Tomb of the Patriarchs reserved for Muslim prayers. This entrance is a checkpoint for the Israel Defense Forces, equipped with a metal detector. Muslims who wished to attend religious services in the mosque had to approach from the Kasaba area of the Old City. Therefore, even inhabitants who lived close to the mosque in the city were forced to travel a distance between 1 and 15 kilometres in order to pass through this entrance. Driving a Palestinian vehicle into the Old City was prohibited (except for ambulances, fire engines or municipality vehicles which needed prior coordination to have access to it). In addition, there were three checkpoints along the way leading to the entrance of the mosque, in the form of rotating metal bars, metal detectors and physical checks. Thus, attending prayer in the mosque implied, for most Hebron residents, a long trip, a subsequent walk on foot and passage through three to five checkpoints (depending on the route taken), which tended to be a time-consuming and degrading process.

36. Muslim worshippers were prevented from entering the grounds surrounding the Ibrahimi mosque/Tombs of the Patriarchs except for 10 days each year; on all other days, the area was reserved for the settlers. At the time of writing, the Israeli authorities had reserved 60 per cent of the Ibrahimi mosque/Tomb of the Patriarchs for Jewish worshippers and 40 per cent for Muslims. During Jewish holidays, the Israel Defense Forces closed it completely to Muslims. The Israeli authorities also regularly prevented the call to prayer (especially the *Maghreb* and *Isha* prayers) when Jews were praying in their section. Waqf authorities reported that the call to prayer was prevented on an average of 50 to 60 times per month. They also voiced their concern over the fact that the settlers regularly use the yards of the Ibrahimi mosque/Tomb of the Patriarchs for celebrations, such as weddings or Bar Mitzvahs).

37. Nablus, located 65 kilometres from Jerusalem, is the largest Palestinian city in the West Bank. Its population is predominantly Muslim, with Christian and Samaritan minorities. The Old City is replete with major religious sites, including 9 historic mosques, 19 Islamic monuments and a seventeenth-century church.[32] Christian, Jewish and Muslim holy places, such as Jacob's Well and Joseph's Tomb, are also situated there.

38. At the time of writing, Nablus was encircled by 14 Israeli settlements and 26 settlement outposts. The settlements were connected to each other by a series of roads, used primarily by

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[31] OCHA - The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 96, and Ghost town: Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron, May 2007, B'tselem and Association for Civil Rights in Israel (ACRI).

[32] Costs of conflict. Nablus after five years of conflict, OCHA, December 2005, p. 1.

settlers, that stretch around the city and across the Nablus governorate. The roads are in turn linked to 10 checkpoints, including 7 encircling Nablus city. All Palestinians going in and out of Nablus were required to cross these checkpoints. In addition, more than 70 obstacles installed by the Israel Defense Forces blocked the road junctions and physically prevented Palestinian traffic from reaching the roads that were used primarily by the settlers.[33]

39. In April 2007, only 10 per cent of Nablus buses (22 of 220) and 7 per cent of Nablus taxis (150 of 2,250) had permits to use the checkpoints around the city. Only 50 private Palestinian cars were permitted to use the checkpoints.[34] The heavy restrictions on the freedom of movement in the reporting period had a serious impact on the capacity of the Nablus population to have access to places of worship situated within the governorate and in Jerusalem.

3. Preservation of religious sites

40. A number of events affecting the preservation of religious sites in the Occupied Palestinian Territory were reported during the period.

41. An excavation project in the area of the Arab neighbourhood of Silwan in occupied East Jerusalem, a few hundred metres away from al-Haram al-Sharif/Temple Mount, raised concern among the Palestinian population and archaeological experts that this major religious site might be damaged.[35] Although Israeli authorities claimed that the excavation would take place at a certain distance from the compound, residents erected a protest tent nearby and filed a lawsuit, expressing fears for the stability of the buildings above and arguing they had not been consulted on a dig which they alleged ran beneath their homes. On 18 March 2008, an Israeli court ordered a halt to the project while it considered the case.[36] At the time of writing, the case was still pending before the court.

42. During the night of 1 January 2008, the historic mosque of al-Hamadiyya in the town of al-Khader near Bethlehem was set alight, allegedly by Israeli settlers.[37] Reportedly, settlers

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[33] OCHA. The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 90.

[34] OCHA. The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 90.

[35] National Geographic, 12 February 2007, Violence Sparked by Archaeological Projects in Jerusalem http://news.nationalgeographic.com/news/2007/02/070212-jerusalem.html and reply of the Permanent Observer Mission of Palestine of 2 April 2008.

[36] International Middle East Media Center, 18 March 2008, http://www.imemc.org/article/53566. Ha'aretz, 16 March 2008, http://www.haaretz.com/hasen/spages/821774.html.

[37] 17 March 2007, Alternative Information Center (AIC), http://www.alternativenews.org/news/english/settler-violence-report-for-february-2008-20080317.html.

had been attempting to seize land around al-Khader for the expansion of their settlements.[38] The remains of the original mosque building are believed to be 700 years old. An Israeli investigation had opened but no charges had been brought against any suspect at the time of writing.[39]

43. The decision of the Israeli authorities to demolish the al-Omari mosque in Umm Tuba, a small village 4 kilometres south-west of Jerusalem, in February 2008, provoked protests. The Grand Mufti of Jerusalem condemned the decision, as did the Islamic Educational, Scientific and Cultural Organization.[40]

44. Furthermore, both before and during the reporting period, the Israeli authorities reportedly raised bureaucratic obstacles to the efforts of the Waqf authorities to carry out even minor repair and maintenance works in al-Haram al-Sharif/Temple Mount related to the normal usage of the premises.

4. Religious, charitable or humanitarian institutions or schools

45. As noted above, the freedom to manifest one's religion as set out in article 18 (1) of the International Covenant on Civil and Political Rights includes the freedom to establish seminaries or religious schools.[41] In the Occupied Palestinian Territory, several Islamic charitable institutions and schools intended to assist the most needy Palestinian individuals and families. Run as non-profit organizations, they were independent from Government authority and relied on donations or voluntary assistance to carry out their work.

46. In February 2008, the Israel Defense Forces raided a number of buildings and schools run by Hebron Islamic Charity, one of the largest charity bodies in the Occupied Palestinian Territory, and handed over military orders for their closure and confiscation of property. These actions risked depriving thousands of orphans and other children in need of the education and shelter provided by Hebron Islamic Charity.[42] Israeli authorities claimed that

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[38] http://www.poica.org/editor/case_studies/view.php?recordID=1323.

[39] Al Haq sworn statement, 12 January 2008.

[40] http://www.maannews.net/en/index.php?opr=ShowDetails&ID=27566 and http://www.isesco.org.ma/english/news/news.php?id=273.

[41] Furthermore, according to the United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the right to freedom of thought, conscience, religion or belief shall include the right to establish and maintain appropriate charitable or humanitarian institutions. Moreover, the Human Rights Council in its resolution 6/37 of 14 December 2007 urged all States to "ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected" (paragraph 9 (h)).

[42] Christian Peacemaker Teams, http://www.cpt.org/node/6968.

Hebron Islamic Charity was affiliated with Hamas. However, the relevant Israel Defense Forces orders reportedly contained no mention of the charitable institution being involved in any illegal activity.

B. Observance of cultural rights by Israel in the Occupied Palestinian Territory

1. Effects of the closure regime on the enjoyment of cultural rights

47. During the reporting period, the above-mentioned restrictions on freedom of movement limited the possibilities for Palestinians to enjoy the right to participate freely in the cultural life of the community and to enjoy the arts, as provided for in article 15 of the Universal Declaration of Human Rights. The steps to be taken by the States Parties to the International Covenant on Economic, Social and Cultural Rights to fully realizing the right of everyone to take part in cultural life "shall include those necessary for the conservation, the development and the diffusion of science and culture" (article 15 (2) of the Covenant).

48. Without access to cultural and artistic institutions and communication between members of a community, aspects of cultural practice and tradition can be lost or severely impaired. Many cultural and social activities take place away from the local area. For culture to thrive and develop, there must be unhindered communication between, and the involvement of, all groups and individuals in society. The closure regime restricted the access of Palestinians to places of cultural significance and locations where cultural events were held. If Palestinian cultural events were to be organized, they needed to be held separately in the West Bank, Gaza and East Jerusalem.

49. As a consequence, all forms of cultural and educational contacts and exchange, such as theatre, cinema, fine arts and music, were limited inside the Occupied Palestinian Territory. This included cultural exchanges with the countries of the region, as restrictions on the right of Palestinians to leave and re-enter the Occupied Palestinian Territory hampered their participation in cultural events organized in other States. Similarly, owing to visa restrictions for citizens of Arab countries, faculties of fine arts, music and other cultural educational institutions in the Occupied Palestinian Territory were unable to invite visiting scholars, lecturers and art performers from neighbouring countries to benefit from their common cultural heritage and language.

50. The importation of Arabic language books was subject to restrictions. Several copies of each book had to be provided for review by the Israeli authorities in order to obtain import approval. This procedure impeded especially the import of specialized literature used by a limited number of readers. The traditional Ramallah Arab book fair, which had been discontinued since 2000, was held again for the first time in 2005, but owing to the burdensome importing procedure, the organizers indicated that they did not intend to repeat the event in the future.

51. Another implication of the restrictions on freedom of movement for Palestinians in the West Bank and Gaza was the lack of access to their historic and cultural heritage. Palestinians, notably the younger generation, were prevented from visiting renowned places of historical or cultural interest in the Occupied Palestinian Territory, although they were accessible to international visitors.

52. At their regular meeting, in November 2007, the ministers of culture of the League of Arab States declared Jerusalem the Capital of Arab Culture for 2009, a title awarded annually to an Arab capital city. On 25 March 2008, Palestinian organizers planned to hold an event at the Palestinian National Theatre in East Jerusalem to announce the winner of an art contest for designing a logo for the cultural campaign. When they arrived, the doors were locked and the Israeli police were standing outside, reportedly with a warrant from the Ministry of Internal Security banning the event.[43]

2. Preservation of cultural heritage

53. Inside the Occupied Palestinian Territory there are reportedly an estimated 10,000 archaeological sites and features dating from a number of different civilizations.[44] This extraordinary cultural diversity requires careful maintenance so that its unique character is preserved.

54. The Palestinians have, however, been deprived of the right to manage, take proper care of and benefit from this rich historic and cultural heritage. According to UNESCO, territorial fragmentation and restricted mobility has impaired the capacity of the Palestinian Authority to control and monitor the condition of cultural sites across the Occupied Palestinian Territory. Furthermore, the reliance on international donors for heritage conservation has not contributed to the establishment of a stable and sustainable conservation sector, which could be invaluable to the future socio-economic life of Palestinians.[45] In addition, it was reported that, during the period under review, no positive action was taken by Israeli authorities to ensure the preservation of archaeological and historical sites and objects in East Jerusalem and in the areas of the West Bank under Israeli administrative jurisdiction.

55. Since 1967, Israel has undertaken numerous activities that have had a negative impact on religious and historic sites in the Occupied Palestinian Territory, ranging from demolitions and excavations to road construction and the building of new structures.[46] By a military order dated 18 September 2007, Palestinian lands of the al-Khader and Artas villages were appropriated for the ongoing construction of the Wall. According to media reports and as

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[43] International Herald Tribune, March 25, 2008, http://www.iht.com/articles/ap/2008/03/25/africa/ME-GEN-Israel-Palestinians-Culture-Clash.php.

[44] Riwaq's Registry of the historic buildings of Palestine, 2006, p. 12.

[45] Giovanni Fontana Antonelli. UNESCO Ramallah office, presentation at the Jericho Conference on Conservation and Enhancement of the Cultural Heritage, 26-27 March 2008.

[46] Buildings of historical, cultural and religious value have been damaged or destroyed in for instance Nablus, Hebron, Bethlehem and East Jerusalem. The destruction and damage caused to the cultural heritage in the Occupied Palestinian Territory was unanimously deplored by the World Heritage Committee in 2002 (26COM 6.1 - Protection of the Cultural Heritage in the Palestinian Territories, adopted by the World Heritage Committee at its 26th session on 24-29 June 2002).

indicated in the map of the military order, the area where the new section will be constructed might also lead to the demolition of Kherbet ‘Alia (‘Alia Hamlet), a site that features the remains of a Roman town, mosaic flooring, water channels and rock-carved tombs, located in Artas village.[47] During the reporting period, Israeli authorities still refused to grant permission to the Hebron Rehabilitation Committee to renovate 44 houses in the Old City of Hebron, reportedly because of their close proximity to Israeli settlements.

56. The unique cultural, architectural and historic sites of the Gaza Strip, which include Roman mosaics, a seventh-century Islamic mosque and a fifth-century Greek Orthodox church, were also at risk of natural decay owing to lack of conservation and preservation efforts and to damage caused during violent clashes. Reportedly, many objects of archaeological value were kept in private houses in an attempt to ensure better protection, however this practice may further increase the risk of damage or permanent loss.

57. On a positive note, a working group of some 50 Israeli and Palestinian archaeologists is reportedly preparing an agreement on Israeli-Palestinian cultural heritage. The agreement would reportedly be based on the assumption of a two-State solution and peaceful interaction. The archaeological professionals on both sides have agreed that the national territories of Israel and Palestine constitute a unified archaeological landscape divided by political borders. Bearing in mind the fact that archaeological resources are not renewable, the members of the working group share the opinion that both sides hold a special responsibility for the preservation of local archaeological heritage, as its significance extends far beyond national borders.[48]

IV. CONCLUSIONS

58. During the reporting period, the measures adopted by the Government of Israel to restrict freedom of movement of both people and goods in the Occupied Palestinian Territory severely impeded the population’s access to religious sites, notably in Jerusalem, cultural exchanges and events. The justification for the closure regime repeatedly cited by the Israeli authorities was the need to provide security and protection to all people within its jurisdiction.[49] While the security of the population is undoubtedly an important consideration, the relevant measures should be

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[47] 17 September 2007, Alternative Information Center (AIC), http://www.poica.org/editor/case_studies/view.php?recordID=1164.

[48] Ha’aretz, 17 April 2008, http://www.haaretz.com/hasen/spages/973870.html.

[49] See for instance Israeli Foreign Minister Tzipi Livni’s address to the AHLC Donors’ Conference in London (http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM+Livni+addresses+AHLC+donors+conference+2-May-2008.htm) and B’Tselem, Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank (August 2007) p. 92.

proportionate to that aim and non-discriminatory in their application.[50] A considerable part of the restrictions were introduced to ensure and ease freedom of movement for the inhabitants of Israeli settlements, which have been established in breach of international law,[51] creating intolerable hardship for hundreds of thousands of Palestinians attempting to exercise their right to freedom of movement inside the Occupied Palestinian Territory.

59. International humanitarian law requires that the Occupying Power permit ministers of religion to give spiritual assistance to their religious communities. In this regard, Israel should take the necessary measures to ease existing restrictions on local and foreign clergy and allow unhampered movement and access for spiritual leaders to communicate with members of their faith.

60. The existing rules governing the importation of Arabic literature to the Occupied Palestinian Territory limit the capacity of Palestinians to exercise their right to take part in cultural life by effectively restricting the opportunity to exchange knowledge and experiences and take part in the cultural achievements of other peoples of the region with whom they share language and culture. The Government of Israel should consider revisiting these rules to assess their proportionality.

61. The freedom to establish seminaries or religious schools and religious, charitable or humanitarian institutions should be fully respected and protected. While restrictions on such institutions might be introduced when necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others, any such restrictions must be prescribed by law, applied only for those purposes for which they were prescribed and be directly related and proportionate to the specific need for which they are predicated.

62. As Occupying Power, Israel bears responsibility for the preservation of the cultural and religious heritage in the Occupied Palestinian Territory under international law, and should take positive measures to preserve this heritage and refrain from action which could negatively affect the sites.

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[50] As stated by Ms. Asma Jahangir, the Special Rapporteur on freedom of religion or belief of the United Nations Human Rights Council, on 27 January in Jerusalem at the end of her visit to Israel and the OPT (20-27 January 2008): “A major issue of concern for my mandate is the restricted access to holy places. Muslims and Christians are impeded from worshipping at some of their most holy places in the world due to an elaborate system of permits, visas, checkpoints and the Barrier. While the Israeli Government informed me that these restrictions are necessary for security reasons, I would like to emphasize that any measure taken to combat terrorism must comply with the States’ obligations under international law, including freedom of religion or belief. These intrusive restrictions strike me as disproportionate to their aim as well as discriminatory and arbitrary in their implementation.”

[51] ICJ, paragraph 120, referring to article 49 (6) of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War.

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the Secretary-General*

Follow-up on the implementation of the recommendations contained in the report of the high-level fact-finding mission to Beit Hanoun established under Human Rights Council resolution S-3/1

* Late submission.

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I. INTRODUCTION

1. Following the Israeli military operations in Beit Hanoun on 8 November 2006, the Human Rights Council, in its resolution S-3/1, decided to dispatch urgently a high-level fact-finding mission, led by Archbishop Desmond Tutu and joined by Professor Christine Chinkin, duly appointed by the President of the Council. The mission travelled to Beit Hanoun in May 2008 via Egypt, after three previous failed attempts owing to the refusal of the Government of Israel to cooperate with the mission to facilitate its transit through Israel to reach Beit Hanoun.

2. Upon completing its mandate, the mission presented its report to the Council at its ninth session, in September 2008 (A/HRC/9/26). An interim report (A/HRC/5/20) had been submitted to the Council in June 2007. The Council, in its resolution 9/18, welcomed the report and called upon all concerned parties to ensure the full and immediate implementation of the recommendations contained in the report. It also recommended that the General Assembly consider the report with the participation of the members of the mission.[1]

3. In resolution 9/18, the Council requested the Secretary-General to report to the Council at its next session on the implementation of the recommendations contained in the report of the mission. The present report is submitted pursuant to that resolution and covers developments since 1 September 2008.

II. RECENT DEVELOPMENTS IN THE OCCUPIED PALESTINIAN TERRITORY

4. At the outset, it should be noted that, on 27 December 2008, Israel launched Operation Cast Lead, a large-scale aerial and naval offensive, in the Gaza Strip. A ground offensive, which began on 3 January 2009, followed the air and naval strikes, when Israeli ground forces entered Beit Hanoun in the early hours of 4 January. According to Israel, the offensive was launched as a response to the firing of rockets into Israel by Palestinian militants. Israel declared a unilateral ceasefire on 18 January, after more than three weeks of attacks. Shortly thereafter, on the same day, Hamas and other Palestinian factions and groups, with the exception of the Popular Front for the Liberation of Palestine, also declared a week-long ceasefire to allow Israeli forces to withdraw. On 20 January, Israel announced the withdrawal of all its troops from the Gaza Strip. It is uncertain whether the ceasefire will hold.

5. The Office for the Coordination of Humanitarian Affairs reported that, according to the Palestinian Ministry of Health, from 27 December 2008 to 18 January 2009, the military operation in the Gaza Strip resulted in 1,440 Palestinians dead and 5,380 wounded, the majority of whom were civilians, women and children. During the same period, 3 Israeli civilians were killed and 182 injured. The Office also reported that 10 Israeli soldiers had been killed (4 in a “friendly fire” incident) and 336 wounded. The Israeli attacks damaged and destroyed civilian infrastructure across the Gaza Strip, including homes, schools, mosques, hospitals, roads, public services and political institutions. United Nations and other humanitarian installations, supplies, vehicles and personnel also suffered multiple strikes by the Israeli forces.

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[1] The General Assembly has not yet pronounced itself on this recommendation.

6. The humanitarian and human rights situation was already critical in Gaza prior to the commencement of Operation Cast Lead, owing to the blockade applied by Israel for the previous 19 months to the Gaza Strip, which had brought Gazan society to the brink of collapse, with widespread erosion of livelihoods and the breakdown of infrastructure and essential services.[2]

III. IMPLEMENTATION OF RECOMMENDATIONS

7. The recommendations of the high-level mission can be grouped into three categories: protection of the human rights of civilians; remedies and redress for victims and survivors; and accountability and the rule of law.

A. Protection of the human rights of civilians

8. The mission recommended that, with regard to the protection of the human rights of civilians, the people of Gaza be afforded protection in compliance with international law, above all the Fourth Geneva Convention; the Israeli military place at the centre of its decision-making and activities the consequences of the use of force on civilians; the firing of rockets on the civilian population in Israel be ceased; and the issue of the ongoing closure of the Gaza Strip be addressed.

9. The above-mentioned recommendations have not been implemented, as evidenced, inter alia, by the Israeli military incursion into the Gaza Strip in November, which killed six Palestinians; the subsequent escalation of tensions, with Palestinian militants firing rockets into Southern Israel; and the recent Israeli military offensive in the Gaza Strip on 27 December 2008 during which over 6,700 Palestinians were killed or injured. Indeed, many of the victims of the Beit Hanoun shelling were re-victimized as a result of Operation Cast Lead; for example, a member of the Al-Athamna family, who lost 18 family members in the 2006 Beit Hanoun shelling, moved to Izbet Abed Raboo after his house sustained damages in the Beit Hanoun shelling because of concerns for the safety of his family, only to see the new house he had built for his family in Izbet Abed Raboo destroyed during Operation Cast Lead.

10. As at January 2009, the Israeli blockade of the Gaza Strip has not yet been lifted. Israel continues to restrict the flow of goods and supplies into the Gaza Strip, including humanitarian supplies and fuel. In brief, since Israel imposed the closure of Gaza in June 2007, the Karni crossing, the largest commercial crossing, has been completely closed; all exports and most industrial and non-humanitarian imports have been suspended and the amount of fuel allowed entry has been severely restricted; a ban on the movement of Palestinians through Erez, the sole passenger crossing with Israel and the West Bank, has been introduced (except for emergency medical and humanitarian cases); the Rafah terminal, the only passenger crossing into Egypt, has been almost totally closed; and the sea area accessible to Palestinian fishermen has been further reduced.

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[2] The United Nations High Commissioner for Human Rights will report more extensively on the human rights situation in Gaza prior to, during and subsequent to Operation Cast Lead in her report to the Human Rights Council requested by the Council in its resolution S-9.

B. Remedies and redress for victims and survivors

11. The mission recommended that Israel, with regard to remedies and redress for victims and survivors, remove obstacles to judicial remedies; pay victims adequate compensation to individuals without delay and the Beit Hanoun community reparation in the form of a memorial to the victims; and facilitate access to health services.

12. As at January 2009, obstacles confronting victims and survivors to seek judicial remedies[3] had not been removed. Furthermore, no compensation had been paid and reparations had not been made to the victims and survivors of the shelling of Beit Hanoun.

13. The ongoing closure of the Gaza Strip has had a negative impact on peoples' access to health services, including physiotherapy services. The Israeli restrictions on the flow of medical goods and personnel into the Gaza Strip as well as those on the access of victims to health care elsewhere has continued. The status of essential drug stocks is just one indicator of the impact of the closure; the World Health Organization (WHO) classifies 416 drugs as essential by international standards, yet the Gaza Strip continues to suffer from critical shortages of these drugs on account of the closure. The Ministry of Health in Gaza has reported that 105 drugs on the essential drug list were at zero stock level at the central drug store, even before Operation Cast Lead.

14. Another indicator of the impact of the closure is the referral abroad of patients seeking health services otherwise not available in the Gaza Strip. Between 1 October 2007 and 1 December 2008 - even before the recent attacks - WHO confirmed the deaths of 59 patients who were waiting to leave Gaza to reach specialized referral health services outside. In October 2008, three patients died, one of kidney failure at the Erez crossing while waiting to enter Israel. WHO has reported that, since 25 December 2008, the Ministry of Health has requested approval from the Israeli authorities for 21 patients to leave Gaza to seek medical care in Israeli or West Bank hospitals; of those, only 7 were allowed to leave. Erez has been closed for patient referrals since 27 December 2008.

15. Since Operation Cast Lead, the health-care system in Gaza has been overwhelmed by the sheer influx of injured people. The ability of the Gaza health-care system, already depleted and fragile, to cope with the constant arrival of wounded people has been stretched to the limit, and medical personnel have been under severe strain. Moreover, the Office for the Coordination of Humanitarian Affairs has reported that 34 health facilities were damaged, 16 health personnel were killed and 22 wounded while on duty during Operation Cast Lead.

C. Accountability and the rule of law

16. The mission had recommended, with regard to accountability and the rule of law, that an independent, impartial and transparent investigation be conducted into the Beit Hanoun shelling, and that Israeli and Palestinian authorities create a joint monitoring mechanism on the human rights situation of civilians in conflict.

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[3] A/HRC/9/26, paras. 67-71.

17. As at January 2009, no action had been taken with regard to the above-mentioned recommendations.

18. The mission also recommended that the international community fulfil its role in respect of the suffering of the Gazan population. The ongoing closure of the Gaza Strip and the recent attacks during Operation Cast Lead raise questions of the legal responsibilities of third-party States. Third-party legal obligations arise under the provisions of the Geneva Conventions. As stipulated in common article 1, High Contracting Parties have an obligation to ensure respect for the provisions contained therein. According to article 146 of the Fourth Geneva Convention, High Contracting Parties also have a responsibility to effectively search for and bring before their courts persons committing, or ordering to be committed grave breaches of the Fourth Geneva Convention, such as the wilful killing of civilians, and extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly. Moreover, while States have a primary responsibility to protect all persons under their jurisdiction or control from war crimes, crimes against humanity, genocide and ethnic cleansing, under the doctrine reaffirmed in the 2005 World Summit Outcome,[4] the international community in its entirety shares the responsibility for protecting civilians, in particular where and when the authorities concerned are unable or unwilling to do so. Finally, as concerns accountability, the international system provides options for accountability at the international level, including through action by the International Criminal Court, the establishment of ad hoc tribunals and the exercise of universal jurisdiction in third-party courts. Thus, the people of Beit Hanoun and Gaza look legitimately to the international community to respond with urgency and with appropriate measures to their desperate and still worsening situation.

IV. CONCLUSIONS

19. **As at January 2009, none of the recommendations made by the high-level mission had been implemented. Indeed, the critical human rights situation in Beit Hanoun described by the mission had significantly worsened since the adoption of Council resolution 9/18 as a result of the 19-month blockade of Gaza by Israel and its large-scale military operation in Gaza from 27 December 2008 to 18 January 2009. The victims of the shelling of Beit Hanoun of 8 November 2006 remain without effective protection, meaningful reparation and any independent, impartial and transparent mechanism that could secure accountability.**

20. **If no action is taken by Israeli authorities or by the international community to demonstrate that human rights are protected by the rule of law, greater numbers in the population are likely to embrace those who resort to militant means of seeking redress. Accountability is not only a legal obligation but also an imperative for peace.**

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[4] General Assembly resolution 60/1.

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolution S-9/1*

* Late submission.

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I. INTRODUCTION

1. The present report is submitted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to resolution S-9/1 adopted by the Council at its ninth special session held on 9 and 12 January 2009, convened following the launch of Israeli military operations in the Gaza Strip on 27 December 2008.

2. This is the first periodic report by the High Commissioner mandated by Council resolution S-9/1, in which the Council requested the High Commissioner "to report on the violations of human rights of the Palestinian people by the occupying Power, Israel, by ... submitting periodic reports to the Council" on the implementation of the resolution (para. 11). The present report focuses on some of the key concerns of OHCHR in the Occupied Palestinian Territory (OPT) covering the period of the Israeli military operations in Gaza codenamed "Cast Lead" to 10 April 2009.

3. As mandated by paragraphs 2 and 10 of the resolution, OHCHR will focus on the impact of military operations on civilians and on respect for the rules of international humanitarian law and international human rights law by all duty bearers. This report complements the other reports on the Gaza operations that were mandated by resolution S-9/1;[1] it also deals with the situation in the West Bank (reference to which in this report includes occupied East Jerusalem).

4. During the reporting period, the OHCHR Office in the OPT developed a human rights monitoring framework and has commenced with its implementation. Thus, OHCHR will include analysis based on monitoring of selected human rights cases in the OPT in future reporting.

[1] A/HRC/10/20 and A/HRC/10/22, which have already been presented to the Council, and a forthcoming report by the independent fact-finding mission headed by Justice Richard Goldstone. In addition, a summary of the report by the United Nations Headquarters Board of Inquiry into incidents in Gaza, mandated by the Secretary-General and led by Ian Martin, was shared with the President of the Security Council on 4 May 2009 (A/63/855-S/2009/250).

II. LEGAL FRAMEWORK

A. International human rights law

5. Israel, as a State party to many of the core international human rights conventions,[2] continues to bear responsibility for implementing its human rights obligations in the OPT.[3]

6. A situation of armed conflict or occupation does not release a State from its conventional human rights obligations. The International Court of Justice, United Nations human rights treaty bodies, successive High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, consistently have averred that international human rights law and international humanitarian law apply concurrently in all of the Occupied Palestinian Territory. Notably, in its Advisory Opinion on the Wall, the International Court of Justice pointed out that Israel remains bound by its obligations under several international human rights treaties.[4] The Court also noted that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[5]

7. The Palestinian Authority (PA), the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council (PLC) have made numerous statements and undertakings through which they have declared themselves bound by international human rights obligations.[6] With respect to Hamas, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their

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[2] Israel is a party to six of the nine core international human rights treaties. Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979 and the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (CRC) on 3 October 1991.

[3] An examination of the concluding observations of various United Nations treaty bodies, as well as the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion on the Wall) issued by the International Court of Justice on 9 July 2004, confirms this view. See A/HRC/8/17, para. 7; CAT/C/ISR/CO/4, para. 11; and footnote 5 below.

[4] Advisory Opinion on the Wall, paras. 102-113, where the Court concluded that the protection offered by human rights conventions do not cease in cases of armed conflict and that ICCPR, ICESCR and CRC are applicable in respect of individuals within the jurisdiction of a State, even concerning those individuals under its jurisdiction outside its own territory.

[5] Advisory Opinion on the Wall, para. 112.

[6] See A/HRC/8/17, para 8.

conduct affects the human rights of the individuals under their control.[7] Hamas has also made public statements that it is committed to respect international human rights and humanitarian law.[8]

B. International humanitarian law

8. The cardinal principles of customary international humanitarian law concerning the protection of civilians in the conduct of hostilities - including the principles of distinction between civilians and combatants, between civilian objects and military objectives, proportionality and precautions in attack, humane treatment of those not or no longer taking part in hostilities but finding themselves in the power of a party to the conflict - are applicable to all parties of the conflict.

9. In addition, rules of international humanitarian law regarding military occupation, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), must be applied by Israel, as the occupying Power, in the West Bank and the Gaza Strip. Though Israel has put forward arguments disputing the application of this convention, the situation remains one of military occupation, as recognized by the Security Council, the General Assembly and the Human Rights Council.[9] In addition to the applicability of the Fourth Geneva Convention, The Hague Regulations (annexed to the 1907 Convention respecting the Laws and Customs of War on Land), which are accepted as customary international law, apply to the OPT.

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[7] By way of example, in the joint report on Lebanon and Israel, a group of four special rapporteurs concluded that "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights .... It is especially appropriate and feasible to call for an armed group to respect human rights norms when it 'exercises significant control over territory and population and has an identifiable political structure'." Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari (A/HRC/2/7), para. 19, citing the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7), para. 76. See also A/HRC/7/76, paras. 4-9, for a brief overview of relevant events leading up to Hamas' takeover of the Gaza Strip.

[8] See further A/HRC/8/17, paras. 8-9.

[9] See e.g. General Assembly resolutions 62/181 and 63/98, Security Council resolution 1860 (2009) and Human Rights Council resolution 10/18.

III. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW DURING THE GAZA MILITARY OPERATIONS

10. On 27 December 2008, Israel launched a large-scale aerial and naval offensive on the Gaza Strip, "Operation Cast Lead". A ground offensive, which began on 3 January 2009, followed the air and naval strikes. The hostilities lasted 22 days, until Israel announced a unilateral ceasefire on 17 January and put it in force on 18 January. Hamas and other Palestinian factions and groups (except the Popular Front for the Liberation of Palestine), which prior to and during Operation Cast Lead had fired rockets and mortars into Israel,[10] also declared unilateral ceasefires on the same day. Israeli troops subsequently withdrew from the Gaza Strip, but, as at the time of the writing of this report, no lasting agreement has been reached between the two sides, and the situation remains volatile.

11. Estimates vary as to the exact number of Palestinian civilians killed and injured during the operation: according to various sources, between approximately 1,200 and 1,400 civilians were killed and about 5,300 were injured.[11] According to PCHR, while 236 of those killed were reportedly combatants, an additional 255 were members of the civilian police force and the remaining 926 were civilians.[12] The Government of Israel, on the other hand, has stated[13] that, according to the data gathered by the Research Department of IDF Intelligence, at least 709 were combatants, though this number reportedly includes police officers, who are classified as civilians under international law.[14] The Government of Israel is further

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[10] During the six-month truce between Israel and Hamas, the *tahdiya*, which started on 18 June and ended on 19 December 2008, a total of 223 rockets and 139 mortar shells were fired at Israel. See Ministry of Foreign Affairs of Israel, "The Hamas terror war against Israel", 21 July 2009, at www.mfa.gov.il. During the 22 days of Operation Cast Lead, 571 rockets and 205 mortars landed in Israel, according to the Ministry. ("Operation Cast Lead: Israel strikes back against Hamas terror in Gaza, 21 January 2009, ibid.).

[11] See Palestinian Centre for Human Rights (PCHR), press release, 12 March 2009, at www.pchrgaza.org/files/PressR/English/2008/press.html. See also Amnesty International, *Operation "Cast Lead": 22 days of death and destruction*, 2 July 2009, p. 13; and Israeli Defense Forces (IDF) press release, "Vast majority of Palestinians killed in Operation Cast Lead terror operatives", 26 March 2009, at dover.idf.il/IDF/English/Press+Releases/09/03/2601.htm.

[12] PCHR, press release, 12 March 2009, www.pchrgaza.org.

[13] IDF press release, op. cit.

[14] Police officers may be regarded as combatants if they participate directly in hostilities. The information available to OHCHR indicates that most of the police officers were killed in the first day of air attacks, including as a result of an Israeli missile attack targeting the police headquarters in Gaza City during preparations for a graduation ceremony for regular civilian and traffic police, see e.g. Office for the Coordination of Humanitarian Affairs (OCHA) Protection of Civilians Weekly Report, 24-31 December 2008.

reported as having stated that a total of 295 Palestinian non-combatants died during the operation, 89 of them under the age of 16 and 49 of them women, the Army added.[15]

12. According to the Israeli Ministry of Foreign Affairs, 10 Israeli soldiers were killed in the course of the military operation, 4 of them in "friendly fire" incidents, and 336 were wounded. In southern Israel, during the operation, 4 Israeli civilians were killed and 182 were injured (ranging from serious injuries to those attributable to shock) due to rockets and mortar shells fired at Israel from Gaza.[16]

13. In a letter dated 4 May 2009, the Government of Israel provided OHCHR with information regarding five IDF investigations that had been conducted into the conduct of Israeli forces during the hostilities in Gaza, in connection with a number of specific incidents. In each of the investigations, it was concluded that IDF had operated in accordance with international law. Some of the investigations recommended a revision of existing methods and/or further examinations. The IDF Spokesperson's Unit has stated that there is also a central operational IDF investigation of the entire operation being conducted, which will be concluded by June 2009.[17]

A. Alleged breaches of the principle of distinction and indiscriminate attacks

Distinction between civilians and combatants

14. The reports of civilians being attacked by Israeli forces are numerous,[18] and some of these have been reported previously by a number of special rapporteurs.[19] The present report wishes to highlight, in particular, the following reported cases.

15. On 3 January, in the al Zaytoun area of Gaza City, Israeli soldiers approached a family house and shot the male head of the household while he had both hands in the air and his identity

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[15] Communication by the IDF Spokesperson, 26 March 2009.

[16] An additional 584 persons suffered from shock and anxiety syndrome. Israeli Ministry of Foreign Affairs, "Operation Cast Lead - Israel strikes back against Hamas terror in Gaza", 21 July 2009. See also Amnesty International, *Operation "Cast Lead"*, p. 66.

[17] Israeli Ministry of Foreign Affairs, "IDF: Conclusions of investigations into central claims and issues in Operation Cast Lead", 22 April 2009.

[18] See, for instance, Amnesty International, *Operation "Cast Lead"; No Safe Place*, report of the Independent Fact Finding Committee on Gaza to the League of Arab States, 30 April 2009; B'Tselem: *Guidelines for Israel's Investigation into Operation Cast Lead*, position paper, February 2009; and Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles*, 30 June 2009.

[19] See e.g. A/HRC/10/22.

documents in one hand. The soldiers then proceeded to fire indiscriminately into the house until everyone was on the floor, injuring the mother and four of the children, one of them fatally.[20]

16. In one of the gravest incidents during the offensive, on 4 January, Israeli soldiers ordered over 100 Palestinians into a single house in the al Zaytoun area of Gaza City, allegedly warning them to stay indoors. Approximately 24 hours later, Israeli forces reportedly shelled the house repeatedly, killing about 23 people. Some of those who survived the attack walked 2 kilometres to a busy road in Gaza City, where they were able to find transportation in civilian vehicles to hospital.[21]

17. On 7 January, Israeli soldiers reportedly ordered an entire family out of their home in eastern Jabalia, a site of frequent Israeli incursions before the latest offensive. The six-member family allegedly walked out of the house carrying four white flags, and were told to stand in front of a tank. After approximately five minutes, a soldier allegedly suddenly opened fire, killing two of the children and injuring two other family members. The family's home was subsequently demolished.[22]

18. With regard to allegations of indiscriminate attacks by Palestinian militants, during the Israeli offensive, 571 rockets and 205 mortars landed in Israel.[23] As noted above, 4 Israeli civilians were killed and 182 injured due to rockets and mortar shells fired from Gaza during the offensive, in which no attempt was made to distinguish between military and non-military objects. In January 2009, as an increasing number of Palestinian rockets hit Ashkelon, Israeli officials reported that up to 40 per cent of the city's 122,000 inhabitants had felt forced to move to other parts of Israel. Sderot and villages in the area were similarly affected.[24] Indiscriminate rocket attacks continue as of the finalization of this report, endangering the right to life of individuals living in southern Israel.[25]

19. OHCHR is not yet in a position to assess, in each and every individual instance, whether there has been a breach of international humanitarian law. However, in the above and other cases, there is significant prima facie evidence of serious violations of international humanitarian

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[20] A/HRC/10/22, annex, para. 16.

[21] A/HRC/10/22, annex, para. 13 and Amnesty International, *Operation "Cast Lead"*, p. 20.

[22] National Lawyers Guild, "Onslaught: Israel's attack on Gaza and the rule of law", March 2009 and Amnesty International, ibid., pp. 25-27.

[23] According to the Israeli Ministry of Foreign Affairs, "Operation Cast Lead: Israel strikes back against Hamas terror in Gaza", 21 January 2009.

[24] Amnesty International, *Document - Israel/OPT: Fuelling conflict: Foreign arms supplies to Israel/Gaza*, February 2009.

[25] See e.g. Israeli Ministry of Foreign Affairs, "Rockets hit home in Sderot, IAF targets terrorist sites in Gaza", 19 May 2009 and The Israel Project, "Rockets and mortars fired from Gaza from Jan-April-09", www.mfa.gov.il/MFA.

law having been committed by the Israeli forces and Palestinian militants. Under international humanitarian law, parties to a conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives. Indiscriminate attacks are prohibited.

Distinction between civilian objects and military objectives

20. The Israeli military targeted and damaged numerous civilian administrative facilities, including buildings of the Palestinian Legislative Council, the Ministry of Foreign Affairs, the Ministry of Justice, prisons and police stations, despite its obligations under international humanitarian law to respect such facilities.[26] In addition, the Israeli military damaged a wide range of civilian constructions, including an estimated 21,000 private homes[27] hospitals, schools (including those operated by the United Nations), universities, factories, businesses and mosques.[28]

21. By way of example, on 5 January 2009, Israeli forces bombed from the air the al-Raeiya medical centre near a large hospital in Gaza City. The centre was clearly marked as a medical facility, and there are no military or even governmental buildings in its vicinity.[29] The Al-Quds medical centre, run by the Palestine Red Crescent Society in Gaza City, caught fire after it was hit, putting at risk the lives of around 100 patients and the medical staff caring for them.[30] According to the World Health Organization (WHO), 15 of Gaza's 27 hospitals suffered damage, among them Al-Wafa rehabilitation hospital, which is Gaza's only rehabilitation hospital.[31]

22. Even facilities marked clearly as being operated by the United Nations were damaged, including schools run by the United Nations Relief and World Agency for Palestine Refugees in the Near East (UNRWA), some of which were serving as emergency shelters, and health centres. On 5 January 2009, the Asma Elementary School run by UNRWA was hit by Israeli shelling,

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[26] Amnesty International, *Operation "Cast Lead"*, p. 60.

[27] OCHA Gaza Flash Appeal, p. 17. Amnesty International estimates that 20,000 homes were damaged and 3,000 destroyed; see *Operation "Cast Lead"*, p. 56. *No Safe Place*, estimates that over 3,000 homes were destroyed and over 11,000 damaged (para. 10).

[28] See, for instance, *No Safe Place*, para. 496, which reports destruction and damage to 45 mosques, 58 hospitals and primary health-care centres, 178 schools, 17 universities, 215 factories, 700 businesses as well as to 80 per cent of Gaza's agricultural land.

[29] Amnesty International, *The conflict in Gaza: A briefing on applicable law, investigations and accountability*, January 2009, p. 14.

[30] International Committee of the Red Cross (ICRC), "Gaza: Wounded at risk as Al-Quds Hospital is hit", 15 January 2009.

[31] WHO situation report, 4 February 2009, www.who.int/hac/crises/international/wbgs/sitreps/gaza_4feb2009/en/index.html.

resulting in the death of three persons.[32] On 6 January, another UNRWA school, the Jabalia Preparatory Boys School and its immediate vicinity, was hit, resulting in the death of an estimated 30-40 persons.[33] On 15 January, the main UNRWA compound in Gaza was hit by Israeli shells, resulting in the destruction of vehicles, foodstuffs and other humanitarian supplies, and approximately 6,500 square metres of warehouse space. Approximately 700 Palestinians fleeing Israeli attacks had been receiving shelter in this compound.[34] The Israeli Defence Minister reportedly stated that Hamas militants had opened fire at Israeli Armed Forces from areas adjacent to the United Nations facilities, and that the shelling was in self-defence.[35] Subsequently, however, he reportedly apologized for the attack, calling it a "grave mistake".[36]

23. On 11 February 2009, the Secretary-General appointed a United Nations Headquarters Board of Inquiry to review and investigate nine incidents that occurred between 27 December 2008 and 18 January 2009 at United Nations premises in Gaza causing death, injury or damage. Of the nine incidents it investigated, the Board of Inquiry found IDF responsible for casualties and damages in seven incidents. In one incident it determined that the most serious damage was caused by a Palestinian rocket most likely fired by Hamas, and in the final incident it said it was unable to reach a conclusion as to which party was responsible.[37]

24. Israel has alleged that civilians and civilian infrastructure were impermissibly used by combatants in Gaza on a wide scale during the conflict,[38] and at least one IDF report contains a photograph of weapons apparently stored in a mosque in Gaza.[39] This conclusion has been challenged by international human rights organizations, whose investigations have concluded

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[32] Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 (A/63/855-S/2009/250), paras. 10-17.

[33] Ibid., paras 18-28.

[34] UNRWA, Refugee Stories: "Attacks against the UN in Gaza must be investigated", January 2009.

[35] Ibid.

[36] Associated Press, 15 January 2009.

[37] See A/63/855-S/2009/250, para. 9.

[38] Israeli Ministry of Foreign Affairs, "Hamas exploitation of civilians", 13 January 2009.

[39] See report issued by the Israeli Intelligence Heritage and Commemoration Center, available through a link on the home page of the Israeli Foreign Ministry Internet website.

that either there was no large-scale abuse of civilians and civilian objects by combatants, or that civilians' deaths could not be explained as resulting from the presence of fighters in civilian areas.[40]

25. Any civilian object becomes a legitimate military objective only if, by its nature, location, purpose or use, it makes an effective contribution to military action, and if its total or partial destruction in the circumstances ruling at the time offers a definite military advantage. Yet, even if an object loses its essentially civilian character, the attacker must still refrain from any attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Moreover, article 53 of the Fourth Geneva Convention prohibits, unless absolutely necessary by military operations, "[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations".

26. Israel asserts that it took measures to warn the civilian population of Gaza of imminent attacks, including through the dropping of leaflets, recorded telephone calls and text messages to mobile phones during the conflict. The accuracy and general effectiveness of these warnings have been called into question.[41] In any event, the use of such warnings does not discharge Israel of the duty to consider the proportionality of any attack on a target which may include civilians.

Alleged use of white phosphorous

27. IDF used white phosphorous, a substance with a highly incendiary effect, in densely populated, built-up areas of Gaza City.[42] The use of munitions containing phosphorous is not, as such, prohibited under international law, in particular for marking and smokescreen purposes. However, the use of white phosphorus in airburst method over densely populated areas is inevitably indiscriminate, insofar as its wide dispersal means that it is impossible to direct it towards only military targets.

B. Reported failure to protect medical personnel and to evacuate the wounded

28. There are reports of failures on the part of the Israeli military to meet its obligation under international humanitarian law to protect medical personnel and to care for and evacuate the

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[40] Amnesty International, *Operation "Cast Lead"*, pp. 4 and 75; Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza*, 25 March 2009, p. 5.

[41] Amnesty International, *Operation "Cast Lead"*, op. cit., pp. 50-51 and B'Tselem, "Guidelines for Israel's Investigation into Operation Cast Lead", pp. 10-11.

[42] See Amnesty International, *Israel/OPT: Fuelling conflict*, p. 11; Human Rights Watch, *Rain of Fire*, pp. 1-2, 31 and 58. A delegation from Amnesty International reported finding white phosphorous still burning in residential areas in several parts of Gaza days after the hostilities stopped on 18 January. See also *No Safe Place*, paras. 478 and 487-489.

wounded.[43] Following Israeli shelling in the al Zaytoun neighbourhood of Gaza City, the Israeli military not only refrained from assisting the wounded, but also hindered ICRC and the Palestine Red Crescent from doing so for several days. The ICRC considered the delay in allowing rescue services access unacceptable.[44] International humanitarian law is clear in that the protection of hospitals and medical teams shall not cease "unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy".[45] ICRC made it clear during the conflict that it must be possible to evacuate wounded at all times.[46]

C. Border closure

29. Apart from limited openings, including to facilitate medical evacuation of seriously injured persons, all borders of Gaza remained closed during the military operation, preventing any persons from fleeing the area. The 1.5 million people of Gaza were therefore trapped in 360 square kilometres, caught in a major military operation with no possibility of fleeing to safety. Had the closure of the border not been maintained, civilian deaths may have been far lower. It is an established principle that civilians need to be able to flee from hostilities, including from indiscriminate attacks that affect civilians. Under the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own, and to return to his country (art. 13, para. 2),[47] and everyone has the right to seek asylum (art. 14, para. 1). During the height of the conflict, the United Nations High Commissioner for Refugees reminded neighbouring States of their obligation to respect the universal right of those fleeing war to seek safety in other States and asked that all borders and access routes be kept open and safe.[48] However, such calls were ignored, and the borders of the Gaza Strip remained closed throughout the conflict.

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[43] ICRC, news release 09/04, "Gaza: ICRC demands urgent access to wounded as Israeli army fails to assist wounded Palestinians", 8 January 2009.

[44] Ibid.

[45] Article 19, Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

[46] ICRC, news release 09/05, "Gaza: life-saving ambulances must be given unrestricted access to the wounded", 8 January 2009.

[47] The freedom to leave any country, including one's own, is also protected in ICCPR, art. 12, para. 2. In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. See Human Rights Committee, general comment No. 27 (1999) (CCPR/C/21/Rev.1/Add.9).

[48] UNHCR briefing notes, "Gaza: the only conflict in the world where people aren't even allowed to flee", 6 January 2009.

IV. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN GAZA

A. Blockade

30. During the reporting period, Israel continued its blockade[49] of the border crossings into Gaza, restricting severely all imports and exports. Insofar as it constitutes collective punishment of all persons in Gaza, including the civilian population, the blockade is itself a violation of international humanitarian law.[50] The military operation and the continued blockade have had severe cumulative effects on the realization of a wide range of economic, social and cultural rights, as well as civil and political rights of the Gaza population.

31. Though most international attention has focused on the restrictions on imports into Gaza, it should be noted that the Government of Israel has also prohibited exports from Gaza. Since June 2007, the Government of Israel had permitted only a total of 13 truckloads of cut flowers to be exported from Gaza. Exports from Gaza have been banned since Hamas took power in Gaza in June 2007,[51] with no justification.

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[49] In the period prior to Operation Cast Lead, imports into Gaza remained constrained to very basic food items and limited amounts of fuel, animal feed, and medical and hygiene supplies. See OCHA, The Humanitarian Monitor, No. 32, December 2008, p. 4. During Operation Cast Lead, a daily three-hour suspension of hostilities was introduced which temporarily eased the situation of the civilian population but which was not sufficient (OCHA, Protection of Civilians Report, 1-8 January 2009 and UNICEF, "During short ceasefire, some life-saving supplies delivered in Gaza", 7 January 2009).

[50] Article 33 of the Fourth Geneva Convention states that "[n]o protected person may be punished for an offence he or she has not personally committed. Collective penalties ... are prohibited". Article 50 of the Regulations of the Convention respecting the Laws and Customs of War on Land (The Hague IV) of 18 October 1907 states that "[n]o general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible". When Israel imposed the blockade on Gaza, it justified the blockade on security grounds, stating that in the absence of security personnel loyal to the PA on the Gaza side of the crossings, it could not permit the opening of the Karni or Rafah crossings (letter from Asaf Barhel, Coordination for Government Activities in the Territories (IDF) to Noam Peleg of the Israeli non-governmental organization (NGO) Gisha in relation to the High Court Proceeding, 15 July 2007; see Gisha, "Gaza Closure Defined: Collective Punishment", (December 2008). However, in September 2007 Israel's Security Cabinet declared Gaza a "hostile territory", and as a result decided that sanctions would be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip; reduce the supply of fuel and electricity; and restrict the movement of people to and from the Gaza Strip. ("Security Cabinet declares Gaza hostile territory", 19 September 2007, available at www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+ Gaza+hostile+territory+19-Sep-2007.htm).

[51] OCHA, Weekly Report on the Protection of Civilians, 18-24 March.

32. The prohibition of exports has devastated the economy in Gaza and has prevented people from working to sustain their livelihoods and to realize their right to an adequate standard of living, as provided for in article 11 of the ICESCR. According to OCHA, 65 per cent of Gazans live below the poverty line, with 37 per cent living in extreme poverty.[52]

33. The nearly total prohibition of exports from Gaza continues to be accompanied by severe import restrictions, which prevent economic recovery and reconstruction in Gaza.[53] Among the many human rights negatively affected by these restrictions are the rights to adequate food, adequate housing, and the highest attainable standard of physical and mental health (articles 11 and 12 of the ICESCR).

34. The supply of food in Gaza continues to be highly volatile, resulting in substantial price increases for basic necessities such as sugar, rice, poultry and cooking oil.[54] This situation is not an inevitable result of armed conflict; there is no shortage of humanitarian aid waiting to be delivered to Gaza. Rather, the situation is a direct result of the severe restrictions on the import of foodstuffs imposed by the Government of Israel, restrictions that have been described by OCHA as "unclear and often inconsistent".[55] On 22 March, the Government of Israel announced that it will lift all restrictions on the entry of foodstuffs, provided that the source of the shipments has been approved by the Government of Israel. As of the writing of this report, it did not appear that this decision had been implemented. It should be stressed that the right to food is not primarily about the ability to receive food aid; rather, it is a requirement that persons be enabled to feed themselves and to sustain an adequate livelihood.

35. The realization of the right to adequate housing is continuously frustrated by the blockade on the Gaza Strip. The import of cement, for example, has been blocked consistently since November 2008, as it is feared by Israeli authorities that it could serve a "dual purpose". However, cement is urgently needed in Gaza for the reconstruction of destroyed homes and buildings. It is also needed urgently for the reconstruction of water pipes that were destroyed during the Israeli offensive.

36. The right of Gazans to the enjoyment of the highest attainable standard of physical and mental health was negatively affected already before and during the Gaza military operation.[56] Subsequent to the hostilities, intra-Palestinian disputes between the ministries of health in Ramallah and Gaza resulted in a temporary halt of the Referral Abroad Department (responsible for processing patients who require medical treatment outside of the Gaza Strip), further hindering the provision of medical aid abroad. This issue has since been resolved through the

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[52] OCHA, Field update on Gaza from the Humanitarian Coordinator, 10-16 March 2009.

[53] OCHA, The Humanitarian Monitor, March 2009.

[54] OCHA, Field Update on Gaza, 17-23 March.

[55] OCHA, Weekly Report on the Protection of Civilians, 18-24 March.

[56] See paragraphs 20 and 21 above.

establishment of a joint national referral committee.[57] The right to health of children, set out in article 24 of CRC, is of particular concern in Gaza. United Nations agencies, Ministry of Health officials and health NGOs report that rising poverty, unemployment and food insecurity, compounded by the conflict, have increased the threat of child malnutrition.[58] In January, UNICEF said that 10.3 per cent of Gazan children under 5 were stunted.

37. During Operation Cast Lead, affected individuals and NGOs filed two petitions with the Supreme Court of Israel.[59] The petitions sought orders for (a) IDF to be restrained from causing delays in evacuating the wounded in Gaza to hospitals (including through halting IDF attacks on ambulances and medical personnel); and (b) the blockage in the supply of electricity due to combat operations to be lifted to allow hospitals, clinics, the water system and the sewage system to function properly. The Court denied both petitions. In doing so it accepted explanations provided by IDF of the sufficiency of mechanisms it had recently established to facilitate transfers of wounded to Israel and efforts to repair electricity infrastructure and the provision of diesel oil. The Court concluded that:

> [i]n view of the establishment and enhancement of the humanitarian mechanisms, which it may be assumed will prove their effectiveness, in view of the statement made to us that a serious effort will be made to improve the evacuation and treatment of the wounded, in view of the setting up of a clinic in the vicinity of the Erez crossing (and to the extent that the Palestinian side will also agree to the transfer of the wounded to Israel for treatment), it is to be hoped that the humanitarian mechanisms will operate properly in accordance with the obligations of the State of Israel. In these circumstances, we see no further reason to grant relief in the form of an order nisi at this time.[60]

B. Extrajudicial executions

38. Reports indicate that the security forces of Hamas have conducted a large number of extrajudicial executions, beatings, torture and ill-treatment against alleged collaborators with Israeli forces, former PA security personnel and Fatah supporters, during and after the Israeli operation in Gaza. Most of the victims were reportedly abducted from their homes and later found dead or injured in isolated areas, or were found dead in the morgue of Gaza's hospitals.[61] At least 32 Palestinians have allegedly been extrajudicially executed by the security forces of

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[57] Joint OCHA and WHO statement, "Concern over halting of Gaza medical patients referrals", 30 March 2009.

[58] WHO Health Action in Crises (HAC) Highlights for the week 20 to 26 April 2009.

[59] *Physicians for Human Rights and others v. Prime Minister of Israel and others*, HCJ 201/09 and *Gisha: Legal Centre for Freedom of Movement and others v. Minister of Defence*, HCJ 248/09.

[60] Ibid., para. 23.

[61] Amnesty International. press release. 12 February 2009.

Hamas and unidentified gunmen after having being accused of collaboration with Israel,[62] 18 of whom were extrajudicially executed during the Israeli offensive.[63] Hamas has reportedly announced that investigations are under way in at least some of the reported killings.[64]

V. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN THE WEST BANK, INCLUDING OCCUPIED EAST JERUSALEM

39. During the reporting period, the human rights situation in the West Bank continued to be critical, primarily as a result of reported violations committed by Israel, but also due to a rise in alleged violations of rights of political opponents, committed in a context of continued political separation between PA and Hamas.

A. Alleged arbitrary detentions, torture, extrajudicial executions and ill-treatment

40. During the reporting period, Israeli forces continued to conduct military operations in the West Bank, with the purpose of detaining persons suspected of involvement in activities against Israeli security as per an Israeli military order.[65] This military order has been criticized for its vagueness at different levels.[66] In the month of March alone, more than 120 operations of this nature took place, resulting in the arrest of more than 300 Palestinians.[67] Individuals are generally detained in Israel including under administrative detention orders. Administrative detention in Israel is conducted on the basis of an administrative order issued by a military commander, as opposed to a judicial decision, and there is no indictment or trial. There are often strict restrictions on access to counsel, and usually neither the detainees nor their counsels are allowed to examine the evidence against them. This being the case, it cannot be said that administrative detainees have a meaningful opportunity to challenge their detention.[68] Israel justifies administrative detention based on article 78 of the Fourth Geneva Convention.

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[62] PCHR, Special Report, Inter-Palestinian Human Rights Violations in the Gaza Strip, February 2009, p. 2.

[63] Human Rights Watch, “Under cover of war; Hamas political violence in Gaza”, April 2009, p. 1.

[64] See e.g. Al Jazeera English, “Hamas accused of killing rivals”, 21 April 2009.

[65] Israeli Military Order No. 1229, of 1988.

[66] See B’Tselem regular updates on administrative detention, at www.btselem.org/english/Administrative_Detention/Israeli_Law.asp.

[67] Information compiled by the OHCHR Office in the OPT.

[68] See B’Tselem, *Human Rights in the Occupied Territories: 2008 Annual Report*.

41. In the OPT, the Israeli military order allowing administrative detention states that persons can be detained for up to six months, with the possibility of indefinite extension (to be decided by the military commander in the region) where there is a "reasonable basis for believing that the security of the region or public safety" so requires.[69] In a letter to an Israeli NGO dated 21 January 2009, the Government of Israel stated that there were 546 Palestinians being detained under administrative detention provisions. Of those 546, 42 had been detained for more than two years.[70] The number of administrative detainees declined steadily throughout 2008, from 813 in January to the aforementioned 546 in December.[71] By 31 March 2009, there were 506 administrative detainees in Israeli prisons, including 2 children, out of a total of 7,884 Palestinians detained in Israel, of which 408 were children.[72]

42. The Israeli practice of administrative detention as described above is in violation of several provisions of article 9 of ICCPR, which prohibits arbitrary detention and states, inter alia, that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest" and that "[a]nyone arrested or detained on a criminal charge shall be … entitled to trial within a reasonable time or to release". Although Israel has notified other States parties of its derogation from article 9 due to the existence of a state of emergency, the Human Rights Committee has expressed concern that the derogation limits the effectiveness of judicial review, thus endangering protection of other, non-derogable provisions of the Covenant.[73] More recently, in May 2009, the Committee against Torture reiterated its concern that administrative detention as practised by the Government of Israel does not conform to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it "deprives detainees of basic safeguards including the right to challenge the evidence which is the basis for the detention, warrants are not required, and the detainee may be de facto in incommunicado detention for an extended period, subject to renewal".[74] The Human Rights Committee, in its

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[69] Ibid.

[70] http://www.btselem.org/English/Press_Releases/20090205.asp.

[71] IDF Spokesperson's Office's letter to B'Tselem, 21 January 2009 and B'Tselem, published at www.btselem.org/English/Administrative_Detention/Statistics.asp.

[72] B'Tselem, http://www.btselem.org/english/statistics/Detainees_and_Prisoners.asp and http://www.btselem.org/english/statistics/Minors_in_Custody.asp. This figure does not include those held in IDF facilities.

[73] Concluding observations of the Human Rights Committee on the second periodic report of Israel (CCPR/CO/78/ISR), para. 12. In its third periodic report to the Human Rights Committee, submitted in July 2008, the Government of Israel said that a state of emergency may be declared by the Knesset (the Israeli parliament) for a period of one year, a state which has been renewed annually since 1997 (CCPR/C/ISR/3, para. 157), and that the Government and the Knesset are working jointly to complete the needed legislative procedures required to end the state of emergency (ibid., para. 159).

[74] Concluding observations of the Committee against Torture on the fourth periodic report of Israel (CAT/C/ISR/CO/4), para. 17.

general comment No. 5 (1981) on derogations, has stated that measures taken under article 4 should be of an "exceptional and temporary nature and may last only as long as the life of the nation concerned is threatened".[75]

43. Furthermore, international humanitarian law, in particular the Fourth Geneva Convention, applies in the West Bank. Article 76 of the Convention states clearly that civilians "accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein". Article 5 of the Convention also states that persons accused of offences, even those "engaged in activities hostile to the security of the State … shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention".[76]

44. Cases of alleged torture of Palestinian detainees in Israeli prisons continue to be reported by human rights NGOs. These reports indicate that various methods of torture are used, including preventing access to toilet facilities, physical violence, binding in painful positions, and humiliation and threats. In addition, a large number of detainees are not able to receive visits from family members living in the West Bank and Gaza, who are refused entry into Israel.[77]

45. The PA security forces in the West Bank also reportedly continued to carry out arbitrary detention of persons accused of being supporters of Hamas or of collaborating with Israel.[78] Several senior political figures allegedly affiliated with Hamas were arrested in early March. According to the Palestinian Independent Commission for Human Rights (ICHR), such incidents are increasing. Numerous cases have been documented of detainees tortured while in PA custody, sometimes resulting in death. ICHR reports that from December 2008 through February 2009, 60 complaints were received from Palestinians claiming that they were subjected to torture in PA detention, and that in February alone, four deaths in PA custody, apparently due to torture, were documented.[79] It is further worrisome that courts in Hebron and Gaza issued seven death sentences (five in the Gaza Strip and two in the West Bank) during the reporting period.[80]

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[75] Para. 3. See HRI/GEN/1/Rev.9 (vol. I), chap. II.

[76] See Israeli Military Order No. 1229/1988.

[77] CAT/C/ISR/CO/4, para. 19, The Association for Civil Rights in Israel, "The State of Human Rights in Israel and the Occupied Territories: 2008 Report" and The United Against Torture Coalition, *Torture and Ill-Treatment In Israel and the occupied Palestinian territory: An Analysis of Israel's compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Annual Report 2008.*

[78] See, for instance, CAT/C/ISR/CO/4 at para. 34.

[79] ICHR, December 2008 Monthly Report, January 2009 Monthly Report.

[80] ICHR monthly reports covering the period December 2008 - March 2009.

B. Freedom of expression, assembly and association in the OPT

46. During the military offensive in Gaza, mass demonstrations took place in nearly every district of the West Bank, resulting in a large number of clashes with Israeli forces. On several occasions during the reporting period Israeli soldiers used rubber-coated metal bullets, sound bombs and tear gas canisters, resulting in the death of a total of five Palestinian demonstrators (three in December 2008 and two in January 2009) as well as the injury of numerous others. In another incident in March 2009, one demonstrator was reportedly critically injured after having sustained a head injury by one such bullet.[81]

47. On 20 March 2009, Israeli law enforcement authorities reportedly prevented peaceful events marking the designation by the League of Arab States of East Jerusalem as the Capital of Arab Culture 2009. Israeli police officers dispersed crowds and confiscated flags, and arrested at least 10 persons.[82]

48. Journalists in both the West Bank and the Gaza Strip perceived as being partial to the opposing party were reportedly subjected to various degrees of harassment, including arbitrary detention, according to a report released in January.[83] Several newspapers were allegedly prevented by PA from being printed and/or distributed in the West Bank, including two Gaza-based publications that had been banned by PA in 2007 on the grounds that they favoured Hamas.[84] In Gaza, there were several incidents in 2008 of Hamas authorities preventing several West Bank newspapers from being brought into the area.[85]

49. During December 2008 and January 2009, nine peaceful demonstrations organized in various parts of the West Bank were halted by PA (in the West Bank cities of Berzeit, Hebron and Ramallah). For example, on 28 December 2008, PA security forces reportedly used excessive force to prevent a demonstration that took place in the city of Hebron, resulting in the injury of several Palestinian demonstrators. On the same day, PA forces arrested 10 Palestinian protestors during a peaceful demonstration organized in Ramallah.[86]

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[81] OCHA, Protection of Civilians Weekly Report 18-24 March 2009.

[82] OCHA, Protection of Civilians Weekly Report 18-24 March 2009.

[83] Committee to Protect Journalists, “West Bank, TV correspondents, cameraman detained”, 27 January 2009.

[84] Committee to Protect Journalists, Attacks on the Press 2008.

[85] ICHR, Annual Report 2008.

[86] ICHR December 2008 Monthly Report.

C. Forced evictions and home demolitions

50. Forced evictions and building demolitions continued in the West Bank, including East Jerusalem and Area C.[87] From January through the end of April 2009, a total of 72 structures were either demolished or sealed off and rendered unusable; 296 persons were consequently displaced and another 192 were affected in other ways, including through the loss of their main means of livelihood.[88]

51. East Jerusalem in particular is faced with a wave of new demolition orders. Since 1967, Israel has failed to provide Palestinian residents of East Jerusalem with adequate planning to meet natural population growth. While Palestinians face significant obstacles to legally build on the 13 per cent of East Jerusalem designated for Palestinian construction, Israeli settlements have flourished on the 35 per cent of land expropriated for them, in contravention of international law. This situation has resulted in a housing crisis for the Palestinian population characterized by a shortage in housing, widespread "illegal" construction in East Jerusalem and ensuing demolition by Israel of "illegal" Palestinian construction.[89]

52. Due to limitations of time and space this report will highlight only one of many urgent demolition threats, namely in the Silwan area of East Jerusalem, where the Jerusalem municipality has stated it wants to press forward with a plan to demolish some 90 Palestinian homes, reportedly to make way for an archaeological park. As a result, well over 1,000 persons would be forcibly displaced.[90]

53. The justification given by the Israeli authorities for home demolitions, particularly in East Jerusalem, is that the Palestinian residents had erected structures without building permits. Though neutral at first glance, there is ample evidence that the policy has a disproportionate effect on the Palestinian population, both in its formulation and its implementation. In its review of Israel's report in 2007, the Committee on the Elimination of Racial Discrimination expressed concern regarding the "disproportionate targeting of Palestinians in house demolitions" and "[reiterated] its call for a halt to the demolition of Arab properties, particularly in East Jerusalem,

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[87] Israel controls both security matters and civil affairs, including planning and construction, in Area C, which comprises almost 61 per cent of the West Bank. Given the interrelationship between Areas A and B, both of which are fragmented and surrounded by Area C, and Area C, the Israeli control of the latter affects not only the Palestinians whose homes are within it; it also affects the development prospects of every community in the West Bank and the interaction between these communities.

[88] According to OCHA internal data, updated as of May 2009. Additional information available in OCHA Special Focus Report: The Planning Crisis in East Jerusalem, April 2009, at www.ochaopt.org.

[89] OCHA Special Focus Report: The Planning Crisis in East Jerusalem, and OHCHR-OPT press release of 1 May 2009 issued in occasion of the publication of the OCHA report.

[90] Ibid.

and for respect for property rights irrespective of the ethnic or national origin of the owner".[91] It should also be noted that the Committee on Economic, Social, and Cultural Rights has stated that "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law".[92] The Commission on Human Rights also adopted a resolution in 1993 in which it stated that "the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing".[93]

54. There are numerous other cases of threatened evictions or demolitions and OHCHR will be returning to this important issue in future reporting.

D. Settlements and settler violence

55. The question of forced evictions and home demolitions cannot be examined without due regard to the question of ongoing settlement activity.

56. On 27 January 2009, an Israeli NGO, Peace Now, released a report which confirmed that the number of new structures in the West Bank settlements and outposts had increased by 69 per cent in 2008, compared to 2007.[94] According to OCHA, at the end of 2008, approximately around 485,000 settlers were residing in 121 settlements in the West Bank, including 195,000 in 12 settlements in East Jerusalem.[95]

57. Settlement activity in the West Bank amounts to violations of numerous humanitarian law provisions. Article 55 of the Hague Regulations states that the "occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates". Furthermore, article 49 of the Fourth Geneva Convention stipulates specifically that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". Israel's continued settlement activity is in flagrant violation of this provision.

58. Besides the fact that settlements are in and of themselves a violation of Israel's obligations under international humanitarian law, violent acts by settlers against the Palestinian population of the OPT continue, usually with impunity. These acts increased in 2008, with OCHA noting that, since 2006, a "significant majority" of such violent acts have been carried out by groups of

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[91] CERD/C/ISR/CO/13, para. 35.

[92] General comment No. 4 (1991) on the right to adequate housing, para. 18. See HRI/GEN/1/Rev.9 (vol. I).

[93] Resolution 1993/77 on forced evictions.

[94] Peace Now, "Summary of construction in the West Bank", January 2009.

[95] OCHA, "West Bank movement and access update", May 2009, p. 13.

settlers, as opposed to individuals, as had generally been the case before 2006.[96] An Israeli human rights organization has documented 429 cases of settler violence against Palestinians and their property in 2008, a 75 per cent increase over 2007.[97] Israeli settlers living in many areas have a special dispensation regarding the owning and carrying of firearms.

59. There have been incidents of violence where large groups of settlers, sometimes more than 100, have attacked Palestinian individuals in the West Bank. In some widely reported instances,[98] the attacks were extensive and prolonged, lasting hours. Despite this trend, Israel's security forces in most cases fail to prevent such attacks and in most cases, settlers do not face prosecution or even investigation.

60. There are instances where settlers are prosecuted for having committed violent acts towards Palestinians. In December 2008, a resident of the Yitav settlement in the north-east West Bank was sentenced to 16 months of imprisonment after having shot and paralysed for life an unarmed Palestinian civilian for no apparent reason.[99] While OHCHR is not aware of any comprehensive statistics on settler violence-related prosecutions, such prosecutions appear, to be exceptions to the prevailing impunity.

61. In addition to the fact that settler violence generally takes place with impunity, OHCHR is concerned that there are instances where IDF acquiesce or even cooperate with settlers in committing violent acts against Palestinians.

E. Case study: attacks on Safa village

62. Recent events in the village of Safa, near Hebron, are indicative of violations in the OPT related to settler violence and the involvement of IDF in settler violence.

63. The village of Safa, 12 kilometres north of Hebron, is bordered by the Israeli settlement of Bat Ayin in the north and the settlement of Gush Etzion in the north-east. On 2 April 2009, 13-year-old Shlomo Nativ was killed and Yair Gamliel, aged 7, was injured, allegedly by a resident of Safa, in the centre of Bat Ayin settlement.

64. According to information gathered by OHCHR in Safa village, shortly following the incident in Bat Ayin, Israeli forces entered the village. Troops temporarily occupied three homes, declaring them military outposts, and bulldozers blocked off entrances to the village, isolating it

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[96] OCHA, "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[97] According to HRW, Israel/Occupied Palestinian Territories (OPT), http://www.hrw.org/en/node/79235.

[98] See e.g. OCHA, "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[99] B'Tselem, "Settler gets 16 months in jail for shooting and paralysing Palestinian", 22 December 2008.

from farmlands and neighbouring villages. A complete curfew was imposed on the residents of the village for 24 hours as Israeli troops raided homes, searching for the perpetrator of the murder. On 2 April, IDF arrested three men from Safa.

65. On Saturday, 3 April 2009, at about 10 p.m., dozens of IDF troops entered the village from different directions, some in military vehicles. Troops then used megaphones ordering all men in the village to exit their homes and come out to the street. The Abu Dayyeh family, with 13 members in Safa, left their home as ordered. All family members were out on the street except Mohammad and his sister Jamila, who are both mentally disabled. The soldiers instructed the family members to sit down on the street in front of the house. Hatem (34 years of age) and Mahmoud (23), were taken aside by soldiers and their identity papers were checked. They were handcuffed, blindfolded, and forced to stand face to the wall. The troops then proceeded to beat Hatem on the face with their hands and on various parts of his body with the butts of their rifles. Mahmoud started to cry out while his eldest brother was beaten; then one soldier kicked Mahmoud several times and hit his head against the wall of the house. Mohammad, who exited the house at this point, was immediately beaten by several soldiers for several minutes, and then literally dragged to the spot where his other two brothers were detained (approximately 6 metres away from the rest of the family).

66. After questioning Hatem and Mahmoud for some minutes, the soldiers entered the family house and searched it, throwing family possessions to the ground and damaging furniture in the process. They then left the village at approximately 12.15 a.m., taking Mohammad and Mahmoud. Family members were reportedly able to confirm later that day that Mahmoud had been detained in an interrogation centre in Jerusalem while Mohammad was taken to Shikma prison in Israel. Mohammad was released on 7 April, with scars from apparent beatings while in detention. Mahmoud was released from detention on bail on 27 April.

67. On 6 April, IDF arrested two more people from Safa village, increasing the number of Palestinians who were arrested from Safa to seven in total. On the same day, dozens of Israeli settlers tried to attack the village from the northern side, at approximately 10.30 p.m.; however, hundreds of Palestinians from Safa as well as from the nearby town of Beit Ummar congregated to prevent them from entering the village, and after a brief standoff, the settlers were forced by IDF to return to the settlement.

68. On 8 April, settlers from both settlements, escorted by IDF troops, gathered to the north and east of Safa. Many of the settlers were armed, and they opened fire at Palestinian civilians who gathered to protect themselves and their property. The settlers and IDF used firearms, sound bombs and tear gas canisters against Palestinian civilians, who in response threw stones. IDF brought reinforcements to the area and declared it a closed military zone. These attacks continued for 90 minutes, and peaked when IDF broke into the village and raided houses. As a result of these attacks, nine Palestinian civilians were wounded by gunshots, six by shots fired by IDF soldiers and three who were shot by settlers. Additionally, 26 civilians suffered from tear gas inhalation.

69. These events raise a number of human rights concerns. As occupying Power, Israel has the obligation to ensure order in the OPT; specifically to ensure that Palestinians are not targeted by

Israeli settlers (or vice versa). Far from carrying out this duty, it appears that, in this instance, IDF were directly involved in settler violence, by escorting settlers to Safa and openly assisting them in attacking the village.

70. In addition, IDF subjected persons to ill-treatment during their search of the village. All IDF operations in the West Bank must be in strict compliance with international human rights standards. In particular, force should be used only as a last resort, and only to the minimum extent necessary. It appears that these standards were not followed. It is also, as noted above, a violation of international humanitarian law that persons detained in the course of such operations are detained in Israel, and not in the West Bank.

F. The Wall and restrictions on the freedom of movement

71. The Wall enclosing, and in many areas encroaching into, the West Bank, remained throughout the reporting period. As of August 2008, the last date for which comprehensive data are available, approximately 57 per cent of the Wall's planned route of 723 kilometres had been completed. Approximately 86 per cent of the route of the Wall is actually in the West Bank, and not along the Green Line (the armistice line between Israel and the Jordanian-controlled West Bank), and will effectively annex large parts of the West Bank to Israel. Almost 12 per cent of the land of the West Bank (including East Jerusalem) will remain either west of the Wall or in enclaves created by the route. Approximately 35,000 Palestinians holding West Bank identity documents in 35 communities will be located between the Green Line and the Wall; 125,000 Palestinians will be surrounded by the Wall on three sides and 26,000 on four sides. Over 80 per cent of the Israeli settlers in the West Bank will be connected to Israel, whereas Palestinians will be separated from land, livelihoods and services, with access dependent on an extremely restrictive permit regime.[100]

72. As noted above, the Wall has been found by the International Court of Justice to be in contravention of Israel's obligations under international law, insofar as it departs from the Green Line. In its advisory opinion, the Court stated that the construction of the Wall in the OPT should cease and the portions already built in occupied territory dismantled. It is of grave concern that as of the present time Israel has chosen not to comply with this advisory opinion. However, it should be stressed that the Wall is but one element of the extreme restrictions on the movement of Palestinians within the West Bank, including permanent checkpoints where Palestinians are usually subjected to checks that cause prolonged delays. As of March 2009, OCHA observed 634 closure obstacles blocking Palestinian movement within the West Bank, including 93 staffed checkpoints.[101] In addition, the Army operates 39 permanent checkpoints that control travel

[100] OCHA, "The humanitarian impact of the barrier", August 2008.

[101] OCHA, "West Bank movement and access update", May 2009.

between the West Bank and Israeli territory. Israel maintains that checkpoints are vital for security. However, most of these checkpoints are located well inside the West Bank, up to several kilometres from the Green Line.[102]

73. The Wall itself has, as of March 2009, 66 gates. Only half of them are open to Palestinian use, and then only for holders of a special permit from the Israeli forces. The gates available for Palestinian use are open only part of the day. In addition to staffed checkpoints, the army has erected hundreds of physical obstructions (dirt piles, concrete blocks, boulders, trenches, fences and iron gates) to block access to main roads and channel Palestinian traffic to staffed checkpoints. In recent years, the number of these obstructions has gradually risen.[103]

74. Travel on hundreds of kilometres of roads in the West Bank is restricted or prohibited outright for Palestinians, whereas Israelis are allowed to travel on them freely. As of March 2009, travel of all Palestinians (apart from East Jerusalem residents, who carry special identity papers and are entitled to purchase cars with Israeli-issued number plates) is restricted or prohibited outright on 430 kilometres of roads in the West Bank, while Israelis are allowed to travel these sections freely. On 137 of the 430 kilometres, the Army prohibits Palestinian travel completely; on the remainder of the forbidden roads, only Palestinians with permits are allowed to travel.[104]

75. In addition, about one third of the West Bank, including occupied East Jerusalem, is completely prohibited to Palestinians without a special permit issued by the Israeli military. Even with a special permit, entering these restricted areas with a Palestinian car (i.e. a car with a Palestinian-issued number plate) is prohibited under all circumstances. On the occasion of Jewish holidays from 9 through 11 March 2009, the Government of Israel imposed a three-day closure on the West Bank, prohibiting Palestinians from entering Israel and occupied East Jerusalem. A similar ban was enforced from 6 through 18 April, again for Jewish holidays.

76. It is difficult to adequately express the wide scope of human rights violations that these extreme restrictions impose on the Palestinian population. These severe restrictions themselves amount not only to a violation of the right to freedom of movement,[105] but also result in situations where Palestinians are effectively prevented from exercising other rights, including the right to work (art. 6 of ICESCR), the right to an adequate standard of living (art. 11), the right to health (art. 12), and the right to education (article 13). Though comprehensive data do not exist, thousands of people are effectively prevented on a daily basis from accessing workplaces, schools and health-care facilities, from purchasing necessary goods and from visiting family

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[102] B'tselem, "Restrictions on movement", www.btselem.org/english/Freedom_of_Movement/Statistics.asp.

[103] Ibid.

[104] B'Tselem, 2008 Annual Report, p. 13

[105] Article 12 of ICCPR states that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right of liberty of movement".

members and friends. As noted above, the International Court of Justice has found that both ICCPR and ICESCR remain applicable in the West Bank, and the entire regime restricting the freedom of movement of the Palestinian population is in violation of Israel's international obligations under these treaties.

VI. CONCLUSIONS AND RECOMMENDATIONS: THE NEED FOR ACCOUNTABILITY

77. **During the reporting period, the already critical human rights situation in the OPT deteriorated further. The recommendations made by the United Nations Secretary-General and the High Commissioner for Human Rights in recent reports on the human rights situation[106] have not been implemented. All recommendations made previously by the Secretary-General and the High Commissioner, addressed to all duty bearers, remain valid and urgently need to be implemented by the parties. In particular, the High Commissioner remains gravely concerned that Israel has not yet complied with the Advisory Opinion on the Wall of the International Court of Justice, and that the severe restrictions on movement of Palestinian persons in the West Bank continue.**

78. **As reported above, significant prima facie evidence indicates that serious violations of international humanitarian law as well as gross human rights violations occurred during the military operations of 27 December 2008 to 18 January 2009, which were compounded by the blockade that the population of Gaza endured in the months prior to Operation Cast Lead and which continues.**

79. **Across the OPT, reported human rights violations during the reporting period include arbitrary detentions; torture and ill-treatment; extrajudicial executions; forced evictions and home demolitions; settlement expansion and related violence; as well as restrictions on freedom of movement and freedom of expression. While these violations are of deep concern in their own right, the nearly total impunity that persists for such violations (regardless of the responsible duty bearer) is of grave concern, and constitutes a root cause for their persistence.**

80. **In this context, the High Commissioner makes the following recommendations:**

- **The blockade of Gaza and the restrictions on the entry and exit of people and goods in the West Bank, as well as inside the West Bank, amount to collective punishment under article 33 of the Fourth Geneva Convention. The High Commissioner reiterates her call for the immediate easing of restrictions with a view to the complete lifting of the blockade and other restrictions.**

- **All allegations of violations of international humanitarian law and human rights violations during the Gaza military operations must be investigated by credible, independent and transparent accountability mechanisms, taking fully into account international standards on due process of law. Equally crucial is upholding the**

[106] Including A/63/518, A/63/519, A/HRC/7/76, A/HRC/8/17 and A/HRC/8/18.

right of victims to reparation. All parties concerned, as well as States and the international community as a whole, should render full support and cooperation to all such accountability efforts. The High Commissioner stresses in particular the need for full cooperation with and support to the ongoing work of the independent fact-finding mission mandated by the Human Rights Council and headed by Justice Richard Goldstone.

- **In the wider OPT context, addressing the persisting impunity for human rights and international humanitarian law violations committed by all parties is vital for preventing a further deterioration of the human rights situation. In particular, reported instances of arbitrary detentions, torture and ill-treatment and extrajudicial executions should be investigated. A key obstacle in this regard is the widespread recourse to military justice systems, which do not meet international standards of due process, by all parties. This should be curtailed.**

- **The Government of Israel must stop its expansion of settlements, which are illegal. It should also issue viable zoning plans and a less cumbersome process for issuing building permits in a non-discriminatory manner for all, in East Jerusalem and other places in the West Bank. Until such time, the High Commissioner calls for an immediate halt to evictions and demolitions of Palestinian homes. The Government of Israel also needs to address, as a matter of urgency, the persisting impunity for settler violence, while providing effective protection for all, in particular the vulnerable groups most affected by such acts.**

- **In its efforts to promote a much-needed political solution to the over-40-year-old conflict, the international community should ensure that such a long-awaited outcome is anchored in international law, in particular international human rights and humanitarian law, including the advisory opinion of the International Court of Justice. There can be no lasting peace without respect for human rights and without accountability for human rights violations.**

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Human Rights situation in Palestine and other occupied Arab territories

The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza strip

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1*

* Late submission.

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I. Introduction

1. This is the second periodic report submitted pursuant to Human Rights Council resolution S-9/1, in which the Council requested the High Commissioner to monitor, document and report on the violations of human rights of the Palestinian people. The report covers the period from 1 May 2009 to 3 February 2010.

2. The present report also contains information regarding the implementation of the recommendations of the first periodic report of the High Commissioner (A/HRC/12/37) and the situation in East Jerusalem, as requested by the Human Rights Council in resolution S-12/1.

II. Follow-up to the first periodic report

3. During the reporting period the human rights situation in the Occupied Palestinian Territory (OPT) remained of serious concern. Recommendations made previously by the Secretary-General and the High Commissioner remain valid and need to be implemented as a matter of urgency.

4. Peace negotiations and intra-Palestinian reconciliation remained at a standstill. The occupation continued to be the main cause of widespread violations of Palestinians' civil, political, economic, social and cultural rights. While arbitrary detention, torture and other ill-treatment were perpetrated by all parties, Israeli settlements continued to expand in the West Bank, including in East Jerusalem, as did home demolitions and forced evictions of Palestinians by Israeli authorities.[1]

5. Demonstrations against the wall continued, especially in the villages of Ni'lin and Bil'in. According to Yesh Din, an Israeli non-governmental organization, over the past six months, 31 residents of Bil'in have been arrested by Israeli authorities, including 10 children. It is reported that 12 remain in custody.[2] Demonstrators are frequently responded to with excessive force by Israeli security forces (ISF).[3] This includes the use of rubber-coated steel bullets and live ammunitions. During the reporting period, the Office of the High Commissioner for Human Rights in the OPT (OHCHR-OPT) recorded the death of one demonstrator due to excessive force by ISF.[4]

6. The fragmentation of the West Bank continued, as did the severing of the West Bank hinterland from East Jerusalem through a system of checkpoints and permits. Severe restrictions on the freedom of movement in the West Bank — as well as in Gaza through the blockade — persisted throughout the reporting period. While there were no further

[1] A/HRC/12/37, paras. 38, 42–45 and 50–56. A report recently published by the Public Committee against Torture in Israel notes that impunity for torture continues. See "Accountability denied: the absence of investigation and punishment of torture in Israel" (December 2009). Available from www.stoptorture.org.il/files/Accountability_Denied_Eng.pdf.

[2] Information obtained by the OHCHR-OPT directly from Yesh Din during a 15 December 2009 meeting in Tel Aviv.

[3] The term Israeli security forces (ISF) is used in the present report when it is unclear which agency or body (police, security or military) is involved.

[4] On 5 June 2009, Yousef Akil Srour, a Palestinian, was shot in the chest with 0.22 calibre live ammunition and pronounced dead upon arrival at the hospital. On the same day, four other demonstrators were injured by 0.22 calibre live ammunition. See B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), www.btselem.org/English/Firearms/20090618_Firing_live_ammunition_on_demonstrators.asp.

substantial efforts to construct the wall, its associated regime of checkpoints, bypass roads and related permits resulted in violations to a broad range of Palestinians' rights, in particular the rights to education, family, health, non-discrimination and work.[5]

7. An encouraging development, with respect to existing restrictions on the freedom of movement of Palestinians, relates to a recent judgement of the Israeli High Court of Justice regarding Route 443. This is one of the main thoroughfares that connect Jerusalem and Tel Aviv. Private Palestinian land was expropriated for the purpose of constructing Route 443. Yet in 1982 the High Court of Justice ruled that its construction was lawful since it would benefit the Palestinian population.[6] Subsequently, in 2002, Palestinians were banned from using the road.[7] On 29 December 2009 the Court ruled that this prohibition was "inconsistent with the rules of international law regarding a belligerent occupation".[8] The full implementation of this ruling would constitute a positive development in terms of respect for the right of Palestinians to freedom of movement.

8. The blockade of Gaza has become more severe since the conclusion of Operation Cast Lead. The population of Gaza has not received adequate assistance or support to recover from the impact of this operation. While the rights to health and water are given special attention below, the full range of human rights of the Gaza population continues to be violated on a regular basis, in particular as a consequence of the blockade.

9. Impunity for human rights violations remains a critical concern in the OPT. There is an urgent need to improve accountability for violations, with a view towards preventing future violations and ensuring justice for victims.

III. The human rights situation in Gaza

A. Rule of law and accountability

10. Under international human rights law victims have the right to an effective remedy following substantive violations of their rights.[9] The right to an effective remedy requires that the State carry out investigations promptly, thoroughly and impartially.[10] It also requires that reparation be made to individuals whose rights (under the International Covenant on Civil and Political Rights) have been violated. The rights of victims to an effective remedy require urgent attention, since time is of the essence in meeting such obligations.

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[5] See, for example, B'Tselem, *A Wall in Jerusalem: Obstacles to Human Rights in the Holy City* (Jerusalem, 2006), which refers to the effects of the wall. Available from www.btselem.org/download/200607_A_Wall_in_Jerusalem.pdf.

[6] See *Jami'at Ascan el-Malmun el-Mahdudeh el-Masauliyeh, Communal Society Registered at the Judea and Samaria Area Headquarters v. The Commander of IDF Forces in the Judea and Samaria Area*, HCJ 393/82.

[7] See, for example, Association for Civil Rights in Israel, "Ban on Palestinian movement on Route 443: background information" (June 2009).

[8] *Abu Safiya v. Minister of Defence*, HCJ 2150/07 (official English synopsis).

[9] Article 2, paragraph 3, of the International Covenant on Civil and Political Rights; see also Human Rights Committee general comment No. 31 (2004) (CCPR/C/21/Rev.1/Add.13).

[10] See General Assembly resolution 60/147, annex, para. 3. The text was a statement of existing law (see preamble, p. 3). See also Human Rights Committee, general comment No. 20 (1992), para. 14 and Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the Economic and Social Council in its resolution 1989/65 (1989), para. 9.

Investigations carried out by Israel in connection with Operation Cast Lead

11. Information received by the High Commissioner as well as information that can be found in the public domain[11] indicate that approximately 150 incidents have been the subject of investigation by the Israeli armed forces.[12] A total of 36 incidents are or have been the subject of criminal investigations by the Military Police Criminal Investigations Division (MPCID);[13] the rest have been the subject of command investigations. The report published by the Government of Israel in January 2010 indicates that all investigations begin with the Military Advocate General (MAG), and may be referred either for a command investigation or a criminal investigation. The latter are carried out by the MPCID, trained in the exercise of criminal investigation, while the former are carried out by military officers with operational, rather than criminal, investigation expertise.

12. A total of 68 command investigations[14] have concluded with the MAG determining that no criminal investigation is warranted. Seven criminal investigations have concluded that no prosecution is warranted. A total of 45 command investigations and 28 criminal investigations are ongoing. One case has resulted in the conviction of a soldier, in relation to the theft of a credit card. Investigations in relation to half of the above-mentioned 150 incidents therefore appear to have been concluded. No information has been provided indicating that any of the decisions not to proceed with investigations have been the subject of a request for judicial review or review by the Attorney General.

13. Effective investigations must be independent, thorough and prompt.[15] All of the command investigations, special and ordinary, appear to rely predominantly, if not exclusively, on information provided by those potentially implicated in the violations. They do not appear to meet the standards required for practical independence.[16]

14. Ordinary command investigations appear to fall short of the required standard of hierarchical independence[17] and carry with them a risk of a conflict of interest that cannot

[11] There are five documents: (a) Israeli Defense Forces, "Conclusion of investigations into central claims and issues in Operation Cast Lead" (April 2009); (b) Israel (Ministry of Foreign Affairs), "Initial Response to the Fact-Finding Mission on Gaza pursuant to resolution S-9/1 of the Human Rights Council" (September 2009); (d) Letter from the Permanent Mission of Israel to the United Nations Office and Specialized Institutions in Geneva to the High Commissioner for Human Rights (November 2009); and (e) Israel, "Gaza operation investigations: an update" (January 2010).

[12] The reports from the Government suggest that an investigation is taking place in respect of each incident. Therefore 150 investigations correlate to 150 incidents. There may be investigations that cover multiple incidents, but certainty is not possible on the basis of available information.

[13] Seven of these were referred by the Military Advocate General at the conclusion of command investigations, according to information provided by the Government of Israel.

[14] See Israel, "Gaza operation investigations: an update" (2010), pp. 16–19.

[15] See footnotes 12 and 13 above. See also, on procedural and institutional considerations, concluding observations of the Human Rights Committee: Lithuania (CCPR/CO/80/LTU), para. 10, and Committee against Torture communication No. 56/1996 (CAT/C/20/D/59/1996).

[16] See *Finucane v. the United Kingdom* (2003) 22 EHRR 29, para. 68: "For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, judgement of 27 July 1998, *Reports* 1998-IV, §§ 81–82; *Ogur v. Turkey*, [GC] No. 21954/93, ECHR 1999-III, §§ 91–92). This means not only a lack of hierarchical or institutional connection but also practical independence (see, for example, *Ergi v. Turkey*, judgement of 28 July 1998, *Reports* 1998-IV, §§ 83–84, and the recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, No. 28883/95, § 128, *Hugh Jordan v. the United Kingdom*, No. 24746/94, § 120, and *Kelly and Others v. the United Kingdom*, No. 30054/96, § 114, ECHR 2001-III)."

[17] See for example *Finucane v. the United Kingdom* and *McKerr v. the United Kingdom*.

be overcome by the fact that the final decision lies with the MAG. More information is required to ascertain the degree of institutional independence of special command investigations.

15. The Government of Israel points out that the review by the MAG is central to the system, not the command investigation.[18] However, the MAG relies on the information provided by the command investigation.[19] If there is reason to doubt the impartiality or independence of the evidence gathering process, this cannot be overcome by a subsequent reviewer, even if that reviewer can be considered independent.[20]

16. United Nations treaty bodies consistently reiterate that investigations must be thorough and effective.[21] There are at least three significant examples which on their own indicate a lack of thoroughness in the command investigations in relation to extremely serious allegations.[22] The absence of substantive information on other investigations makes evaluation of their thoroughness difficult at this point.

17. As regards criminal investigations, the Government of Israel indicates that 36 criminal investigations, out of a total of 150 investigations, have been opened. Nineteen concern the alleged shooting towards civilians, while the remainder deal with allegations of the use of human shields, mistreatment of detainees or civilians, pillage or theft.[23]

18. The degree to which MPCID and prosecutors to whom it presents its findings can be viewed as institutionally independent from those carrying out military operations cannot be assessed without more detailed information.

19. The High Commissioner is aware of reports and criticisms contending that the investigations of MPCID have consistently failed to lead to adequate prosecutions for offences allegedly committed by ISF, and that they have fostered a culture of impunity. In particular, B'Tselem and Yesh Din have catalogued criticisms related to investigative techniques and charging practices.[24]

20. To be effective a remedy must also be provided promptly. While the standard for promptness will vary from case to case, the High Commissioner notes the frequent reference of treaty bodies to the need for prompt investigations, especially in cases of alleged unlawful killings.[25] In this regard she is concerned that it appears that the

[18] Israel, "Gaza operation investigations", para. 60.

[19] The Government states that command investigations "serve as a means of compiling an evidentiary record for the Military Advocate General, enabling him, from his central vantage point, to determine whether there is a factual basis to open a criminal investigation". It is not clear how that point allows the MAG to consider the facts other than those presented by the command investigation.

[20] See *Finucane v. the United Kingdom*, paras. 68 and 69, and *McKerr v. the United Kingdom*, para. 128. Cited in footnote 19 above.

[21] See General Assembly resolution 60/417, Human Rights Committee general comments Nos. 6, 7, 20 and 31, and Committee on Economic, Social and Cultural Rights general comment No. 16. See also *Finucane v. the United Kingdom*, para. 69.

[22] These include the alleged aerial missile attack on the Al-Maqadma Mosque, the incident alleged to have occurred at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) compound, and the strike against the El-Bader flour mill.

[23] Israel, "Gaza operation investigations", paras. 134 and 135.

[24] See A/HRC/12/48, paras. 1828–1831. See also Yesh Din, "Investigation of criminal offences by IDF soldiers against Palestinians and their property – Figures for 2000–2007". Available from www.yesh-din.org/site/images/ds1eng.pdf and B'Tselem, "Military investigations of harm to civilians in Operation Cast Lead are insufficient". Available from www.btselem.org/English/Gaza_Strip/20091111_IMP_Investigations_of_Cast_Lead_Operation.asp. See also Human Rights Watch, "Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing" (June 2005).

[25] See Human Rights Committee communication No. 373/1989 (CCPR/C/55/D/373/1989), para. 9.2.

investigation into one of the most serious incidents of Operation Cast Lead — relating to the death of over 20 people in the Al Samouni family home in Zeitoun — was not opened until November 2009.[26]

21. The High Commissioner notes that neither criminal nor command investigations are adequate to investigate whether policies, rules of engagement or orders that guided ISF during Operation Cast Lead were in violation of international law, or the responsibility of relevant senior officials – military or civilian. An independent inquiry into these matters is required, in addition to the investigation of specific incidents, for an effective right to remedy.

Palestinian initiatives

22. On 25 January 2010, the Palestinian Authority issued a decree[27] establishing a commission to follow up on the report of the United Nations Fact-Finding Mission. According to the decree, the commission is independent, is comprised of five members, is authorized to carry out investigations into the violations alleged in the report, will report to relevant authorities with respect to the outcomes of its activities, and is empowered to appoint experts and specialists to assist it to fulfil its duties.

23. The de facto authorities in Gaza state that two committees have been formed to follow up on the implementation of the recommendations in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The de facto authorities in Gaza also state that the committees are comprised of experts in international law and will immediately and independently follow up on the allegations of violations of international humanitarian law contained in the Fact-Finding Mission report, in accordance with Palestinian laws and practices.

24. There is insufficient information available at this time to draw conclusions regarding the compliance of responsible Palestinian authorities with the obligation to provide effective remedies. The High Commissioner notes that, at this point, there is no indication of credible investigations having taken place. In addition, the late launching of these initiatives brings into question the commitment of responsible Palestinian authorities to satisfying the criterion that a remedy be prompt.

B. Implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict

25. The Secretary-General has submitted a report to the Human Rights Council on the status of implementation of paragraph 3 of Council resolution S-12/1 (A/HRC/13/55). The Secretary-General's report provides information on the implementation of the recommendations of the United Nations Fact-Finding Mission.

See also communication No. 587/1994 (CCPR/C/59/D/587/1994); communication No. 599/1994 (CCPR/C/57/D/599/1994), para. 9; and report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/2004/56), para. 39. See also *Cantoral Benavides v. Peru*, judgement of 18 August 2000, Inter-American Court of Human Rights (Ser. C) No. 69 (2000) and concluding observations of the Committee against Torture: Egypt (CAT/C/CR/29/4), para. 5 (b).

[26] Israel, "Gaza operation investigations", paras. 124 and 125.

[27] Palestinian Authority, "Decree No. 0105 of 2010 concerning the formation of an independent commission to follow up the Goldstone Report".

C. General human rights situation in Gaza

26. Sporadic violence within the armed conflict between Israel and Palestinian armed groups continued during the reporting period, with Israel launching airstrikes on Gaza[28] and Palestinian armed groups firing rockets and mortar shells into Israel.[29] Since the end of Operation Cast Lead, 89 Palestinians and 1 Israeli have been killed, while 154 Palestinians and 7 Israelis have been injured in such incidents.[30]

27. The blockade of Gaza continues to further deprive the population. Denied basic supplies and services, 1.5 million persons are subjected to a worsening humanitarian crisis that disregards their human dignity. The blockade has had a devastating impact on a broad range of human rights of Gazans — more than half of whom are children — most notably impeding the fulfilment of core human rights such as the rights to health, water, food, shelter, work and education.

28. Restrictions in place on the importation of construction materials into Gaza have left over 6,000 houses that were destroyed or seriously damaged during Operation Cast Lead unrepaired.[31] This exacerbates the difficult living conditions of families still living in tents or makeshift shelters near the remains of their homes, in particular during the winter season.[32] Moreover, winter will increase electricity needs, resulting in an expected electricity shortage of up to 35 per cent.[33]

D. The right to water

29. The water and sanitation situation in Gaza is perilous. The United Nations Humanitarian Coordinator recently stated that "the deterioration and breakdown of water and sanitation facilities in Gaza is compounding an already severe and protracted denial of human dignity in the Gaza Strip. At the heart of this crisis is a steep decline in standards of living for the people of Gaza, characterized by erosion of livelihoods, destruction and degradation of basic infrastructure, and a marked downturn in the delivery and quality of vital services in health, water and sanitation".[34] A September 2009 report by the United Nations Environment Programme (UNEP) warns that Gaza is on the verge of water and sanitation collapse. UNEP points to increased salinity from salt water intrusion caused by over-abstraction of ground water as a key concern, alongside pollution from sewage and agricultural runoff.[35] Reinforcing this assessment, Amnesty International reports that the

[28] See, for example, "Israel air strike kills Gaza militants", BBC News, 10 January 2010. Available from http://news.bbc.co.uk/2/hi/middle_east/8450891.stm.

[29] Ambassador Aharon Leshno Yaar, Letters to the High Commissioner, dated 9 November 2009, 26 November 2009, 14 December 2009, 5 January 2010 and 12 January 2010.

[30] Office for the Coordination of Humanitarian Affairs (OCHA), Protection of Civilians, weekly report (16–22 December 2009), p. 2. Available from www.ochaopt.org/documents/Socha_opt_protection_of_civilians_weekly_report_2009_12_24_english.pdf.

[31] Humanitarian Coordinator for the Occupied Palestinian Territory and the Association of International Development Agencies (AIDA), press release on winter needs in Gaza (11 November 2009). Available from www.ochaopt.org/documents/ocha_opt_humanitarian_coordination_winterization_gaza_joint_statement.pdf.

[32] OCHA, The Humanitarian Monitor, October 2009, p. 10.

[33] Ma'an News Agency, "Gaza power cuts up to 32 hours per week", 15 December 2009. Available from www.maannews.net/eng/ViewDetails.aspx?ID=246552.

[34] United Nations Humanitarian Coordinator and AIDA, press release, 3 September 2009. Available from http://ochaopt.org/documents/hc_aida_statement_gaza_watsan_20090803_english.pdf.

[35] UNEP, *Environmental Assessment of the Gaza Strip Following the Escalation of Hostilities in December 2008 – January 2009* (Nairobi, 2009), p. 56. Available from www.unep.org/PDF/dmb/

water situation in Gaza has reached a crisis point and highlights that today 90–95 per cent of Gaza's water is unfit for human consumption due to sewage and seawater infiltration.[36]

30. The blockade has prevented the entry of materials necessary to repair, rehabilitate and maintain the water and sanitation infrastructure. Materials have been allowed in only on an exceptional basis. For example, construction of the North Gaza Emergency Sewage Treatment Plant has been slowed by the shortage of critical materials. Once completed the plant will treat the sewage of more than 500,000 people and filter the treated wastewater back into the ground aquifer.[37]

31. The dire water situation is illustrated by the situation of Al Shoka municipality (estimated population of 15,000), which is located at the easternmost part of Rafah. Since residents of Al Shoka do not have access to water through the public water network, they must purchase water from private vendors for all their needs. Thus, the average daily consumption of water in the municipality is less than half the 100 litres per day recommended by the World Health Organization (WHO). One of the local staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East explained to OHCHR-OPT that he spends as much as 30 per cent of his salary purchasing water for his family. According to the chief municipal engineer, new wells are required. A project of the Coastal Municipalities Water Utility includes plans to dig three wells in Tel El Sultan and build a carrier line from these new wells to the existing networks, which would allow access to water for some 60,000 people, including the Al Shoka residents. Yet the blockade prevents the importation of materials needed to complete this project.

E. The right to health

32. The right to the highest attainable standard of physical and mental health is a fundamental human right.[38] This includes the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups. It also encompasses access to minimum essential food that is nutritionally adequate and safe, access to shelter, housing and sanitation and an adequate supply of safe drinking water, the provisions of essential drugs, and equitable distribution of all health facilities, goods and services.

33. The availability and quality of health care in Gaza has deteriorated over recent years because of political turmoil, Operation Cast Lead and the blockade.[39] The blockade hinders the effective functioning of the health-care system on multiple levels, including by restricting access to basic supplies, such as drugs and consumables, such as syringes and gloves; basic medical equipment, such as x-ray machines; other equipment, such as computers and printers; and supplies to rehabilitate hospitals, such as glass, cement and wood. At present, it is only possible to import a minimum of essential medical supplies and equipment.

34. During the reporting period, there continued to be enormous difficulties for patients from Gaza who required emergency medical care available in the West Bank, East Jerusalem, Israel or abroad. From February 2009 until the end of October 2009, 25 persons

UNEP_Gaza_EA.pdf.

[36] Amnesty International, *Troubled Waters – Palestinians Denied Fair Access to Water* (London, 2009).

[37] OCHA, The Humanitarian Monitor, October 2009, p. 12.

[38] Article 12, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights.

[39] As of 31 October 2009, the Gaza Central Drug Stores reported that 78 of the list of 480 essential drug items and 119 of the list of 700 essential disposable items were at zero stock level. Information communicated directly to OHCHR-OPT by WHO, 15 November 2009.

died due to being unable to access medical treatment outside Gaza.[40] Many applications to exit Gaza for medical treatment were delayed or denied by Israeli authorities.[41]

35. Patients applying for medical care outside of Gaza are typically summoned for questioning by ISF at the Erez checkpoint, in advance of obtaining an exit permit. This can be a difficult experience. For example, "K.", a resident of Gaza, was referred by the Ministry of Health to Al-Makassed Hospital in East Jerusalem for back surgery. In July 2009 a permit request was sent to ISF to allow him into Israel. ISF called him for a meeting. During this meeting the security officer questioned him about the circumstances in which his son was killed, by ISF, in 2002, as well as about his other sons. The security officer reportedly stated that his sons were "terrorists" and told him to return to Gaza. In October 2009 a new referral for treatment was issued. With the help of a local non-governmental organization (NGO), K. again requested a permit. The permit was denied on "security grounds" and K.'s health continues to deteriorate. Without surgery K. risks paralysis.

36. According to WHO, from January to November 2009 ISF summoned approximately 590 patients to Erez for such interrogations.[42] In May 2009 Physicians for Human Rights-Israel (PHR-Israel) presented data to the Committee against Torture regarding new measures employed by ISF during the interrogation of patients at Erez. New measures reportedly include photographing patients against their will; detaining patients for undisclosed periods of time; harassing, accusing, cursing and intimidating patients; and forcing uncooperative patients to return to Gaza without receiving a permit to exit.[43] PHR-Israel has informed OHCHR-OPT that these practices have increased since November 2009, often resulting in patients missing medical appointments. In two cases, patients summoned for interrogation were immediately detained and transferred to the Shikma prison in Ashkelon, where they remained for approximately 20 days before being released.[44] While before June 2009 PHR-Israel's mobile clinic was allowed into Gaza on 3 occasions (out of 6 requests), after June 2009 all 10 of its requests were refused.[45]

IV. East Jerusalem

37. Palestinians who live or work in East Jerusalem face distinct challenges to the enjoyment of their human rights. Those who live in East Jerusalem are issued different identity documents than residents of the West Bank, with the former being more difficult to obtain and more easily revoked.[46] East Jerusalemites can lose their right to live in the city if they reside outside Israel or East Jerusalem for seven consecutive years, or if they obtain citizenship or permanent residency in another country. The information available to

[40] OCHA, The Humanitarian Monitor, October 2009, p. 12.

[41] Ibid. In October 2009, the Israeli District Liaison Office for Erez Crossing approved 71.4 per cent of applications to exit Gaza for medical treatment, 25.5 per cent were delayed and 2.9 per cent were denied. Of those delayed, 83 patients were asked to be questioned by Israeli security forces before approval of their application, of which 51 did not go to the interview, 29 were asked to submit new applications and 1 was approved after the interview.

[42] Information communicated directly to OHCHR-OPT by WHO, 1 December 2009.

[43] PHR-Israel, "New data about GSS (Shabac) unorthodox methods at Erez Crossing", press release, 4 May 2009. Available from www.phr.org.il/default.asp?PageID=190&ItemID=269.

[44] Information on these two cases gathered from PHR-Israel and Al-Mezan, on file with OHCHR-OPT.

[45] These 10 consecutive refusals follow the publication by PHR-Israel of two reports on Operation Cast Lead: "Ill Morals", March 2009 and "Report of an independent fact-finding mission of medical experts", April 2009.

[46] See Civic Coalition to Defend Palestinian rights in Jerusalem at www.ccdprj.ps/en/?page_id=89.

OHCHR-OPT indicates that this policy has been implemented by the Ministry of Interior of Israel since December 1995.[47] However, in 2008, the last year for which data is available, Israel revoked the residency permits of 4,577 East Jerusalemites. This is reported to be 21 times the average of each of the previous 40 years.[48]

38. Palestinians with West Bank or Gaza identity papers must apply for a permit to enter East Jerusalem. Even for those who are regularly employed in East Jerusalem, entry permits must be renewed every three or six months. West Bank identity-paper holders who are granted permits to enter Jerusalem are generally subject to a number of conditions, such as a time limit on the hours they can spend in Jerusalem and/or bans on driving or staying overnight. Restrictions on travel are often imposed, often during Israeli holidays, thereby preventing even permit holders from entering East Jerusalem. The extremely restrictive permit system impedes the freedom of movement of Palestinians between East Jerusalem, West Bank and Gaza.[49]

39. In addition, persons with East Jerusalem identification whose spouses hold West Bank identification (or are not Palestinian) are required to either surrender their residency and live in the West Bank, or apply for a family unification permit for the non-resident spouse.[50] The challenges of family unification are illustrated by the following case documented by OHCHR-OPT. "S.", living in the Silwan area of East Jerusalem and a holder of West Bank papers, married a Palestinian woman with East Jerusalem residency. While he had managed to obtain a permit to stay in East Jerusalem since his marriage, his permit was revoked after his house was demolished in December 2008. Since then Israeli authorities have refused to renew his permit, citing unspecified "security reasons". In 2009, upon the expiration of his permit, he was arrested and detained for over three weeks. While now released, he remains without a permit and "illegally" in East Jerusalem with his wife, living in fear of being arrested again. Israeli authorities have also refused to issue a "certificate of good conduct" (no criminal record) for his wife, making it difficult for her to find employment.

A. Home demolitions

40. Israel's obligations under international humanitarian law prohibit it from destroying private or public property, or from forcibly displacing the civilian population, except as required for reasons of military necessity.[51] The Committee on the Elimination of Racial Discrimination has expressed serious concerns regarding house evictions and home

[47] This policy has its roots in the judgement in the *Mubarak Awad* case of the High Court of Justice delivered in 1988, which decided that the status of Palestinian residents should be regulated in accordance with the Entry in Israel Law, which is immigration legislation. See, for example, Hamoked and B'Tselem, "The quiet deportation", April 1997, and "The quiet deportation continues", September 1998, p. 7, and *Mubarak Awad v. Yitzhak Shamir, et al.*, HCJ 282/88.

[48] Nir Hasson, "Israel stripped thousands of Jerusalem Arabs of residency in 2008", Haaretz.com, last update 2 December 2009. Available from www.haaretz.com/hasen/spages/1132170.html. Information confirmed by OHCHR-OPT during meeting with Hamoked.

[49] Such concerns were also raised by the Human Rights Committee in its concluding observations for Israel (CCPR/C/79/Add.93), para. 22.

[50] See Jerusalem Centre for Social and Economic Rights, "Residency Rights", 23 April 2009. Available from www.jcser.org/index.php?option=com_content&view=article&id=12&Itemid=15.

[51] Articles 49 and 53 of the Fourth Geneva Convention of 1949.

demolitions in the OPT, including in East Jerusalem.[52] Furthermore, such home demolitions amount to forced evictions and are in violation of the right to adequate housing.[53]

41. Often the justification given by the Israeli authorities for home demolitions, particularly in East Jerusalem, is that Palestinian residents erect structures without building permits. Yet in practice Palestinians lack meaningful access to such permits. Palestinians applying for building permits face an unnecessarily stringent and costly process to demonstrate land ownership.[54] Furthermore, it is important to note that only 13 per cent of the annexed East Jerusalem land area is currently zoned for Palestinian construction, and much of this land is already dense with construction.

42. While the Municipality of Jerusalem announced that 70 per cent of home demolitions in East Jerusalem would desist,[55] forced evictions and home demolitions have continued unabated. The Office for the Coordination of Humanitarian Affairs determined that, from 16 May to 18 November 2009, at least 214 persons, including 103 children, were displaced due to home demolitions or forced evictions. The Israeli Committee against Home Demolitions estimates that demolitions from 1 January to 18 November 2009 displaced at least 333 persons, including 157 children. It is estimated that there are more than 1,500 outstanding demolition orders in East Jerusalem alone. If these orders are implemented, as many as 60,000 further Palestinians would be displaced.[56]

43. Some cases documented by OHCHR-OPT indicate that Palestinian families being evicted are often not allowed to remove their belongings. On 26 October 2009 Israeli authorities demolished the home of four Palestinian families in the Al Ghezayel area of Sur Bahir, in the process displacing 15 persons, including 6 children. Persons in the house were separated into three different rooms and were not allowed to contact anyone by telephone. At 7 a.m. ISF arrived and the demolition began, with the families given little time to remove their belongings. OHCHR-OPT observed that items such as kitchenware and furniture were still in the house when it was demolished. Another home was demolished on 27 October 2009, with ISF arriving at 5 a.m. and immediately ordering all residents to exit. The four families residing in the house were forced to wait in the cold until workers arrived at 7 a.m. The workers proceeded to clear the house of its furniture and belongings for approximately 30 minutes, until bulldozers arrived and demolished the house with the remaining belongings still inside. In all cases documented by OHCHR-OPT, victims stated that workers who cleared their homes hurled furniture out the windows and caused further damage to their belongings.

44. With respect to Israel's continuing policy and practice of carrying out home demolitions in East Jerusalem, it is recalled that on 3 November 2009 the Secretary-General issued a statement in which he declared that he was "dismayed at continued Israeli actions in occupied East Jerusalem, including the demolition of Palestinian homes, the eviction of Palestinian families and the insertion of settlers into Palestinian neighbourhoods".[57] In a 1

[52] See CERD/C/ISR/CO/13, para. 35.

[53] Article 11, paragraph 1, International Covenant on Economic, Social and Cultural Rights.

[54] OHCHR-OPT press release of 1 May 2009 issued on the occasion of the publication of the OCHA Special Focus Report: The Planning Crisis in East Jerusalem.

[55] See, for example, Israeli Committee against Home Demolitions, "Jerusalem municipality plans to freeze 70% of home demolitions in East Jerusalem: a step forward?", 29 June 2009; "After U.S. pressure, Barkat to halt 70% of East Jerusalem demolitions," Haaretz.com, 29 June 2009.

[56] OCHA, "Overview of the situation in East Jerusalem with regard to forced evictions, house demolitions and displacement: update for donor briefing", 11 November 2009.

[57] "'Dismayed' by continued settlement activity in occupied East Jerusalem, Secretary-General calls on Israel to cease such 'provocative actions,'" statement of the Secretary-General, 3 November 2009.

December 2009 statement, the Special Coordinator for the Middle East Peace Process reiterated the call of the Secretary-General for such actions to cease immediately.

B. Freedom of religion

45. During Ramadan Israeli authorities customarily allow Palestinians with West Bank identity papers to enter East Jerusalem to attend Friday prayers at the Al-Aqsa Mosque. However, in 2009 access for holders of West Bank identification was restricted to men over 50 years of age, women over 45, and boys and girls under 12.[58] On 16 September 2009 OHCHR-OPT sent a communication to the head of the Civil Administration of the West Bank, requesting that he take measures to "ensure that the many Palestinians wishing to access religious sites in East Jerusalem are able to exercise their right to manifest their religion in an orderly and secure manner". No response was received.

46. Restrictions on Palestinians accessing Al-Aqsa Mosque raise concerns under article 18 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of thought, conscience and religion, including freedom to manifest one's religion, be it individually or in community with others, in public or private.[59] On 27 September 2009 restrictions of Palestinians accessing Al-Aqsa Mosque led to clashes, which spread from the Old City into other parts of East Jerusalem. By the end of October 2009, 102 Palestinians and 31 Israelis had been injured, mostly due to clashes relating to access to the Al-Aqsa Mosque and anti-wall demonstrations. The situation turned tense on 25 October 2009, when Jewish clerics called on their followers to perform rituals inside the Al-Aqsa compound.[60]

V. Settlements and related violence

47. Settlement activity in the OPT, including in East Jerusalem, violates international human rights and international humanitarian law. Article 49 of the Fourth Geneva Convention stipulates that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies".[61] As of late November 2009 the number of settlers in the West Bank is approximately 300,000, which includes approximately 200,000 in East Jerusalem.[62] Settlement activity equally has an impact on the rights to life, property and basic services.

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[58] OCHA, The Humanitarian Monitor, September 2009, p. 7.

[59] In paragraph 8 of its general comment No. 22 (1993) on this article, the Human Rights Committee stated that the article "permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. … In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."

[60] OCHA, The Humanitarian Monitor, October 2009, p. 3.

[61] Article 55 of the Hague Regulations (annexed to the 1907 Convention respecting the Laws and Customs of War on Land) states that the "occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates".

[62] According to Peace Now estimates provided to OHCHR-OPT. OCHA estimates that, as of December

48. A related issue is that of settlements that are unauthorized under Israeli law, commonly known as "outposts". Unlike settlements that are established and maintained as a matter of policy by the Government of Israel, outposts are established by groups of settlers and are illegal under Israeli law. Irrespective of authorization under Israeli law, all settlements in the OPT, including in East Jerusalem, are illegal under international law.

49. Incidents of settler violence continued throughout the West Bank with impunity. During the reporting period there were an average of 29 settler-related incidents of violence per month, and an average of 13 Palestinians a month injured in such incidents.[63]

50. The olive harvest has for many years been the flashpoint for tension between settlers and Palestinian farmers living in communities near settlements. For example, the village of Burin is frequently subjected to settler violence and related destruction of property. Information provided to OHCHR-OPT indicates that over 1,500 olive trees had been burnt or destroyed by settlers from January through October 2009.

51. OHCHR-OPT is also aware of cases where ISF, present on the scene of settler violence, did nothing to prevent attacks. A woman and her family living in the Tel Rumeida area of the old city of Hebron reported that she and her family are subject to severe movement restrictions by ISF and harassment and violence by settlers. On 11 April 2009 this woman, who is 70 years old and requires regular medical attention, was returning from the hospital and had received special permission from ISF to approach her home using the paved front way in the ambulance, as opposed to the usual restriction against using the front entrance and the prohibition from driving vehicles to their homes. The ambulance was stopped by ISF troops near her home. As ISF examined their identity documents, a group of settlers gathered around the ambulance. The crowd insulted the passengers and hurled large stones through the ambulance's back window, the first of which sent shattering glass throughout the ambulance. Throughout this time, the troops present did nothing to prevent the attacks or disperse the settlers, and eventually turned the ambulance back, where it was again attacked by settlers.

52. In another incident, on 13 July 2009, a 16-year-old boy was stopped by ISF approximately 150 metres from his home. The troops took him to a military camp, where he was handcuffed, blindfolded and placed in a chair in a concrete cubicle. The troops allowed a group of settlers to beat him until he was unconscious. It was only after members of his family, accompanied by a field worker from B'Tselem with a video camera, arrived at the scene that the beating ended. The boy was released and taken to the hospital. His family presented a complaint regarding this incident to the Israeli police on 8 June 2009. They have received no information regarding an investigation.

53. There are few cases where settlers have been prosecuted by Israeli authorities for crimes against Palestinians. In September 2009 the trial of a settler who refused to give the police the names of persons suspected of assaulting and beating Palestinian shepherds in March 2008 commenced.[64] However, the prevailing situation is one of impunity. With the

2008, there were approximately 290,000 in the West Bank and 195,000 in East Jerusalem. See OCHA, "West Bank movement and access update", May 2009, p. 13. In July 2009, an Israeli newspaper cited a military report stating that the settler population had increased to 304,000 in the West Bank. See "More than 300,000 settlers live in the West Bank", Haaretz.com, 27 July 2009.

[63] OCHA, The Humanitarian Monitor, October 2009, p. 4.

[64] Chaim Levinson, "Settler rabbi faces trial for not naming names to police", Haaretz.com, 16 September 2009. As of the finalization of this report, no information is available regarding the outcome of this trial.

announcement at the end of November of a 10-month settlement freeze in the West Bank,[65] settler protests and related violent incidents are likely to increase.

VI. Violence and discrimination against women

54. As Palestinians under occupation and as a group subject to a patriarchal value system, women in the OPT face multiple layers of violence and discrimination. Moreover, the current political, economic and humanitarian crisis has contributed to an increase in domestic violence.[66]

55. Palestinian NGOs report that violence against Palestinian women is widespread, and that women are discouraged from reporting abuses. Only 2 per cent of women victims of domestic violence seek legal assistance.[67] For example, "Y." explained how difficult it is for her to file a complaint with the Palestinian Authority police against her husband, who beats and verbally abuses her. She stated that filing a complaint with the police would disgrace her community, and that she would likely suffer stigmatization. She fears that filing a complaint would also mean that her husband would not allow her to see their children.[68]

56. One challenge in relation to violence against women is the lack of information-gathering by official institutions. In particular, there are no reliable statistics on so-called "honour crimes". Yet NGOs and other observers report that "honour killings" take place in the OPT and, as a matter of practice, are not investigated. It is believed that such crimes are not investigated due either to a lack of willingness on the part of family and community members to cooperate with law enforcement authorities, or a lack of willingness of law enforcement authorities to rigorously investigate such crimes.[69]

57. Information collected by the Palestinian Independent Commission for Human Rights in Gaza indicates that the majority of "honour killings" in Gaza were committed by immediate relatives in the families' homes, though the bodies of some victims were discarded away from the home. Palestinian Authority police do not seem to have achieved any progress in investigating these crimes.

58. In May 2009 a Palestine Authority inter-ministerial committee drafted a presidential decree to amend existing legislation that discriminates against women. According to the decree, the killing of a spouse (male or female) suspected of or found to have committed adultery would be treated as murder and would be sentenced accordingly. The decree abolishes the exemption from punishment for killings committed in the name of "honour". This decree, which has already been adopted by the legal working group of the Legislative Council, is currently with the President for signature.

59. An encouraging development is the signature by President Abbas of a decree accepting the applicability of the Convention on the Elimination of All Forms of Discrimination against Women. This decree offers Palestinians a point of reference to

[65] This freeze does not include East Jerusalem, ongoing construction, or so-called "natural growth".

[66] As communicated to OHCHR-OPT by the United Nations Development Fund for Women (UNIFEM).

[67] United Nations Inter-Agency Gender Task Force and UNIFEM, *Voicing the Needs of Women and Men in Gaza: Beyond the Aftermath of the 23-Day Israeli Military Operations* (2009), p. 61.

[68] Case documented by OHCHR-OPT on 26 October 2009.

[69] According to the Palestinian Independent Commission for Human Rights, 10 Palestinian women were killed in the West Bank during 2008, 1 on grounds of "honour" and 7 in similar circumstances. During 2009 one case of a woman killed in relation to "honour" was reported in the West Bank.

advocate for gender equality in all social and economic areas, constitutes a tool in the fight to end violence against women and girls, promises accountability for violations of women's rights, and provides for the responsibility of the Palestinian Authority to fulfil the principles and measures enshrined in the Convention.[70]

VII. Conclusions and recommendations

60. **The human rights situation between 1 May 2009 and 3 February 2010 remained of serious concern. A wide range of serious human rights violations occurred with disturbing frequency. The most critical violations that took place included a lack of respect for the right to life; arbitrary detention; impediments to the right to freedom of religion; obstacles to the fulfilment of the right to health; restrictions on freedom of movement; torture and other cruel, inhuman, or degrading treatment or punishment; a lack of remedy and redress for abuses and violations; and violence against women and children, in both the public and private spheres.**

61. **The recommendations contained in reports by the Secretary-General and the High Commissioner for Human Rights on the human rights situation in the OPT remain valid and need to be implemented as a matter of the highest urgency.**

62. **The blockade of Gaza results in grave and widespread human rights violations, including in relation to the fulfilment of the right to health and the right to adequate, safe drinking water. Furthermore, Israel's blockade impedes the reconstruction or repair of thousands of homes destroyed or damaged during Operation Cast Lead, resulting in violations to the right to adequate housing.**

63. **Israel still has not fully complied with the International Court of Justice's Advisory Opinion on the wall. The continued expansion and establishment of settlements has further fragmented the West Bank. Notwithstanding a slight reduction in the number of Israeli checkpoints, severe restrictions on the movement of Palestinians within the West Bank and between East Jerusalem and the West Bank, in particular due to permit requirements, negatively affect a wide range of human rights on a daily basis. The extent of the fragmentation of the West Bank and the increasing separation of East Jerusalem from the rest of the West Bank brings into question the ability of Palestinians to effectively exercise their right to self-determination.**

64. **The situation in and around Jerusalem is particularly insecure. A dramatic increase in the revocation of Jerusalem residency permits for Palestinians in East Jerusalem was noted over the past year. Many Palestinian families in East Jerusalem and Area C of the West Bank were forcibly displaced, due to evictions and demolitions carried out by Israeli authorities.**

65. **Impunity for violations of human rights and international humanitarian law remains widespread, and needs to be addressed by all parties as a matter of the highest urgency. Investigations launched by the Government of Israel into alleged violations related to the military operations in Gaza of December 2008–January 2009 remain inadequate to provide effective remedies. While the processes put in place by responsible Palestinian authorities are recent and not much information is available, there is at this point no indication of credible investigations having taken place with regard to allegations of violations by Palestinian armed groups.**

[70] See joint statement by OHCHR, UNICEF, UNIFEM, UNRWA in the OPT on Human Rights Day, 9 December 2009.

66. **Taking into account the findings of this report, the High Commissioner recommends that the Government of Israel:**

(a) Abide by its obligations under its Basic Law: Human Dignity and Liberty (1992) and under the international instruments to which Israel is a party;

(b) Investigate without further delay, impartially and independently, in conformity with international standards, allegations of human rights violations committed by Israelis in the OPT. Bring those responsible for any violations to justice and provide effective redress to victims of violations;

(c) Immediately lift the blockade of Gaza;

(d) Fulfil its obligations under the Fourth Geneva Convention, as an occupying power, related to maintaining the normal life of the civilian population in Gaza;

(e) Ensure the supply of all essential humanitarian materials to Gaza;

(f) Ensure that all essential medicines, material and equipment necessary for the full functioning of the health-care system can be delivered to Gaza;

(g) Immediately allow all necessary reconstruction materials to be delivered to Gaza, in order to reconstruct or repair homes that were destroyed or damaged during Operation Cast Lead;

(h) Immediately allow all material and equipment necessary for the construction and repair of water and sanitation facilities in Gaza, including the quantities of fuel necessary to operate such equipment;

(i) Seek to fulfil the right of Palestinians to freedom of movement, in particular in the West Bank, including by, as an initial measure, dismantling portions of the wall that were built beyond the Green Line, in accordance with the Advisory Opinion of the International Court of Justice;

(j) Ensure that Palestinians can fully realize their right to freely practise their religion, including by removing restrictions on freedom of movement;

(k) Desist from carrying out evictions or demolitions of Palestinian homes;

(l) Issue viable zoning plans and institute a less cumbersome, non-discriminatory process for obtaining building permits for East Jerusalem and Area C;

(m) Dismantle all Israeli settlements in the West Bank and East Jerusalem, in accordance with international law, and stop any and all illegal construction activity, including in East Jerusalem;

(n) Take immediate, effective measures to prevent violence against Palestinians by settlers, and bring those responsible for any such violence to justice.

67. **The High Commissioner recommends that the Palestinian Authority:**

(a) Fulfil its obligations under the Palestinian Basic Law, international human rights law and international humanitarian law;

(b) Investigate without further delay, impartially and independently, in conformity with international standards, all allegations of human rights violations in the OPT committed by any of its forces or agents, and that it bring those responsible for any such violations to justice and provide effective redress to victims;

(c) Immediately address patterns of violence against women, including violence committed in the private sphere, and put in place legislative mechanisms to appropriately sanction crimes committed in the name of "honour";

(d) Carry out, in partnership with international organizations present in the OPT (including OHCHR), a campaign to raise awareness and prevent crimes committed in the name of "honour".

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Report of the Secretary-General on the status of implementation of paragraph 3 of Council resolution S-12/1 B*

Summary

This report focuses on the status of the implementation of the broad range of recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. It reviews every recommendation of the Mission, following the order in which they appear in the Mission's report.

* Late submission.

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I. Introduction

1. In its resolution S-12/1 B of 16 October 2009, the Human Rights Council endorsed the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (hereinafter the "Mission"),[1] called upon all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates, recommended to the General Assembly that it consider the report during the main part of its sixty-fourth session, and requested the Secretary-General to submit to the Council, at its thirteenth session, a report on the status of the implementation of those recommendations. The present report is submitted pursuant to that request. The information it contains has been requested and received from States, organizations and other entities to which the Mission addressed its recommendations, as well as being gathered directly by the United Nations from relevant sources.

II. Status of the implementation of the recommendations of the Mission report

A. Action by the Human Rights Council

2. In paragraph 1968 of its report, the Mission addressed five recommendations to the Human Rights Council.

3. In paragraph 1968 (a) of its report, the Mission recommended that "the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions".

4. In paragraph 3 of its resolution S-12/1 B, the Human Rights Council endorsed the recommendations contained in the Mission's report and called on all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates. In paragraph 4 of its resolution S-12/1 C, the Human Rights Council decided to follow up on the implementation, inter alia, of Section B of that resolution as its thirteenth session.

5. In paragraph 1968 (b) of its report, the Mission recommended that "in view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported . . . the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations below".

6. In its resolution S-12/1 B, the Human Rights Council did not direct any specific request to the Secretary-General to bring the Mission's report to the attention of the Security Council under Article 99 of the Charter. At the same time, in paragraph 3 of that resolution, the Human Rights Council endorsed the recommendations of the Mission.

[1] A/HRC/12/48.

7. In paragraph 1968 (c) of its report, the Mission recommended that "the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court".

8. Further to paragraph 3 of Human Rights Council resolution S-12/1 B, the report of the Mission was transmitted by the Council secretariat to the Prosecutor of the International Criminal Court on 10 December 2009.

9. In paragraph 1968 (d) of its report, the Mission recommended that "the Human Rights Council should submit this report to the General Assembly with a request that it should be considered".

10. In paragraph 4 of its resolution S-12/1 B, the Human Rights Council "recommend[ed] that the General Assembly consider the report of the [Mission], during the main part of its sixty-fourth session".

11. In paragraph 1968 (e) of its report, the Mission recommended that "the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process".

12. The Mission's report was transmitted to the United Nations treaty bodies that monitor compliance by the State of Israel with the human rights treaties to which it is party[2] on 10 December 2009.

B. Action by the Security Council

13. In paragraph 1969 of its report, the Mission addressed a total of six recommendations to the Security Council.

14. In paragraph 1969 (a) of its report, the Mission recommended that that the "Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations: (i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention; and (ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations".

15. To date, the Security Council has not directed such a request to the Government of Israel.

16. In paragraph 1969 (b) of its report, the Mission further recommended that the "Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations. Such committee of experts should report at the end of the six-

[2] The Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, Committee Against Torture and Committee on the Rights of the Child.

month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights".

17. To date, the Security Council has not established such a committee.

18. In paragraph 1969 (d) of its report, the Mission recommended that "the Security Council should require the independent committee of experts referred to in [paragraph 1969 (b)] to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary".

19. In paragraphs 1969 (c) and (e) of its report, the Mission further recommended that "upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40" by the appropriate authorities of the State of Israel or the relevant authorities in Gaza, respectively, "acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute" of the International Criminal Court. In paragraph 1969 (f) of its report, the Mission recommended that "lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee".

20. As the Security Council has not established an independent committee of experts, none of these recommended actions have been carried out.

C. Action by the Prosecutor of the International Criminal Court

21. In paragraph 1970 of its report, the Mission stated that, "with reference to the declaration under article 12 (3) [of the Rome Statute] received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, [it] considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible".

22. By a letter dated 12 January 2010 addressed to the Deputy High Commissioner for Human Rights, the Office of the Prosecutor of the International Criminal Court stated that the Prosecutor had not, as of that date, made a determination whether, in his view, the International Criminal Court has jurisdiction in respect of any crimes referred to in article 5 of the Rome Statute that may have been committed in the Gaza Strip between December 2008 and January 2009. The Office of the Prosecutor additionally noted in its letter that the

Prosecutor had not yet made a determination whether, in his view, any cases relating to such crimes would be admissible before the Court.[3]

D. Action by the General Assembly

23. In paragraph 1971 of its report, the Mission addressed four recommendations to the General Assembly.

24. In paragraph 1971 (a) of its report, the Mission recommended that "the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain appraised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace".

25. To date, the General Assembly has not directed such a request to the Security Council.

26. In paragraph 1971 (b) of its report, the Mission recommended to the General Assembly that it "should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December-January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund".

27. To date, the General Assembly has not established such a fund.

28. In paragraph 1971 (c) of its report, the Mission recommended that "the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1".

29. In paragraph 5 of its resolution 64/10 of 5 November 2009, the General Assembly "recommend[ed] that the Government of Switzerland, in its capacity as depository of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, undertake as soon as possible the necessary steps to reconvene a Conference of High Contracting parties to the Fourth Geneva Conventions on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1". In a subsequent communication to the Secretary-General, the Government of Switzerland provided an update on the preliminary consultations it had undertaken to this end.[4]

[3] See "Letter to the UN High Commissioner on Human Rights", 12 January 2010, available at www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/12%20january%202010%20_%20letter%20to%20the%20un%20high%20commissioner%20on%20human%20rights.

[4] A/64/651, Annex III.

30. In paragraph 1971 (d) of its report, the Mission recommended that "the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommend[ed] that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip".

31. To date, the General Assembly has not taken action to promote such a discussion.

E. Action by the State of Israel

32. In paragraph 1972 of its report, the Mission addressed a total of nine recommendations to the State of Israel.

33. In paragraph 1972 (a) of its report, the Mission recommended "that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip".

34. As of the date of this report, the policy of closures of Gaza remains in effect. The quantity and range of goods allowed into Gaza remain severely restricted, and the majority of material allowed in continues to be food and hygiene items (84 per cent of imports since October 2009). Material needed to commence reconstruction continues to be barred from entry, but some smaller-scale improvement has been noted. So, for example: outstanding shipments of spare parts for the Gaza Electricity Distribution Company have been allowed in between November 2009 and January 2010; 103 truckloads of glass have entered since 29 December 2009, and the United Nations is now starting negotiations to allow for a second tranche of glass; construction material including cement, gravel and tar for the Northern Gaza Waste Water Treatment project was allowed entry in November 2009. The Government of Israel has also indicated that the transfer of educational supplies to the Gaza strip was facilitated on 11 November 2009.[5]

35. In paragraph 1972 (b) of its report, the Mission recommended "that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel".

36. As of the date of this report, Israeli naval forces continue to prohibit Gazans access beyond three nautical miles from the shore and within a 300-metre-wide strip of land near the border fence.

37. In paragraph 1972 (c) of its report, the Mission recommended that "Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and

[5] Letter from the Permanent Mission of Israel to the High Commissioner for Human Rights, 16 November 2009.

other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law".

38. The Government of Israel has informed the United Nations that, on 20 January 2009, the Chief of General Staff of the Israel Defense Forces (IDF) ordered investigations into a range of allegations regarding the conduct of the IDF during the Gaza conflict. As a result of those investigations, the Chief of General Staff "ordered the IDF to implement lessons learned on a broad range of matters, directing that certain standing orders be highlighted or clarified, establishing further guidelines on the use of various munitions, and instructing that steps be taken to improve coordination with humanitarian organisations and entities".[6] On 9 November 2009 the Government of Israel informed the High Commissioner for Human Rights that, on the basis of its investigations conducted to date, "significant measures are already being taken to implement the lessons learned and improve IDF's operational activities. Among the measures is the formulation of revised procedures for the destruction of property and infrastructure for military purposes, as well as for the use of certain means of warfare".[7] The Government of Israel has not to date approached the Office of the United Nations High Commissioner for Human Rights (OHCHR) to avail itself of its expertise in connection with a review of rules of engagement, standard operating procedures, open fire regulations or other relevant guidance for military personnel.

39. In paragraph 1972 (d) of its report, the Mission recommended that "Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory — within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world — in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommend[ed] that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities".

40. Freedom of movement of Palestinians within the Occupied Palestinian Territory remains highly limited. The Israeli policy of closures continues to prevent the free movement of people and goods into and out of Gaza. Within the West Bank, since October 2009, the Israeli authorities continued to implement measures to increase freedom of movement of Palestinians between most Palestinian urban centres — excluding East Jerusalem — through the removal of some permanent obstacles and by allowing Palestinians to access roads previously reserved for Israelis.[8] On the other hand, in January and February 2010 there was a significant increase in random, or so-called "flying", checkpoints throughout the West Bank. In total, there were 550 obstacles to movement in

[6] A/64/651, annex I, para. 101; also, para. 99.

[7] "Examination of allegations by Israel Defense Force," annex to Letter from the Permanent Mission of Israel to the High Commissioner, 9 November 2009. The High Commissioner for Human Rights requested further details on this by way of a letter dated 18 November 2009, but has yet to receive a reply.

[8] In this regard, see report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/13/54, para. 7), which discusses the recent decision by the Israeli High Court of Justice that orders the IDF to allow Palestinian access to Route 443.

the West Bank as of February 2010 as compared to 592 in October 2009.[9] Furthermore, many Palestinians engaged in human rights and political activities continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world, since Israel has not lifted travel bans that are currently in place.

41. In paragraph 1972 (e) of its report, the Mission recommended that "Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume".

42. Recently obtained information indicates that approximately 6,800 Palestinians are being held in Israeli prisons, including approximately 300 children.[10] Approximately 260 persons are being held in administrative detention.[11] The number of such detainees fluctuates regularly, and it is often not possible to ascertain the reason that a detainee has been released. Family visits for prisoners from Gaza still do not take place, following the suspension by Israeli authorities of the Family Visits Programme of the International Committee of the Red Cross on 4 June 2007. The Israeli High Court of Justice upheld the suspension of this programme in December 2009.[12]

43. In paragraph 1972 (f) of its report, the Mission recommended that "Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning".

44. On 1 and 2 November 2009 Israel released seven members of the Palestinian Legislative Council; all affiliated to Hamas, bringing the total of Palestine Legislative Council (PLC) members in Israel's custody to 16, including 13 from Hamas, 2 from Fatah and one from the Popular Front for the Liberation of Palestine (PFLP). A small number of PLC members in the West Bank have been able to visit Gaza, but there has been no broad-based facilitation of movement of PLC members between Gaza and the West Bank.

45. In paragraph 1972(g) of its report, the Mission recommended that "the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken".

46. Human rights NGOs have reported that the Government of Israel has made efforts to decrease the financial support available to such organizations working in the Occupied

[9] Information obtained from the Office for the Coordination of Humanitarian Affairs (OCHA) in the OPT.

[10] See B'Tselem statistics as of 31 January 2010 at www.btselem.org/english/statistics/Detainees_and_Prisoners.asp, and Addameer's statistics for January 2010 at http://addameer.info/?icat=18. .

[11] Ibid. See also Defence for Children International, Child Detainee Figures as of 16 February 2010 at www.dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11.

[12] *Rami Dhaqar Ismai'l Anbar et al v GOC Southern Command et al* , HCJ 5268/08, 09 December 2009 at para. 8.

Palestinian Territory.[13] As of the date of this report, Israel has not established an inquiry of the kind recommended by the Mission.

47. In paragraph 1972 (h) of its report, the Mission recommended that "that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel".

48. In an open letter to senior Israeli government officials, a group of Israeli NGOs warned of the increasing "delegitimization" of organizations that cooperated with the Mission,[14] which has raised serious concerns among civil society organizations carrying out human rights work.[15]

49. In paragraph 1972 (i) of its report, the Mission recommended that "Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future". It further recommended that "reparations to the United Nations should be provided fully and without further delay, and that the General Assembly should consider this matter".

50. As of the date of this report, the United Nations has not received any formal communication from the Government of Israel reiterating its commitment to respect the inviolability of United Nations premises and personnel.

51. In June and July 2009, the Secretary-General exchanged letters with the Foreign Minister of the Government of Israel regarding steps to improve coordination between the United Nations and the Israel Defense Forces (IDF), so as to ensure that United Nations personnel, operations and premises are not put at risk in the event of any future military operations affecting Gaza. The United Nations has prepared a proposal to improve coordination for discussion with the Ministry of Foreign Affairs.

52. In its resolution 64/89 of 10 December 2009, the General Assembly "deplor[ed] the extensive damage to and destruction of [United Nations Relief and Works Agency for Palestine Refugees in the Near East] facilities in the Gaza Strip caused during the military operations between December 2008 and January 2009, including to schools where civilians were sheltered and [UNRWA's] main compound and warehouse" and "urge[d] the

[13] See, e.g., Open Letter: Palestinian, Israeli and International Human Rights NGOs Deplore Politically-Motivated Claims Aimed at Discrediting Human Rights Defenders, signed by 52 human rights NGOs, 1 February 2010, available at http://www.alhaq.org/etemplate.php?id=499.

[14] See the open letter to Mr. Shimon Peres, President of Israel, MK Reuven Rivlin, Knesset Speaker and Mr. Benjamin Netanyhau, Prime Minister of Israel, "Re: Assault and delegitimization of human rights organizations in Israel – warning and request for meeting", 31 January 2010, signed by Aid Organization for Refugees and Asylum-Seekers in Israel, The Association for Civil Rights in Israel, Bimkom – Planners for Planning Rights, B'Tselem, Gisha, The Public Committee against Torture in Israel, Yesh Din, Hamoked – The Centre for the Defence of the Individual, The Hotline for Migrant Workers, Israel Religious Action Center, Kav LaOved – Worker's Hotline, Physicians for Human Rights – Israel, Rabbis for Human Rights, available at http://www.acri.org.il/pdf/lettertoperes310110.pdf.

[15] See the Association for Civil Rights in Israel, "ACRI Condemns Campaign against NIF, Naomi Chazan", available at http://www.acri.org.il/eng/story.aspx?id=705, and Human Rights Watch, "Israel: Attacks on New Israel Fund, Critical Groups, Threaten Civil Society," available at www.hrw.org/en/news/2010/02/08/israel-attacks-new-israel-fund-critical-groups-threaten-civil-society.

Government of Israel to speedily compensate [UNRWA] for damage and destruction to its property and facilities resulting from actions by the Israeli side, including as a result of the military operations in the Gaza Strip between December 2008 and January 2009".

53. In August 2009, the United Nations submitted a claim to Israel for reimbursement for the losses that the Organization had sustained in seven incidents that had been investigated by the United Nations Headquarters Board of Inquiry into Certain Incidents that Occurred in Gaza Strip between 27 December 2008 and 19 January 2009 and for which the Board had found Israel responsible.[16] In January 2010, the Government of Israel made a payment to the United Nations of $10.5 million in respect of the losses that the Organization had sustained in the incidents that were investigated by the Board of Inquiry.

F. Action by Palestinian armed groups

54. In paragraph 1973 of its report, the Mission addressed two recommendations to Palestinian Armed Groups.

55. In paragraph 1973 (a) of its report, the Mission recommended that "Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities".

56. Indiscriminate rocket and mortar attacks launched by Palestinian armed groups from Gaza continue to occur.[17] OHCHR is unable to confirm whether Palestinian armed groups have taken "all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities."

57. In paragraph 1973(b) of its report, the Mission recommended that "Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits".

58. At the time of writing, Israeli soldier Gilad Shalit remains in detention, without being recognized as a prisoner of war and without being allowed contact with the International Committee of the Red Cross.

G. Action by responsible Palestinian authorities

59. The Mission directed three recommendations to responsible Palestinian authorities in paragraph 1974 of its report.

60. In paragraph 1974 (a) of its report, the Mission recommended that "the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigations of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians".

[16] A/63/855–S/2009/250.

[17] Letters from the Permanent Mission of Israel to the High Commissioner for Human Rights, 9 November 2009, 26 November 2009, 14 December 2009, 5 January 2010, and 12 January 2010.

61. The Minister of Interior of the Palestinian Authority has issued two decisions[18] that instruct security forces, within the context of handling detainees, to abide by human rights norms, as enshrined in the Palestinian Basic Law and international instruments. OHCHR has not been able to confirm whether the Palestinian Authority has ended resort to military justice to deal with cases involving civilians. At the same time, the Palestinian Authority established a committee on 25 January 2010,[19] which is mandated to follow up on the implementation of the Mission's report in so far as it relates to the Palestinian Authority, and to undertake the investigative duties and responsibilities required of it by the Mission's report.

62. In paragraph 1974 (b) of its report, the Mission recommended that "the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law".

63. According to information provided to OHCHR, 523 detainees are being held in the West Bank for political reasons.[20] OHCHR has received information that approximately 100 prisoners were being held by the de facto Gaza authorities as of 1 December 2009 for political reasons.[21] On 18 February it was reported that the de facto Gaza authorities had released 22 persons who were allegedly detained on political grounds.[22] The Palestinian Authority and the de facto Gaza authorities both publicly claim that detainees and prisoners are not held on political but rather only on security or criminal grounds.

64. In paragraph 1974 (c) of its report, the Mission recommended that "the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights".

65. There is no indication that any specific action has been taken to implement this recommendation. Moreover, an escalation of attacks on human rights defenders in Gaza has been observed in recent months. One example is the attempt by Hamas security forces to close the Independent Commission for Human Rights' office in Gaza on 22 October 2009. It remains unclear who is responsible for the incursion into the premises of the Al-Dameer Institute for Human Rights on 15 November 2009 and the attack against the Palestinian Network of Non-Governmental Organizations on 13 December 2009.

H. Action by the international community

66. Paragraph 1975 of the Mission's report contains five recommendations addressed to a range of actors and partners in the international community. States and relevant organizations have provided information on the implementation of those recommendations.

67. In paragraph 1975 (a) of its report, the Mission recommended that "the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave

[18] Palestinian National Authority, Minister of Interior, Decision No. 149, 20 August 2009, and Palestinian National Authority, Minister of Interior, Decision No. 172, 17 September 2009

[19] Palestinian National Authority, Presidential Decree No. 0105, 25 January 2010.

[20] Information provided to OHCHR by the Independent Commission for Human Rights (ICHR) – Palestine.

[21] Figures provided by ICHR, as of 1 December 2009

[22] See *Jerusalem Post*, "Hamas: We've released 22 Fatah prisoners as goodwill gesture," at www.jpost.com/Headlines/Article.aspx?id=169070.

breaches of the Geneva Conventions of 1949. Where so warranted following investigations, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice".

68. The High Commissioner for Human Rights sent notes verbales to all States parties to the Geneva Conventions to request information on the implementation of this recommendation. None of the States which replied indicated that any case related to the Gaza conflict was being investigated by its relevant national authorities or prosecuted before its national courts.[23]

69. In paragraph 1975(b) of its report, the Mission recommended that "international aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population".

70. The High Commissioner for Human Rights sent letters to United Nations agencies engaged in such activities in the Occupied Palestinian Territory, and the following information regarding this recommendation is based on the replies received.[24]

71. UNICEF has been working with the Palestinian Center for Democracy and Conflict Resolution (PCDCR) to provide psychosocial support to children and families affected by the conflict. This work includes initial and in-depth group sessions for children referred by schools, community-based organizations and community workers; individual support for children who require more focused help; emergency visits to children and communities; a toll free line to which children and families can call for support, advice and referral; and a socio-legal defence centre where people can call for legal advice on their rights and entitlements, referral and support. In 2009 UNICEF increased its support to PCDCR by establishing an emergency standby team of psychosocial support workers. A publicity campaign was also carried out in the lead-up to the anniversary of the war, with messages to parents that addressed the dangers of over-exposure to television and media images related to the conflict.

72. UNICEF is supporting the NGO Terre des Hommes to implement a mental health and psychosocial technical support unit for Gaza. The aim is to support mental health and psychosocial support (MHPSS) by mapping existing MHPSS actors and the different levels of support that are already in place, raising awareness regarding support available for mental health problems, including de-stigmatization of such problems, and adapting and disseminating the Inter-Agency Standing Committee's (IASC) Guidelines on Mental Health and Psychosocial Support in Emergency Settings. Furthermore, UNICEF, in its capacity as co-chair of the MHPSS working group in Gaza, is providing periodic trainings in relation to the IASC Guidelines.

73. The World Health Organization (WHO) reports that over 80 national and international NGOs have been involved in working on MHPSS issues through the implementation of a coordinated joint effort. These organizations have convened on a

[23] As of 2 March 2010, replies had been received from Burkina Faso, Cyprus, Egypt, Finland, France, Jordan, Norway, Pakistan (in its capacity as Coordinator of the Organization of the Islamic Conference Group on human rights and humanitarian issues), Portugal, Nigeria (in its capacity as Coordinator of the Africa Group on human rights issues), Switzerland and Slovenia.

[24] Letters were addressed to: the Humanitarian Coordinator of the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO), which was copied to the Heads of United Nations Agencies in the Occupied Palestinian Territory; the Prosecutor of the International Criminal Court (ICC); to international aid providers: the European Commission in the West Bank and Gaza and to the Chair of the Ad-Hoc Liaison Committee, to the Special Envoy of the Quartet, to the United National Environment Programme (UNEP) and the World Health Organization (WHO).

regular basis to review and plan activities and develop and endorse input into policymaking regarding MHPSS issues.

74. In paragraph 1975 (c) of its report, the Mission recommended that, "in view of their crucial function . . . donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law".

75. In response to informal queries from the OHCHR field presence in the Occupied Palestinian Territory, neither Israeli nor Palestinian NGOs have reported any major changes in their funding as of the time of writing.

76. UNICEF chairs an inter-agency working group on grave violations against children that includes representatives of Palestinian and Israeli human rights organizations. Through this working group, which carries out monitoring and reporting activities, UNICEF has, since the date of the Mission's report, organized workshops in Gaza and the West Bank to strengthen local capacities to contribute to reports for the Security Council regarding the situation of children in the Occupied Palestinian Territory.

77. OHCHR continues to lead the Protection Cluster Working Group as well as the Accountability Task Force within it. Both include a number of Palestinian and Israeli NGOs and both were active throughout the 2009, as was the Displacement Working Group, led by OCHA.

78. In paragraph 1975 (d) of its report, the Mission recommended that "States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives".

79. The High Commissioner for Human Rights sent a letter on 14 December 2009 to the Quartet Representative requesting information on the implementation of this recommendation, and has not received a response to date.

80. In paragraph 1975 (e) of its report, the Mission recommended that "in view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions . . . a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation".

81. On 14 December 2009, the United Nations Environmental Programme (UNEP) released a report entitled "Environmental assessment of the Gaza Strip: following the escalation of hostilities in December 2008-January 2009". In that report, lack of safe drinking water and the prevalence of methemoglobinemia are identified as critical concerns, including in relation to blue baby syndrome. In this regard, the UN Humanitarian Coordinator has agreed to launch a detailed study on methemoglobinemia, and UNICEF will prepare a strategy note on providing safe water for all children in the Gaza Strip. The report stresses that the situation with respect to groundwater continues to deteriorate and

that the aquifer is likely to collapse if action is not taken urgently. UNEP is preparing a technical paper on the long-term solutions required to address groundwater issues in Gaza.

I. Action by the international community and responsible Palestinian authorities

82. In paragraph 1976 (a) of its report, the Mission recommended to the international community and responsible Palestinian authorities that "appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and effectively disbursed, and urgently put to use for the benefit of the population of Gaza."

83. To date, no mechanism has been established to track commitments against the US$ 4.2 billion pledged by international donors at the Gaza reconstruction conference held in Sharm el-Sheikh in March 2009. The low commitments against the US$ 4.2 billion pledged may be attributable to the ongoing closures of Gaza. Notwithstanding this, some donor funding is reaching Gaza via budget and programme support to the Palestinian Authority (a significant portion of which goes to Gaza) and direct project support for various projects in Gaza. UNRWA reports that it has received US$ 100 million to support reconstruction activities, although it notes that it is not possible to undertake such activities due to continuing restrictions on the import of reconstruction materials.

84. In paragraph 1976 (b) of its report, the Mission recommended that, "in view of the consequences of the military operations, . . . responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients."

85. It is reported that the Ministry of Social Affairs of the de facto authorities in Gaza recently established a department to provided support for persons with disabilities.[25] OHCHR is not aware of any further action taken by responsible Palestinian authorities or Palestinian structures, in response to the recommendation contained in paragraph 1976 (b) of the Mission's report.

86. WHO reports that approximately 70 NGOs have been working in support of persons with disabilities. Substantial numbers of traumatic disabilities resulted from the Gaza conflict, including at least 221 amputees. Many seriously injured persons were transferred abroad during or immediately after the conflict to receive care. At the same time, a number of surgeons from abroad came to Gaza after the end of the conflict to assist in carrying out surgical corrective programmes. International NGOs, such as Médecins sans Frontières, continue to provide specialized support and post-operative care, while the local production of prostheses by the Artificial Limb and Polio Centre has doubled, thanks to support from the international humanitarian community.

87. UNRWA's effort to assist persons with disabilities includes the provision of cash assistance to 76 individuals; the inclusion of 21 disabled persons in training opportunities abroad; supporting six community-based rehabilitation centres with technical expertise and human resource assistance (134 short-term workers); special educational services for 822

[25] Information received from National Society for Rehabilitation on 17 January 2010.

persons; equipment, such as wheel chairs, walkers, crutches, air mattresses, etc. for nearly 2,000 people; morale-boosting activities for children, such as festivals and days of recognition; medical follow up for amputees or persons otherwise wounded; and support for 17 health-care facilities in Gaza that specialize in various treatments. Furthermore, UNRWA cooperated with local organizations to ensure that 48 patients received prosthetic devices and artificial limbs, and provided physiotherapy for 393 persons who sustained injuries during the Gaza conflict, 33 per cent of whom were under 20 years old. [26]

88. UNICEF reports that it provided surgical (trauma) kits, drugs and medical consumables sufficient to support the emergency care and rehabilitation of an estimated 250 children and adults affected by the crisis.

89. The UN Mine Action Team and its partners have been continuing to clear unexploded ordinance in destroyed houses and buildings, with a view toward reducing the risk of further disabilities.

90. The European Commission, through its ECHO humanitarian aid arm, has made efforts to meet shortages of medical supplies, assistive devices and training opportunities for medical professionals in Gaza, with a particular focus on providing care and rehabilitation services for persons with disabilities.

91. The OHCHR office in the Occupied Palestinian Territory has conducted a survey regarding persons with disabilities[27] and found that 529 persons were disabled as a result of the Gaza conflict, 173 of whom are children.[28] All persons interviewed by the OHCHR pointed out to the lack of access to sustained rehabilitation and support services. Persons with disabilities rely on rehabilitation services, both mental and physical, that are provided by NGOs and the United Nations. OHCHR came across a number of cases in which persons with disabilities were in need of a prosthetic device, yet were not able to receive help from either local organizations or from the de facto authorities in Gaza. In general, support provided by local authorities is highly limited and sporadic, especially for persons who are not considered to be in the most difficult situations.

J. Action by the international community, Israel and Palestinian authorities

92. In paragraph 1977 (a) of its report, the Mission recommended "that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000)".

93. There are many ongoing efforts to involve Israeli and Palestinian civil society groups in the peace process, and many civil society groups continue to play an active role in promoting ideas and processes to foster a successful peace process. The Secretary-General and the United Nations Special Coordinator for the Middle East peace process continues to engage with a broad spectrum of actors who are promoting initiatives in support of the

[26] The injuries incurred by these patients are broken down as follows: 43 per cent fractures, 29 per cent soft injuries, 20 per cent peripheral and centre nerve injury, 4 per cent amputees, and 4 per cent multiple injuries.

[27] Consisting of a series of interviews with persons with disabilities due to the operation Cast Lead and relevant local organizations.

[28] Out of the 529, 75 per cent are male (399) and 25 per cent female (120), while 42 per cent are from Gaza City.

peace process. The absence of formal peace negotiations presents a constraint to ensuring the sustainability of these initiatives and their integration into peace agreements.

94. In paragraph 1977 (b) of its report, the Mission recommended that "attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security".

95. The UN Inter-Agency Gender Task Force, led by UNIFEM and the GenCap Adviser, has been carrying out a range of activities in relation to the position of women. This includes launching a major survey and report on women's specific needs after the conflict, and following up the report with a series of meetings with various communities throughout Gaza. Further, UNIFEM is supporting the opening of a safe house in Gaza to protect women affected by violence and the formation of a mechanism for women's advocacy.

96. UNRWA has provided 777 loans to women owned and operated small businesses and employed an average of 3,800 women on a temporary basis through a job creation programme. UNRWA has also convened events to improve women's self-sufficiency and ability to take leadership roles in their communities, provided technical and human resources support to organizations providing legal advice to women, and disseminated information targeted to women regarding how to obtain further assistance.

K. Action by the Secretary-General

97. In paragraph 1978 of its report, the Mission recommended that "the Secretary General should develop a policy to integrate human rights into peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide expertise required to implement this recommendation".

98. The Secretary-General continues to make efforts to ensure that human rights are integrated into peace initiatives in which the United Nations is involved, including the Quartet.

L. Action by the Office of the United Nations High Commissioner for Human Rights

99. Paragraph 1979 of the Mission's report contains two recommendations directed to OHCHR.

100. In paragraph 1979 (a) of its report, the Mission recommended that "the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate".

101. Through its field presence in the Occupied Palestinian Territory, OHCHR has maintained contact with persons who have cooperated with the Mission, in order to monitor their situation, and will periodically report on their situation.

102. In paragraph 1979 (b) of its report, the Mission recommended that "the Office of the High Commissioner for Human Rights should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council."

103. The High Commissioner's periodic report on the implementation of Human Rights Council resolution S-9/1 (A/HRC/13/54) addresses a number of human rights issues that are also relevant to the Mission's recommendations.

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Report of the United Nations High Commissioner for Human Rights on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict*

Summary

The present report provides information on the status of implementation of Human Rights Council resolution 13/9 on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict. It reviews the key operative paragraphs of resolution 13/9 and actions taken toward their implementation.

* Late submission.

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I. Background

1. In resolution 13/9 on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report on the implementation of the resolution at its fifteenth session. The present report is submitted pursuant to this request.

II. Implementation of Human Rights Council resolution 13/9

2. In operative paragraph 4 of resolution 13/9, the Human Rights Council reiterated its call upon all concerned parties, including United Nations bodies, to ensure the implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), in accordance with their respective mandates.

3. In response to operative paragraph 14 of resolution 13/9, the status of implementation of the recommendations contained in the report of the Fact-Finding Mission is comprehensively addressed in the report of the Secretary-General to the fifteenth session of the Council on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of Human Rights Council resolution S-12/1 (A/HRC/15/51).

4. In operative paragraph 5 of resolution 13/9, the Human Rights Council reiterated the call by the General Assembly upon the Government of Israel to conduct investigations that are independent, credible, and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, with a view to ensuring accountability and justice. In operative paragraph 6 of resolution 13/9, the Council reiterated the urging by the General Assembly for the conduct by the Palestinian side of investigations that are independent, credible, and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, with a view to ensuring accountability and justice.

5. The status of implementation of operative paragraphs 5 and 6 of resolution 13/9 is addressed in the report of the committee of independent experts in international humanitarian and human rights law that was established by the Council in operative paragraph 9 of the same resolution (A/HRC/15/50). The committee was mandated to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards.

6. In operative paragraph 7 of resolution 13/9, the Human Rights Council welcomed the recommendation made by the General Assembly to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene, as soon as possible, a conference of High-Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999 as well as the reconvening of the conference and the declaration adopted on 5

December 2001, and recommended that the Government of Switzerland reconvene the above-mentioned conference before the end of 2010.

7. In the context of preparing a report pursuant to General Assembly resolution 64/254, the Secretary-General requested that the Government of Switzerland provide written information regarding any steps it may have taken, or was in the process of taking, further to the recommendation of the General Assembly in operative paragraph 4 of resolution 64/254.[1] The Government of Switzerland responded to this request with a report entitled "Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254," which is contained in annex 3 to the report of the Secretary-General and contains information on the implementation of operative paragraph 7 of Human Rights Council resolution 13/9.

8. In operative paragraph 8 of resolution 13/9, the Human Rights Council called upon the High Commissioner for Human Rights to explore and determine the appropriate modalities for the establishment of an escrow fund for the provision of reparations to the Palestinians who suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the military operations conducted from December 2008 to January 2009.

9. In response to operative paragraph 8, the High Commissioner requested guidance from the Controller of the United Nations on the modalities for the establishment of an escrow fund, including its appropriate custodian. The response received from the Controller identified a range of considerations and questions, which have been referred to the Office of Legal Affairs. The High Commissioner will provide further information on this matter following the receipt of counsel from the Office of Legal Affairs.

10. In operative paragraph 10 of resolution 13/9, the Human Rights Council requested that the High Commissioner appoint the members of the committee of independent experts in international humanitarian and human rights law and provide them with all the administrative, technical, and logistic assistance requested to enable them to fulfil their mandate promptly and efficiently.

11. As detailed in the progress report of the High Commissioner on the follow-up to the report of the Fact-Finding Mission (A/HRC/14/CRP.4), the High Commissioner fulfilled the request of the Council to appoint the members of the committee and established a secretariat to provide assistance to the committee.

12. In operative paragraph 11 of resolution 13/9, the Human Rights Council requested the Secretary-General to transmit all the information submitted by the Government of Israel and the Palestinian side, pursuant to paragraphs 2 and 3 of General Assembly resolution 64/254, to the committee of independent experts.

13. As indicated in his second follow-up to the report of the Fact-Finding Mission, the Secretary-General sent all the information submitted by the Government of Israel and the Palestinian side to the High Commissioner, with a request that she transmit this information to the committee of independent experts.[2] The High Commissioner received and complied with the request of the Secretary-General.

14. In operative paragraph 12 of resolution 13/9, the Human Rights Council requested the committee of independent experts to present its report to the Council at its fifteenth session. It is expected that the committee will meet this request.

[1] See A/64/890.

[2] A/64/890, para. 12.

15. In operative paragraph 13 of resolution 13/9, the Human Rights Council called upon the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions, as referred to in the report of the Fact-Finding Mission, drawing, inter alia, on the expertise of the International Committee of the Red Cross.

16. As of the submission of this report, the General Assembly has not acted on this request.

17. The Human Rights Council, in operative paragraph 14 of resolution 13/9, requested the Secretary-General to present a comprehensive report on the progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of resolution S-12/1, to the Council at its fifteenth session.

18. As noted in paragraph 3 above, the Secretary-General has submitted a report to the fifteenth session of the Council in pursuance of this request.

19. Operative paragraph 15 of the Council's resolution 13/9 requested that the High Commissioner present a report on the implementation of the same resolution to the Council at its fifteenth session.

20. The present document is submitted pursuant to this request.

21. In operative paragraph 16 of resolution 13/9, the High Commissioner was requested to submit to the Council, at its fourteenth session, a progress report on the implementation of the resolution.

22. The progress report (A/HRC/14/CRP.4) of the High Commissioner on the follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict was duly submitted to the fourteenth session of the Council to fulfil this request.

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Report of the United Nations High Commissioner for Human Rights on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict

Addendum

Advice of the Office of Legal Counsel on the establishment of an escrow fund pursuant to Human Rights Council resolution 13/9*

In accordance with paragraph 8 of Human Rights Council resolution 13/9, the United Nations High Commissioner for Human Rights requested guidance from the Controller of the United Nations on the modalities for the establishment of an escrow fund, including its appropriate custodian. The response received from the Controller identified a range of considerations and questions, which were referred to the Office of Legal Affairs. A summary of the counsel received on 28 August 2010 from the Office of Legal Affairs is provided below.

* Late submission.

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Advice of the Office of Legal Counsel on the establishment of an escrow fund pursuant to Human Rights Council resolution 13/9

1. In response to the request of the United Nations High Commissioner for Human Rights for advice with regard to the establishment of an escrow fund, the Office of Legal Affairs identified a number of decisions that would need to be taken by a competent organ of the United Nations (for example the General Assembly) if the decision were to be made to follow the recommendation made in the Goldstone report.[1] These would include (a) a decision to establish the escrow fund; (b) a decision on the source(s) of funding for the fund; (c) a decision to establish a body to administer the fund; (d) a decision on the extent to which the body would rely on the investigations carried out by the Government of Israel and the Palestinian authorities in order to determine the factual basis of a claim for compensation from the fund; and (e) a decision to establish a secretariat of the body administering the fund.

2. The Office of Legal Affairs furthermore identified a set of ancillary decisions that would also need to be taken, including decisions on the identification of persons eligible to receive compensation from the fund; the particular types of loss for which compensation might be paid from the fund; the process for the submission of claims for compensation; a timetable for the submission of claims; and a target date for the completion of claims processing.

[1] A/HRC/12/48.

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Progress made in the implementation of the recommendations of the Fact-Finding Mission by all concerned parties, including United Nations bodies, in accordance with paragraph 3 of section B of Human Rights Council resolution S-12/1

Report of the Secretary-General*

Summary

The present report focuses on the status of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48). It reviews all recommendations made by the Mission, in the order in which they appear in the Mission report.

* Late submission.

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I. Introduction

1. The Human Rights Council, in its resolution 13/9, reiterated its call for all concerned parties, including United Nations bodies, to ensure the implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) (hereinafter the "Mission"). It also requested the Secretary-General to submit a comprehensive report on progress made in the implementation of the Mission's recommendations, in accordance with paragraph 3 of section B of Human Rights Council resolution S-12/1, to the Council at its fifteenth session. The present report is submitted pursuant to that request, and updates the information contained in the report of the Secretary-General on the status of implementation of paragraph 3 of Council resolution S-12/1 B (A/HRC/13/55). It contains information requested and received from States, organizations and other entities to which the Mission addressed its recommendations, as well as that gathered directly by the United Nations.

II. Status of the implementation of the recommendations of the Mission report

A. Action by the Human Rights Council

2. In paragraph 1968 of its report, the Mission addressed five recommendations to the Council. It recommended that the Council should endorse the recommendations contained in the report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation at future sessions.

3. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the Council endorsed the Mission's recommendations and called on all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates. In paragraph 4 of its resolution 13/9, the Council reiterated this call; in paragraph 17, it decided to follow up on the implementation, inter alia, of its paragraph 4 at its fifteenth session. In paragraph 16, the Council also requested the United Nations High Commissioner for Human Rights to submit to the Council, at its fourteenth session, a progress report on the implementation of the resolution, including its paragraph 4. The High Commissioner submitted that report (A/HRC/14/CRP.4) to the Council, which the Council reviewed at its fourteenth session.

4. In paragraph 1968 (b) of its report, the Mission recommended that, in view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported, the Council should request the Secretary-General to bring the report to the attention of the Security Council under Article 99 of the Charter of the United Nations in order that the Security Council may consider action according to the Mission's relevant recommendations.

5. To date, the Council has not directed any specific request to the Secretary-General to bring the Mission's report to the attention of the Security Council under Article 99 of the Charter.

6. In paragraph 1968 (c) of its report, the Mission recommended that the Council should formally submit the report to the Prosecutor of the International Criminal Court.

7. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the report of the Mission was transmitted to the Prosecutor of the International Criminal Court on 10 December 2009.

8. In paragraph 1968 (d) of its report, the Mission recommended that the Council should submit the report to the General Assembly with a request that it should be considered.

9. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the Council recommended that the General Assembly should consider the report of the Mission during the main part of its sixty-fourth session.[1]

10. In paragraph 1968 (e) of its report, the Mission recommended that the Council should bring the Mission's recommendations to the attention of relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission also recommended that the Council should consider review of progress as part of its universal periodic review process.

11. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the Mission's report was transmitted to the treaty bodies that monitor compliance by Israel with the human rights treaties to which it is party[2] on 10 December 2009.

B. Action by the Security Council

12. In paragraph 1969 of its report, the Mission addressed a total of six recommendations to the Security Council.

13. In paragraph 1969 (a) of its report, the Mission recommended that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations, to:

(a) Take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission, and any other serious allegations that might come to its attention;

(b) Inform the Security Council, within a further period of three months, of actions taken, or in the process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations.

14. To date, the Security Council has not directed such a request to the Government of Israel.

[1] See General Assembly resolution 64/254 and the report of the Secretary-General on the second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/64/890).

[2] The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child.

15. In paragraph 1969 (b) of its report, the Mission also recommended that the Security Council should, at the same time, establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the above-mentioned investigations. Such a committee should report at the end of its six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the High Commissioner for Human Rights (OHCHR).

16. To date, the Security Council has not established such a committee.[3]

17. In paragraph 1969 (d) of its report, the Mission recommended that the Security Council should require the said independent committee of experts to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the above-mentioned investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Mission also recommended that the Security Council should request the committee to report to it at determined intervals, as may be necessary.

18. In paragraphs 1969 (c) and (e) of its report, the Mission further recommended that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of Israel or the relevant authorities in Gaza, respectively acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute of the International Criminal Court. In paragraph 1969 (f) of its report, the Mission recommended that lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee. As the Security Council has not established an independent committee of experts, none of these recommended actions has been carried out.[4]

[3] In resolution 13/9, the Human Rights Council decided, in the context of the follow-up to the report of the Independent International Fact-Finding Mission, to establish a committee of independent experts to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards. The Council also requested the High Commissioner for Human Rights to appoint the members of the committee and to provide them with all necessary administrative, technical and logistical assistance. Accordingly, the High Commissioner appointed Professor Christian Tomuschat (Chairperson), Param Cumaraswamy and Justice Mary McGowan Davis as members of the committee, and established a secretariat to provide the required administrative, technical and logistical assistance (see A/HRC/14/CRP.4).

[4] Ibid.

C. Action by the Prosecutor of the International Criminal Court

19. In paragraph 1970 of its report, the Mission stated that, with reference to the declaration under article 12 (3) of the Rome Statute received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, it considered that accountability for victims and the interests of peace and justice in the region required that the Prosecutor should make the required legal determination as expeditiously as possible.

20. In a letter dated 22 July 2010 addressed to the Deputy High Commissioner for Human Rights, the Office of the Prosecutor of the International Criminal Court stated that the Prosecutor had not, to date, made a determination of whether, in his view, the Court had jurisdiction in respect of any crimes referred to in article 5 of the Rome Statute that may have been committed in the Gaza Strip between December 2008 and January 2009. The Office of the Prosecutor noted that it had received submissions on the issue from Palestinian and Israeli authorities, as well as from other entities,[5] and that a determination would be made once the Office was satisfied that all relevant arguments had been collected and considered.

D. Action by the General Assembly

21. In paragraph 1971 of its report, the Mission addressed four recommendations to the General Assembly. The Mission recommended that the Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in its report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The Assembly could remain apprised of the matter until it was satisfied that appropriate action had been taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The Assembly could also consider whether additional action within its powers was required in the interests of justice, including under its resolution 377 (V) on uniting for peace.

22. To date, the General Assembly has not directed such a request to the Security Council (see paragraph 4 above).

23. In paragraph 1971 (b) of its report, the Mission recommended that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December-January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission also recommended that the Assembly should ask OHCHR to provide expert advice on the appropriate modalities to establish the escrow fund.

24. To date, the General Assembly has not established such a fund.[6]

[5] A summary of the submissions is available at www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Palestine/.

[6] In paragraph 8 of its resolution 13/9, the Human Rights Council called upon the High Commissioner to explore and determine the appropriate modalities for the establishment of an escrow fund for the provision of reparations to the Palestinians who suffered loss and damage as a result of the unlawful acts attributable to the State of Israel during the military operation conducted from December 2008 to January 2009. See also the report of the High Commissioner on the follow-up to the report of the

25. In paragraph 1971 (c) of its report, the Mission recommended that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1.

26. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the General Assembly recommended that the Government of Switzerland, in its capacity as depository of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, should undertake as soon as possible the necessary steps to reconvene a conference of High Contracting parties to the Fourth Geneva Conventions on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1. In a subsequent communication to the Secretary-General, the Government provided information on the preliminary consultations that it had undertaken to that end (A/64/651, annex III). In paragraph 4 of its resolution 64/254, the Assembly reiterated its recommendation that the Government of Switzerland, in its capacity as depository of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, undertake as soon as possible the necessary steps to reconvene a Conference of High Contracting parties to the Fourth Geneva Conventions on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999, as well as the reconvening of the Conference and the declaration adopted on 5 December 2001. In a subsequent communication to the Secretary-General, the Government provided information on the preliminary consultations that it had undertaken to that end.[7]

27. In paragraph 1971 (d) of its report, the Mission recommended that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in its report, and in particular white phosphorous, flechettes and heavy metal, such as tungsten. In such a discussion, the Assembly should draw on, inter alia, the expertise of the International Committee of the Red Cross (ICRC). The Mission also recommended that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they had caused in the Gaza Strip.

28. To date, the General Assembly has not taken action to promote such a discussion.[8]

United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/15/52), in which she stated that she had requested guidance from the Controller of the United Nations on the modalities for the establishment of an escrow fund, including its appropriate custodian, and that the response received from the Controller had identified a range of considerations and questions, which should be referred to the Office of Legal Affairs, that the High Commissioner had accordingly written to that Office for legal advice and would provide further information on this matter following the receipt of its reply.

[7] A/64/890, annex III. In paragraph 7 of its resolution 13/9, the Council welcomed the recommendation of the General Assembly addressed to the Government of Switzerland, and recommended that the Government reconvene the conference envisaged before the end of 2010.

[8] In paragraph 13 of its resolution 13/9, the Council called upon the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, drawing on, inter alia, the expertise of the International Committee of the Red Cross.

E. Action by the State of Israel

29. In paragraph 1972 of its report, the Mission addressed a total of nine recommendations to the State of Israel.

30. In paragraph 1972 (a) of its report, the Mission recommended that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip.

31. On 20 June 2010, the Government of Israel announced a new policy in relation to border closures and restrictions on passage through border crossings with the Gaza Strip.[9] In connection with this announcement, a list detailing items that were banned or otherwise restricted from entering Gaza was released.[10] According to the new list, the entry of arms and munitions and "dual-use" goods and items[11] would be subject to specific permission by the Government. Moreover, construction items and materials were to be allowed entry only for projects authorized by the Palestinian Authority and implemented by the international community. Since the announcement of the new policy, new food and productive items have been allowed into Gaza and the volume of imports has increased steadily. A total of 696 truckloads of goods entered Gaza between 20 and 26 June 2010, immediately after the announcement, a six per cent increase compared to the weekly average of 553 truckloads that entered in 2010 prior to the announcement.[12] In the week between 18 and 24 July 2010, the number of truckloads reached 979;[13] by 7 August 2010, the number stood at an average of 1006 truckloads per week. However, this figure only represents 36 per cent of the weekly average of the first five months of 2007, before the imposition of the blockade.[14] Approvals have also been given for a number of additional United Nations projects in the vital areas of education and health. Israel continues to prohibit all exports from Gaza.[15]

32. In paragraph 1972 (b) of its report, the Mission recommended that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It also recommended that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel.

33. Israeli naval forces continue to prohibit Gazans access beyond three nautical miles from the shore and within a 300-metre wide strip of land near the border fence. This has drastically reduced the quantity and quality fishing activities. As a result, nearly 90 per cent of Gazan fishermen now live in either poverty or extreme poverty.[16] Fishermen going

[9] See Israeli Security Cabinet Decision of 20 June 2010.

[10] See the Civilian policy towards the Gaza Strip: the implementation of the Cabinet Decision (June 2010), State of Israel, Ministry of Defense, Coordinator of Government Activities in the Territories, June 2010.

[11] Ibid. "Dual-use" times are defined as "liable to be used, side by side with their civilian purposes, for the development, production, installation or enhancement of military capabilities and terrorist capacities".

[12] See Protection of Civilian Weekly Report, United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian territory (OCHA-OPT), 23-29 June 2010.

[13] Ibid., 18-24 July 2010.

[14] Ibid., 28 July-10 August 2010.

[15] Letter received by OHCHR from the Permanent Mission of Israel, Geneva, 28 June 2010.

[16] See "Gaza closure: not another year", International Committee of the Red Cross, press release of 14 June 2010, available at www.icrc.org/web/eng/siteeng0.nsf/html/palestine-update-140610.

beyond the imposed zone are subject to arrest, seizure of their vessel, and/or armed attack from Israeli naval forces.

34. In paragraph 1972 (c) of its report, the Mission recommended that Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. It recommended that Israel should avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular, such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination were effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law.

35. In July 2010, the Government of Israel issued a document entitled "Gaza operation investigations: second update". In the document, the Government describes the adoption by the Israel Defense Forces of new procedures and doctrine to improve the protection of civilians in urban warfare.[17] These include positive measures to "insulate the civilian population from combat operations, and to limit unnecessary damage to civilian property and infrastructure and require integration of civilian interests into the planning of combat operations".[18] It also reports the issuance of a new standing order on the destruction of private property for military purposes.[19] The Government of Israel has not approached OHCHR to draw on its expertise in connection with a review of rules of engagement, standard operating procedures, open fire regulations or other relevant guidance for military personnel.

36. In paragraph 1972 (d) of its report, the Mission recommended that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory – within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world – in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission also recommended that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities.

37. The freedom of movement of Palestinians within the Occupied Palestinian Territory remains severely restricted. The barrier, in conjunction with its gate and permit regime, continues to be the single largest obstacle to Palestinian movement within the West Bank. On 24 May 2010, Israeli authorities announced a welcome package of measures that included the opening of a key route to Palestinian traffic and the removal of 60 roadblocks.[20] Still, there has been no significant improvement in the access of Palestinians to areas behind the barrier, including East Jerusalem, or to land and rural communities in the Jordan Valley. Freedom of movement for Palestinians between Gaza and the West Bank, and abroad remains highly limited. In this regard, the Government of Israel stated that its adjusted policy on the entry of goods into Gaza would not remove existing

[17] Available at www.mfa.gov.il/NR/rdonlyres/1483B296-7439-4217-933C-53CD19CE859/0/GazaUpdateJuly2010.pdf.

[18] Ibid., paras.150-153.

[19] Ibid., paras.154-156.

[20] The West Bank Movement and Access Update, OCHA-OPT, June 2010.

restrictions on freedom of movement to and from Gaza.[21] Palestinian human rights defenders continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world due to the travel bans imposed by Israel.[22]

38. In paragraph 1972 (e) of its report, the Mission recommended that Israel should release Palestinians detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission also recommended that Israel should cease the discriminatory treatment of Palestinian detainees, and that family visits for prisoners from Gaza should resume.

39. The number of Palestinian prisoners in Israeli prisons has decreased. As at the end of June 2010, more than 6,200 Palestinians remained in Israeli prisons, including nearly 300 children.[23] The number of Palestinians held in administrative detention had also decreased. Nonetheless, more than 200 people, including two children, remained in administrative detention.[24] The recent decline has been attributed to various factors, including a drop in violence.[25] Family visits for prisoners from Gaza continue to be banned by Israeli authorities.

40. In paragraph 1972 (f) of its report, the Mission recommended that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning.

41. Four members of the Palestinian Legislative Council who had been in Israeli detention since 2006 were released in May and early June 2010. In June 2010, the members, all elected on the Change and Reform political party list in 2006 and permanent residents of Jerusalem, had their residency permits revoked by the Government of Israel and were ordered to leave East Jerusalem. A petition was filed at the Israeli High Court on 15 June 2010 to contest the revocation of the permits. The High Court is due to hear the merits of the case on 6 September 2010.[26] At present, 12 Council members remain in Israeli detention.[27]

42. In paragraph 1972 (g) of its report, the Mission recommended that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning the policies and conduct of Israel during the military operations in the Gaza Strip. The Mission also recommended that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the

[21] "Israel announces: no easing for travel of people into and out of Gaza", Gisha press release, 8 July 2010.

[22] See Al-Haq Alternative report to the Human Rights Committee on the occasion of Israel's third periodic report; Israel's violations of the Covenant on Civil and Political Rights with respect to the freedom of movement, June 2010.

[23] B'Tselem, Statistics at 30 June 2010, available at www.btselem.org/english/statistics/Detainees_and_Prisoners.asp. See also Defence for Children International/Palestine Section, statistics as of 22 June 2010, available at http://dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11.

[24] Ibid.

[25] See Annual Human Rights Review, B'Tselem, 1 January 2009 to 30 April 2010, p. 43.

[26] See statement by Richard Miron, Spokesperson for the United Nations Special Coordinator for the Middle East Peace Process, Robert Serry, Jerusalem, 1 July 2010.

[27] Quarterly update on Palestinian Prisoners, Addameer Prisoner Support and Human Rights Association, 19 July 2010.

inquiry should be made public and, subject to the findings, appropriate remedial action should be taken.

43. Some non-governmental organizations report concerns regarding limits on freedom of expression in Israel and the Occupied Palestinian Territory, and point primarily to the recently proposed bill, entitled "Amendment of restrictions on an organization's registry and activity", as an indication of ongoing efforts to limit the freedom of expression by civil society organizations concerned with human rights. If enacted, the proposed legislation would prevent the registration of non-governmental organizations or shut down existing ones "if there is a reasonable basis to conclude that the organization is providing information to foreign bodies or is involved in lawsuits abroad against senior officials in the government in Israel and/or officers in the Israeli army regarding war crimes."[28] As of the publication of the present report, Israel has not established an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory.

44. In paragraph 1972 (h) of its report, the Mission recommended that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact-Finding Mission on the Gaza Conflict, in particular individuals who had appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel.

45. OHCHR is not aware of any reprisals taken by the Government of Israel against Palestinian or Israeli individuals or organizations that cooperated with the Mission.

46. In paragraph 1972 (i) of its report, the Mission recommended that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel, and that it should take all appropriate measures to ensure that there was no repetition of violations in the future. It also recommended that reparations to the United Nations should be provided fully and without further delay, and that the General Assembly should consider the matter.

47. On 22 March 2010, an IDF missile hit a well in the Toufah quarter in Gaza, damaging the nearby school run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[29] As of the publication of this report, the United Nations has not received any formal communication from the Government of Israel reiterating its commitment to respecting the inviolability of United Nations premises and personnel.

F. Action by Palestinian armed groups

48. In paragraph 1973 of its report, the Mission addressed two recommendations to Palestinian armed groups.

[28] Bill no. P/18/2456 (available at www.adalah.org/newsletter/eng/apr10/bill.pdf). See also the joint response issued by the following organizations: Adalah - The Legal Center for Arab Minority Rights in Israel; Association for Civil Rights in Israel; Bimkom – Planners for Planning Rights; B'tselem - The Israeli Information Center for Human Rights in the Occupied Territories; Gisha - Legal Center for Freedom of Movement; Hamoked - Center for the Defence of the Individual; Physicians for Human Rights – Israel; Public Committee against Torture in Israel; Rabbis for Human Rights; Yesh Din - Volunteers for Human Rights (available at www.adalah.org/eng/pressreleases/pr.php?file=29_04_10).

[29] Information received by OHCHR from UNRWA.

49. In paragraph 1973 (a) of its report, the Mission recommended that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities.

50. Indiscriminate rocket and mortar attacks against Israel continue to be frequently launched from Gaza.[30] According to the United Nations Department of Safety and Security, from 1 March 2010 to 23 July 2010, there were 37 incidents of rocket fire (totalling 41 rockets) and seven incidents of mortar shelling (totalling 12 mortar shells). OHCHR is unable to determine whether these attacks targeted military or civilian objectives. On 18 March 2010, a rocket attack launched from Gaza resulted in the death of one person.[31] OHCHR is unable to confirm whether Palestinian armed groups have taken all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities.

51. In paragraph 1973 (b) of its report, the Mission recommended that the Palestinian armed groups holding Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds; pending that release, they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

52. At the time of writing, Gilad Shalit was still in detention, had not been recognized as a prisoner of war and was not allowed any contact with ICRC.

G. Action by responsible Palestinian authorities

53. The Mission directed three recommendations to responsible Palestinian authorities in paragraph 1974 of its report.

54. In paragraph 1974 (a) of its report, the Mission recommended that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigations of all allegations of serious human rights violations by security forces under its control, and end the resort to military justice to deal with cases involving civilians.

55. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, the Minister of Interior of the Palestinian Authority issued two decisions instructing security forces, within the context of handling detainees, to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments. The OHCHR field presence has nevertheless received information that the Palestinian Authority continues to subject civilians to military tribunals.

56. In paragraph 1974 (b) of its report, the Mission recommended that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law.

57. According to information provided to OHCHR, arbitrary arrests on political grounds continue in both the West Bank and Gaza. OHCHR received information that, in April, May and June 2010, approximately 364 people in the West Bank and 76 people in Gaza

[30] Letters of the Permanent Mission of Israel to the United Nations High Commissioner for Human Rights of 15 March, 9 April, 29 April, 28 June and 30 July 2010.

[31] Ibid.

were arbitrarily detained for political reasons.[32] The Palestinian Authority and the Gaza authorities maintain that detainees are not held on political grounds.

58. In paragraph 1974 (c) of its report, the Mission recommended that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Palestinian Independent Commission for Human Rights.

59. There is no indication that any action has been taken to implement the above recommendation. Repression of freedom of expression and attacks on civil society organizations have increased in Gaza; for example, on 24 May 2010, the Gaza authorities prevented the Palestinian Independent Commission for Human Rights from convening an event to present its annual human rights report.[33] In the West Bank, assaults on freedom of expression have escalated. In April 2010, Palestinian authorities in the West Bank shut down 10 television and radio stations. The Palestinian Authority has demanded that the remaining outlets pay exorbitant licensing fees, or face closure.[34] More recently, authorities in Gaza and the West Bank imposed restrictions on the publication and distribution of the newspapers *al-Quds*, *al-Ayyam* and *al-Hayat al-Jadida* in Gaza, and *al-Resala* and *Palestine* in the West Bank.[35]

H. Action by the international community

60. Paragraph 1975 of the Mission's report contains five recommendations addressed to a range of actors and partners in the international community.

61. In paragraph 1975 (a) of its report, the Mission recommended that the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigations, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice.

62. According to media reports, on 23 June 2010, an indictment was filed in Belgium against various Israeli Government officials for the commission of possible war crimes during Operation Cast Lead;[36] on 12 July 2010, a group of lawyers filed a complaint with a Moroccan prosecutor seeking the arrest of several high-ranking Israeli Government officials in relation to their involvement in Operation Cast Lead.[37]

63. In paragraph 1975 (b) of its report, the Mission recommended that international aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population.

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[32] Information provided by the Palestinian Independent Commission for Human Rights.

[33] See "Al-Haq condemns recent attacks on civil society organizations in the Gaza Strip", Al-Haq press release, 26 May 2010. For more information on the situation of civil society in Gaza, see also "UNRWA strongly condemns second attack on Summer Games locations", UNRWA press release, available at www.unrwa.org/etemplate.php?id=723.

[34] See Palestinian Centre for Human Rights, press release, 12 July 2010. See also "Journalists under pressure: experiences from the frontline", Valentina Al-Ama, Ma'an Network, International Conference on Freedom of Information: the Right to Know, United Nations Educational, Scientific and Cultural Organization, Brisbane, Australia, 2 May 2010.

[35] Ibid.

[36] See for example "Belgian indictment against Barak, Livni", Jerusalem Post, 23 June 2010.

[37] "Morocco looks to arrest Cast Lead architects", Daily Star, 13 July 2010.

64. The United Nations High Commissioner for Human Rights addressed letters to United Nations agencies engaged in such activities in the Occupied Palestinian Territory; the information given below regarding the above-mentioned recommendation is based on the replies received.[38]

65. Since mid-April 2010, the United Nations Children's Fund (UNICEF) has received approximately $5.5 million towards providing protection and psychosocial support for Palestinian families and children following Operation Cast Lead. UNICEF is currently finalizing an evaluation of psychosocial support in the Occupied Palestinian Territory with a view to informing the development of monitoring tools for psychosocial programmes.

66. The UNRWA Community Mental Health Programme continues to provide counselling to school children and their families affected by the conflict, focusing particularly on those with special needs. In addition, UNRWA is currently mapping resources and working to establish a referral mechanism to ensure long-term commitment to victims.

67. In paragraph 1975 (c) of its report, the Mission recommended that, in view of their crucial function, donor countries and assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law.

68. In response to informal queries from the OHCHR field presence in the Occupied Palestinian Territory, neither Israeli nor Palestinian non-governmental organizations have reported any major changes in their funding at the time of publication of the present report.

69. OHCHR continues to lead the Protection Cluster Working Group and the Accountability Task Force within it. Both include Palestinian and Israeli non-governmental organizations, and share information relating to documenting, developing reports and advocacy activities in relation to violations of human rights and international humanitarian law.

70. In paragraph 1975 (d) of its report, the Mission recommended that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives.

71. Following a meeting on 19 March 2010, the Quartet issued a statement that, inter alia, underscored the importance of respect for international law in the promotion of an environment conducive to successful negotiations. In the same statement, the Quartet expressed concern over the continuing deterioration of the human rights situation in Gaza and stressed the urgency of a durable resolution to the Gaza crisis.[39]

72. In paragraph 1975 (e) of its report, the Mission recommended that, in view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, a programme of environmental monitoring should be implemented under the auspices of the United Nations, for as long as

[38] Letters were addressed to the Humanitarian Coordinator of the Office of the United Nations Special Coordinator for the Middle East Peace Process, which were copied to the Heads of United Nations agencies in the Occupied Palestinian Territory; the Prosecutor of the International Criminal Court; international aid providers: the European Commission in the West Bank and Gaza and to the Chair of the Ad-Hoc Liaison Committee; and to the United Nations Environment Programme and the World Health Organization.

[39] See Office of the Quartet Representative, Tony Blair, press release, 19 March 2010.

deemed necessary; the programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms that address the fears of the population of Gaza and southern Israel at that time and should, at a minimum, be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

73. OHCHR is not aware of any action taken within the reporting period to implement the above recommendation.

I. Action by the international community and responsible Palestinian authorities

74. In paragraph 1976 (a) of its report, the Mission recommended that the international community and responsible Palestinian authorities should establish appropriate mechanisms should to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip were smoothly and effectively disbursed, and urgently put to use for the benefit of the population of Gaza.

75. At the time of publication of the present report, no mechanism had been established to track commitments against the $4.2 billion pledged by international donors at the International Conference in Support of the Palestinian Economy for the Reconstruction of Gaza, held in Sharm el-Sheikh on 2 March 2009. UNRWA has not been able to fully utilize the $4.5 billion received from donors for reconstruction in the Gaza Strip owing primarily to the restrictions on importing construction materials. Following the decision by Israel to adjust its policy of closures in Gaza, UNRWA has proposed to the Government of Israel a new process for receiving international aid and construction materials for housing, schools and medical facilities. The proposal includes monitoring, verification and quality assurance processes to guarantee the integrity of UNRWA programmes.

76. In paragraph 1976 (b) of its report, the Mission recommended that, in view of the consequences of the military operations, responsible Palestinian authorities and international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommended that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which had not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

77. OHCHR is not aware of any action taken by responsible Palestinian authorities or Palestinian structures in response to the above recommendation.

78. The Disability Sub-Cluster, led by the World Health Organization (WHO), is conducting activities to address the needs of disabled people in Gaza, including providing assistive devices, supplying new limb prosthesis every month, providing outreach services (approximately 3,000 beneficiaries from May 2009 to June 2010), counselling and psychosocial support. The Sub-Cluster continues to provide capacity-building in physiotherapy and occupational therapy and coordinate over 40 non-governmental organizations working on disability issues in Gaza. According to WHO, during the reporting period, 80 patients whose limbs had been amputated as a result of injuries

incurred during Operation Cast Lead had received artificial limbs. At least 70 patients remain in need of prostheses.

79. UNRWA continues to cooperate with local organizations to ensure that patients receive prosthetic devices and artificial limbs, and to provide physiotherapy for persons who sustained injuries during Operation Cast Lead. In addition, UNRWA is providing community-based organizations with financial assistance and technical advice to help them to deliver services to their target groups. For example, UNRWA has provided financial subsidies to cover a portion of operating expenses and educational fees, covered salaries for employees through its job creation programme, and assisted such organizations to provide basic goods to affected families. UNRWA has also delivered psychosocial support, physiotherapy, occupational therapy and assistive devices, and coordinated the travel of 21 persons with disabilities to the United Arab Emirates to allow them to receive medical attention.

J. Action by the international community, Israel and Palestinian authorities

80. In paragraph 1977 (a) of its report, the Mission recommended that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000).

81. As stated in the report of the Secretary-General submitted pursuant to section B of Human Rights Council resolution S-12/1, there are ongoing efforts to involve Israeli and Palestinian civil society groups and women in the peace process, including those led by United Nations bodies. In particular, in June 2010 and in commemoration of the tenth anniversary of resolution 1325 (2000), the United Nations Development Fund for Women (UNIFEM) and the International Women's Commission for a Just and Sustainable Palestinian-Israeli Peace convened a two-day high-level colloquium in Spain that brought together Government leaders and experts on women's human and political rights and the Israeli-Palestinian conflict; they highlighted, inter alia, the critical need to recognize women's civil society leadership as participants in resolving the Israeli-Palestinian conflict, ensure that women had a place in all processes to negotiate peace, and take concrete steps to protect women from the specific ways that conflict affects them.[40]

82. In paragraph 1977 (b) of its report, the Mission recommended that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

83. UNRWA reports that it has provided women whose houses were damaged or demolished as a result of Operation Cast Lead with cash assistance for living expenses and rental fees. Since March 2010, UNRWA has recruited 4,934 women at various UNRWA and non-UNRWA installations. Owing to the general lack of employment opportunities, UNRWA has not been able to offer employment to a large number of unskilled women in Gaza. It has, however, developed a project proposal that seeks to offer employment opportunities to 5,772 unemployed, unskilled women in vulnerable households.

[40] See "Women share a vision for Israeli-Palestinian peace", UNIFEM press release, 3 June 2010.

K. Action by the Secretary-General

84. In paragraph 1978 of its report, the Mission recommended that the Secretary-General should develop a policy to integrate human rights into peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide expertise required to implement that recommendation.

85. The Secretary-General asked OHCHR, in cooperation with the United Nations Special Coordinator for the Middle East Peace Process, to devise proposals to ensure increased integration of human rights into the Middle East peace process. OHCHR has initiated a process to develop proposals in response to the request of the Secretary-General.

L. Action by the Office of the United Nations High Commissioner for Human Rights

86. Paragraph 1979 of the Mission's report contains two recommendations addressed to OHCHR.

87. In paragraph 1979 (a) of its report, the Mission recommended that OHCHR should monitor the situation of persons who have cooperated with the United Nations Fact-Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate.

88. Through its field presence in the Occupied Palestinian Territory, OHCHR has maintained contact with persons who have cooperated with the Mission in order to monitor their situation, and will periodically report on their situation as appropriate.

89. In paragraph 1979 (b) of its report, the Mission recommended that OHCHR should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

90. In her periodic report on the implementation of Council resolution S-9/1 (A/HRC/13/54), the High Commissioner addresses a number of human rights issues that are also relevant to the Mission's recommendations.

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Progress made in the implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict by all concerned parties, including United Nations bodies, in accordance with Human Rights Council resolution S-12/1 B, paragraph 3

Report of the Secretary-General*

Summary

The present report focuses on the status of implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48). It reviews all recommendations made by the Mission, in the order in which they appear in the Mission report

* Late submission.

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I. Introduction

1. The Human Rights Council, in its resolution 16/32, reiterated its call upon all concerned parties, including United Nations bodies, to ensure the full and immediate implementation of the recommendations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), in accordance with their respective mandates. It also requested the Secretary-General to submit a comprehensive report on progress made in the implementation of the Mission's recommendations, in accordance with its resolution S-12/1 B, paragraph 3, to the Council at its eighteenth session.

2. The present report is submitted pursuant to that request. It updates the information contained in the previous report of the Secretary-General on progress made in the implementation of the Mission's recommendations in accordance with Human Rights Council resolution S-12/1 B, paragraph 3 (A/HRC/15/51). It contains information requested and received from States, organizations and other entities to which the Mission addressed its recommendations, as well as that gathered directly by the United Nations.

II. Status of the implementation of the recommendations of the Mission report

A. Action by the Human Rights Council

3. In paragraph 1968 of its report, the Mission addressed five recommendations to the Human Rights Council. In paragraph 1968 (a) of its report, the Mission recommended that the Council should endorse the recommendations contained in the report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation at future sessions.

4. As stated in the report of the Secretary-General on the status of implementation of paragraph 3 of Council resolution S-12/1 B (A/HRC/13/55, para. 4), the Human Rights Council, in paragraph 3 of that resolution, endorsed the Mission's recommendations and called upon all concerned parties, including United Nations bodies, to ensure their implementation in accordance with their respective mandates. In paragraph 4 of its resolution 13/9, the Council reiterated this call and, in paragraph 17, decided to follow up on the implementation of that resolution at its fifteenth session. In paragraph 1 of its resolution 15/6, the Council requested the Secretary-General to follow up on the implementation of the recommendations contained in the Mission's report, in accordance with its resolution S-12/1. In paragraph 3 of its resolution 16/32, the Council reiterated its call upon all concerned parties, including United Nations bodies, to ensure the full and immediate implementation of the Mission's recommendations, in accordance with their respective mandates; and, in paragraph 12, it decided to follow up on the implementation of that resolution at its nineteenth session.

5. In paragraph 1968 (b) of its report, the Mission recommended that, in view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it had reported, the Human Rights Council should request the Secretary-General to bring the report to the attention of the Security Council under Article 99 of the Charter of the United Nations in order that the Security Council might consider action according to the Mission's relevant recommendations.

6. To date, the Human Rights Council has not directed any specific request to the Secretary-General to bring the Mission's report to the attention of the Security Council under Article 99 of the Charter.

7. In paragraph 1968 (c) of its report, the Mission recommended that the Human Rights Council should formally submit the report to the Prosecutor of the International Criminal Court.

8. As stated in the report of the Secretary-General A/HRC/13/55, the report of the Mission was transmitted to the Prosecutor of the International Criminal Court on 10 December 2009.

9. In paragraph 1968 (d) of its report, the Mission recommended that the Human Rights Council should submit the report to the General Assembly with a request that it should be considered.

10. In its resolution S-12/1 B, paragraph 4, the Human Rights Council recommended that the General Assembly should consider the report of the Mission during the main part of its sixty-fourth session.[1] In paragraph 8 of its resolution 16/32, the Human Rights Council recommended that the General Assembly reconsider the report of the Mission at its sixty-sixth session and urged the Assembly to submit the report to the Security Council for its consideration and appropriate action, including consideration of referral of the situation in the Occupied Palestinian Territory to the Prosecutor of the International Criminal Court, pursuant to article 13 (b) of the Rome Statute.

11. In paragraph 1968 (e) of its report, the Mission recommended that the Council should bring the Mission's recommendations to the attention of relevant United Nations human rights treaty bodies so that they might include review of progress in their implementation, as might be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission also recommended that the Council should consider review of progress as part of its universal periodic review process.

12. As stated in the report of the Secretary-General A/HRC/13/55, paragraph 12, the Mission's report was transmitted to the treaty bodies that monitor compliance by Israel with the human rights treaties to which it was party[2] on 10 December 2009.

B. Action by the Security Council

13. In paragraph 1969 of its report, the Mission addressed a total of six recommendations to the Security Council.

14. In paragraph 1969 (a) of its report, the Mission recommended that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations, to:

(a) Take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human

[1] The General Assembly did so and adopted its resolution 64/10 of 5 November 2009.

[2] The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child.

rights law reported by the Mission, and any other serious allegations that might come to its attention;

(b) Inform the Security Council, within a further period of three months, of actions taken, or in the process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations.

15. To date, the Security Council has not directed such a request to the Government of Israel.

16. In paragraph 1969 (b) of its report, the Mission further recommended that the Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the above-mentioned investigations. The Mission also recommended that such a committee should report at the end of its six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level; that the Security Council should request the committee to report to it at determined intervals, as may be necessary; and that the committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

17. To date, the Security Council has not established such a committee.[3]

18. In paragraph 1969 (d) of its report, the Mission recommended that the Security Council should require the said independent committee of experts to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the above-mentioned investigations and that the committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council might assess whether appropriate action to ensure justice for victims and accountability for perpetrators had been taken or was being taken at the domestic level. The Mission also recommended that the Security Council should request the committee to report to it at determined intervals, as might be necessary.

19. In paragraphs 1969 (c) and (e) of its report, the Mission further recommended that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of Israel or the relevant authorities in Gaza, respectively acting under Chapter VII of the Charter of the

[3] The Human Rights Council, in its resolution 13/9, decided to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness and genuineness of these investigations and their conformity with international standards. In accordance with that same resolution, the Committee of Independent Experts presented its report to Human Rights Council at its fifteenth session (A/HRC/15/50). In its resolution 15/6, the Council welcomed the Committee's report and decided to renew and resume the mandate of the Committee. In accordance with that same resolution, the Committee of Independent Experts presented its report to the Council at its sixteenth session (A/HRC/16/24). In its resolution 16/32, the Council took note of the Committee's two reports and called for the implementation of the conclusions contained therein.

United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute of the International Criminal Court. In paragraph 1969 (f) of its report, the Mission recommended that lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee.

20. As the Security Council has not established an independent committee of experts, none of these recommended actions has been carried out.

C. Action by the Prosecutor of the International Criminal Court

21. In paragraph 1970 of its report, the Mission stated that, with reference to the declaration under article 12 (3) of the Rome Statute received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, it considered that accountability for victims and the interests of peace and justice in the region required that the Prosecutor should make the required legal determination as expeditiously as possible.

22. In a letter dated 28 June 2011 addressed to the Deputy High Commissioner for Human Rights, the Office of the Prosecutor of the International Criminal Court stated that, in accordance with articles 12 and 15 of the Rome Statute, the Office has continued its preliminary examination into whether the statutory requirements are fulfilled for the Court to exercise jurisdiction in respect of any crimes referred to in article 5 of the Rome Statute that may have been committed in the Gaza Strip between December 2008 and 22 January 2009. The Office of the Prosecutor noted that it has considered public reports and received legal submissions in this regard from experts and academics.[4] It has also received a report from the Palestinian Authority on the issue of the statutory requirements for exercise of jurisdiction by the Court. The Office has also received and accepted requests from different parties involved in the conflict to present their views before it makes a determination.

D. Action by the General Assembly

23. In paragraph 1971 of its report, the Mission addressed four recommendations to the General Assembly. In paragraph 1971 (a) of its report, the Mission recommended that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in its report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. It stated that the Assembly could remain apprised of the matter until it was satisfied that appropriate action had been taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators and could also consider whether additional action within its powers was required in the interests of justice, including under its resolution 377 (V) on uniting for peace.

[4] An updated list of such submissions is available on the Court's website, together with the summary of submissions on whether the declaration lodged by the Palestinian Authority meets statutory requirements. Available from www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Palestine/.

24. To date, the General Assembly has not directed such a request to the Security Council.[5]

25. In paragraph 1971 (b) of its report, the Mission recommended that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December-January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission also recommended that the Assembly should ask OHCHR to provide expert advice on the appropriate modalities to establish the escrow fund.

26. To date, the General Assembly has not established such a fund.[6]

27. In paragraph 1971 (c) of its report, the Mission recommended that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War on measures to enforce the Convention in the occupied Palestinian territory and to ensure its respect in accordance with its article 1.

28. Steps taken by the General Assembly in furtherance of the implementation of this recommendation were outlined in the previous progress report of the Secretary-General (A/HRC/15/51, para. 26). Since then, the General Assembly has not taken any further action in this matter.[7]

29. In paragraph 1971 (d) of its report, the Mission recommended that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in its report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such a discussion, it recommended that the Assembly should draw on, inter alia, the expertise of the International Committee of the Red Cross (ICRC). The Mission also recommended that the Government of Israel should undertake a

[5] The Human Rights Council, in its resolution 16/32, recommended that the General Assembly remain apprised of the matter until it is satisfied that appropriate action has been taken at the domestic or international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers is required in the interests of justice.

[6] By its resolution 13/9, the Human Rights Council called upon the High Commissioner to explore and determine the appropriate modalities for the establishment of such an escrow fund. The High Commissioner reported to the Council on this matter in the context of her report on follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/15/52/Add.1). In paragraph 6 of its resolution 16/32, the Human Rights Council called upon the High Commissioner to follow up on the determination of appropriate modalities for the establishment of an escrow fund for the provision of reparations to Palestinians who suffered loss and damage as a result of unlawful acts attributable to the State of Israel during the military operations conducted from December 2008 to January 2009, also taking into consideration Israelis who suffered loss and damage as a result of unlawful acts attributable to the Palestinian side. The High Commissioner subsequently reported on this matter in the context of her progress report on the implementation of Human Rights Council resolution 16/32 (A/HRC/18/50).

[7] In paragraph 5 of its resolution 16/32, the Human Rights Council welcomed the efforts made by the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian persons in Time of War, to reconvene, as soon as possible, a conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure respect in accordance with common article 1, bearing in mind the statement adopted on 15 July 1999, as well as the reconvening of the conference and the declaration adopted on 5 December 2001, and recommended that the Government of Switzerland continue to pursue its efforts with the aim of resuming the conference before September 2011. See also A/HRC/18/50.

moratorium on the use of such weapons in the light of the human suffering and damage they had caused in the Gaza Strip.

30. To date, the General Assembly has not taken action to promote such a discussion.[8]

E. Action by the State of Israel

31. In paragraph 1972 of its report, the Mission addressed a total of nine recommendations to the State of Israel.

32. In paragraph 1972 (a) of its report, the Mission recommended that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip.

33. The border closures and restrictions on passage through border crossings with the Gaza Strip continue to seriously negatively affect livelihoods and infrastructure.[9] In light of restrictions on the importation of building materials, the vast majority of the 40,000 housing units needed to replace homes destroyed during Operation Cast Lead and meet natural population growth have not been constructed. This housing shortage has especially affected families living in dilapidated and overcrowded housing conditions, and has disproportionately impacted women and children.[10] Unemployment in the second half of 2010 in Gaza reached 45.2 per cent, one of the highest rates in the world.[11] High unemployment levels and the demand for construction materials resulted in thousands of people risking their lives to work in tunnels along the border with Egypt, or in access-restricted areas near the barrier surrounding Gaza.[12] In December 2010, Israel allowed the export of a limited amount of cut flowers and strawberries.[13] Israel announced in June 2011 that it would allow the entry of material to construct new houses and schools to the value of $100 million, bringing the total of approved projects involving "dual use" material to $265 million.[14]

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[8] In paragraph 13 of its resolution 13/9, the Human Rights Council called upon the General Assembly to promote an urgent discussion on the future legality of the use of certain munitions as referred to in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict, drawing on, inter alia, the expertise of ICRC. The Council reiterated this call in paragraph 7 of its resolution 16/32.

[9] See United Nations Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory (OCHA-OPT), *Easing of the Blockade: assessing the humanitarian impact on the population of Gaza* (March 2011). Available from www.ochaopt.org/documents/ocha_opt_special_easing_the_blockade_2011_03_english.pdf, accessed on 21 July 2011.

[10] Ibid, p. 1.

[11] United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Labour Market Briefing: Gaza Strip, Second Half 2010* (June 2011).

[12] *Easing of the Blockade*, p. 1.

[13] See Security Council Brief of the United Nations Special Coordinator for the Middle East Peace Process (December 2010). Available from www.unsco.org/Documents/Statements/MSCB/2008/SCB%2014%20December%202010.pdf**,** accessed on 20 July 2011. See also Integrated Regional Information Network (IRIN), "OPT: Farmers can export again, but livelihoods precarious" Humanitarian News and Analysis, 23 January 2011.

[14] Security Council Brief by the Special Coordinator, June 2011. Available from hwww.unsco.org/scb.asp, accessed on 26 July 2011. See also United Nations News Service, "UN welcomes Israel's decision to approve construction projects in Gaza", 22 June 2011.

34. In paragraph 1972 (b) of its report, the Mission recommended that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It also recommended that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel.

35. There has been no change in the policies of Israel in response to this recommendation since the previous progress report of the Secretary-General (A/HRC/15/51, para. 33). The status and impact of these policies are addressed in detail in the most recent report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/16/71).[15]

36. In paragraph 1972 (c) of its report, the Mission recommended that Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. It recommended that Israel should avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. It recommended that, in particular, such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination were effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law.

37. Certain action taken by Israel in implementation of the above recommendation was outlined in the previous progress report of the Secretary-General (A/HRC/15/51, para. 35). The Secretary-General is not aware that any further action has been taken to implement the recommendation.

38. In paragraph 1972 (d) of its report, the Mission recommended that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory – within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world – in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommended that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities.

39. Freedom of movement within the Occupied Palestinian Territory remains severely restricted. Although Israel began dismantling a section of the barrier near the West Bank village of Bil'in in June 2011 in compliance with the decision of the Israeli High Court of Justice in *Beit Sourik Village Council v. the Government of Israel* (HCJ 2056/04).[16] There has been no significant improvement in access for Palestinians to areas to the west of the

[15] See also OCHA-OPT and World Food Programme, *Between the Fence and a Hard Place, Special Focus,* August 2010. Available from www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf, accessed on 21 July 2011.

[16] OCHA-OPT, "Protection of Civilian Weekly Update", 8–21 June 2011. Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2011_06_24_english.pdf, accessed on 21 July 2011.

barrier, including East Jerusalem, or to land and rural communities in the Jordan Valley.[17] Freedom of movement for Palestinians between Gaza and the West Bank and abroad remains strictly limited.[18] Palestinian human rights defenders continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world due to the travel bans imposed by Israel.[19]

40. In paragraph 1972 (e) of its report, the Mission recommended that Israel should release Palestinians detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommended that Israel should cease the discriminatory treatment of Palestinian detainees and that family visits for prisoners from Gaza should resume.

41. As of June 2011 approximately 5,500 Palestinians remained in prisons in Israel and in the Occupied Palestinian Territory, including 211 children (38 between ages of 12 and 15).[20] More than 200 Palestinians were in administrative detention.[21] Arrest and detention of children from East Jerusalem suspected of throwing stones at Israeli settlers and their private security personnel increased.[22] Conditions of detention remain poor and ill-treatment and abuse of detainees during arrest, interrogation and detention are reportedly routine.[23] The Israeli authorities continue to bar family visits for prisoners from Gaza.[24]

42. In paragraph 1972 (f) of its report, the Mission recommended that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory and, as a first step, release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning.

43. As of the date of writing, twelve members of the Palestinian Legislative Council (PLC) remain in Israeli detention. Three PLC members who had been in detention between 2006 and June 2010, and who subsequently had their residency permits revoked by the Government of Israel on the basis of their lack of loyalty to the State, continued to seek refuge on ICRC premises in East Jerusalem (A/HRC/16/71, para. 23). A fourth PLC

[17] See, generally, OCHA-OPT, "Barrier Update: Seven years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem area", July 2011. Available from http://www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

[18] See, generally, OCHA-OPT, "Humanitarian Situation in the Gaza Strip Fact Sheet", July 2011. Available from www.ochaopt.org/documents/ocha_opt_Gaza_Fact_Sheet_July_2011.pdf.

[19] See Al-Haq, "Alternative report submitted by Al-Haq to the Human Rights Committee on the occasion of its consideration of Israel's third periodic report: Israel's violations of the Covenant on Civil and Political Rights with respect to Freedom of Movement in the Occupied Palestinian Territory", June 2010.

[20] Figures from Addameer, available at http://www.addameer.org/detention/current_stats.html, and B'Tselem available at http://www.btselem.org/statistics/detainees_and_prisoners.

[21] Ibid.

[22] Naama Baumgarten-Sharon, *Caution: Children Ahead, The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing*, (B'Tselem, 2010). Available from www.btselem.org/publications/summaries/201012_caution_children_ahead, accessed on 21 July 2011.

[23] See Adv. Yossi Wolfson, *Kept in the Dark, treatment of Palestinian Detainees in the Petah Tikva interrogation Facility of the Israel Security agency*, (B'Tselem and Hamoked, 2011). Available from www.btselem.org/download/201010_kept_in_the_dark_eng.pdf, accessed on 20 July 2011

[24] ICRC, "Gaza detainees barred from family visits", 23 June 2011.

member was forcibly transferred to another part of the West Bank by Israeli authorities in December 2010.[25]

44. In paragraph 1972 (g) of its report, the Mission recommended that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning the policies and conduct of Israel during the military operations in the Gaza Strip. The Mission also recommended that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken.

45. Israel has not established an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory. Non-governmental organizations continue to report concerns regarding initiatives to curtail freedom of expression in Israel and the Occupied Palestinian Territory, reportedly as a reaction to their roles during the Israeli military operations in the Gaza Strip. In November 2010 a bill was introduced proposing an amendment to the Associations Law[26] to close organizations whose activities "harm the State of Israel as a Jewish state", namely those that participate in filing lawsuits abroad against senior Israeli politicians and army officers. The bill is set to be debated in the Knesset later in 2011.[27] On 21 February 2011 the Knesset enacted the NGO Funding Transparency Law,[28] which requires Israeli non-profit organizations to disclose foreign sources of funding. Two bills amending legislation were also under consideration by the Knesset at the time of this report: one amending the Income Tax Order[29] whereby funding from foreign states would be taxed at a rate of 45% and the other amending the Associations Act[30] limiting donations from a foreign entity to 20,000 NIS per year. The official explanation attached to the draft bill amending the Income Tax Order specifically references the "Goldstone Report".[31]

46. In paragraph 1972 (h) of its report, the Mission recommended that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact-Finding

[25] Security Council Briefs given by the Special Coordinator, 14 December 2010 and 19 January 2011. See also Jerusalem Center for Social and Economic Rights, "Israel decides to deport from Jerusalem PLC member Abu Teir", 8 December 2010. Available from www.jcser.org/index.php?option=com_content&view=article&id=719%3Aisrael-decides-to-deport-from-jerusalem-plc-member-abu-teir-&catid=34%3Anews&Itemid=1.

[26] Associations Law, 5740-1980: Statute Book 5740, p. 127; the current title of this amendment is Association Law (amendment – reservations regarding the registration and activity of an association), 5770-2010. Available in Hebrew from www.knesset.gov.il/privatelaw/data/18/2456.rtf.

[27] See Association for Civil Rights in Israel (ACRI), "Knesset 2010-2011 Winter Session: Legislative Roundup", April 2011. Available at: www.acri.org.il/en/?p=2033, accessed on 21 July 2011.

[28] Disclosure Requirements for Recipients of Support from a Foreign State Entity, 5771-2011. Available in Hebrew from www.nevo.co.il/Law_word/law14/law-2279.pdf.

[29] Available from http://www.acri.org.il/en/wp-content/uploads/2011/07/Kirshenbaum-Income-Tax-ENG.doc, accessed on 21 July 2011.

[30] The Akunis bill is entitled Associations Law (amendment – prohibition on foreign state entities' support for political associations in Israel), 5771–2011. Available in Hebrew from www.knesset.gov.il/privatelaw/data/18/3140.rtf.

[31] The Kirshenbaum bill is entitled Income Tax Order (amendment – taxation of public institutions that receive donations from a foreign state entity), 5771–2011. Available from http://www.knesset.gov.il/privatelaw/data/18/2917.rtf.

Mission on the Gaza Conflict, in particular individuals who had appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel.

47. The Secretary-General is not aware of any reprisals taken by the Government of Israel against Palestinian or Israeli individuals that cooperated with the Mission. However, a proposal introduced in the Knesset in June 2011 would, if adopted, end the assignment of National Service civilian volunteers to the Israeli non-governmental organizations that cooperated with the Mission.[32]

48. In paragraph 1972 (i) of its report, the Mission recommended that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there was no repetition of violations in the future. It further recommended that reparations to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider the matter.

49. To date, the United Nations has not received any formal communication from the Government of Israel reiterating a commitment to respecting the inviolability of United Nations premises and personnel. Information on the subject of reparations was included in A/HRC/13/55.

F. Action by Palestinian armed groups

50. In paragraph 1973 of its report, the Mission addressed two recommendations to Palestinian armed groups.

51. In paragraph 1973 (a) of its report, the Mission recommended that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities.

52. Indiscriminate rocket and mortar attacks against Israel continue to be launched from Gaza.[33] According to the United Nations Department of Safety and Security, from 1 September 2010 to 21 June 2011 there were 32 incidents of rocket fire and 19 incidents of mortar shelling. The Secretary-General is unable to confirm whether Palestinian armed groups have taken all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities.

53. In paragraph 1973 (b) of its report, the Mission recommended that the Palestinian armed groups holding Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds; pending that release, they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

54. At the time of writing, Gilad Shalit was still in detention, had not been recognized as a prisoner of war and had not been not allowed any contact with ICRC.[34]

[32] Jonathan Lis, "Israeli rights groups that cooperated with Goldstone may no longer get National Service volunteers", *Haaretz*, 12 June 2011.

[33] See also letters of the Permanent Mission of Israel to the High Commissioner for Human Rights of 13 April 2011, 24 December 2010 and 22 November 2010.

[34] ICRC, "Gaza: ICRC demands proof that Gilad Shalit is alive", 23 June 2011. Available from www.icrc.org/eng/resources/documents/news-release/2011/israel-palestine-news-2011-06-23.htm.

G. Action by responsible Palestinian authorities

55. The Mission directed three recommendations to responsible Palestinian authorities in paragraph 1974 of its report.

56. In paragraph 1974 (a) of its report, the Mission recommended that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigations of all allegations of serious human rights violations by security forces under its control, and end the resort to military justice to deal with cases involving civilians.

57. On 17 January 2011 the Palestinian Authority reportedly announced that civilians will no longer be tried by military courts.[35]

58. In paragraph 1974 (b) of its report, the Mission recommended that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law.

59. OHCHR is not aware of any developments in this regard.

60. In paragraph 1974 (c) of its report, the Mission recommended that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Palestinian Independent Commission for Human Rights.

61. There is no indication that any action has been taken to implement the above-mentioned recommendation. Repression of freedom of expression and attacks on civil society organizations continue in the West Bank and in Gaza. Palestinian security forces arrested a manager of a radio station on 15 November 2010, after the station reported on differences between the president of the Palestinian Authority and the Fatah Central Committee.[36] Palestinian security forces also arrested a journalist working for al-Quds Press News Agency on charges of libel and slander against President Mahmoud Abbas.[37] In October 2010 Hamas security forces shut down the Palestinian Journalists' Syndicate;[38] and on 30 November Hamas security forces shut down all offices of the Sharek Youth Forum, on the basis of allegations of "moral misconduct".[39] In March 2011 Hamas security forces attacked journalists, including women, covering peaceful demonstrations, including

[35] See Al-Haq, "Palestinian General Intelligence: civilians will be no longer tried in military courts", 17 January 2011. Available from www.alhaq.org/etemplate.php?id=566.

[36] Reporters without Borders, "Political divisions make reporting nearly impossible for journalists", 22 November 2010.

[37] International Freedom of Expression Exchange, "MADA calls for immediate release of journalist Mamdouh Hamamreh", 22 October 2010.

[38] International Freedom of Expression Exchange, "Hamas shuts down journalist union", 20 October 2010.

[39] Statement by Maxwell Gaylard, United Nations Resident and Humanitarian Coordinator in the occupied Palestinian Territory on the Dissolution of Sharek Youth Forum in the Gaza Strip, 20 July 2011. Available from unispal.un.org/UNISPAL.nsf/47D4E277B48D9D3685256DDC00612265/FF5418A04E3A8442852578D30052968B; see also Palestine Monitor, "Sharek Youth Forum closed in Gaza", December 2010. Available from www.sharek.ps/gaza-press-1.

beating, insulting, threatening and detaining journalists, and raiding several media agency offices.[40]

H. Action by the international community[41]

62. Paragraph 1975 of the Mission's report contains five recommendations addressed to a range of actors and partners in the international community.

63. In paragraph 1975 (a) of its report, the Mission recommended that the States parties to the Geneva Conventions relating to the protection of victims of international armed conflicts should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. It also recommended that, where so warranted following investigations, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice.

64. The Secretary-General is not aware of any further action taken to implement the above recommendation since his previous progress report (A/HRC/15/51, para. 62).

65. In paragraph 1975 (b) of its report, the Mission recommended that international aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population.

66. The United Nations Children's Fund (UNICEF) reports that the impact of Operation Cast Lead and the blockade have greatly diminished family coping mechanisms and led to significant deterioration of services, thereby deeply affecting the well-being of children. In 2011, it had received a total of $3.8 million from the Canadian International Development Agency and the European Commission Humanitarian Aid department, which is earmarked for emergency response for protection and psychosocial support. UNICEF also reports that, owing to extreme economic distress, many children are engaged in dangerous labour to support their families, including the collection of gravel and scrap metal in abandoned settlements and in the buffer zone near the barrier around Gaza, where they are at high risk of being shot by Israeli security forces. In addition, UNICEF states that, in collaboration with Columbia University and local partners, it is introducing standardized tools for monitoring and evaluating psychosocial interventions for children and caregivers.

67. UNRWA reports that children who suffered trauma after Operation Cast Lead were initially supported through a special initiative under the UNRWA Community Mental Health Programme. After completing targeted counselling in late 2009, children who continued to show symptoms were given additional care through existing counselling activities in UNRWA schools throughout Gaza.

68. In paragraph 1975 (c) of its report, the Mission recommended that, in view of their crucial function, donor countries and assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law.

[40] International Freedom of Expression Exchange, "MADA demands investigation into attacks on journalists covering protest", 17 March 2011.

[41] In order to gather information regarding the status of implementation of the recommendations contained in paragraphs 1975, 1976 and 1977, OHCHR addressed letters to United Nations agencies working in the occupied Palestinian territory. The information regarding these recommendations is based on replies received.

69. In response to informal queries from OHCHR, neither Israeli nor Palestinian NGOs had reported any major changes in their funding at the time of publication of the present report.

70. OHCHR continues to lead the Protection Cluster Working Group and the Accountability Task Force within it. Both include Palestinian and Israeli non-governmental organizations and share information relating to documenting, developing reports and advocacy activities concerning violations of human rights and international humanitarian law.

71. UNICEF reports that it leads an inter-agency working group that regularly reports to the Working Group of the Security Council on Children and Armed Conflict. The Working Group has submitted four bi-monthly reports to the Security Council covering the time period from September 2010 to April 2011. The reports document grave violations[42] against children in the Occupied Palestinian Territory by Israeli security forces, Palestinian armed groups and Israeli settlers. This includes reports of killing and injuries, detention, ill-treatment and torture, use of children by armed forces, forced displacement, attacks on schools and impediments to humanitarian access, including health services and education.

72. In paragraph 1975 (d) of its report, the Mission recommended that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives.

73. On 21 September 2010 the Quartet issued a statement that, among other things, urged a complete halt to all violence and reiterated its call on all parties to ensure the protection of civilians and to respect international humanitarian and human rights law.[43]

74. In paragraph 1975 (e) of its report, the Mission recommended that, in view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, a programme of environmental monitoring should be implemented under the auspices of the United Nations, for as long as deemed necessary; the programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms that address the fears of the population of Gaza and southern Israel at that time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

75. The United Nations Environment Programme (UNEP) reports that, as part of a follow-up to its study *Environmental Assessment of the Gaza Strip following the escalation of hostilities in December 2008 – January 2009*,[44] it has focused on restoring groundwater sustainability in Gaza, prepared a technical paper which proposes that a major

[42] For further information on the grave violations against children, see Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation", Working Paper No. 1, October 2009. Available from www.un.org/children/conflict/_documents/SixGraveViolationspaper.pdf.

[43] Statement by Middle East Quartet, SG/2162, 21 September 2010. Available from www.un.org/News/Press/docs/2010/sg2162.doc.htm.

[44] UNEP, Nairobi, 2009. Available from www.unep.org/PDF/dmb/UNEP_Gaza_EA.pdf, accessed on 21 July 2011. See also A/HRC/13/55, paragraph 81.

desalinization plant or a series of smaller plants be established and noted that sewage systems in Gaza need to be upgraded to ensure connectivity and improved treatment. According to UNEP, this will require the establishment of a series of new sewage treatment plants, as the existing ones are overloaded and incapable of producing the quality of water needed for re-use in the Gaza Strip.

I. Action by the international community and responsible Palestinian authorities

76. In paragraph 1976 (a) of its report, the Mission recommended that the international community and responsible Palestinian authorities should establish appropriate mechanisms to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip were smoothly and effectively disbursed, and urgently put to use for the benefit of the population of Gaza.

77. To date, no mechanism has been established to track, receive and allow disbursal of funds for the reconstruction of Gaza. UNRWA reports that United Nations implementing agencies remain unable to effectively access and use funds pledged at the International Conference on the Palestinian Economy and Gaza Reconstruction in March 2009 for construction activities for the benefit of the civilian population. UNRWA also reports that it has proposed to Israeli authorities a streamlined process of project approvals and transfer of construction supplies through the crossings established under the Agreement on Movement and Access of 2005, with a view towards expediting the implementation of construction and reconstruction projects.

78. In paragraph 1976 (b) of its report, the Mission recommended that, in view of the consequences of the military operations, responsible Palestinian authorities and international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommended that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who had suffered amputations or been otherwise injured by munitions, the nature of which had not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

79. The Secretary-General noted in his previous progress report (A/HRC/15/51, para. 77) that he was not aware of any action taken by responsible Palestinian authorities or Palestinian structures in response to the above recommendation. This continues to be the case.

80. In its submission to OHCHR, UNRWA reports that it continues to cooperate with local organizations to ensure that patients receive prosthetic devices and artificial limbs, and to provide physiotherapy for persons who sustained injuries during Operation Cast Lead. In addition, UNRWA is providing community-based organizations with financial assistance and technical advice to help them deliver services to their target groups. For example, UNRWA has provided financial subsidies to cover a portion of operating expenses and educational fees, covered salaries for employees through its job creation programme and assisted such organizations to provide basic goods to affected families. UNRWA also reports that it has delivered direct psychosocial support, physiotherapy, occupational therapy and assistive devices to individuals and families affected.

J. Action by the international community, Israel and Palestinian authorities

81. In paragraph 1977 (a) of its report, the Mission recommended that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000).

82. As stated in A/HRC/13/55, paragraph 93, there are ongoing efforts to involve Israeli and Palestinian civil society groups in the peace process, including those led by United Nations bodies. The United Nations Population Fund (UNFPA) supports a network of 20 non-governmental organizations in Gaza that seek to combat violence against women, promote women's protection, emphasize women's issues and mainstream Security Council resolution 1325 (2000).

83. In paragraph 1977 (b) of its report, the Mission recommended that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

84. In its submission to OHCHR, UNRWA reports that it continues to provide women whose homes were damaged or demolished during Operation Cast Lead with cash assistance and rental fees. Cash subsidies have been disbursed to enable female-headed households who had their shelters damaged to pay for minor and major repairs. In cases where shelters have been destroyed completely, UNRWA continues to pay one-year rental fees. Women continue to account for approximately one third of employees under the UNRWA Job Creation Programme. Since Operation Cast Lead, a number of Gaza Women Programme Centres supported by UNRWA have offered psychosocial and legal support to women.

85. In its submission to OHCHR, UNFPA reports that it has, in partnership with two non-governmental organizations, supported centres for women in the Jabalia and Bureij areas. These centres provide a package of services, including reproductive health care such as family planning, antenatal and postnatal care, and psychosocial, legal and recreational services.

K. Action by the Secretary-General

86. In paragraph 1978 of its report, the Mission recommended that the Secretary-General should develop a policy to integrate human rights into peace initiatives in which the United Nations is involved, especially the Quartet, and request the High Commissioner for Human Rights to provide expertise required to implement that recommendation.

87. As stated in his previous progress report (A/HRC/15/51, para. 85), the Secretary-General has asked OHCHR, in cooperation with the United Nations Special Coordinator for the Middle East Peace Process, to devise proposals to ensure increased integration of human rights into the Middle East peace process. OHCHR has developed proposals in response to that request. It is envisaged that consultations with the United Nations Special Coordinator for the Middle East Peace Process regarding these proposals will be initiated and concluded in the coming months.

L. Action by the Office of the United Nations High Commissioner for Human Rights

88. Paragraph 1979 of the Mission's report contains two recommendations addressed to OHCHR.

89. In paragraph 1979 (a) of its report, the Mission recommended that OHCHR should monitor the situation of persons who have cooperated with the United Nations Fact-Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate.

90. Through its field presence in the Occupied Palestinian Territory, OHCHR has maintained contact with persons who have cooperated with the Mission in order to monitor their situation and will periodically report on their situation as appropriate.

91. In paragraph 1979 (b) of its report, the Mission recommended that OHCHR should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

92. In the High Commissioner for Human Rights' most recent report on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/16/71), the status of implementation of the Mission's recommendations was addressed.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General

Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Summary

The present report is the High Commissioner's fourth periodic report on the human rights situation in the Occupied Palestinian Territory submitted in the light of Human Rights Council resolutions S-9/1 and S-12/1.

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I. Introduction

1. The present report is the fourth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights. It covers the period from 1 December 2010 to 15 November 2011.

2. The information in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-OPT). Monitoring activities are implemented within the framework of General Assembly resolution 48/141 of 1994 and in consideration of Human Rights Council resolutions S-9/1 and S-12/1 of 2009, in which the High Commissioner was requested to monitor, document and report on human rights violations in the Occupied Palestinian Territory, particularly in Gaza and East Jerusalem, and report periodically to the Human Rights Council.

3. In the present report, the High Commissioner highlights issues of concern with regard to each of the three main duty-bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed in the report are far from exhaustive of all human rights concerns in the Occupied Palestinian Territory. While issues of concern highlighted in previous reports of the High Commissioner remain valid, the present report focuses on a number of areas requiring priority attention by duty-bearers and which OHCHR-OPT intends to focus its work on in the coming months.

4. The report is organized in four main sections. Following this introductory section, section II makes a brief reference to the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37), which provided an analysis of the applicable legal framework in the Occupied Palestinian Territory that remains valid. Section III addresses a number of human rights concerns and is organized into three subsections according to duty-bearer. That section also suggests steps that could be taken by the duty-bearers in fulfilling their obligations under international law. Section IV presents some conclusions and provides a number of recommendations for each duty-bearer.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. The High Commissioner's first periodic report on the situation of human rights in the occupied Palestinian territory contains a detailed analysis of the legal framework applicable and the basis for the obligations of the different duty-bearers in the Occupied Palestinian Territory, namely the State of Israel as the Occupying Power, the Palestinian Authority and the de facto authorities in Gaza (A/HRC/12/37, paras. 5-9). This analysis remains valid.

III. Human rights violations by all duty-bearers

A. The de facto authorities in Gaza and Palestinian armed groups

1. Violations in the context of hostilities

6. Palestinian armed groups continued firing rockets and mortar shells at Israel. A total of 499 rockets, including homemade rockets, Grad rockets, and rocket propelled grenades, and 328 mortar shells, were fired during the reporting period.[1] While it was confirmed that some of these projectiles were directed at military objectives, the indiscriminate nature of the vast majority of these projectiles makes it impossible to determine the intended targets of the remaining ones. A significant number of these rockets and mortar shells landed in civilian areas within Israeli territory.

7. During the reporting period three Israeli civilians were killed by rockets fired from Gaza. On 7 April 2011, a guided anti-tank missile was fired from Gaza and hit a school bus driving near Sha'ar Hanegev Regional Council, southern Israel, leaving two Israelis wounded. A 16-year-old boy subsequently died as a result of injuries suffered from this attack.[2] Hamas claimed responsibility for the attack, saying that it was in revenge to the killing of three of its militant leaders on 2 April.[3] It stressed that its militants did not know that the bus was carrying schoolchildren.[4] On 20 August 2011, a 38-year-old civilian was killed in Be'er Sheva when a Grad rocket struck the area he was in.[5] On 29 October 2011, a 56-year-old resident of Ashkelon was killed by shrapnel from a Grad rocket, while driving near his home.[6]

8. Indiscriminate attacks, such as the firing of these rockets, is contrary to the rules of international humanitarian law prohibiting the targeting of civilians, the use of inherently indiscriminate weapons and acts aimed at spreading terror in the civilian population.[7] In addition, it has been alleged by the Government of Israel that such rockets and mortars are often located in and fired from densely populated areas. Should this be the case, it would also contravene customary international humanitarian law.[8]

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[1] Information obtained from the United Nations Department of Safety and Security.

[2] Israel, Ministry of Foreign Affairs, "Two wounded in anti-tank missile attack on school bus". Available from www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas +war+against+Israel/Two-injured-in-anti-tank-missile-attack-on-school-bus-7-Apr-2011.htm.

[3] CNN Wire Staff, "Hamas claims responsibility for missile strike on bus that wounded boy", CNN, 7 April 2011. Available from http://edition.cnn.com/2011/WORLD/meast/04/07/israel.gaza.violence/index.html.

[4] "Hamas says didn't mean to target Israeli schoolbus", Reuters, 9 April 2011. Available from www.reuters.com/article/2011/04/09/palestinians-israel-hamas-idUSLDE73807X20110409.

[5] B'Tselem, Israeli civilians killed by Palestinians in Israel, 19.1.2009-31.10.2011. Available from http://old.btselem.org/statistics/english/Casualties_Data.asp?Category=6&region=ISRAEL&sD=19&sM=01&sY=2009&filterby=event&oferet_stat=after

[6] Israel, Ministry of Foreign Affairs. See www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2011/Victims/Moshe_Ami.htm.

[7] These rules are identified in International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rules 1, 2, 11 and 71.

[8] Ibid., rule 23.

9. The Palestinian armed groups that fire these rockets and mortars are responsible for the related violations of international humanitarian law. As noted above, Hamas claimed direct responsibility for one of these attacks during the reporting period. In addition, the de facto authorities in Gaza failed to take measures to ensure that other such attacks were not carried out. Yet it appears that the de facto authorities have some capacity to stop or reduce the number of indiscriminate rocket attacks launched by other Palestinian armed groups. This can be inferred from the fact that during the reporting period there have been significant periods of time during which no single rocket was launched in the direction of Israeli territory from Gaza. This was the case, for example, in the period following the reconciliation agreement between Fatah and Hamas in May 2011 and in the period preceding the conclusion of the prisoner swap agreement in October 2011.

2. Detention and treatment of prisoners

10. Reports of arbitrary detention and ill-treatment of detainees and alleged enforced disappearances committed by different branches of the de facto authorities' security forces, including the internal security apparatus and the anti-drug police, continued during the reporting period. OHCHR monitored at least 10 cases of ill-treatment in detention, including a number of cases of torture. In most cases the detainees were subject to "shabeh"[9] and beatings. In a number of cases persons suspected of sympathizing with Fatah were ill-treated and forced to sign an oath by which they commit not to participate in Fatah activities. In one case, following a dispute between Fatah- and Hamas-affiliated students at a university in Gaza, at least three students were repeatedly summoned for interviews over a period of a week by the internal security apparatus. Each time they were detained for several hours, subjected to shabeh and beaten. During the last interview they were asked to sign an oath not to participate in Fatah activities.

11. Some cases of detention and ill-treatment of former members of the Palestinian Authority security forces were reported. On 1 January 2011, a former member of the Palestinian Preventive Security Service (PSS) was detained in his home, together with a neighbour, by the de facto authorities' security forces. During their transfer to the Beit Lahia police station, they were beaten and once at the station they were subject to shabeh and beaten and interrogated in relation to the alleged firing of fireworks on the occasion of the anniversary of the Fatah movement.[10] They were released the following morning. OHCHR received information concerning the alleged detention and disappearance of a 43-year-old woman by the de facto authorities' security forces in April 2011. She is a Palestinian Authority police officer and an active member of Fatah. Since her detention her family has not received information concerning her whereabouts.

12. Cases of death in custody were reported. In one of the three cases monitored by OHCHR, a 23-year-old man was detained by anti-drug police on 3 June 2011, and brought to a detention centre on Salah El Din street in Deir El Balah, where he was subject to shabeh and beaten for four hours. He was admitted to the intensive care unit of the local hospital suffering from cerebral

[9] The practice of "shabah" is understood to include stress positions, sensory isolation, sleep deprivation and infliction of pain, and often one or a combination of these methods for prolonged periods.

[10] Case monitored by OHCHR.

bleeding. He went into a coma and died on 12 June 2011. In another case a man was detained by the internal security apparatus on 14 April 2011. He died in detention on 19 April. At the time of death the Ministry of Interior of the de facto authorities indicated there would be an autopsy. Later the same day the authorities announced that he had died of natural causes despite the fact that his body showed signs of bruises on the head and his ribs were broken.

3. Civil rights, including freedom of expression

13. The de facto authorities continued to curtail freedom of expression, opinion and assembly. In several cases, individuals participating in academic conferences or workshops outside of Gaza were detained or summoned for interrogation following their return to Gaza and in some cases threatened or ill-treated.[11] Public assemblies were also targeted. During the reporting period the de facto authorities' security forces used excessive force to disperse several peaceful assemblies. On 11 February 2011, following Friday prayers, several hundred people gathered in Khan Younis protesting against social injustice and calling for an end to the internal political rift. The de facto authorities' security forces, both uniformed and in civilian clothing, intervened. They beat several participants, detained those who had photographed their intervention, including a journalist, and confiscated their equipment or deleted their photographs.[12] In another incident on 15 March 2011, a public assembly in support of Palestinian unity was violently dispersed. At least 100 participants and observers were beaten, tents were destroyed and some 50 persons were detained. In the following days, other smaller demonstrations in support of Palestinian unity were violently dispersed, including one at Al Quds Open University.[13]

14. The work of journalists continued to be disrupted by the de facto authorities' security forces. Journalists present at the public assemblies mentioned above had their cameras confiscated and in some cases were arrested and beaten. A few days after the 15 March protest, 12 de facto authorities' security personnel raided the offices of Reuters, destroyed equipment, beat two employees and confiscated a camera. In this case the de facto authorities announced that they had arrested four suspects and were initiating an investigation. In another case a journalist received a call from someone identifying himself as the head of the internal security apparatus in Khan Younis, who accused him of incitement against the de facto authorities and referred to a number of his articles as "provocative". On 17 February 2011, the journalist was summoned for an interview with the internal security apparatus during which he was coerced to sign a document by which he made a commitment to act professionally and to refrain from acts of incitement against the government.

4. The death penalty

15. The de facto authorities continued to carry out executions and to issue death sentences. While international human rights law does not prohibit capital punishment, it limits it to the most serious crimes, which is interpreted to mean those where there was an intention to kill and which resulted in loss of life. Death sentences should only be issued following a trial in a court that offers the

[11] OHCHR monitored at least two incidents, each involving several people.
[12] Case monitored by OHCHR.
[13] Case monitored by OHCHR.

defendant all procedural guarantees of a fair trial, including the right to appeal the conviction and the sentence.

16. During the reporting period the de facto authorities carried out three executions. All were carried out without the ratification of the death sentences by the President of the Palestinian Authority, which is a requirement under the Palestinian Basic Law. On 26 July 2011, the de facto authorities carried out two death sentences by hanging Mahmud Abu Qenas and Rami Abu Qenas. The two had been found guilty in 2004 of murder and collaboration with Israel. On 4 May 2011, Abd al-Karim Mohammed Abed Shrair was executed by firing squad, having been found guilty of collaborating with Israel.[14] The common use by de facto authorities' security forces of torture and ill-treatment before and during interrogation and the use of military tribunals to try civilians cast serious doubt on the respect of fair trial guarantees in cases in which the death penalty is imposed in Gaza.

17. According to information collected by OHCHR, the de facto authorities' courts delivered at least seven death sentences since the beginning of 2011. All of these sentences were handed down by military courts.[15] On 11 October, the High Military Court in Gaza sentenced to death Rebhi Ahmed Rebhi Badawi, a 35-year-old man, after conviction on charges of spying for the Israeli Defence Forces (IDF). On 12 October, two more death sentences were issued by the High Military Court, against Belal Sa'ady Al Masri (22), from Beit Lahia, and Jehad Abdullah As Sabea' (23), from the town of Ash Sheikh Zayed. The three were reportedly sentenced to death after being convicted of having been involved in the detonation of an explosive device that led to the killing of one person and the injury of several others on 5 February 2009. These sentences can still be appealed.[16]

B. The Government of Israel

1. Law enforcement in the West Bank including East Jerusalem and the right to life

18. During the reporting period, the Office for the Coordination of Humanitarian Affairs (OCHA) reported 3,745 search and arrest operations by IDF in the West Bank, during which 2,748 Palestinians were arrested and/or detained. A number of cases documented by OHCHR indicate that IDF often use live ammunition against unarmed Palestinians. The resort to the use of live ammunition in IDF search and arrest operations resulted in the death of four unarmed Palestinian civilians.

[14] Human Rights Watch, "Gaza: Hamas should stop executions", 1 August 2001. Available from www.hrw.org/news/2011/08/01/gaza-hamas-should-stop-executions.

[15] Palestinian Centre for Human Rights, "Military court in Gaza issues three new death sentences", 13 October 2011. Available from www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7784:military-court-in-gaza-issues-three-new-death-sentences-&catid=36:pchrpressreleases&Itemid=194

[16] Al Mezan Center for Human Rights, "High military court sentences three persons to death and one person to four years' imprisonment in two separate cases", press release, 12 October 2011. Available from www.mezan.org/en/details.php?id=12779&ddname=excution&id_dept=3&id2=9&p=center. See also Palestinian Centre for Human Rights, "Military Court".

19. On 7 January 2011 at approximately 3.30 a.m., a large number of IDF troops surrounded a house in Hebron, silently broke into the second floor of the house and immediately rushed for the bedroom. Three soldiers entered the bedroom and immediately opened fire at close range on Omar Qawasmeh, a 66-year-old man who was asleep in his bed. Approximately 14 bullets were fired at him. According to accounts collected by OHCHR, when the soldiers realized that they had targeted the wrong floor they proceeded to the first floor of the house where they arrested the intended target of the raid. IDF announced that it would investigate the killing and on 19 January, announced that it would terminate the career of one of the soldiers involved in the operation.[17]

20. On 13 July 2011, at around 5 a.m., 21-year-old Ibrahim Omar Sarhan from el-Far'a refugee camp was shot in the leg by an IDF soldier and subsequently bled to death. According to the account collected by OHCHR, the victim and his cousin had finished dawn prayers at a mosque in el-Fa'ra camp and were walking home. A number of IDF soldiers appeared at the end of the narrow alley where the victim and his cousin were walking. The cousin was quickly physically immobilized by some of the soldiers while the victim turned around and started running away. An IDF soldier fired in the direction of the victim, who was hit in the thigh but continued running away until he reached a neighbor's place. IDF entered the house where the victim was lying, almost unconscious, and started providing first aid to the victim. An ambulance arrived at the scene and took the victim to al-Rafidiya hospital in Nablus where, upon arrival, the victim was pronounced dead. The accounts collected by OHCHR and the circumstances of the incident indicate that the victim was not involved in any violent act against IDF during their operation in the camp.

21. On 1 August 2011, at approximately 2:30 a.m., IDF troops entered Qalandia refugee camp to conduct a search and arrest operation targeting three teenagers accused of stone throwing, arson and destruction of property. Some camp residents, alerted to the presence of IDF in the camp, had gathered on the adjacent roofs and started throwing stones at the soldiers. This lasted approximately 30 minutes. The soldiers then left the courtyard, firing several hundred rounds in many directions, while advancing toward the road that leads out of the camp. At the same time in an adjacent street, in which the situation was calm and no stone throwing was taking place, another group of soldiers was making its way towards the group of stranded soldiers, when they came face to face with five unarmed young men. According to the accounts collected by OHCHR, one of the soldiers immediately opened fire in the direction of the young men, killing 25-year-old Ali Hasan Abed Khaleefah and 22-year-old Mo'atasim Essa Othman Odwan and wounding another.

22. On 23 September 2011, in Qusra, in the northern West Bank, an unarmed Palestinian civilian was shot dead by IDF following clashes between settlers and Palestinians. Clashes erupted after IDF refused to remove a group of settlers who had trespassed into privately owned Palestinian land. The soldiers focused their efforts instead on removing the Palestinians. Eyewitness accounts collected by OHCHR indicate that the soldiers formed a line and stood in between the settlers, some of whom were armed, and the Palestinians. IDF used tear gas to disperse the Palestinians, then resorted to rubber bullets against the Palestinians and

[17] IDF, "IDF terminates military career of soldier involved in Hebron incident", press release, 19 January 2011.

finally used live fire, which led to the death of 36-year-old Essam Kamal Badran Oudeh, a father of seven children. The use of live fire by IDF was confirmed by its spokesperson.[18] It was subsequently reported in the media that the commander of the IDF unit involved in the death of the Palestinian civilian was relieved from his post but remained in the IDF.[19]

23. The use of live ammunition by IDF at checkpoints in the Occupied Palestinian Territory against unarmed individuals is also cause for concern. For example, on 2 January 2011 an unarmed man crossing the Al-Hamra checkpoint was shot and killed. The man was passing through the security check and had handed over his identification to an Israeli soldier. When he was about to clear the checkpoint, a female soldier who stood behind a concrete block started to shout at him in Hebrew and shot him in the leg. The man fell to the ground. He then got up with his hands up; at this point other soldiers at the checkpoint opened fire. One bullet hit him in the chest. At the arrival of the ambulance crew he was pronounced dead. IDF announced three weeks later that an operational investigation had concluded that the soldiers had acted in conformity with rules of engagement.[20]

24. On 11 November 2011, an Israeli citizen was driving in the Hebron Governorate. IDF, having received information about a suspicious vehicle, had set up a temporary checkpoint. The vehicle driven by the victim failed to stop at the checkpoint as signalled by the soldiers. One of the soldiers then opened fire in the direction of the vehicle, killing its driver and injuring two passengers. In a press statement IDF indicated that the soldier felt that his life was threatened. IDF ordered an investigation.[21]

25. As emphasized by the Secretary-General in his report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/66/356), "the use of firearms against unarmed persons raises serious concerns with regard to the open-fire regulations and training received by the Israeli security forces. In the West Bank, occupying forces act in a law-enforcement capacity. They are bound by article 6 of the International Covenant on Civil and Political Rights and should act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" (para. 15). The use of firearms is authorized in extremely limited circumstances, namely self-defence or defence of others against imminent threat of death or serious injury and only if less extreme means are insufficient.[22] The Secretary-General added that "thorough, prompt, independent and impartial investigations of the use of firearms by law enforcement officials, and the taking of appropriate judicial and disciplinary sanctions when necessary, are essential to ensure the accountability of security forces" (para. 17). The

[18] IDF, "Events following violent riot near Qusra", 23 September 2011. Available from http://idfspokesperson.com/2011/09/23/events-following-violent-riot-near-qusra/.

[19] Harriet Sherwood, "Israeli officer loses command, a month after death of protester", *Guardian*, 24 October 2011. Available from www.guardian.co.uk/world/2011/oct/24/israeli-commander-dismissed-death-protester.

[20] IDF, "Investigation of 'Bekaot' crossing incidents concluded", press release, 24 January 2011. Available from http://dover.idf.il/IDF/English/Press+Releases/2011/01/2401.htm.

[21] IDF, "Central Command Chief orders investigation of shooting incident", press release, 11 November 2011. Available from www.idf.il/1283-13798-en/Dover.aspx.

[22] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, principle 9.

circumstances of the killings mentioned above indicate the necessity for Israeli security forces to reassess open-fire regulations with a view to preventing such incidents. Furthermore, the issue of lack of accountability remains a serious concern.

2. Discriminatory practices underlying settlement expansion and impunity for settler violence

26. Despite the illegality of settlements under international law, Israeli settlement expansion continued in the West Bank, including East Jerusalem, and was accompanied by a regime of policies detrimental to the rights of Palestinians. About half a million Israeli settlers live in the West Bank, including East Jerusalem.[23] Throughout the reporting period the Government of Israel continuously announced plans for new construction and the expansion of existing settlements in the occupied West Bank, including in East Jerusalem.[24] Moreover, Israeli-imposed restrictions specifically targeting Palestinian construction are blatantly discriminatory (A/66/364, para. 8).

27. While Israeli settlement expansion continues, Palestinians throughout the West Bank, particularly in Area C and in East Jerusalem, continue to face significant restrictions on construction, which severely affects their needs and rights. As noted by the Secretary-General, Israel continues "to impose restrictions on land allocation and planning for Palestinian construction. Israel's discriminatory planning restrictions result in the lack of building permits for the Palestinian population in the West Bank forcing them to build without building permits and live under the constant threat of eviction and demolition" (A/66/364, para. 10).[25] According to OCHA, the total number of Palestinian structures demolished by Israeli authorities during the reporting period is 574, including 203 residential structures, which led to the displacement of at least 957 Palestinians. In its consideration of Israel, the Human Rights Committee concluded that the planning regimes in the West Bank, in particular in Area C and in East Jerusalem, are discriminatory and disproportionately favour the Israeli population of those areas (CCPR/C/ISR/CO/3, para. 17).

28. Violence perpetrated by Israeli settlers continued to be reported throughout the West Bank, including East Jerusalem. Attacks by settlers against Palestinians and their property take various forms, including attacks with live ammunition and baseball bats, the cutting of trees, stone throwing and the vandalizing and torching of mosques, in addition to other various types of assault. According to OCHA, the weekly average of settler attacks against Palestinian communities resulting in Palestinian injuries and property damage increased by 40 per cent in 2011 in comparison to 2010 and by more than 165

[23] Peace Now, West Bank and Jerusalem Map, January 2011. Available from www.peacenow.org.il/eng/content/west-bank-and-jerusalem-map-2011.

[24] In October 2011 the Government of Israel announced plans for the construction of Givat Hamatos, a new settlement. Chris McGreal, "Israel plans new settlement of 2,600 that will isolate Arab East Jerusalem", *Guardian*, 16 October 2011. Available from www.guardian.co.uk/world/2011/oct/16/israel-settlement-isolate-arab-jerusalem. See also Peace Now, "Givat Hamatos - a new Israeli neighborhood in East Jerusalem", 13 October 2011. Available from www.peacenow.org.il/eng/GivatHamatosEng.

[25] For a detailed description of the restrictions and concerns for East Jerusalem see the report of the Secretary-General A/66/364, paras. 13-18; for Area C of the West Bank, see paras. 19 and 20.

per cent compared to 2009.[26] In 2011, almost 10,000 Palestinian-owned trees, mainly olive trees, were damaged or uprooted by Israeli settlers, severely affecting the livelihood of hundreds of Palestinian families.[27]

29. During the reporting period, OHCHR closely monitored the situation in the village of Qusra, in the northern West Bank, which witnessed a spike in settler violence during 2011 and particularly during September. The attacks took various forms and are emblematic of the phenomenon of settler violence throughout the West Bank. On 6 October 2011, at least 200 trees belonging to four Palestinian families were uprooted and/or damaged in Qusra. On 23 September 2011, as noted above, following clashes between Palestinians and settlers, an unarmed Palestinian civilian was shot dead with live ammunition by IDF. During the same incident, two minors were detained by IDF for two hours in a tent located between the village and the Esh Kodesh outpost, during which they were beaten by both IDF soldiers and settlers and insulted. On 16 September 2011, one unarmed Palestinian was injured with live fire by a settler after armed settlers trespassed onto his land. During the same incident, one minor was injured in his leg when the settlers released their dog on the minor. On 5 September 2011, a mosque in the village was vandalized and torched. Insulting graffiti was sprayed on its walls. On 26 August 2011, a Palestinian minor was injured by live ammunition used by IDF following clashes between settlers and Palestinians. On 7 March 2011, at least 12 Palestinians sustained serious injuries as a result of live fire shot by both IDF and armed settlers. During this incident, accounts collected by OHCHR indicate that the injured Palestinians were assaulted simultaneously by both IDF and armed settlers (A/66/364, para. 24).

30. The failure of IDF to protect Palestinians and their property from violence by Israeli civilians continues to be a growing concern. The lack of accountability for these violent acts, which is exacerbated by the existence of a dual legal system - civil courts for Israeli civilians and a less protective military justice system for Palestinians suspected of involvement in crimes - contributes to increased tension between Palestinians and Israelis (ibid, para. 31). OHCHR documented several cases where IDF appeared to provide direct support to settlers when they attacked Palestinian communities and focused their efforts in dispersing Palestinians or removing them from their lands rather than preventing Israeli settlers from trespassing onto private Palestinian land and attacking Palestinians and their property. Reports of the Government of Israel suggest that this failure may in some instances be a result of the insufficient knowledge of some IDF soldiers about their duty to protect Palestinians (ibid., para. 30). At the same time, it should be noted that IDF in many contexts does successfully act to prevent incidents and to ensure accountability, which suggests that the required capacity is available.

31. Filing a complaint against settlers or IDF is often a complicated and intimidating process for many Palestinians. Many refrain from filing complaints and limit themselves to reporting the case to the Palestinian authorities. However, Palestinian authorities have no jurisdiction with regard to settlers and can only document the damages and/or injuries and send written complaints to

[26] OCHA, Israeli Settler Violence in the West Bank, fact sheet, November 2011. Available from www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf.

[27] Ibid.

their Israeli counterparts (A/66/364, para. 29). Israeli authorities in the West Bank have the sole responsibility, capacity and jurisdiction to ensure effective prevention and accountability for settler violence in the West Bank.

3. The Wall and the case of Al-Walaja

32. In the advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004 issued upon the request of the General Assembly, the International Court of Justice concluded that the construction of the Wall in the Occupied Palestinian Territory and its associated regime contravene international law (para. 42). The Court also concluded that Israel is obligated to cease construction of the Wall inside the Occupied Palestinian Territory, to dismantle the existing portions which lie inside the Occupied Palestinian Territory, and to make reparations for damages caused by the construction of the Wall (paras. 150-153). As of July 2011, the total length of the Wall was approximately 708 km, which is more than twice the length of the 320-km Green Line (the 1949 Armistice Line) between the West Bank and Israel. According to OCHA, when completed as per the planned route, 85 per cent of the Wall will run inside the West Bank. Almost 62 per cent of the Wall is now completed.[28] Israel has not complied with the advisory opinion of the International Court of Justice.

33. The situation of the village of Al-Walaja illustrates the situation of many communities affected by the Wall. Al-Walaja is located 9 km south-west of the Old City of Jerusalem and has a population of about 2,200 people. In 2006, the Israeli authorities confirmed to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) the plan of Israel to encircle the village with the Wall, effectively isolating it as an enclave between Jerusalem and the Etzion settlement block.[29] Construction of the Wall resumed in 2010, after years of inactivity, and hundreds of trees of different types were uprooted to make way for the Wall, depriving dozens of families from an important source of income. Since July 2011, the Israeli authorities uprooted at least 90 olive trees and at least 100 trees of different types from the lands of the village of Al-Walaja, directly affecting the livelihoods of many Palestinian families.[30] The community of the village continues to challenge the legality and the effects of the Wall by petitioning the Israeli High Court, so far in vain.

4. The situation of Bedouin communities

34. Pressure levied by the Israeli authorities on Bedouin communities living in Area C of the West Bank increased during the reporting period. The Secretary-General recently noted that "over the last 30 years the Bedouin community has experienced gradual, systematic dispossession of its land. Today Bedouins face constant attempts to displace them from their homes and increasingly restricted access to natural resources" (A/66/356 para. 44). Recent plans announced by the Israeli authorities targeting the transfer of 20 Bedouin communities, including a total of 2,300 people, from the Jerusalem periphery are of immediate concern.

[28] OCHA, *Barrier Update*, Special Focus, July 2011, p. 3. Available from www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

[29] UNRWA, Al-Walaja: An Analysis under International Law, May 2011, third page. Available from www.unrwa.org/userfiles/2011081763638.pdf.

[30] UNRWA, Al-Walaja: Community at Risk of a Second Forced Displacement, October 2011.

Half of the communities in question live along road No. 1, which connects Jerusalem with the Jordan Valley and the northern Dead Sea, and the other half live inside and on the outskirts of the "E1" area planned for the expansion of the settlement of Ma'ale Adumim.[31]

35. Some reports indicate that this plan may be implemented as early as January 2012 and that it is the first step of a larger plan to transfer up to 27,000 Bedouins from their communities in Area C.[32] OHCHR met with representatives of some Bedouin communities in September 2011. The communities expressed their concerns with the implications of the planned transfer. More than 80 per cent of the members of these communities are already refugees. The communities have already lost land in the past due to settlement expansion and most have pending demolition orders against their homes. Currently, none have access to electricity networks and just about half are connected to water networks. The communities have clearly expressed to OHCHR that the Israeli Civil Administration has not consulted them for this transfer plan. The communities fear the transfer will lead to a further deterioration of their living conditions, loss of livelihood, loss of tribal cohesion and erosion of their traditional lifestyles. Furthermore, according to OCHA, the proposed transfer site is situated close to the municipal dumping site and is likely to pose health hazards to the communities.[33]

36. If the proposed plan to transfer 20 Bedouin communities is not desired by the vast majority of these communities it would, if implemented, constitute forced transfer of population, which is strictly prohibited under international humanitarian law. Elements of this also raise a number of human rights concerns enshrined in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Should some communities be willing to be transferred, they should be involved in genuine consultations, alternatives should be discussed, and their way of life, livelihood and culture must be preserved. Their informed consent (in a language they understand), obtained without coercion or pressure, is required. In any case, consent of the communities to be moved by no means justifies the expansion of settlements or related activities which remain illegal under international law.

5. Gaza

37. The Israeli blockade, now in its fifth year, continued to significantly impact the human rights situation in Gaza. Severe restrictions on the movement of people and goods, on land and sea, remain in place. The effects of such measures include: increased poverty and unemployment, a decline in infrastructure and the quality of services, such as health care, education, water and sanitation, and serious erosion of the coping mechanisms of families and communities.[34] Restrictions on exports continued, as did limitations on imports

[31] B'Tselem, "Civil Administration plans to expel tens of thousands of Bedouins from Area C", 10 October 2011. Available from www.btselem.org/settlements/20111010_forced_eviction_of_bedouins.

[32] Ibid.

[33] OCHA, Bedouin Relocation: Threat of Displacement in Jerusalem Periphery, fact sheet, September 2011, first page. Available from www.ochaopt.org/documents/ocha_opt_bedouin_FactSheet_October_2011_english.pdf.

[34] Protection concern identified by the Protection Cluster Working Group as reflected in the Consolidated Appeals Process 2012 (forthcoming, December 2012).

of certain materials qualified by Israel as "dual-use" items, impeding reconstruction, maintenance and expansion of civilian infrastructure destroyed during Operation Cast Lead and as a result of ongoing military operations.[35] There was also a delay in the construction of three wastewater treatment plants. The inability to build new schools/classrooms due to the lack of construction material in combination with the growing population has led to a double- and triple-shift system of holding classes, which negatively affects the quality of education that children receive. About 85 per cent of schools in Gaza run on the system of double or triple shifts, leading to a reduction in class time and the elimination of extracurricular activities.[36] The unemployment rates continue to increase, with an estimated 26 per cent of the people, including 38 per cent of the youth, being unemployed.[37] Due to ongoing restrictions on the import of construction materials, the lack of alternative employment opportunities, and huge housing and infrastructure needs, the tunnel economy continues to grow.

38. Palestinians continued to face serious threats to life, liberty and security on a regular basis as a result of various forms of violence, including conflict-related violence (such as incursions, bombardments/air strikes and levelling operations by Israeli security forces) and the use of live ammunition to enforce the access to restricted areas on land and at sea. Such acts, which usually take place with impunity, have resulted in death, injury, displacement, disability and/or psychological trauma, as well as extensive damage to civilian infrastructure[38] and Palestinian land and property.

39. In some cases, IDF failed to take precautions to avoid the loss of civilian life. It has also failed to observe the principles of proportionality and distinction. OHCHR investigated four cases of civilians killed by IDF in Gaza where necessary measures to prevent the casualties were not taken. On 22 March 2011, an Israeli mortar shell struck a civilian residence in Al-Tufah neighbourhood, eastern Gaza city, killing four civilians, including two children, and wounding 12 others. Earlier that day three mortar shells targeting IDF stationed at the Green Line had been launched from the area.[39] The shells had caused no physical injuries or damage. While IDF seems to have been responding to the earlier attack from the area, it is alleged it did so several hours later. This time frame should have allowed IDF to use all means at its disposal to properly assess whether a military objective was still present in the area so long after the initial attack as well as the risk to civilians in the targeted area and allowed it to choose weapons which could have minimized this risk. On 8 April 2011, an IDF missile struck a house in Abassan Al Kabira in Khan Younis, killing a mother (40 years old) and her daughter (19 years old), and injuring two children who were sitting in the courtyard. Witnesses interviewed by OHCHR noted that no mortar shell or rocket attacks at Israeli targets had taken place from that area on the day of the strike or before.

[35] OCHA, *Monthly Humanitarian Monitor*, July 2011, pp. 8-9.

[36] UNICEF oPt monthly update, July-August 2011, p. 1.

[37] OCHA, Humanitarian Situation in the Gaza Strip, fact sheet, October 2011, first page. Available from www.ochaopt.org/documents/ocha_opt_Gaza_FactSheet_October_2011_english.pdf.

[38] For example, a well and nine water tanks were destroyed during an Israeli air strike in Beit Hanoun on 17 July 2011.

[39] According to the United Nations Department of Safety and Security, communication dated 26 June 2011.

40. Major obstacles continue to prevent most Palestinians from seeking accountability. The statute of limitations under Israeli law requires that a complaint for civil damages must be brought within two years of the date of the incident, or the right to compensation is lost. The restrictions on movement and the large number of victims have meant that victims are often unable to submit their cases within the required time frame. Restrictions on movement have also meant that victims or witnesses have been unable to appear in court (when needed) or access legal counsel in Israel, while requests by lawyers to enter Gaza have also been consistently denied. Reports indicate that since July 2007, no individuals from Gaza have been allowed to travel to appear before the court. In addition, the setting of a high court fee and a court insurance/guarantee before the case can begin, and its application only to Palestinian claimants, serves to limit, and ultimately deny, access to justice. Few victims can afford to pay the court insurance, an estimated NIS 10,000 (US$ 2,800), which has led to cases being dismissed and closed.[40]

C. The Palestinian Authority

1. Detention and treatment in detention

41. According to the Palestinian Independent Commission for Human Rights (ICHR), the Palestinian General Intelligence Agency announced that it would stop trying Palestinian civilians before military courts. The decision, which entered into effect on 16 January 2011, also puts an end to the practice of detaining persons without a warrant from the Office of the Public Prosecutor, a practice that contravened the Palestinian Code of Criminal Procedure.[41] In a meeting with PSS in February 2011, OHCHR was informed that on 31 December 2010, the decision to stop the use of military courts had entered into force. All detainees would be tried by civil courts with the exception of people held prior to that date. After a review of the files of persons held in Juneid Prison in Nablus, PSS released 19 detainees and six detainees were referred to civil courts in Nablus. OHCHR was also informed that PSS had issued strict instructions on the treatment of detainees. Accounts collected by OHCHR from detainees in Juneid Prison indicate that treatment of detainees in that prison had generally improved.

42. Despite these positive developments, OHCHR continued to receive reports of arbitrary detention and ill-treatment in detention by security services of the Palestinian Authority in the West Bank. ICHR received a total of 398 complaints by Palestinians who claimed that they were deprived of their freedom and were arbitrarily detained by members of the security agencies operating in the West Bank between January and April 2011.[42] In the meantime, several orders of release issued by the Palestinian High Court of Justice due to illegality of detention were not implemented by the executive authorities in the West Bank

[40] See Palestinian Centre for Human Rights, "Genuinely unwilling: an update - the failure of Israel's investigative and judicial system to comply with the requirements of international law, with particular regard to the crimes committed during the offensive on the Gaza Strip", August 2010, p. 73.

[41] ICHR, "The General Intelligence Agency issues a decision to refrain from bringing civilians before military courts". Available from www.ichr.ps/etemplate.php?id=239.

[42] See ICHR Monthly Reports January – April 2011: http://home.ichr.ps/en/2/5/604/monthly-reports-2011-monthly-reports-2011.htm.

in violation of Palestinian Basic Law (art. 106). In August 2011, ICHR documented 17 complaints regarding the non-implementation of decisions issued by both the Palestinian High Court of Justice and the Court of First Instance in the West Bank.[43] In some cases, although Palestinian Authority security agencies implement the High Court's decisions on the release of detainees, they frequently nullify the practical effects by detaining released persons under the pretext of other charges. Therefore, release orders are implemented, but affected persons are summoned and detained again. Although arbitrary detention in the West Bank is outlawed by the Palestinian Basic Law and the Law of Penal Procedure No. 3 of 2001,[44] the situation on the ground is different. Executive authorities need to take effective measures against arbitrary detention.

2. Civil rights, including freedoms of expression, association and assembly

43. Freedom of opinion and expression is guaranteed by the Palestinian Basic Law. However, during the reporting period some Palestinian actors took action in some cases to curtail this right. Palestinian security services in the West Bank curtailed the freedom of journalists and media professionals. Announcements in April 2011 on possible Fatah and Hamas reconciliation had a positive impact on journalists' freedom to exercise their profession. This also allowed for the return of journalists and other personnel of Palestine TV to the Gaza Strip, and of Al-Aqsa TV to the West Bank.

44. During the protests calling for national unity that were organized in March 2011 in different cities and towns in the West Bank, violations by PSS and the General Intelligence Agency against journalists in the West Bank were reported. On 15 March, a group of unidentified persons attacked journalists in plain sight of security services personnel stationed near the protest tent at Al-Manara Square in Ramallah. Based on the complaints received by ICHR from two journalists (one foreign and one Palestinian), the Palestinian Authority policemen did not try to protect them. The Palestinian Centre for Development and Media Freedoms (MADA), with which OHCHR met, reported that attacks on journalists "continued to hinder their work and endanger their lives".

45. In August 2011, the Prosecutor-General of the Palestinian Authority decided to stop airing a Palestine TV show called *Watan ala Watar* (Homeland on a String). Palestine TV was ordered to stop airing the satirical programme as it allegedly offended and humiliated a large number of Palestinians. In the same month, Professor Abdel Sattar Qassem was arrested and held in custody following the publishing of an article. He was later released following a personal appeal to the President of the Palestinian Authority.

46. The Islamic Liberation Party (Hizb al-Tahrir) annually commemorates the fall of the Islamic Caliphate. The commemoration usually takes the form of a series of lectures ending with a central conference and a march in Ramallah. The intervention of Palestinian Authority security forces this year resulted in clashes with members of the party. In June 2011 the party received confirmation by relevant authorities of the Palestinian Authority that they had no objection to the demonstration planned for 2 July 2011. On the appointed day, members of the

[43] ICHR August Monthly Report: http://home.ichr.ps/en/2/5/612/August-Report-on-violations-of-HR-August-Report-on-violations-of-HR.htm.

[44] Penal Procedure Law No. 3 of 2001: www.courts.gov.ps/pdf/Law%203%202001%20Penal%20Procedures.pdf.

party gathered in several towns of the West Bank to hold peaceful marches commemorating the ninetieth anniversary of the fall of the Islamic Caliphate. Despite having submitted a written notice of the march in Ramallah, Palestinian Authority security forces violently dispersed it, along with several other marches in a number of West Bank towns. One of the victims of these incidents in Hebron city informed OHCHR that he was severely beaten by 10 to 12 members of Palestinian Authority security forces before being apprehended.

IV. Conclusion and recommendations

47. **The human rights situation in the Occupied Palestinian Territory remains of concern. Serious violations of international law by all duty-bearers continue to occur. All duty-bearers have an obligation to respect international human rights and international humanitarian law. The violations highlighted in the present report can be addressed through direct corrective action by the duty-bearers in the present context. OHCHR notes with appreciation that the Palestinian Authority is willing to cooperate with OHCHR to address shortcomings and continue to build its human rights capacity. With regard to the Government of Israel, OHCHR notes with appreciation indications of willingness to engage in a dialogue on its human rights responsibilities, and stresses the need for this dialogue to significantly develop over the coming months.**

A. Recommendations to the de facto authorities in Gaza

48. **The de facto authorities must ensure respect for international humanitarian law by members of its armed groups and groups under its control, in particular in relation to the prohibition of targeting civilians, civilian objects and civilian areas and to ending the use of indiscriminate weapons. The de facto authorities must avoid locating military assets in densely populated areas and seek to remove those already in place.**

49. **Clear and unambiguous orders must be issued to all the security forces in Gaza prohibiting the use of torture and/or cruel, inhuman or degrading treatment, and the de facto authorities must ensure that members of the security forces respect these orders by investigating promptly, thoroughly and impartially all allegations of ill-treatment and by imposing appropriate disciplinary and penal sanctions against those found responsible.**

50. **The freedoms of opinion, expression and assembly of residents of Gaza, including journalists, must be respected.**

51. **The de facto authorities must cease the use of military tribunals to try civilians and should positively consider imposing an immediate moratorium on the use of the death penalty with a view to its ultimate abolishment.**

B. Recommendations to the Government of Israel

52. **The Government of Israel must take all necessary measures to prevent further incidents of excessive use of force during law enforcement operations by its security forces, including during search and arrest operations. This should include a comprehensive review of regulations on**

the use of live ammunition in law enforcement operations carried out by all Israeli security forces, including the Israeli Defence Forces (IDF) so as to ensure that these regulations are in line with the international legal obligations of Israel.

53. **The Government of Israel must ensure the accountability of the members of its security forces, in particular by conducting investigations that meet international standards of promptness, independence, impartiality, and thoroughness into all credible allegations of violations, and taking appropriate disciplinary and penal sanctions against those deemed responsible. Victims of such violations need to be adequately compensated.**

54. **The Government of Israel must fulfil its obligations under international human rights and international humanitarian law and immediately cease the transfer of its civilian population into occupied territory. The Government should cease its discriminatory policies and practices affecting Palestinians, including those that violate Palestinians' right to adequate housing.**

55. **The Government of Israel must take all necessary measures to prevent attacks by Israeli settlers against Palestinian civilians and their property in the West Bank, including East Jerusalem. Attacks by settlers and Israeli security forces against Palestinian civilians and their property in the West Bank must be duly investigated by the Israeli authorities and those responsible held accountable. Victims also have to be appropriately compensated.**

56. **The Government of Israel must take all necessary measures to ensure that Palestinian victims of alleged crimes by Israeli settlers can file and follow up on complaints. They must be able to do so in complete safety. The Government must ensure that the principle that all persons are equal before the law and entitled without discrimination to the equal protection of the law is fully enforced in all its practices. Israeli police stations should be easily accessible to Palestinians. An adequate and efficient complaint-filing system should be set up between the Israeli authorities and the Palestinian Authority in cases where Palestinians are not able to access Israeli police stations.**

57. **The Government of Israel must fully comply with the advisory opinion of the International Court of Justice with regard to the Wall.**

58. **The Government of Israel should cancel any plans to transfer Bedouin communities from the West Bank that may amount to forced transfer and/or forced evictions. Any attempts to carry out a transfer should be carried out only with the free, prior and informed consent of the communities and in conformity with international human rights and international humanitarian law.**

59. **Methods used by IDF to enforce access restrictions on land and sea in Gaza need to be reviewed. These methods need to be in line with the international legal obligations of Israel and should never include the use of live ammunition against civilians.**

60. **The Government of Israel should ensure that any attack by IDF fully respects international humanitarian law, in particular the principles of distinction, proportionality and precautions.**

61. **The Government of Israel must fully lift the blockade of Gaza, with due regard to legitimate security concerns. This should include measures to facilitate the movement of people to and from Gaza, permitting goods to be exported from Gaza, and ensuring that materials for reconstruction can be delivered to Gaza.**

C. Recommendations to the Palestinian Authority

62. **The Palestinian Authority must ensure that all its law enforcement agencies/security services adhere to international standards and refrain from arbitrarily arresting persons, including without a warrant from the Office of the Public Prosecutor. Files currently in the hands of the military judicial authorities need to be referred to the competent civil authorities. The Palestinian Authority must also ensure that conditions and treatment in its detention facilities are in conformity with international standards.**

63. **The Palestinian Authority must ensure that civil society organizations, human rights defenders and journalists can carry out their work in a safe and secure environment in accordance with applicable international human rights standards. The freedoms of expression, association and assembly are a central cornerstone in a free and open society, and the Palestinian Authority should take all necessary measures to protect and respect these freedoms.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1*

Summary

The present report is the High Commissioner's fifth periodic report on the human rights situation in the Occupied Palestinian Territory submitted in the light of Human Rights Council resolutions S-9/1 and S-12/1.

* Late submission.

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I. Introduction

1. The present report is the fifth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights.[1] The report covers the period from 16 November 2011 to 29 November 2012. The information in the report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-OPT). Monitoring activities are implemented within the framework of General Assembly resolution 48/141 of 1993 and Human Rights Council resolutions S-9/1 and S-12/1 of 2009.

2. In the present report, the High Commissioner highlights issues of concern with regard to each of the main duty bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed do not exhaustively cover all human rights concerns in the Occupied Palestinian Territory. The report focuses on areas requiring priority attention by duty bearers, and should be read in conjunction with two recent reports by the Secretary-General (A/67/372 and A/67/375), which address additional issues not dealt with in the present report.

3. The addendum to the present report (A/HRC/22/35/Add.1) covers issues of concern arising from the escalation in hostilities in Gaza and southern Israel between 14 and 21 November 2012, referred to by Israel as Operation Pillar of Defence, and referred to in the present report as "the crisis". During the crisis, according to information available to OHCHR, a total of 174 Palestinians were killed. At least 168 of them were killed by Israeli military action; of those, 101 are believed to be civilians, including 33 children and 13 women. Hundreds of Palestinians were injured.[2] Palestinian armed groups fired over 1,500 rockets at Israel, reportedly killing three soldiers and four Israeli civilians.[3] According to the Government of Israel, 239 others, including 219 civilians, were injured.[4] OHCHR closely monitored the situation and noted, on numerous occasions, the failure of both parties to respect the laws of war, including the principles of distinction, proportionality and precautions.

4. It should be noted that in March 2012 the Government of Israel announced in the media that its relations with the Human Rights Council and with OHCHR would be suspended following the adoption of Council resolution 19/17, in which the Council

[1] Previous reports: A/HRC/19/20, A/HRC/16/71, A/HRC/13/54, A/HRC/12/37.

[2] Figure varies according to source. The numbers cited refer to the Protection Cluster database on casualties, for which Palestinian and Israeli organizations provided data. The Israeli Defense Forces (IDF), according to media, estimate the number of Palestinians killed at 177, including 120 combatants, and the number of injuries (including an unspecified number of civilians) at 900. Gaza's Ministry of Health estimates the number of Palestinians killed at 189, and injuries at 1,526. No details on casualties of civilians are provided by that Ministry. For IDF figures, see *Times of Israel*, www.timesofisrael.com/several-casualties-in-explosion-in-central-tel-aviv/. For Gaza Ministry of Health figures, see Ma'an News Agency, 27 December 2012, http://maannews.net/arb/ViewDetails.aspx?ID=551374.

[3] According to the Government of Israel, one Israeli civilian was located at a legitimate military objective. See the website of the Ministry of Foreign Affairs, www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2012/GazaNov2012/Alayaan_Salem_al-Nabari.htm.

[4] Israel, Ministry of Foreign Affairs, "Israel under fire – November 2012", 22 November 2012, www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm.

decided to establish a fact-finding mission on Israeli settlements. This decision was confirmed in letters of 14 May 2012 from the Permanent Representative of Israel to the United Nations in Geneva to the High Commissioner and the President of the Council. The High Commissioner responded noting her surprise at this unprecedented decision, urging the Government to reconsider its position and reaffirming the readiness of OHCHR to engage with Israel. There was no formal change in the position of Israel during the remainder of the reporting period.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the applicable legal framework and the basis for the obligations of the different duty bearers, namely the State of Israel as the occupying Power, the Palestinian Authority and the de facto authorities in Gaza, can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras. 5-9). This analysis remains valid.

III. Human rights violations by all duty bearers

A. The Government of Israel

1. Right to life and security in Gaza

(a) Killing and injury of civilians in the course of hostilities

6. The right to life, liberty and security continued to be an issue of serious concern during the reporting period as a result of various forms of violence. By 29 November 2012, 130 civilians, including 40 children and 14 women, had been killed due to conflict-related violence in Gaza, such as air strikes, bombardments, incursions and levelling operations, as well as the use of live ammunition to enforce the access-restricted areas both on land and at sea. Of these, 101 civilians, including 33 children and 13 women, were killed in the crisis from 14 to 22 November. Excluding Palestinians injured during the crisis – as this information was not yet verified at the time of writing – 369 civilians, including 114 children and 39 women, were injured in Gaza as a result of conflict-related violence during the reporting period.[5]

7. Israeli military attacks targeted alleged members of armed groups while present in populated areas, resulting in civilian casualties. Some cases raise concerns regarding the respect by the Israeli Defense Forces (IDF) of the principles of distinction, proportionality and precautions to avoid the loss and injury of civilian life when launching an attack. On 7 October 2012, eight civilians, including a woman and four children, were injured when an Israeli airplane fired a missile that resulted in the killing of two alleged members of armed groups travelling on a motorbike in Rafah. Similarly, on 10 November, following an attack by armed groups that injured four Israeli soldiers, at the fence east of Al-Shojayaa, IDF launched attacks on different targets in Gaza that lasted for several days. In one such attack, on 10 November, at approximately 4 p.m., four blasts occurred in a sand dune located a short distance from residential buildings that are located approximately 1,000 metres from the Israeli fence between Gaza and Israel. Four civilians, including two children, were killed and 42 injured. OHCHR received information indicating that some of the victims

[5] Information provided by the Office for the Coordination of Humanitarian Affairs (OCHA).

were sitting on the sand dune when the first two blasts occurred, while others were hit by the third and fourth blasts as they were trying to climb up the sand dune to see what was happening.

8. Local human rights groups documented further cases of attacks that resulted in civilian casualties. On 20 June 2012, a Palestinian child and his blind father were killed and three other children were injured by an Israeli air strike in Tal al-Hawa in Gaza City.[6] On 23 June 2012, one civilian was killed and seven others were injured in an Israeli air strike targeting two alleged members of armed groups travelling on a motorbike in Al-Nasser in Gaza City.[7]

(b) Access-restricted areas

9. Israel continued to use live ammunition to enforce the access-restricted areas near the Israeli fence between Gaza and Israel, as well as at sea.[8] Though the number of such incidents decreased in comparison to previous years, the life and security of civilians continued to be at risk. According to information obtained from the Office for the Coordination of Humanitarian Affairs (OCHA), during the reporting period 12 civilians, including 1 woman and 2 children, were killed, and a further 123, including 11 women and 25 children, were injured in the access-restricted areas. These figures do not include figures relating to the crisis in November, as these were not verified at the time of writing. With respect to the recommendation of the United Nations Fact-Finding Mission on the Gaza Conflict in paragraph 1968 (d) of its report (A/HRC/12/48), as stated in the first progress report of the Secretary-General on the status of implementation of the recommendations of the Mission (A/HRC/13/55, paras. 9-10), the Human Rights Council, in resolution S-12/1, recommended that the General Assembly should consider the report during its sixty-fourth session. In its resolution 16/32, the Council recommended that the General Assembly reconsider the report at its sixty-sixth session. The Secretary-General observed that the Human Rights Council has implemented the recommendation in paragraph 1968 (d) of the report of the Mission.

10. On 30 March 2012, Israeli soldiers stationed at the Erez crossing between Gaza and Israel used live ammunition against civilians assembled to mark "Land Day". Dozens of civilians approached the fence at Erez and threw stones at the Israeli soldiers. While the soldiers initially responded with aerial shootings, they later resorted to live ammunition in response to continued stone throwing. As a result, a 19-year-old Palestinian civilian was killed and 35 others were injured, including 17 children.

[6] Palestinian Centre for Human Rights (PCHR), weekly report, 14-20 June, 2012, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8557:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-14-20-june-2012&catid=84:weekly-2009&Itemid=183.

[7] PCHR, weekly report, 21-27 June 2012, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8582:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-21-27-june-2012&catid=84:weekly-2009&Itemid=183.

[8] On a positive note, and as part of the ceasefire of 21 November 2012, the Government of Israel expanded the fishing zone from 3 to 6 nautical miles. (See Israel, Ministry of Defense, Coordinator of Government Activities in Territories, "Humanitarian & civilian activities towards the Gaza Strip – monthly report for November 2012", www.cogat.idf.il/Sip_Storage/FILES/8/3688.pdf). OHCHR received unconfirmed information indicating that the Government of Israel has allowed farmers to access land up to 100 metres from the fence on foot, and up to 300 metres from the fence with tractors and equipment.

11. On 4 November 2012, a 23-year-old man suffering from epilepsy was shot and killed by IDF about 10 metres from the fence, east of El Borueij camp. IDF had requested the victim several times – in Arabic, by microphone – to leave the area, but the victim had not responded. OHCHR received information indicating that the victim was known to IDF, due to his detention in mid-September, when he had previously approached the fence. IDF called the victim by his name prior to opening fire. Information received by OHCHR indicates that IDF allowed the victim to be evacuated only three hours after having been shot.

12. On 8 November 2012, a 13-year-old boy was shot and killed by IDF, as he played football with three friends next to his home about 1,000 metres from the fence, in Abasan al-Kabira, Khan Younis. Eyewitnesses reported that several incursions by IDF took place in the area on the same day.

13. On 11 August 2012, a 17-year-old male farmer cultivating his land, located about 600 metres from the fence, was shot twice, in his left hand and right thigh, east of Khan Younis. In another case, on 29 August , a 42-year-old female farmer was shot three times, in her hand, abdomen and back, in Wadi El Salqa, central Gaza Strip, about 700 metres from the fence. Information gathered by OHCHR indicates that the farmers posed no apparent risk to IDF, and that no armed activities had been or were being conducted from the site of the incident or from the surrounding area at the time when the incidents took place.

14. On 28 September 2012, IDF opened fire on about 30 fishermen from Beit Lahia, who were on the beach, killing one of them, a 23-year-old, and injuring another. IDF sources, through media, denied that IDF had attacked any fishermen that day. The same sources admitted that Israeli soldiers at the Gaza-Israel northern fence had shot and injured two Palestinians approaching the fence after they had disregarded the verbal warnings.[9] OHCHR was informed that the fishermen were fishing on the shore with nets about 300-400 metres from the fence when the incident occurred.

15. On 23 November 2012, dozens of Palestinians celebrating the ceasefire headed toward the fence east of Khan Younis, attempting to cross it. IDF responded with live fire, leaving one civilian dead and 18 others, including 3 children, injured.[10] OHCHR does not have any information regarding whether the civilians in the cases mentioned above were warned in advance.

16. In terms of positive developments, the Israeli Navy appeared to change operating procedures and resorted to more systematic use of warning fire, rather than directly targeting fishermen with live ammunition, as had previously often been the case. However, fisherman continued to be detained and their equipment confiscated and/or destroyed. A local human rights group documented the arrest of 68 fishermen, and the confiscation of 20 boats by the Israeli Navy during the reporting period.[11] In October 2012, OHCHR documented the detention of eight fishermen and the confiscation of their boats by the Israeli Navy in two separate incidents. These occurred at 2 to 2.5 nautical miles from shore, west of Beit Lahia, on 7 and 22 October.

[9] Yaakov Lappin, "IDF fires on suspects who approached Gaza fence", *Jerusalem Post*, 30 September 2012, www.jpost.com/Defense/Article.aspx?id=286079.

[10] According to PCHR, Weekly Report, 22-29 November 2012, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9072:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-22-29-nov-2012&catid=84:weekly-2009&Itemid=183

[11] According to Al Mezan Centre for Human Rights, e-mail to OHCHR, 4 November 2012 (period covering 15 November 2011 to 4 November 2012).

17. As part of the 21 November ceasefire, Israel expanded the fishing zone to 6 nautical miles. Still, fishermen continued to be detained within this area. OHCHR received information regarding the detention of at least 18 fishermen, reportedly fishing within the 6 nautical mile limit, between 23 and 29 November 2012.

18. The use of live ammunition against civilians to enforce the access-restricted areas is not in conformity with international law regarding the right to life and security. It does not respect the rules on the use of force and firearms by law enforcement officials, and when taking place in the context of hostilities it violates the principle of distinction, which prohibits the targeting of civilians not directly participating in hostilities. Mere presence in a restricted area cannot be construed as participation in hostilities. As the occupying Power, Israel has the obligation to protect civilians.

2. The blockade of Gaza

19. In September 2012, Israel permitted the first commercial export of Gaza-made furniture into the West Bank since the imposition of the blockade in 2007. Apart from this, and the export of negligible amounts of agricultural produce to Europe, Gaza's exports remained severely restricted.[12] Continued restrictions on Gaza's exports and imports have stalled the private sector and minimized prospects for economic growth. By August 2012, 44 per cent of Gaza's population was suffering from food insecurity, 39 per cent lived in poverty, and 80 per cent relied on food assistance from humanitarian agencies.[13]

20. Restrictions on the import of construction material for private and public use continued to create serious challenges for the education sector. By August 2012, the education sector was in need of 230 new schools to meet the growing demand following from demographic growth. The shortage of educational facilities in Gaza forced an estimated 80 per cent of government and 93 per cent of United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools to operate on double shifts, diminishing the quality of education.[14]

21. Since June 2010, Israel has permitted the import into Gaza of construction materials for the particular United Nations projects it has approved. In September 2012, Israel, after a 19-month process, approved 11 United Nations projects related to water, sanitation, education, housing and electricity. However, Israel rejected 18 other projects, stating security concerns related to the locations of these projects.[15] The United Nations remains hindered from effectively responding to the population's rapidly increasing demand for services.[16]

22. Though the tunnel economy between Gaza and Egypt has facilitated the entry of some construction material for private use, by the end of June 2012 approximately 71,000 housing units were needed to fulfil shelter needs.[17] Gazans continued to face electricity cuts

[12] OCHA, *Monthly Humanitarian Monitor*, September 2012, p. 4, www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_10_23_english.pdf.

[13] United Nations Country Team in the Occupied Palestinian Territory (UNCT), *Gaza in 2020: A Liveable Place?*, August 2012, p. 6.

[14] OCHA, *Monthly Humanitarian Monitor*, August 2012, p. 10, www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_09_24_english.pdf.

[15] OCHA, *Monthly Humanitarian Monitor*, September 2012, p. 2.

[16] Ibid., pp. 3-4.

[17] OCHA, Five Years of Blockade: The Humanitarian Situation in the Gaza Strip, fact sheet, June 2012, www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_june_2012_english.pdf.

of up to 12 hours per day[18] and limited access to clean water.[19] An estimated 75 per cent of Gaza's waste water remains untreated, and 90 million litres of Gaza's raw sewage is pumped into the Mediterranean daily.[20] In sum, the blockade of Gaza has a significant negative impact on the enjoyment of economic, social and cultural rights in Gaza.

3. Excessive use of force in the West Bank, including East Jerusalem

23. The use of force by Israeli Security Forces (ISF), including IDF and the Israeli Border Police, led to seven Palestinian deaths and 3,036 injuries in the West Bank, including East Jerusalem. Many of these instances raised concerns regarding the excessive use of force by ISF.[21]

24. OHCHR received several reports of excessive force being used by ISF in East Jerusalem. On 5 October 2012, at around 1 p.m., the Israeli Border Police engaged with Palestinians in the Al-Aqsa compound. Eyewitnesses reported that Border Police fired stun grenades at Palestinians in various locations of the compound, and in surrounding narrow streets, including near Bab el-Selsela where 16-year-old Hassan Afif Afifi and his family live. A dozen Border Police randomly engaged with Palestinians, including Mr. Afifi's parents. The victim came to assist his parents, who were both on the ground. Mr. Afifi was reportedly grabbed by at least three Border Police, who punched and kicked him all over his body, including in his genitals, before dragging him into the Al-Aqsa compound. There they reportedly beat him for almost 60 minutes before taking him to a police station and then, due to his injuries, a hospital. The family filed a complaint but had not yet received any information from Israeli authorities regarding an investigation as of the finalization of the present report.

25. On 6 October 2012, at around 12.30 p.m., 32-year-old Hani Mohammad Abul Hawa witnessed an altercation between Palestinian teenagers and Border Police in the neighbourhood of Mount of Olives. Mr. Abul Hawa saw a Border Police officer violently grab a young boy. He intervened and asked the officer to release the boy. At least four Border Police approached Mr. Abul Hawa and punched him all over his body, wrestled him to the ground and dragged him, before violently pushing him into a police vehicle. Three Border Police entered the back of the vehicle and continued to beat Mr. Abul Hawa, including by punching him in the face. One officer hit him on his head with the butt of a rifle, leading him to bleed profusely. This officer also repeatedly stepped on the victim's hand with her boots, causing a fracture to his hand. Mr. Abul Hawa was taken to a hospital at around 2 p.m., where he alleges the three Border Police continued to beat him. Mr. Abul Hawa was checked into the emergency room while handcuffed and with his feet shackled. He filed a complaint a few days after the incident, but had not yet received any information from Israeli authorities regarding an investigation as of the submission of the present report.

26. On 8 March 2012, at approximately 3 p.m., IDF entered Yatta to carry out an arrest. Some Palestinian youths gathered. The situation remained calm, until one youth stabbed a soldier with a box cutter. The youths immediately fled. The injured soldier opened fire, injuring his assailant, who was about 5 metres away. About 30 seconds later the soldier again opened fire. Sixteen-year-old Zakaria Jamal Mohammad Abu Arram, who was standing at a distance of 45 metres from the soldier, was shot in the face and killed. A

[18] OCHA, Protection of Civilians Weekly Report, 24-30 October 2012, p. 3, www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2012_11_02_english.pdf.

[19] UNCT, *Gaza in 2020*, p. 11.

[20] Ibid., p. 12.

[21] Statistics provided by OCHA.

Palestinian ambulance arrived but was prevented from assisting Mr. Abu Arram until IDF departed. The distance between Mr. Abu Arram and the soldier brings into question whether an imminent threat to life or serious injury existed, when the soldier opened fire the second time.[22]

27. On 27 March 2012, three brothers in the village of Rammun noticed two unknown men on their neighbour's car. Thinking they may be thieves, the brothers went out to check, and asked the two men to identify themselves. They responded in Arabic but did not identify themselves. A confrontation ensued and the two unidentified men opened fire at the three brothers. One brother was shot in the leg, another was shot in the neck, and the third was shot in the abdomen. Several dozen uniformed IDF soldiers suddenly appeared. Two of the brothers were shot by uniformed soldiers, with one being struck seven times at close range. The soldiers checked the two men, who it later transpired were undercover IDF soldiers, for injuries and then departed.[23] Palestinian ambulances were prohibited by IDF soldiers from providing medical assistance to the wounded. After approximately 40 minutes, the wounded were put in IDF jeeps and transported to Taybeh junction. Crews from two Palestinian ambulances requested to be allowed to assist the wounded, but the IDF soldiers refused. Israeli ambulances eventually took the wounded to a hospital in Jerusalem. The man who had been shot seven times at close range died of his injuries. An autopsy report obtained by OHCHR confirmed that the victim died as a result of "live fire shot from close range".[24] The two other brothers were released from the hospital several days later. According to media reports, IDF subsequently relieved from duty one of the soldiers involved, for having kicked one of the injured brothers in the head, and ordered the opening of a Military Police investigation into the incident.[25]

28. On 29 July 2012, 14 Palestinian workers without entry permits were being smuggled into Israel in a van driven by an Israeli citizen. As the van approached the Az Za'ayyem checkpoint, a friend called to advise the driver not to cross, since soldiers there were actively searching vehicles. The van's engine stalled, which prompted two private security guards to approach the vehicle. The driver turned away from the checkpoint towards Az Za'ayyem village. The guards shot at the van, with assault rifles, even though it had diverted away from the checkpoint and was heading toward the village. Three workers were hit by bullets, one to the leg and shoulder, one to the head and another to the leg. All three were taken to the hospital, where one died the next day.

29. During the reporting period, the use of force by ISF during demonstrations resulted in the death of four Palestinians.

30. On 9 December 2011, during clashes between Palestinians and ISF in Nabi Saleh, following the weekly demonstrations that take place in the village, an Israeli soldier in the back of a moving armoured vehicle fired a tear gas canister directly at Mustafa Tamimi, who was approximately 5 metres behind the vehicle and throwing stones at it. The tear gas canister hit Mr. Tamimi below his right eye. He immediately fell and was taken to a

[22] According to Israeli media the soldier who opened fire received a citation. Yoav Zitun, "Soldier receives citation for courage", *Ynet News*, 23 April 2012, www.ynetnews.com/articles/0,7340,L-4220080,00.html.

[23] On 18 April Israeli media reported that the unit involved in the incident was the "Duvdevan" unit (known for undercover operations) and that they were on a training mission when two undercover soldiers were attacked by four men. According to OHCHR information, the incident involved three Palestinian men. See Yoav Zitun, "Soldier dismissed after kicking bound Palestinian", www.ynetnews.com/articles/0,7340,L-4217835,00.html.

[24] Autopsy report for Rashad Deeb Hassan Shoukha dated 24 June 2012 issued by the Palestine Authority, Ministry of Justice, Palestinian Medico-Legal Institute.

[25] Zitun, "Soldier dismissed".

hospital in Israel, where he died the following morning of injuries sustained from this incident. Statements by IDF indicated that two separate investigations had been initiated by Israeli authorities, one of which was to be concluded by 20 December 2011. In a letter dated 19 January 2012 to the Permanent Mission of Israel to the United Nations in Geneva, OHCHR requested information on the status of the two investigations. At the time of drafting, no response had been received from the Israeli authorities.

31. While the use of live ammunition to disperse demonstrations was limited for most of the reporting period, IDF made widespread use of it in response to demonstrations against Israeli military operations in Gaza during the crisis of 14 to 21 November 2012, including in Nabi Saleh, Hebron, Huwwara checkpoint, Ofer, Tuqu' and Bethlehem. Such incidents resulted in the killing of two and the injury of 16 Palestinians. At the entrance of Ofer military camp, ISF responded to stone throwing by Palestinians with live fire on 15, 16 and 17 November, injuring at least five protesters, who were mostly shot in their legs. Several demonstrators were hit in the head and/or chest by tear gas canisters and rubber-coated metal bullets.

32. On 19 November 2012, students clashed with IDF in Tuqu' village. The students threw stones and the soldiers initially responded by firing tear gas canisters. One of two soldiers standing on higher ground then fired live ammunition at the students around 50 metres away, hitting 17-year-old Mohammad Ahmad al-Badan in the abdomen. Mr. Ahmad al-Badan suffered internal bleeding, damage to his intestines and severe damage to his hip.

33. On 17 November 2012, several boys from the village of Nabi Saleh gathered on a nearby hill overlooking a main road used by Israeli settlers, in order to burn a tire on the road. They were spotted by IDF soldiers, seven of whom climbed the hill and fired tear gas canisters and rubber-coated metal bullets. Adults from the village headed to the hill and clashes continued. Several villagers were hit by rubber-coated metal bullets, including 31-year-old Rushdi Tamimi. He then turned to flee and was hit from behind by live ammunition. The projectile made its way into Mr. Tamimi's stomach, causing internal injuries that resulted in death in the hospital two days later.

34. The resort to live ammunition by ISF to disperse protesters during the week of 14 to 21 November is unprecedented in recent years. There is concern that this may indicate a worrying change in the IDF riot control policies and/or a lack of appropriate training for soldiers deployed in response to public demonstrations.

35. ISF operating in the West Bank are bound by article 6 of the International Covenant on Civil and Political Rights and should also act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles state that the use of firearms is authorized in extremely limited circumstances, namely self-defence or defence of others against imminent threat of death or serious injury, and only if less extreme means are insufficient. ISF are further bound by the provisions of the Covenant that prohibit torture or cruel, inhuman or degrading treatment or punishment and guarantee the right to liberty and security of persons (arts. 7 and 9). Israel has an obligation to provide an effective remedy for any violations of the Covenant. This encompasses thorough, prompt, independent and impartial investigations into the use of firearms by law enforcement officials, including IDF and private security personnel contracted by Israeli authorities. Should negligent or unlawful behaviour be identified during such an investigation, judicial and/or disciplinary proceedings must be initiated against the person(s) responsible. In addition, Palestinians in the occupied territory, including East Jerusalem, are protected persons in line with article 4 of the Geneva Convention relative to the Protection of Civilian Persons in the Time of War (Fourth Geneva Convention) of 1949.

They are therefore entitled to protection against all acts of violence and threats thereof.[26] Additionally, Israel has the duty to ensure that all persons wounded, including those wounded by the action of its security forces, receive the medical attention required by their condition with the least possible delay.[27]

4. Settler violence

36. Israeli settlers continued to perpetrate acts of violence against Palestinians and their property. A total of 383 incidents were registered during the reporting period, which resulted in injury to 169 Palestinians, destruction or damage to 8,054 trees, and other types of damage to property. Lack of accountability for these acts remains a concern. This phenomenon is analysed in detail in the 2012 report of the Secretary-General to the General Assembly on Israeli settlements (A/67/375).

37. Many incidents of settler violence occur during the olive harvest period. Incidents during the 2012 harvest included: damages to olive trees, theft of olives before or after the harvest, settlers trespassing onto private Palestinian land, physical attacks by Israeli settlers against Palestinians, and harassment by settlers of Palestinians attempting to access their land to harvest their groves. According to OCHA, the 2012 olive harvest saw a decrease in the overall number of incidents of settler violence compared to the same period in 2011. While the number of trees damaged during the olive harvest in 2012 was lower,[28] damage to trees by settlers is ongoing throughout the year and particularly intensive before the olive harvest, and the impact on the livelihoods of farmers is cumulative. In the words of a Palestinian farmer: "There is nothing left to burn or cut." The efforts of Israeli authorities to improve coordinated access of Palestinian farmers during the olive harvest are welcomed. However, the main issue remains regular and unimpeded access of Palestinians to their agricultural lands throughout the year, in addition to the effective prevention of and protection from settler violence and a general culture of impunity.

B. The de facto authorities in Gaza and Palestinian armed groups

1. Rocket and mortar shells firing from Gaza

38. Palestinian armed groups continued firing rockets and mortar shells at Israel. A total of 1,605 home-made rockets, 906 Grad rockets, and 436 mortar shells were fired during the reporting period. Of these, 765 home-made rockets, 741 Grad rockets and approximately 135 mortar shells were fired during the crisis from 14 to 21 November 2012.[29] The projectiles fired from Gaza towards Israel resulted in the death of six Israelis, including four civilians. According to Israeli sources, a further 239 Israelis, including 219 civilians, were injured.[30] While the majority of injuries seem to be among civilians, verified figures were unavailable at the time of drafting. A significant number of these rockets landed in civilian areas within Israel. Some projectiles appear to have been directed at military objectives in

[26] International Covenant on Civil and Political Rights, art. 2.

[27] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rule 110, and the 1977 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, art. 10. Israel must also respect its obligations regarding the right to health, namely article 12 of the International Covenant on Economic, Social and Cultural Rights.

[28] Information provided by OCHA.

[29] Information provided by the United Nations Department of Safety and Security (UNDSS).

[30] Ibid., and Israel, Ministry of Foreign Affairs, "Israel under fire" (footnote 4 above).

Israel, yet the indiscriminate nature of the overwhelming majority of these projectiles makes it impossible to determine whether they were directed at military objectives.

39. In some cases Palestinian armed groups continued to fail to uphold the principle of distinction when launching attacks on Israel, by targeting areas populated by civilians. On 9 March 2012, eight Israeli civilians were injured, one of them seriously, as a result of rockets fired at Israel.[31] Five Israeli civilians were injured as a result of rocket firing on Israel on 24 October 2012.[32] On 12 November, four Israeli civilians were injured when a Grad rocket hit a home in Netivot city.[33]

40. During the reporting period at least 237 rockets and mortar shells aimed at Israel fell short and exploded in Gaza, causing Palestinian casualties. Of these, 138 occurred before 13 November[34] and 99 fell short and exploded in the period from 14 to 19 November 2012.[35] Two Palestinian civilians were killed and 12 were injured before 13 November 2012.[36] A further three Palestinian civilians, including a woman and an 11-month-old infant, were killed in Al-Zaitoun on 14 November. OHCHR received reports related to a case involving the death of two additional civilians, including a child, and the injury of five others, including three children, as a result of what seemed to be a rocket fired by Palestinian armed groups that hit a house in Jabalya on 16 November 2012.

41. Targeting civilian areas and using weapons that cannot be directed accurately at a military objective, such as the home-made rockets and Grad rockets, are contrary to the rules of international humanitarian law prohibiting the targeting of civilians and indiscriminate attacks. OHCHR has received information that such rockets are often fired from densely populated areas. It has been alleged by the Government of Israel that these weapons are often stockpiled in structures that appear to be civilian in nature. Should this be the case, this would also violate the rules of international humanitarian law requiring parties to a conflict to protect the civilian population and objects under their control from the effects of attacks, including by avoiding locating military objectives within or near densely populated areas.[37]

2. Right to life, including the death penalty

42. The de facto authorities in Gaza continued to pass death sentences and carry out executions in violation of the right to life. During the reporting period, six persons were executed by the de facto authorities. Five were sentenced by civil courts and one by a military court. All death sentences were executed without the approval of the president of the Palestinian Authority, which is a requirement under the Palestinian Basic Law.

43. The de facto authorities' courts passed three new death sentences, two of which were imposed on civilians by military courts for treason and murder. The trial of civilians in military courts is prima facie inconsistent with international human rights standards, in particular with regard to procedural guarantees pertaining to fair trial. In general, concerns remained with regard to due process and fair trial guarantees.

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[31] Yaakov Lappin, "Escalation in South: 8 hurt, 1 seriously, by Gaza rockets", *Jerusalem Post*, 9 March 2012, www.jpost.com/Defense/Article.aspx?id=261152.

[32] UNDSS e-mails to OHCHR, 1 and 13 November 2012.

[33] "Palestinians fire 20 rockets into South; 4 hurt", *Jerusalem Post*, 12 November 2012, www.jpost.com/Defense/Article.aspx?id=291432.

[34] UNDSS e-mails to OHCHR, 1 and 13 November 2012.

[35] IDF, "Watch: how terror groups endanger Gaza's civilians", 19 November 2012, www.idf.il/1283-17668-en/Dover.aspx.

[36] UNDSS e-mails to OHCHR, 1 and 13 November 2012.

[37] ICRC, *Customary International Humanitarian Law*, rules 22 and 23.

44. On 17 October 2012, a 27-year-old civilian died while in the custody of the criminal investigation unit of the de facto authorities in Khan Younis. OHCHR was informed by family members that the victim was arrested by the unit without a warrant, allegedly in relation to a dispute with his uncle. OHCHR received information that the de facto authorities had committed to launching an investigation into the incident. However, at the time of writing no information was available regarding such an investigation

3. Treatment in detention and civil liberties

45. Arbitrary detention, torture and ill-treatment remained issues of concern. These practices typically targeted members and supporters of Fatah in relation to their political affiliation or opinion.[38] Fatah detainees were reportedly blindfolded and handcuffed at the time of detention or shortly after arrival at a designated security location. During interrogations, in some cases while detainees were blindfolded, questions were asked about social affiliations, professions, family members, and connections to Fatah and the Palestinian Authority.

46. On 3 July 2012, the internal security agency arrested a 33-year-old Fatah member from Khan Younis and detained him for nearly a month. The victim was questioned about his Fatah-related activities, subjected to *shabeh*[39], slapped, intimidated and solitarily confined.

47. The de facto authorities continued to curtail freedom of expression, opinion and assembly. Journalists were detained and ill-treated in relation to their perceived political affiliation or alleged lack of objectivity; in other cases, security forces of the de facto authorities used excessive force to disperse peaceful assemblies. In one case monitored by OHCHR, on 11 June 2012, a freelance journalist from Al-Shojayea was arrested by ISA and detained until 4 July. During his detention he claims to have been questioned about his media-related work, and accused of establishing ties with the Palestinian Authority. During his detention he was intimidated, ill-treated and tortured, including through beatings of different parts of his body and the use of shabeh.

48. Others not linked to the media were harassed in relation to their opinion. In July 2012, for instance, the de facto authorities banned the travel of the director of the Palestinian Contractors Union, in reference to a statement he had made voicing concerns over the quality of cement smuggled via tunnels.[40]

49. OHCHR documented cases in which the de facto authorities violated the right to peaceful assembly, sometimes by using force to disperse participants. The de facto authorities presented justifications for these violations. In some cases the need to ensure public order was invoked, in other cases the de facto authorities' Ministry of Interior blamed individual police personnel for taking inappropriate action. On 18 July 2012, the de facto authorities' police detained two women participating in a peaceful protest against the

[38] PCHR, "PCHR concerned over summons and arrests of Fatah activists by Internal Security Service in Gaza", 28 December 2011, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7988:pchr-concerned-over-summons-and-arrests-of-fatah-activists-by-internal-security-service-in-gaza-&catid=36:pchrpressreleases&Itemid=194.

[39] *Shabeh* refers to forcing a detainee to hold a painful position for extended periods of time.

[40] PCHR, press release of 2 August 2012, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8692:pchr-is-concerned-about-a-decision-issued-by-the-attorney-general-in-gaza-to-prevent-the-palestinian-contractors-unions-director-and-8-journalists-from-traveling-on-the-grounds-of-freedom-of-expression-and-union-freedom-&catid=36:pchrpressreleases&Itemid=194.

electricity crisis. Both were detained for a day and reportedly harassed and ill-treated by female police.

50. In an incident on 26 September 2012, a demonstration blaming the de facto authorities for extreme poverty and unemployment was forcibly dispersed by the de facto authorities' security forces in El-Boureij refugee camp.

51. In an incident on 6 November 2012, around 50 people, mostly women, organized a peaceful gathering in Gaza City, to protest the continued stalemate in national reconciliation. Information received by OHCHR indicates that the de facto authorities' police forcibly dispersed the gathering by beating several participants with sticks. The de facto authorities' Ministry of Interior claimed that the demonstration could not take place for reasons of public order, but also regretted the "wrong acts by policemen". The Ministry announced the establishment of a commission of inquiry to investigate the incident.[41]

52. Incidents of intervention in the work of civil society organizations were reported. In July 2012, the deputy director of the Palestinian Journalists Syndicate, a West Bank-based non-governmental organization, and seven of the Gaza-based board members were prevented from travelling abroad in relation to the syndicate's elections. Reportedly, the deputy director of the syndicate disclosed that he was summoned by the de facto authorities' Attorney-General and questioned about the syndicate's elections in the West Bank. He noted that he was asked to sign an oath to not work for the syndicate any more, which he refused to do.[42]

4. Women's rights

53. Local human rights organizations estimated that four women were killed in the name of honour. On 23 December 2011, a 45-year-old woman from Al-Sheikh Radwan was killed by her nephew by strangulation, allegedly to "maintain the family's honour".[43] Similarly, on 22 March 2012, a 22-year-old girl from Khan Younis was admitted to Al-Nasser hospital suffering serious health complications due to poison, allegedly because she had attempted to commit suicide. Although she received medication on the same day, resulting in a significant improvement of her health, one of her relatives came to the hospital and shot and killed her.[44] The information available to OHCHR indicates that the de facto authorities have not made serious efforts to investigate these cases.[45]

C. The Palestinian Authority

1. The ending of security vetting based on political belief or affiliation

54. In September 2007, the Palestinian Authority Cabinet issued a decision requiring "security vetting" by the Palestinian Authority security services for public sector

[41] Press release of 7 November 2012, www.moi.gov.ps/en/news/35714/Important-press-release-issued-by-Ministry-of-Interior-about-what-happened-in-unknown-soldier-square-in-Gaza.

[42] PCHR, press release of 2 August 2012 (footnote 40).

[43] PCHR, press release of 26 December 2011, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7975:pchr-condemns-killing-of-palestinian-woman-in-gaza-to-qmaintain-family-honorq-&catid=36:pchrpressreleases&Itemid=194.

[44] PCHR, press release of 25 March 2012, www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=8287:pchr-condemns-murder-of-woman-on-the-ground-of-family-honor-in-khan-yunis-&catid=36:pchrpressreleases&Itemid=194.

[45] Al Mezan e-mail to OHCHR, 11 November 2012.

employment. Thus, the security services made recommendations to the Palestinian Authority ministries regarding the hiring, continuation and/or termination of contracts based on political affiliations. Since then, hundreds of school teachers, for example, have been dismissed on the basis of interventions by the two security agencies. According to information available to OHCHR, since 2008 such practices had adversely affected at least 640 people who were excluded from public sector employment on the basis of their political beliefs or affiliations.

55. In positive developments, the Palestinian Authority Cabinet, on 24 April 2012, suspended this decision. Further, on 4 September 2012, the Palestinian High Court ruled in favour of teachers who had been dismissed from their positions due to negative reports by security agencies. Following the court order, the Palestinian Ministry of Education and Higher Education announced that it would comply with the court ruling and rehire the dismissed teachers.

56. OHCHR continued to monitor detention by Palestinian law enforcement agencies, as well as engage with and provide technical assistance on human rights to relevant Palestinian authorities and institutions. The number of complaints of arbitrary detention by the Palestinian Authority received by OHCHR in 2011 decreased significantly, as did the number of complaints received by the Independent Commission for Human Rights and other Palestinian human rights organizations. The Commission reported 755 complaints in 2011, compared with 1,559 in 2010. However, the first half of 2012 witnessed a considerable increase of allegations of arbitrary detention by the Palestinian Authority security forces.

57. OHCHR documented cases that indicate that the security services are still arbitrarily detaining Palestinians, especially persons affiliated with Islamist parties, demonstrators supporting the Arab Spring and national reconciliation efforts, and media professionals and bloggers critical of the Palestinian Authority. The cases documented include detention of individuals without warrants, not informing the individuals detained of the charges against them or the reasons for their detention, prolonged detention without presenting the detainee before a competent court, and non-implementation of judicial decisions ordering the release of individuals.

58. Journalists were targeted by security services during the reporting period. In early 2012, OHCHR monitored the detention of Youssef al-Shayeb, a Palestinian journalist for various local and regional newspapers. On 30 January, Mr. al-Shayeb published a report in the Jordan-based *Al-Ghad* newspaper, where he criticized corruption at the Palestinian diplomatic mission in Paris. On 31 January, Mr. al-Shayeb was summoned and interrogated by the general intelligence service in Ramallah. On 25 February, Mr. al-Shayeb was informed that he had been fired from his position with *Al-Ghad*. On 22 March, he was summoned by the police and was detained for 48 hours. On 28 March, he was taken to court where the prosecutor accused him of incitement against the Palestinian Authority and falsely accusing people of spying, among other things. The judge ordered the extension of his detention for 15 days, whereupon Mr. al-Shayeb declared that he was starting a hunger strike. On 2 April, however, a court ordered his release on a 10,000 Jordanian dinar bail. After his release, he was in a hospital for two days because of his medical condition. The court denied the prosecution's request that he be returned to prison. On 2 May, OHCHR sent a letter to President Mahmoud Abbas and Prime Minister Salam Fayyad outlining its concerns with regard to the detention of journalists. OHCHR has yet to receive a response.

2. Ill-treatment by Palestinian Authority security forces

59. OHCHR continued to receive complaints regarding ill-treatment by the Palestinian Authority security services. Allegations of ill-treatment received by OHCHR referred to shabeh, beating, threats, deprivation of sleep and solitary confinement.

60. In April 2012, OHCHR interviewed a person who had been detained by the Palestinian Preventive Security Service in the south of the West Bank. The person stated that he had been ill-treated by Service officers, who informed him that he had to spend the 45-day interrogation period in solitary confinement. He was brought to a small, cold cell; forced to hold his hands up for several hours during the night without break; forced to take off his clothes during interrogation; forced to sleep naked on the ground without a blanket or mattress; and beaten and kicked several times. He was often slapped on the face and hit with a water-filled plastic bottle on the left ear. He received no medical treatment. Another detainee interviewed by OHCHR in June 2012 reported that he was subjected to daily interrogation and occasional shabeh during the first few weeks of his detention. He spent 22 days without being allowed to shower. He explained that shabeh usually started Thursday afternoon and lasted until early Sunday, when neither the International Committee of the Red Cross nor human rights organizations conduct visits. He noted that shabeh often lasted for extremely long periods, even through the night, during which he was not allowed to sleep. He was also beaten once while handcuffed.

61. According to information gathered by OHCHR, ill-treatment, including shabeh and beatings, among others, has also been used during interrogations in civil, i.e., non-security related, cases.

3. Civil liberties, including freedom of expression, association and assembly

62. During a peaceful protest against a meeting between the Palestinian Authority president and an Israeli official at the end of June 2012, Palestinian security forces physically assaulted journalists and protesters. One of several journalists covering the demonstration, Muhammad Jaradat, was beaten, detained, and had his camera confiscated by four security officers in civilian uniform while covering the protest on 30 June 2012. Mr. Jaradat was taken to the police station, where he was again assaulted by police officers in civilian uniform with a baton, in the presence of fellow officers, who took no action. Mr. Jaradat was released a few hours later.

IV. Conclusions and recommendations

63. **Serious violations of international law continued to be committed in the Occupied Palestinian Territory throughout the reporting period. The general human rights situation remains of heightened concern and needs to be addressed as a matter of urgency.**

64. **OHCHR is especially concerned by the recurrence of violations highlighted in several previous reports of the United Nations High Commissioner for Human Rights and the Secretary-General. Most such violations could have been avoided, should the relevant duty bearers have taken the necessary preventive and corrective actions that are highlighted in the recommendations below.**

65. **The lack of accountability for violations of international human rights and humanitarian law remains a fundamental concern.**

A. Recommendations to the Government of Israel

66. **The Government of Israel must take all possible measures to ensure full respect of its obligations under international humanitarian law, in particular the principles of distinction, proportionality and precautions, and international human rights law, during the conduct of hostilities in the Occupied Palestinian Territory.**

67. **Israel must review the methods and mechanisms used to enforce the access-restricted areas in Gaza, in order to ensure full compliance with international human rights law and international humanitarian law. In situations other than hostilities, these methods should be in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

68. **The Government of Israel must fully lift the blockade of Gaza, with due regard to legitimate security concerns.**

69. **The Government of Israel must take the necessary measures to prevent incidents of excessive use of force during law enforcement operations. These measures should include a reassessment of the regulations allowing the use of live ammunition; the adoption of adequate disciplinary and penal sanctions for members of the security forces who do not respect these regulations; and the provision of adequate riot-control training to all police and troops deployed in the West Bank, including East Jerusalem.**

70. **The Government of Israel must initiate thorough, prompt, independent and impartial investigations into all instances in which firearms are used by its law enforcement personnel, including members of the Israeli Defense Forces (IDF) operating in that capacity and private security personnel contracted by Israeli authorities.**

71. **Israel must ensure that all wounded persons receive the required medical attention with the least possible delay. To this effect, IDF should issue clear instructions that the wounded must receive immediate attention, without discrimination, and staff must refrain from obstructing the work of medical personnel, including Palestinian ambulance crews.**

72. **The Government of Israel must take measures to prevent attacks by settlers against Palestinians and their property. Attacks must be thoroughly, promptly, independently and impartially investigated, perpetrators held accountable, and victims compensated.**

73. **The Government of Israel must ensure full accountability for violations of international human rights law and international humanitarian law, including thorough, prompt, independent and impartial investigations into all instances of alleged violations and the prosecution of those allegedly responsible, where appropriate. Civilian oversight of investigations and prosecutions should be positively considered. All victims of violations must be provided with adequate, effective and prompt reparation for the harm suffered.**

B. Recommendations to the de facto authorities and Palestinian armed groups in Gaza

74. **The de facto authorities should impose an immediate moratorium on the use of the death penalty, and cease the use of military tribunals to try civilians.**

75. **The de facto authorities and Palestinian armed groups must respect international humanitarian law, and the de facto authorities must also ensure respect for international humanitarian law by all members or other armed actors under their control, especially in relation to the principles of distinction and proportionality. In all circumstances, they must avoid targeting civilians. The de facto authorities and Palestinian armed groups must avoid locating military assets in densely populated areas and launching attacks from these areas. Accountability for any violations or abuses of international human rights law and international humanitarian law, including the killing of civilians, must be delivered.**

76. **There is a need for thorough, prompt, independent and impartial investigations into all types of criminal acts, including killings related to honour, and for prosecution of those responsible for such acts.**

77. **There is a need for all necessary measures to be taken to ensure that detentions are in line with international human rights principles, bring an immediate end to the use of ill-treatment and torture by members of its security forces, impartially and thoroughly investigate all allegations of ill-treatment and torture, and impose appropriate disciplinary and penal sanctions against those responsible. All victims of violations must be provided with adequate, effective and prompt reparation for the harm suffered.**

78. **The de facto authorities must respect the rights to freedom of opinion, expression, peaceful assembly and association.**

C. Recommendations to the Government of the State of Palestine[46]

79. **The Government of the State of Palestine must adopt measures to ensure the restitution or compensation of persons who have been removed or excluded from employment on the basis of security vetting.**

80. **The Government of the State of Palestine must ensure that any person detained, including those detained by security forces or agencies, is referred without delay to the appropriate courts.**

81. **The Government of the State of Palestine must ensure that all judicial decisions are complied with promptly by Palestinian law enforcement agencies.**

82. **The Government of the State of Palestine must issue clear instructions to law enforcement officials to refrain from arbitrary detention, ill-treatment and torture. The Government must create an effective mechanism to ensure that any complaint of arbitrary detention, ill-treatment, or torture is investigated in a thorough, prompt, independent and impartial manner. Officials found responsible must be held to account, including through appropriate penal or disciplinary sanctions. All victims of violations must be provided with adequate, effective and prompt reparation for the harm suffered.**

[46] In a letter dated 12 December 2012, the Permanent Observer Mission of Palestine to the United Nations informed the Secretary-General that, in line with General Assembly resolution 69/17 of 29 November 2012, the designation "State of Palestine" should be used in all official documents of the United Nations. On 3 January 2013, Mahmoud Abbas, President, State of Palestine, issued a decree instructing that "official documents, seals, signs and letterheads of the Palestinian National Authority official and national institutions, shall be amended, by replacing the name 'Palestinian National Authority' whenever it appears by the name 'State of Palestine', and by adopting the emblem of the State of Palestine. The relevant authorities shall be in charge of monitoring the implementation of this Decree, taking into account the requirements of use".

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Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Addendum

Concerns related to adherence to international human rights and international humanitarian law in the context of the escalation between the State of Israel, the de facto authorities in Gaza and Palestinian armed groups in Gaza that occurred from 14 to 21 November 2012*

* Reproduced as received.

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I. Introduction

1. This addendum to the High Commissioner's report to the Human Rights Council (A/HRC/22/35) contains issues of concern related to international humanitarian law and human rights law in the context of the escalation of hostilities of 14 to 21 November 2012 (hereinafter "the crisis"). With regard to the Israel Defence Forces (IDF), the following issues are addressed: killing of civilians; destruction of residences; destruction of other civilian property; attacks against media; destruction of medical facilities; destruction of other infrastructure; and humanitarian access. With regard to Palestinian armed groups and the De Facto Authorities (DFA), the following issues are addressed: indiscriminate attacks on Israel; the targeting of civilians; the launching of attacks from populated areas; rockets launched by Palestinian armed groups that fell within the Gaza Strip; and the execution of alleged collaborators.

2. It is noted that while the OHCHR office in the occupied Palestinian territory (OHCHR oPt) is mandated to monitor the human rights in the occupied Palestinian territory (oPt), it does not have such a mandate relating to the State of Israel. As such, OHCHR oPt is not in position to directly monitor or document the consequences of possible violations of international human rights and international humanitarian law within Israel.

3. It is also noted that OHCHR oPt shared its findings related to several cases contained in this addendum with the IDF, with a request for clarification and comments. No response was received at the time of writing.

II. Background

4. On 14 November at about 16:00, the IDF launched an airstrike targeting Ahmad El Ja'abari, the commander of the military wing of Hamas, the Izz El Din El Qassam Brigades. The attack marked the beginning of a new military operation by the IDF in Gaza - Operation Pillar of Cloud/Pillar of Defence.[1] A ceasefire was announced on 21 November.

5. The week leading up to the crisis was marked by flare ups of violence. Four Israeli soldiers were reportedly injured on 10 November, when Palestinian armed groups fired an anti-tank missile at an Israeli military vehicle on the Israeli side of the fence, east of Al-Shojayaa2. From 10 to 12 November, the IDF targeted several locations in Gaza, including a residential neighbourhood in the east of Al-Shojayya, with strikes. In an incident on 10 November, four Palestinian civilians, including two children, were killed and over 40 Palestinians were injured. Prior to the crisis, according to Israel's Ministry of Foreign Affairs, Palestinian armed groups had fired approximately 800 rockets and mortar shells toward Israel between January and November 2012. Also according to the Israeli Ministry of Foreign Affairs, more than 120 such rockets were launched between 10 and 14 November 2012.[3]

[1] In Hebrew, the term "Pillar of Cloud" was used throughout the crisis. "Pillar of Defence" was introduced in English.

[2] Times of Israel, 10 November 2012, available from: http://www.timesofisrael.com/army-jeep-reportedly-struck-by-anti-tank-missile-fired-from-gaza/

[3] Israel Ministry of Foreign Affairs website, available from: http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/BTH_Operation_Pillar_of_Defense_14-Nov-2012.htm

6. During the crisis, 174 Palestinians were killed in Gaza. At least 168 of them were killed by Israeli military action, of whom 101 are believed to be civilians, including 33 children and 13 women. Hundreds of persons were injured.[4] Six civilians, including one woman and three children, may have been killed by rockets fired by Palestinian armed groups that landed in Gaza. In the context of the crisis, six Israelis, including four civilians, were reportedly killed, and 239 Israelis, including 219 civilians, were reportedly injured.[5]

7. According to the IDF[6,] Israel conducted over 1500 air strikes on Gaza. In addition, seven strikes by the Israeli Navy and 360 Mortar shells, all of which were recorded by the United Nations, were fired by Israel on Gaza. Palestinian armed groups fired 765 homemade rockets, 741 long-range Grad rockets, and 135 mortar shells at Israel during the crisis[7]. For the first time, a number of rockets fired from Gaza reached Tel Aviv and Jerusalem.

8. During the first few days of the crisis, IDF airstrikes appeared to be focused on open areas and fields that were allegedly used to launch rocket attacks against Israel, training sites belonging to the Izz Al-Din Al-Qassam Brigades, and other apparent military objectives. Thereafter, the IDF also targeted buildings and installations of the DFA, such as police stations, buildings housing civilian ministries, and other de facto governmental installations, objects which are *prima facie* considered civilian in nature. In the last few days of the operation, residential buildings and areas were also attacked, resulting in a significant increase in civilian casualties.

9. In gathering information during and after the crisis, OHCHR noted concerns with regard to the conduct of hostilities. Such concerns relate to all actors to the conflict. Throughout the crisis, airstrikes by the IDF targeted and damaged farmlands, residences, other civilian property, and other infrastructure, in the course of which civilians lost their lives and were injured. Hospitals and schools were damaged. Some of OHCHR's concerns related to the apparent failure of the IDF to respect the principles of distinction, proportionality and precautions, as required by international humanitarian law. In cases in which military objectives were targeted, the possible failure to take all necessary precautions, including by providing effective advance warning, and take all feasible measures to assess whether an attack would respect the principle of proportionality were

[4] Figures vary according to the source. The numbers provided in the text refer to data compiled by OHCHR for which Palestinian and Israeli organizations provided data. According to a news article the IDF estimates the number of Palestinians killed at 177, including approximately 120 combatants, and the number of injuries including an unspecified number of civilians at 900. Gaza's ministry of health estimates the number of Palestinians killed at 189, and persons injured at 1526. No details on casualties of civilians are provided by the ministry of health. For IDF figures see Times of Israel, "After eight days of fighting, ceasefire is put to the test," available from http://www.timesofisrael.com/several-casualties-in-explosion-in-central-tel-aviv/. For de facto authorities' Ministry of health's figures see Ma'an News Agency on 27 December 2012, available from http://maannews.net/arb/ViewDetails.aspx?ID=551374;

[5] Israel Ministry of Foreign Affairs, Israel under fire - November 2012, 22 November 2012, available from http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm. It is noted that, according to the Government of Israel, one Israeli civilian was located at a legitimate military objective. See http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2012/GazaNov2012/Alayaan_Salem_al-Nabari.htm.

[6] IDF website, available at: http://www.idf.il/1283-17748-en/Dover.aspx.

[7] Figure was provided by UNDSS; also see website of Israel Ministry of Foreign Affairs, Israel under fire - November 2012, 22 November 2012, http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm.

noted. Concerns were also noted in relation to incidents in which media offices were destroyed and members of the media killed and injured.

10. While some of the projectiles fired by the Palestinian armed groups at Israel appear to have been directed at military objectives[8], the indiscriminate nature of the vast majority of these projectiles raises serious concerns under international humanitarian and human rights law. Further, some Palestinian armed groups clearly or indirectly stated that their intended targets were civilians or large population centres in Israel,[9] or objects that are *prima facie* civilian objects, such as Israel's parliament,[10] in clear violation of international humanitarian law. Rockets were launched from densely populated areas, in contravention of customary international humanitarian law.[11] In addition, seven Palestinian men detained by the de facto authorities for allegedly having collaborated with Israel were summarily executed, in public, by unknown armed persons, in clear violation of international humanitarian and human rights law.

III. Issues of concern in relation to international humanitarian law and human rights law

A. Israel Defence Forces

11. OHCHR's findings raise a number of concerns with regard to the IDF's respect for the basic rules on the conduct of hostilities, including distinction, proportionality and precautions in attack.

1. Killing of civilians

12. In a number of cases, civilians who happened to be present in or passing through open areas and fields, locations that could potentially be used for rocket launches, were killed. The cases mentioned below raise the question of whether the IDF took all feasible measures to verify that their targets were military objectives, in line with the principle of distinction under international humanitarian law, which requires that t*he parties to a conflict must at all times distinguish between civilians and combatants*. Under international human rights law these cases may constitute violations of the right to life.

13. On 19 November, a father, his 12-year-old daughter, and his 19-year-old son were allegedly killed by a drone missile while collecting spearmint in a farm adjacent to their house in Ahmad Yassin Street, north of Gaza City. Information collected by OHCHR indicates that the victims were farmers. In a similar case, on 21 November, an 84-year-old man working on his olive farm and his 14-year-old granddaughter were killed by a missile that landed in their farm, east of Khan Younis, southern Gaza Strip. Information received

[8] Ezzedeen Al-Qassam Brigades website, available at: http://www.qassam.ps/statement-1471-Al_Qassam_Brigades_target_Israeli_Jet_Fighter.html

[9] Ezzedeen Al-Qassam Brigades website, available at:http://www.qassam.ps/statement-1470-Al_Qassam_Brigades_Fire_M75_missile_at_Tel_Aviv.html, and Al-Quds Brigades, Military Communiqué, 15 November 2012, available fromhttp://www.saraya.ps/index.php?act=Show&id=24985[Arabic internet edition].

[10] Ezzedeen Al-Qassam Brigades website, available at: http://www.qassam.ps/statement-1469-For_the_First_Time_Al_Qassam_Brigades_Target_the_Kenesset.html

[11] The rule is identified in International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rule 23.

by OHCHR indicates that in neither case were residents warned prior to the attack, and that no militant activities were carried out from the attacked locations throughout the crisis.[12]

14. On 19 November, two civilians, including a boy, were walking next to a field on a paved road in Khan Younis, southern Gaza Strip, when a missile hit them, killing them instantly. A three-year-old girl was injured in the same incident. Witnesses reported that that airstrike was the only one that occurred in the area during the crisis. On the same day, two farmers and a school guard were travelling in a truck reportedly carrying tomatoes in Dier El Balah, central Gaza Strip, when an Israeli airstrike hit their truck, killing the three of them. Information gathered by OHCHR indicates that the IDF had been launching attacks on the surrounding areas prior to this attack.[13] On 21 November, an 8-year-old boy was killed and five other children as well as an 80-year-old man were injured, in an airstrike in Zaitoun area, Gaza City. The children were reportedly playing in the privately-owned courtyard when the missile hit.

15. On at least one occasion, access of ambulances to victims was not granted for hours. On 20 November, two 16-year-old boys were killed, allegedly by a drone missile, while hunting birds in an open area located approximately 700 meters away from the fence, east of Rafah, southern Gaza Strip. Relatives of the victims reported that the IDF did not grant access to the ambulances to retrieve the bodies for at least five hours.[14] International humanitarian law prohibits the IDF from arbitrarily denying the access of medical staff to people injured in hostilities. On 17 November, the IDF targeted a 31-year-old civilian in Rafah, southern Gaza Strip, who was attempting to rescue three persons who had been hit and killed by a missile that struck a farm just a few minutes prior.[15]

2. Destruction of residences and incidental killing of civilians

16. The IDF targeted residential buildings and properties during the last few days of the crisis, with some reports estimating that a total of 382 residences were destroyed or sustained severe damages due to Israeli attacks.[16] In certain cases, attacks on residences resulted in casualties among civilians. The targeting of residences is a violation of the principle of distinction as they are civilian objects. However, if a residence is used in a way that makes an effective contribution to the military action and whose destruction or neutralisation offers a definite military advantage, then it loses its civilian character, qualifies as a military objective and is liable to attack. A member of an armed group present in the residence can be a legitimate military objective. Nevertheless, attacks in such circumstances still have to respect the rules on the conduct of hostilities, especially those regarding distinction, proportionality and precautions in attacks. Residences that have been vacated, even following warnings, by members of an armed group – if these members were the military target, no longer constitute a legitimate military objective.

17. On 18 November, an Israeli air strike without prior warning hit a three-storey house belonging to the Al-Dalou family in Al-Nasser neighbourhood, central Gaza City. The airstrike killed 12 people, five of whom were children and four were women. Ten of those killed belonged to one family. Israel alleged that a member of the Al-Dalou family was

[12] OHCHR monitored the two cases.
[13] OHCHR monitored the case.
[14] OHCHR monitored the case.
[15] OHCHR monitored the case
[16] Shelter Sector Gaza, available from www.sheltergaza.org; according to Al Mezan 52 houses were directly attacked, 35 of which including with smaller missiles for advance warning purposes, available from: http://www.mezan.org/en/details.php?id=15976&ddname=IOF&id2=7&id_dept=22&p=center_more

affiliated with the Izz Al-Din Al-Qassam Brigades.[17] The location where the incident took place is a heavily populated area. Two of the persons killed were neighbours, while a number of other neighbours were injured.[18] Even if one member of the Al-Dalou family was affiliated with an armed group, and therefore potentially a legitimate military target, an attack under the given circumstances with the large number of civilians present, would not meet the requirement of proportionality, i.e., the anticipated concrete and direct military gain from the attack would not outweigh the anticipated civilian loss.

18. In a similar case, on 19 November an Israeli airstrike hit a four-story house belonging to the Azzam family in Al-Shojayaa', east of Gaza City. This airstrike killed four persons, two women and two children, and injured at least 25 civilians, including 22 children. Witnesses stated that the IDF was likely targeting a member of the Azzam family, allegedly affiliated with the Islamic Jihad, who was reportedly living with his family on the second floor of the house. A phone call by the IDF to the alleged member of the armed group, perceived to be an advance warning, was immediately followed by at least two small missiles hitting the house, and shortly thereafter the house of the Abu-Zoor family, often referred to as warning missiles or "roof knocking". In the less than 10 minutes that reportedly followed, prior to the principal attack on the house, the alleged member of the armed group tried to inform family members and neighbours of the imminent attack. It is doubtful whether the 10 minutes provided constituted an effective warning. A number of Azzam family members were injured while evacuating their houses, though the majority of those killed and injured were members of the Abu-Zoor family who were residing in houses located at the backside of the targeted house. Only one out of several of Abu-Zoor family houses was warned.[19] Given that the alleged member of Islamic Jihad was no longer in the house at the time of the attack, this incident raises questions regarding Israel's respect for the basic rule of distinction, if the objective of the attack was solely militants residing there, and also regarding the basic rules of proportionality and precautions if the house itself was the intended military objective.

19. On 17 November, a woman was killed by a missile while she was at home in Khuzaa, east of Khan Younis. On 18 November in Al-Shojaaya, east of Gaza City, a rocket hit a house killing a 19-year-old woman and seriously injuring her mother. A further three people who were in the area when the attack occurred were killed, while at least 14 people, including five children, were injured. The targeted house is located in a heavily populated area that is also full of commercial activities.[20] On 19 November, a father and his two children were killed when an Israeli missile hit their house, which was located in the centre of Jabalia, north of Gaza City. Seven members of the same family were injured. Also on 19 November, an airstrike hit a house east of Rafah City, southern Gaza Strip, killing one child and one adult. In these four cases, the houses were either completely destroyed or sustained serious damages, and no advance warning was given.[21] OHCHR, while gathering information, was not able to identify any military objective that the IDF might have had in these cases, thus raising concerns with regard to possible violations of the principle of distinction and potentially also the right to life.

[17] News24, 'No mistake' with Gaza family strike, 27 November 2012, available from: http://www.news24.com/World/News/Strike-that-killed-Gaza-family-tragic-20121127

[18] OHCHR monitored the case.

[19] OHCHR monitored the case.

[20] OHCHR monitored the case.

[21] OHCHR monitored the three cases.

3. Destruction of other civilian property

20. During the crisis civilian properties other than residences, such as farms and businesses, also sustained damages or were destroyed as a result of IDF attacks. While some of these were the result of direct hits by airstrikes, others were the result of being located next to or close to targeted areas. This again raises questions whether the basic principles of distinction, proportionality, and precautions were fulfilled. The overall loss and damage inflicted on the agricultural sector is estimated at USD 20 million.[22]

21. On 15 November, an Israeli airstrike hit a mosque in the Al-Zaitoun area, east of Gaza City. The airstrike completely destroyed the mosque, damaged a nearby house and injured one person. In addition, 17 camels from a neighbouring farm were killed and the remaining seven injured due to the airstrike. OHCHR did not obtain any information that would allow for the conclusion that a military objective was targeted. On 19 and 21 November, two warehouses belonging to Alaska production and distribution chocolate company, in Al-Tufah neighbourhood, eastern Gaza, sustained major damages when Israeli aircraft targeted neighbouring open areas. Both warehouses were fully stocked when the attacks took place.[23]

22. The IDF regularly claimed during the crisis that open areas were being used to launch rockets, including from underground tunnels, and were therefore legitimate military targets.[24] Even if such claims were accurate, the IDF remains obliged to take all feasible precautionary measures to avoid or minimize damage to civilian objects.

4. Media

23. During the crisis the IDF attacked several media offices and journalists in Gaza City. Such attacks killed two cameramen travelling in a car marked as a press vehicle, and injured at least eight journalists. On 20 November at around 17.00, two cameramen from Al Aqsa TV station were targeted on Al-Shifa street, while in a vehicle marked with “TV,” after having finished filming at Shifa hospital.[25] An Israeli Government spokesman described the two cameramen as "people who have relevance to terror activity," explaining that both Al Aqsa and Al Quds TV stations "are integral parts of terrorist military organizations."[26] The blog of the IDF stated that the two were “Hamas operatives” and cameramen for al-Aqsa TV, which “regularly features programming that encourages and praises attacks on Israeli civilians.”[27] The IDF, however, did not provide information specifying that the two men were members of an armed group or that they were directly participating in the hostilities, raising serious doubts as to whether they had lost their protection as civilians.

24. On 18 November at around 1:30 in the morning, the IDF targeted the roof of the Shawa and Husari building in Gaza City with at least four missiles. The 11th floor office

[22] OCHA, Occupied Palestinian Territory: Escalation in hostilities, Gaza and Southern Israel. Situation Report (as of 5 December, 2012, available from http://www.ochaopt.org/documents/ochaopt_gaza_sitrep_05_12_2012_english.pdf

[23] Case monitored and investigated by OHCHR.

[24] IDF website, Operation Pillar of Defense: Days 3-8, available from http://www.idf.il/1283-17607-EN/Dover.aspx

[25] ohammed Ibrahim Ashour, Al Aqsa TV Station, interview on 4 December 2012.

[26] Reuters, Israeli airstrikes kill 3 Palestinian journalists, 21 November 2012. Available at: http://finance.yahoo.com/news/israeli-airstrikes-kill-3-palestinian-journalists-182418648.html

[27] IDF Blog, How Hamas and Islamic Jihad Use Journalism as a Cover for Terrorism, 29 November 2012. Available at: http://www.idfblog.com/2012/11/29/how-hamas-and-islamic-jihad-use-journalism-as-a-cover-for-terrorism/

situated below the targeted roof, where at least three missiles hit, was used by the Al Quds TV channel. Seven journalists were injured due to the attack, two of them seriously. No advance warning of the attack was provided. Later the same morning, at around 7:00, two missiles hit the 15th floor of the Shorouk media building housing, among others, the Al Aqsa TV channel.[28] One of the missiles hit the Al Aqsa TV antenna on the roof and badly damaged the studio itself, which had been evacuated following the attack on the Shawa and Husari Tower.[29] The IDF claimed that its strikes on the two media buildings targeted "Hamas operational communication sites," in particular communication equipment on the roof, in order "to disrupt the internal communications of Hamas who were using the equipment on these buildings to direct attacks against Israeli civilians".[30] Lacking further justification by the IDF as to how the targets contributed to military action and how the attacks offered a military advantage, these attacks may amount to violations of international humanitarian law. In addition, such attacks could amount to violations of the right to freedom of expression. On 19 November at around 15:30, the third floor of the same building was hit in a separate attack. The strike, according to the IDF, targeted a group of Palestinian militants.[31] The person killed in that strike was identified as a media officer with Saraya Al-Quds[32], the military wing of Islamic Jihad. Two other persons were injured. According to various reports,[33] international journalists were told by the IDF to leave the building prior to this attack.

5. Destruction of medical facilities

25. During the hostilities, according to various sources,[34] 13 primary health care centres were partially damaged due to indirect shelling. Nine of these centres were administered by the DFA Ministry of Health (MoH) and four by UNRWA.[35] The Palestine Red Crescent Society Emergency Medical Services station, the Central Archive of the MoH, and the DFA Department of the Medical Commission also sustained damages.[36]

26. At least three hospitals, including the Jordanian Military Field hospital in Gaza City, the Gaza European hospital and the Beit Hanoun hospital were hit in attacks by the IDF. On 19 November at 22.20, a missile hit the roof of the Jordanian Military Field hospital and penetrated two floors.[37] Nobody was injured, yet some oxygen pipes were damaged, thereby impacting on the hospital's capacity to serve patients. On 20 November at 22:00, Beit Hanoun hospital in the northern Gaza Strip was reportedly hit by two artillery shells of

[28] Moanis Abu Nahil, interview on 27 November 2012

[29] Mohammed Ibrahim Ashour, Al Aqsa TV Station, interview on 4 December 2012.

[30] IDF, Operation Pillar of Defense: Days 3-8, 21 November 2012. Available at: http://www.idf.il/1283-17607-en/Dover.aspx

[31] IDF, Operation Pillar of Defense: Days 3-8, 21 November 2012, available from: http://www.idf.il/1283-17607-en/Dover.aspx

[32] Ibid, and Saraya Al-Saraya Al-Quds, available from: http://www.saraya.ps/index.php?act=Show&id=25504

[33] IDF, Operation Pillar of Defense: Days 3-8, 21 November 2012, available from: http://www.idf.il/1283-17607-en/Dover.aspx and PCHR, PCHR Strongly Condemns Targeting of Journalists in Gaza by Israeli Warplanes, 18 November 2012, available from: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9005:pchr-strongly-condemns-targeting-of-journalists-in-gaza-by-israeli-warplanes-&catid=145:in-focus

[34] World Health Organization (WHO), United Nations Relief and Work Agency (UNRWA), and the Primary Health Care (PHC) directorate of the de facto authorities Ministry of Health (MoH)

[35] WHO oPt, Initial Health Assessment Report, December 2012.

[36] WHO Situation Report, Issue 3, 27 November 2012. Available at: http://www.emro.who.int/images/stories/palestine/documents/WHO_Gaza_sitrep3_27_11_2012.pdf

[37] OHCHR monitored the case.

the type meant to illuminate the area. Neither exploded.[38] One of the shells hit the roof of the patient building, which was at that time accommodating around 15 patients, and then dropped into the hospital's yard. No injuries were recorded. However, the shells caused minor damages to water pipes and the roof. Neither of the hospitals was given an advance warning.

27. International humanitarian law provides that civilian hospitals may in no circumstances be the object of attack and that, if they are used to commit acts harmful to the enemy, such protection shall only cease "after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded."[39] The attacks on the hospitals could therefore amount to violations of international humanitarian law.

6. Destruction of other infrastructure

28. On 20 November after midnight, a missile hit and caused severe damage to the headquarters of the National Islamic Bank in Gaza City, which occupies one and a half stories of a four-story building.[40] The IDF claimed that it had targeted "a bank used to finance Hamas operatives".[41] However, the IDF did not provide any specific information on how the bank may have been making an effective contribution to military action and how the destruction of the building offered a concrete and direct military advantage. The management of the bank clarified that the DFA is one of its clients, and that the salaries of the DFA's officials are paid through the National Islamic Bank. The bank, however, claims not to be owned by the DFA. Based on the information gathered by OHCHR, the bank is a civilian object and was not a legitimate military target[42].

29. Two stadiums, eight sports clubs, and the DFA's ministry of youth, sport and culture buildings were reportedly damaged or destroyed. The DFA ministry estimates that the damages to the sports infrastructure caused by IDF airstrikes are around USD 3,654,400[43.] Information gathered by OHCHR suggests that the al-Yarmouk Stadium in Gaza City was attacked and extensively damaged during an airstrike on 21 November. The Palestine Stadium, also in Gaza City, was completely destroyed during at least three airstrikes conducted by the IDF on different days. While no warning specifically relating to the planned attacks on the stadium was provided by the IDF to the residents of the area, some residents left fearing further airstrikes. In the course of the airstrikes one person sustained a light injury and the showroom of a bamboo furniture company located next to the stadium and several cars parked in the street were damaged. The IDF claimed that it had attacked the Palestine Stadium "after receiving verified information of a launch from within the stadium". An Israeli army spokeswoman tweeted[44] that rockets had been fired from the stadium three days before Israel had bombed it. The IDF added that "in an effort to warn the residents and innocent bystanders and keep them away from strikes" they were at that moment, "controlling the radio stations within Gaza in order to deliver these messages to

[38] OHCHR monitored the case.

[39] Geneva (IV) Convention relative to the Protection of Civilian Persons in Time of War, Article 19

[40] Hazem Al-Husari, Islamic National Bank, interview on 7 December 2012.

[41] IDF, Operation Pillar of Defense: Days 3-8, 21 November 2012, available from: http://www.idf.il/1283-17607-en/Dover.aspx

[42] OHCHR monitored the case.

[43] Information supplied by the Ministry of Youth, Sport and Culture. 30 December 2012.

[44] Twitter, 19 November 2012, available from: https://twitter.com/AvitalLeibovich/statuses/270481383661645824?tw_i=270481383661645824&tw_e=media&tw_p=tweetembed

the civilians."[45] These messages were, however, general in nature, raising concerns as to whether they were effective in terms of providing advance warning on attacks. According to eyewitnesses interviewed by OHCHR, at least twice rockets were launched from a street south of the Palestine Stadium. The same sources noted that the stadium's fence was too high and the stadium ground still guarded by security guards, and therefore the stadium itself was not used to launch rockets. However, other sources indicated that rockets were indeed fired from the stadium.

30. Early morning on 21 November, Israeli airstrikes struck two bridges, damaging severely the coastal bridge connecting Gaza City and the central Gaza Strip, and the Al-Sikka bridge, connecting Al-Nussairat refugee camp and al-Mughraqa village. According to UNDP, the costs of rehabilitation of both bridges are estimated at 586,000 USD.[46] As a result of the attack on the Al-Sikka bridge, a main water pipeline, which supplies drinking water to residents of three camps, was damaged. This left around 20,000 people without running water for about a week.[47] OHCHR did not find any information to suggest that the bridges constituted legitimate military objectives.

7. Other humanitarian issues

31. The escalation of hostilities affected civilians' access to shelter, education, food, medical care, and utilities, thereby increasing humanitarian concerns. The partial or complete destruction of at least 382[48] residences displaced more than 2300 persons. A large number of these families were still being sheltered by their relatives at the time of writing.[49] At least 240 educational facilities were damaged. Twenty-five schools sustained major damages due to indirect shelling.[50] The functioning of some health facilities in Gaza was interrupted due to damages inflicted on them as a result of Israeli airstrikes, as noted. In addition to the three hospitals and 13 primary health care centres that suffered minor damages due to indirect shelling, [51] Israeli airstrikes endangered the life of ambulance drivers transferring the injured and dead. Three drivers were injured when transferring victims and six ambulances sustained damages due to Israeli airstrikes.

B. Palestinian Armed Groups and the De Facto Authorities

1. Indiscriminate attacks towards Israel and targeting of civilians

32. After the killing of Al-Ja'abri by the IDF on 14 November, the Izz El Din El Qassam Brigades disclosed that they had attacked several "military sites" in Israel with 89 rockets, including long-range Grad rockets.[52] Al-Naser Salah El Din Battalions, the military

[45] IDF, Operation Pillar of Defense: Days 3-8, 21 November 2012.

[46] Information obtained from UNDP on 23 December 2012.

[47] Ibrahim al-Aleja, communications officer at Gaza's Coastal Municipalities Water Utility (CMWU). See, The 'Flattening' of Gaza, Eva Bartlett, 25 December 2012. Available at: http://www.ipsnews.net/2012/12/the-flattening-of-gaza/ . also, information obtained from , Joint Service Council of the local government ministry on 31 December 2012.

[48] Shelter Sector Gaza, available at www.sheltergaza.org;

[49] OCHA, Occupied Palestine Territory: Escalation in hostilities, Gaza and Southern Israel. Situation Report. November 26, 2012, available from http://www.ochaopt.org/documents/ochaopt_gaza_sitrep_26_11_2011_english.pdf

[50] Education Cluster, occupied Palestinian territory, Response to Gaza November Escalation, December 7, 2012.

[51] Ibid.

[52] Information Office of Ezzedeen Al Qassam Brigades, "In response to Israeli Massacres E.Q.B. target the Israeli military bases across Occupation Palestinian Land", Military Communiqué, November 14,

wing of the Popular Resistance Committees, on 15 November, disclosed that it had attacked Ashkelon, Israel, with two Grad rockets the prior day.[53] Also on 15 November, the military wing of the Islamic Jihad, Saraya El Quds (Al-Quds Brigades), revealed that it had targeted Tel Aviv with a Fajr 5 rocket, and claimed that the attack had inflicted damages to the city's communication network and forced the closure of Ben Gurion Airport.[54]

33. Official Israeli sources reported that Palestinian armed groups fired over 1500 rockets at Israel in the period from 14 to 21 November.[55] A number of these rockets reached, for the first time, Tel Aviv and Jerusalem, targeting for example Israel's parliament[56]. According to Israeli sources, in the context of the crisis a total of six Israelis, including 4 civilians,[57] were killed, and a further 239, including 219 civilians, were injured.[58] In one incident that took place on 15 November, three Israeli civilians, including a woman, were killed when a Palestinian rocket hit an apartment building in Kiryat Malachi, a town in Israel's southern district.[59] The same day Izz Al-Din Al-Qassam Brigades disclosed that they had fired, among other rockets, 5 Grad rockets at Kiryat Malachi.[60]

34. On 20 November, a 33-year-old Israeli civilian was killed in a mortar and rocket attack on the Eshkol Regional Council, southern of Israel.[61] At the time when the incident took place the victim was reportedly accompanying his cousin, who was at the given location working for a company building tents for soldiers, and was therefore located at a legitimate military objective. His cousin, who was slightly injured in the attack, explained that "[they] were working in the field when the alarm sounded. Everyone ran for cover - soldiers and workers - but [the victim] didn't make it in time and was hit", dying from his

2012, available from http://www.qassam.ps/statement-1454-EQB_target_the_Israeli_military_bases_across_Occupation_Palestinian_Land.html.

[53] Population Resistance Committees, Military Communiqué, November 15, 2012, available from http://www.qaweim.com/alhaq/index.php?act=Show&id=29086 [Arabic internet edition]

[54] Al-Quds Brigades, Military Communiqué, November 15, 2012, available from http://www.saraya.ps/index.php?act=Show&id=24985[Arabic internet edition]

[55] Israel Ministry of Foreign Affairs, Israel under fire - November 2012, November 22, 2012, available from http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm

[56] Izz Al-Din Al-Qassam Brigades, November 18, 2012, available from http://www.qassam.ps/statement-1469-For_the_First_Time_Al_Qassam_Brigades_Target_the_Kenesset.html

[57] According to the Government of Israel, one Israeli civilian was located at a legitimate military objective. See http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2012/GazaNov2012/Alayaan_Salem_al-Nabari.htm.

[58] Israel Ministry of Foreign Affairs, Israel under fire - November 2012, November 22, 2012, available from http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm

[59] Ibid.

[60] Information Office of Ezzedeen Al Qassam Brigades, In an hour; Al Qassam Brigades fired 121 missiles, three Israelis killed, Military Communiqué, November 15, 2012, available from http://www.qassam.ps/statement-1464-Al_Qassam_Brigades_fired_121_missiles_three_Israelis_killed.html

[61] Israel Ministry of Foreign Affairs, Israel under fire - November 2012, November 22, 2012, available from http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_under_fire-November_2012.htm

injuries.[62] The same day, Saraya El Quds of Islamic Jihad announced that it had attacked Israeli cities, including Eshkol, with tens of rockets and mortars.[63]

35. Numerous rockets also hit Israeli residential buildings. An estimated 80 Israeli houses were either destroyed or sustained damages as a result of Palestinian rocket attacks during the crisis.

36. While some projectiles were directed at military objectives, many, if not the vast majority of the Palestinian attacks on Israel constituted indiscriminate attacks. Such attacks violate international humanitarian law. Most rockets fired by the armed groups did not seem to be directed at a specific military objective. Furthermore, many Palestinian armed groups directly and indirectly indicated their determination to – and took responsibility for – attacks on Israeli civilians or large population centres in Israel. Such acts clearly violate international humanitarian law, namely the principle of distinction. In addition, such acts could also have the aim of spreading terror among the civilian population, which would further violate international humanitarian law. While certain Palestinian armed actors cited the limits of their military arsenals as a reason for failing to precisely attack military targets,[64] the military capacity of the conflicting parties is irrelevant to their duty, under international humanitarian law, to take all feasible measures to avoid loss among civilians and damage to civilian property.

2. Launching of attacks from populated areas and rockets launched by Palestinian armed groups falling within the Gaza Strip

37. Another issue of serious concern during the crisis was allegations related to rocket attacks launched by Palestinian armed groups from populated areas in Gaza. According to one source, a rocket attack was launched on 20 November from Al-Wahda Street, about 100 meters from the Shawa and Housari Building, which hosts several media offices. In another incident, a rocket attack was launched from a yard of a house near Al-Deira Hotel, central Gaza City.[65] Some of these rockets may have been launched from underground tunnels.[66] As noted above, eyewitnesses informed OHCHR that on two occasions rockets were launched from an area south of the Palestine Stadium in Gaza City, about 100 meters from a residential area. According to a witness, on both occasions following the day the rockets were fired by Palestinian armed groups, Israeli airstrikes targeted the Palestine Stadium, in one incident injuring a person.[67] OHCHR received first-hand information indicating that rockets were fired from areas close to civilian buildings in the east of Gaza City. According to this account, rockets were fired from a land full of orange trees in Al-Zaitoun, about 300 meters from several residential houses. In addition to damages inflicted to the orange trees as result of counter strikes by Israel, the rocket firing posed a serious risk to the nearby residents.

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[62] Israel Ministry of Foreign Affairs, Alayaan Salem al-Nabari, November 20, 2012, available from http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2012/GazaNov2012/Alayaan_Salem_al-Nabari.htm

[63] Al-Quds Brigades, Military Communiqué, November 20, 2012, available from http://www.saraya.ps/index.php?act=Show&id=25144[Arabic internet edition].

[64] Ezzedeen Al Qassam Brigades, December 24, 2012, available from http://www.alqassam.ps/arabic/print_news.php?id=29989

[65] HRW, Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians, December 24, 2012, available from http://www.hrw.org/news/2012/12/24/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians

[66] Ibid.

[67] See section II. f on Destruction of other infrastructure.

38. Launching attacks from populated areas constitutes a violation of customary rules of international humanitarian law, i.e. the obligation to take all precautions to protect civilians. By having done so, the civilian population's exposure to the inherent dangers of the military operations taking place around them was greatly heightened.

39. By 19 November, according to IDF sources, at least 99 rockets fired between 14 and 19 November from within the Gaza Strip had landed in Gaza.[68] On 14 November, a woman, an 11-month-old infant, and an 18-year-old adult in Al-Zaitoun were killed by what appeared to be a Palestinian rocket that fell short of Israel.[69] In addition, OHCHR received reports related to an incident in which two civilians, including a child, were killed, and five persons, including three children, were injured, as a result of what appeared to be a Palestinian rocket that fell short and hit a house in Al-Quds Street, near Khilla Gas Station, Jabalya, on 16 November. For its part, Izz Al-Din Al-Qassam Brigades underlined the limited military arsenal of Palestinian armed groups as a reason for failing to precisely attack military targets.[70] Yet the military capacity of the conflicting parties is irrelevant to the duty, under international humanitarian law, of these parties to take all feasible measures to avoid loss among civilians and damage to civilian property.

3. Summary execution of alleged collaborators

40. According to media reports, on 16 November at around 11:45 am, a 41-year-old man was shot dead in the street by a group of masked men.[71] A sign was hung around the victim's neck by which the Izz Al-Din Al-Qassam Brigades accused him of collaborating with Israel in the killing of 15 Palestinian leaders.[72] According to the Palestinian Independent Commission for Human Rights, the victim had been detained at the Gaza central prison in Gaza City since 26 December 2011 and was facing trial for treason in a military court.[73]

41. On 20 November, masked militants shot six men dead in Nasser Street in Gaza City, for alleged collaboration with Israel. Again, the Izz Al-Din Al-Qassam Brigades claimed responsibility in a large handwritten note hung on a nearby electricity pole. The note claimed that the six men had provided information to Israel, thereby contributing to the killing of Palestinians.[74] The corpses of the six men were then subjected to abuse by dozens of people. Such abuse included being spit on and kicked in the head. The corpse of one victim was tied by cable to a motorcycle and dragged through the streets of Gaza City, accompanied by gunmen on motorcycles.[75] Contrary to the narrative provided by the Izz Al-Din Al-Qassam Brigades, the six men had been held at the DFA prisons for at least the last eighteen months, and had been issued death sentences by the military court.

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[68] IDF's website, Watch: How terror groups endanger Gaza's civilians, November 19, 2012, available from http://www.idf.il/1283-17668-en/Dover.aspx

[69] Case monitored by OHCHR.

[70] Ezzedeen Al Qassam Brigades, December 24, 2012, available from http://www.alqassam.ps/arabic/print_news.php?id=29989

[71] New York Times, Suspected Collaborator With Israel Killed on Gaza Street, 16 November 2012. Available at: http://www.nytimes.com/2012/11/17/world/middleeast/suspected-collaborator-with-israel-executed-in-gaza.html?_r=0

[72] d.

[73] ICHR, November Monthly report on human rights violations. Available at: http://www.ichr.ps/attachment/190/11%202012.pdf?g_download=1

[74] Hamas Today, 22 November 2012. Available at: http://www.hamastoday.com/arabic/?action=detail&id=9609

[75] Id.

42. Death sentences can, under Palestinian law, only be implemented once they are ratified by the president of the Palestinian Authority.[76] In addition, the death sentences of at least four of the victims were pending appeal at the military court. The final judgment for one of the cases was expected for 20 November. The lawyer in charge of the three other appeals had already prepared submissions based on the lack of evidence and procedural irregularities.[77]

43. While it is unclear whether or not the prison authorities handed the prisoners over to the armed men, prison authorities in any case have the duty to protect those in their custody, to ensure their security and to only hand them over to legally sanctioned government agencies, following court orders[78]. Information received by OHCHR indicates that a "transfer order" was signed by prison officials and officials of the Internal Security Agency prior to the transfer of the alleged collaborators in an ambulance from Kateeba prison to the detention facilities of the Internal Security Agency, where they were reportedly held until their execution. A military judge and a senior member of Al-Qassam brigades were reportedly involved in identifying the seven alleged collaborators. The families of the seven executed persons were not informed of the transfer and only heard about the killings through radio and news reports.

44. On 21 November, the deputy chief of Hamas, Mousa Abu Marzouq, condemned the public execution of the six men[79], and said that "resistance" leaders "should use legal procedures to deal with suspected spies through the courts."[80] Mr. Abu Marzouq said the killings were "not acceptable at all" and that "those responsible for the killings must be held accountable," and such incidents "must never happen again." The DFA's spokesperson, Taher al-Nunu, and the Ministry of Interior reportedly stated that an investigation would be initiated to examine the "extra-judicial executions".[81] OHCHR has not been able to obtain any information regarding any investigations being undertaken at the time of writing.

45. The public killing of the seven people constitutes both a violation of international human rights law and international humanitarian law. Information collected by OHCHR suggests that the seven men were taken out of the detention facilities with the knowledge, while possibly without the direct involvement, of the DFA, which failed to ensure their security. The killings, therefore, constitute a violation of article 3 of the Fourth Geneva Convention which prohibits the murder of persons taking no active part in the hostilities, by the DFA and armed groups, as far as they were involved in carrying out the killings, as well as of the right to life, including possible summary execution, by the DFA.

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[76] Article 101(2) and 109 of Palestinian Basic Law

[77] Id.

[78] Palestinian Law on Rehabilitation and Reformation Centers, Article 7, 11, 38, and 59.

[79] Maan, Hamas leader condemns killings of accused collaborators, 21 November 2012. Available at: http://www.maannews.net/eng/ViewDetails.aspx?ID=540443

[80] https://www.facebook.com/mousa.abumarzook. The post in Arabic reads:
"القصاص من الجواسيس وخاصه من شارك فى قتل قادتنا ومقاومينا ولكن لايجوز معاقبه الناس الا من خلال القانون وبطريقة قانونيه أيضاً خاصه لمن يعطي الأمن والأمان للناس ويحمي الوطن بدمه.الطريقة التى تم فيها قتل هؤلاء العملاء وصور ما بعد القتل غير مقبولة قطعا ويجب ان يحاسب المسؤول عن ذالك ويجب ان لا يتكرر ذلك أبدا."

[81] Maan News, Hamas grants amnesty in reconciliation gesture, 25 November 2012. Available at: http://www.maannews.net/eng/ViewDetails.aspx?ID=541812. Also, YouTube, Hamas probes killing of 'collaborators', 11 December 2012. Available at: http://www.youtube.com/watch?feature=player_embedded&v=QCwEnIpqUXg#!

IV. Displacement and other issues

46. The IDF's continued bombardment of the Gaza Strip during the crisis terrified and traumatized large segments of Gaza's population, forcing the large majority to seek refuge out of concern for their safety. Bombardments were particularly intensified in areas bordering the fence; e.g., northern Gaza Strip, including Beit Lahia and Beit Hanoun. Dozens of residences in these areas sustained damages to doors, windows, and roofs. Civilians reported that their children were traumatized and suffered psychological impacts, which manifested themselves in bedwetting, thumb-sucking, nightmares, and an acute sense of insecurity. A sense of disempowerment prevailed among parents, with many reporting feeling devastated that they were unable to protect their children. Many civilians were vulnerable to Israeli attacks, if their house or residential building happened to be located close to the target of an IDF attack. On 15 November, the IDF disclosed that it had dropped, on the Gaza Strip in the period from 15 to 17 November, 200,000 leaflets, advising residents to stay away from Hamas and other "terror organizations'" facilities and locations "that pose a risk to their safety".[82] Further, 20,000 phone calls[83] and 12,000 text messages[84] with the same warning were sent by the IDF during the crisis. No further details regarding the mentioned facilities and locations were disclosed, raising the question of how effective these warnings were. On 20 November, the IDF dropped further leaflets on a number of locations in the Gaza Strip urging civilians to evacuate their residences and move to Gaza City's centre. The leaflets were dropped on many areas, including Sheikh Ajlin, Tel Al-Hwa, Rimal South, Zeitoun, Sjaiya, Turkeman, SajiyaJadida, Shati, Al-Atatra, Beit Lahiya, and Beit Hanoun, and provided details on how to reach Gaza City.[85] These leaflets prompted a large displacement among the population. By 21 November, almost 12,000 people were staying in UNRWA schools.[86] Following the announcement of the ceasefire, almost all returned to their homes.

V. Summary of findings

47. The IDF, the DFA and Palestinian armed groups, in relation to numerous incidents that took place during the crisis as described above, failed in many instances to respect international law. In some cases, more information would be required to make a more specific assessment. Based on the information available to OHCHR, the IDF did not consistently uphold the basic principles of conduct of hostilities, namely, the principles distinction, proportionality and precautions. Further, the effectiveness, sufficiency and adequacy of precautions taken remains questionable in several cases.

48. Palestinian armed groups continuously violated international humanitarian law, by launching indiscriminate attacks on Israel and by attacking civilians, thereby disregarding the principle of distinction. The armed groups failed to take all feasible precautions in attacks, in particular by launching rockets from populated areas, which put the population at grave risk. Furthermore, several Palestinians were killed by rockets launched by the armed groups that fell short and landed in the Gaza Strip. In addition, seven alleged

[82] IDF website, Operation Pillar of Defense: Days 3-8, November 21, 2012, available from http://www.idf.il/1283-17607-en/Dover.aspx

[83] IDF website, IDF seeks to minimize casualties by warning Gaza's civilians, November 15, 2012, available from http://www.idf.il/1283-17597-en/Dover.aspx

[84] IDF website, Operation Pillar of Defense: Days 3-8, 21 November 2012, available from http://www.idf.il/1283-17607-en/Dover.aspx

[85] Ibid.

[86] UNRWA Gaza situation report, 22 November 2012.

collaborators held in DFA detention facilities were summarily executed, constituting a violation of their right to life and of international humanitarian law.

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

Report by the Secretary-General*

Summary

The present report is submitted pursuant to Human Rights Council resolution 22/28 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It highlights human rights issues in Gaza, including the firing of rockets into civilian areas in Israel, the blockade and access restricted areas. It examines the situation in the West Bank, including East Jerusalem, including limitations on freedom of movement, forcible transfers, violence by some settlers and lack of accountability, excessive use of force by Israeli security forces and violations by the Palestinian Authority. In addition, the report addresses the situation of Palestinians detained by Israel.

* Late submission.

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I. Introduction

1. The present report examines progress made in the implementation of Human Rights Council resolution 22/28 of 22 March 2013, entitled "Human rights situation in the Occupied Palestinian Territory, including East Jerusalem". The resolution demanded, among other things, that Israel respect its obligations under international law, including with regard to practices and actions that violate the human rights of the Palestinian people. The report covers the period of 30 November 2012 to 25 May 2013. The information contained in the report is based primarily on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory. It also contains information obtained from Israeli, Palestinian and international non-governmental organizations (NGOs), human rights defenders and media sources.

2. The report highlights selected human rights issues related to Gaza, including the firing of rockets and mortars into Israel, the blockade and the access restricted areas (ARAs) and their enforcement mechanisms. It examines the situation in the West Bank, including East Jerusalem, including limitations on freedom of movement, forcible transfers, settler violence and lack of accountability, excessive use of force by Israeli security forces[1] and violations of human rights by the Palestinian Authority. The report also addresses the situation of Palestinian detainees in Israeli prison facilities.

3. Several issues identified in resolution 22/28 are addressed in reports of the Secretary-General submitted to the General Assembly for its sixty-eighth session, including Israeli settlements in the Occupied Palestinian Territory. The human rights situation in the Occupied Palestinian Territory is also reviewed in the recent report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/22/35 and A/HRC/22/35/Add. 1).

4. The applicable international legal framework has been set out in previous reports of the Secretary-General and United Nations High Commissioner for Human Rights. The High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory contains a detailed analysis of the legal framework applicable and the basis for the obligations of the different duty-bearers in the Occupied Palestinian Territory, namely the State of Israel as the occupying Power, the Palestinian Authority and the de facto authorities in Gaza (A/HRC/12/37, paras. 5–9). This analysis remains valid.

II. The situation in Gaza

A. Killing and injuries in the course of hostilities

5. The escalation in hostilities between Israel, the de facto authorities in Gaza and armed groups in Gaza[2] ended with a ceasefire understanding between Israel and the de facto authorities on 21 November 2012. The understanding was generally observed by the parties despite a number of incidents that occurred during the reporting period, especially

[1] The phrase "Israeli security forces" refers to law enforcement, military, governmental and intelligence agencies of Israel.

[2] From 14 to 21 November 2012, Israel conducted a military operation in Gaza. During the escalation 174 Palestinians, of whom 101 are believed to have been civilians, and six Israelis, including four civilians, were killed.

since March 2013. According to the United Nations Department of Safety and Security (UNDSS), 27 home-made rockets, four grad rockets and nine mortar shells were fired from Gaza towards Israel, while an additional two rockets and five mortar shells fell short and landed in Gaza, and three rockets exploded at the launching site. Based on the information available, the majority of projectiles fired into Israel struck empty land. No injuries were reported, although the rocket fire had an impact on Israeli civilians living near Gaza. A Salafist jihadist armed group called the Mojahideen Shura Council claimed responsibility for a number of rockets fired towards Israel.[3] The de facto authorities reportedly arrested at least two persons alleged to have been involved in rocket firing following the 21 November agreement.[4] Israel conducted five air strikes in Gaza. On 30 April, the Israeli air force targeted and killed one person and injured another, both allegedly members of an armed group.[5] In addition, at least 23 incursions[6] up to 300 metres within the fence were conducted by the Israeli Defense Forces (IDF).

6. Six months after the end of the escalation in hostilities,[7] there are serious concerns that neither Israel nor the de facto authorities have taken adequate measures to investigate credible allegations of violations of international law and to provide an effective remedy to victims. There is no information available in the public domain on investigations conducted into violations of international law committed by the de facto authorities and Palestinian armed groups. This is of particular concern following the findings of the recent report of the United Nations High Commissioner for Human Rights to the Human Rights Council (A/HRC/22/35/Add.1), especially with regard to the direct targeting of civilians and the indiscriminate nature of rockets fired towards Israel, as well as the summary execution of alleged collaborators.

7. Human rights organizations in Gaza filed 96 complaints with the Israeli military justice regarding alleged violations, calling for investigations. The Israeli Military Advocate General (MAG) is responsible for investigating offences that occur during military operations, including allegations of violations of international humanitarian law and human rights law. Complaints filed do not automatically trigger a criminal investigation. On 11 April 2013, the MAG issued a public document indicating that it found no basis to open criminal investigations in relation to approximately 65 incidents during Operation "Pillar of Defence".[8]

8. While it is positive that the MAG issued this update to outline steps taken by Israel to ensure accountability, it failed to provide sufficient information on the basis for deciding not to open criminal investigations. For example, according to information gathered by OHCHR in the case of the Al-Dalou family (A/HRC/22/35/Add.1, para. 17), on 18 November 2012, 12 people, including five children and four women, were killed in an Israeli air strike that hit a three-storey house in a heavily populated area in Gaza City without prior warning. The MAG claimed that the casualties were caused by "an attack aimed against a senior terrorist operative and several other terrorists" and had the aim "to

[3] The claims were made online at the following links which have since been removed: http://www.as-ansar.com/vb/showthread.php?t=84618 and http://www.as-ansar.com/vb/showthread.php?t=75141.

[4] http://www.fpnp.net/ar/news/111960_%D8%A3%D8%AC%D9%87%D8%B2%D8%A9_%D8%AD%D9%83%D9%88%D9%85%D8%A9__%D8%AD%D9%85%D8%A7%D8%B3__%D8%AA%D8%B9%D8%AA%D9%82%D9%84_%D8%B3%D9%84%D9%81%D9%8A%D9%8A%D9%86_%D8%A8%D8%B9%D8%AF_%D8%A5%D8%B7%D9%84%D8%A7%D9%82_%D8%A7%D9%84%D8%B5%D9%88%D8%A7%D8%B1%D9%8A%D8%AE.html.

[5] http://www.idf.il/1153-18879-EN/Dover.aspx

[6] Data provided by UNDSS.

[7] A/HRC/22/35/Add.1 was devoted to the November 2012 escalation of hostilities.

[8] http://www.law.idf.il/SIP_STORAGE/files/4/1364.pdf

reduce the scope of missile and rocket launchings towards Israel". Various precautions were reportedly taken in the attack, and it was stated that operations staff had not foreseen the civilian harm that resulted. However, even if one member of the Al-Dalou family was affiliated with an armed group, it would appear that the attack would not have met the legal requirement of proportionality in light of the fact that the other 11 persons killed were civilians. Given that the house, located in a residential area of Gaza City, totally collapsed, and numerous adjacent houses sustained damage, it is difficult to understand how the extent of civilian harm could not have been foreseen. If it could not have been foreseen for lack of sufficient information on the extent of civilian presence, the attack should not have been carried out. The lack of clarity regarding the compliance of the attack with international law would appear to require that an investigation be carried out.

9. There are concerns regarding the ability of Palestinians to seek redress for harm suffered as a result of Israeli military operations. Palestinians face a myriad of procedural requirements and legal obstacles that are effectively insurmountable, including unreasonable time limits imposed on accessing the civil court system for compensation, high fees for court guarantees and impracticable procedural requirements related to power of attorney from Gazan clients to Israeli lawyers. Further, recent legislative developments have widely expanded an exemption in liability afforded to the State of Israel for "an act done in the course of a military operation by the IDF".[9]

B. Restrictions imposed by the Israeli authorities on the civilian population in Gaza

1. Blockade

10. The movement of Palestinians out of Gaza and access to basic utilities, housing, education, work, health and an adequate standard of living continued to be severely restricted due to Israel's blockade. The unemployment rate remained one of the highest in the world, with 32.2 per cent of Gaza's workforce unemployed.[10] Despite the easing of the blockade following the ceasefire understanding,[11] Gaza's imports remained significantly short of pre-2007 levels. In February 2013, Israel's Coordinator of Government Activities in the Territories (COGAT)[12] announced measures regarding the movement of goods to Gaza,[13] and in December 2012, Israel and Egypt lessened certain restrictions on importing construction materials.[14] Israel allowed a daily quota of 20 truckloads of aggregates for use by the commercial sector. This amounts to about 15 per cent of the estimated need. Egypt permitted the entry of construction materials for Qatar-funded projects through the Rafah crossing. Although important, these measures remained insufficient given the limited volumes and materials allowed through the crossings.[15]

[9] Update on accountability for violations of international law during the escalation of hostilities in Gaza and southern Israel between 14 and 21 November 2012, OHCHR, 21 May 2013. In February 2013, the Israeli Southern Central Court in Be'er Sheva dismissed 15 civil cases field by Gazan human rights organizations, a major setback to the right of victims to access justice and remedy.

[10] http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_LFSQ42012E.pdf

[11] For the consequences of the escalation in hostilities on the Palestinian population of Gaza, see A/HRC/22/35 and A/HRC/22/35/Add.1.

[12] COGAT is Israel's body responsible for implementing its policy vis-à-vis the Gaza Strip.

[13] http://www.cogat.idf.il/901-10767-en/Cogat.aspx

[14] Since June 2010, import of construction materials was limited to international organizations implementing projects pre-approved by Israel (and the Palestinian Authority in Ramallah), see http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf.

[15] Ibid.

11. These improvements were negatively affected by the decision of Israeli authorities, following rocket fire from the Gaza Strip, to close Kerem Shalom, the only commercial crossing between Gaza and Israel, for several days between 27 February and 30 April 2013, and to restrict movement of people at the Erez crossing to humanitarian cases.[16] As a result, the level of Gaza's imports during February, March and April decreased by 17.5 per cent compared to the previous three months,[17] and to around 36 per cent of the pre-closure level. The blockade also continued to severely restrict Gaza's exports, preventing the population from maintaining their livelihoods. During the reporting period, Gaza exports equalled less than 2 per cent of the pre-blockade level.[18]

12. The United Nations and other international organizations continued to report significant delays and costs associated with the Israeli project approval process and the importation of materials for humanitarian purposes.[19]

2. Access restricted areas

13. The November 2012 understanding included the easing of restrictions to the ARAs imposed by Israel on land and at sea. At sea, access for Palestinians was extended from 3 to 6 nautical miles.[20] Regarding the ARA on land, a lack of clarity regarding the restrictions in place heightened concern regarding the protection of civilians.

14. On 25 February 2013, COGAT reported on its website that Palestinian farmers were permitted to access land up to 100 metres from the fence. Previously, it had verbally informed various international organizations about this decision. On 20 February and 10 March, the IDF spokesperson, in written responses to an Israeli human rights organization, provided different information, stating that the residents of Gaza were prohibited from getting closer than 300 metres from the fence. COGAT subsequently removed its 25 February statement from its website. Exacerbating the lack of clarity, media reports, attributed to the then-Deputy Head of Hamas' political bureau, claimed a complete lifting of the ARA on land.[21]

15. Prior to the November 2012 escalation, in practice, the ARA on land was enforced by the Israeli military up to several hundred metres and often more than the officially declared 300 metres from the fence.[22] Following the November understanding, farmers and non-farmers started to access land that they had not been able to access for years. Farmers reported to OHCHR that they were able to cultivate land up to 300 metres from the fence, although in some cases restrictions were perceived to be enforced beyond 300 metres. Some farmers noted that access had not changed after the November understanding.

[16] http://www.gisha.org/item.asp?lang_id=en&p_id=1970

[17] Ibid.

[18] Data compiled from the Office for the Coordination of Humanitarian Affairs (OCHA) and Gisha.

[19] United Nations Special Coordinator for the Middle East Peace Process, "Briefing to the Security Council", 22 May 2013, available at: http://www.unsco.org/Documents/Statements/MSCB/2008/Security%20Council%20Briefing%2022%20May%202013.pdf. See also Norwegian Refugee Council, *Overview of the Housing Situation in the Gaza Strip*, 2013, pp. 45, 51 and 52.

[20] The fishing limit agreed at the 1993 Declaration of Principles on Interim Self-Government Arrangements (Oslo I Accord) was 20 nautical miles.

[21] Al-Resalah reported that an official stated that the agreement included an "end to restrictions in the ARA", see http://alresalah.ps/ar/index.php?act=post&id=63237.

[22] Office for the Coordination of Humanitarian Affairs and the World Food Programme, "Between the fence and a hard place: the humanitarian impact of Israeli-imposed restrictions on access to land and sea in the Gaza Strip", *Special Focus* (August 2010), p. 5, available at: http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf.

Despite the apparent increase in access, some farmers were not prepared to risk cultivating anything other than low-yielding rain-fed crops, due to the lack of clarity and unpredictability of the situation.

16. During the reporting period, three Palestinians were killed and 56 were injured in Gaza, including 16 children. Thirty-seven were injured in the context of demonstrations or other civilian activities in the areas up to, and at times beyond, 300 metres from the fence.[23] Several such incidents occurred on Fridays and, on some occasions, demonstrators threw stones at Israeli soldiers and their vehicles positioned across the fence.[24] In two separate cases, two 20-year-old men were killed close to the fence, one on 30 November 2012 east of the village of Al-Shouka,[25] and the other one on 11 January 2013, in Jabalia, in the context of demonstrations. The latter was shot in his abdomen about 50 to 60 metres from the fence, which he continued to approach notwithstanding tear gas and warning shots fired by the IDF. He was reportedly unarmed and did not pose any apparent threat to Israeli soldiers. No rockets were being fired from Gaza around the time of the incident.[26]

17. On 21 March, IDF and COGAT announced that the ARA at sea would again be reduced to 3 nautical miles in response to rocket fire from Gaza.[27] The ARA at sea was subsequently re-established at 6 nautical miles on 21 May 2013.[28] The means used by the Israeli navy to enforce the ARA at sea continued to put fishermen at risk. Numerous incidents of warning shots fired towards fishermen who were within the imposed limits were recorded. Six fishermen were injured and 45 were detained[29] during the reporting period. Eight fishing boats were confiscated, 16 boats were damaged and the engines of nine boats, the fishing equipment of several boats and approximately 400 fishing nets were damaged by Israeli naval forces.[30]

18. On 21 January 2013, a boat with three Palestinian fishermen about 5 nautical miles from the shore was approached by an Israeli naval vessel and told to throw their catch back into the sea. Then they were told to take off their clothes, jump into the sea and swim to the Israeli vessel. Once aboard, they were given clothes, blindfolded, had their hands tied and were taken to Israel. After a medical examination and interrogation by the IDF, they were taken to the Erez crossing to return to Gaza.[31]

19. On 19 February 2013, a boat with six fishermen was 3 nautical miles from shore when two Israeli naval vessels approached. Once the naval vessels were around 50 metres from the Palestinians, the naval vessels started to shoot into the water in close vicinity of the Palestinians. The Israeli forces then shot with live ammunition towards the boat and damaged its front and engine. Two fishermen were hit in their legs with shrapnel. Shortly after, the naval vessels left the area.[32]

[23] Data provided by the Protection Cluster database.
[24] OHCHR monitored some of these cases.
[25] http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9092:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-29-nov-05-dec-2012&catid=84:weekly-2009&Itemid=183
[26] Case monitored by OHCHR.
[27] See section II.B.3 below.
[28] "Briefing to the Security Council" (footnote 19 above).
[29] Exact figures are not available. Information gathered suggested that most of them were released within short periods of time.
[30] Information provided by the Union of Agricultural Work Committees.
[31] Case monitored by OHCHR.
[32] Idem.

20. The ARA undermines the livelihoods of tens of thousands of Gazans, violating their human rights, including the rights to work, to freely dispose of their natural wealth and resources, to an adequate standard of living and to food, which includes the possibility of feeding oneself directly from productive land or natural resources. Israel's methods of enforcement often violate Palestinians' civil rights, including the rights to life, liberty and security.

3. Punitive measures that affect civilians

21. Restrictions on the freedom of movement of Gazans and imports and exports to and from Gaza began to be put in place by Israel in the 1990s. In 2007, following the takeover of Gaza by Hamas, such restrictions were tightened, although they were eased considerably in 2010 to allow the import of items not designated by Israel as "dual use", i.e. having the potential to be used in weapon production.

22. While parties to an armed conflict may take security measures, such measures must comply with international law and should be necessary and proportional.[33] Numerous statements made by Israeli officials in their professional capacities have made clear that the blockade is being imposed to apply pressure to the de facto authorities, and in response to acts committed by various groups in Gaza, including Palestinian armed groups, towards or in relation to Israel.[34] However, the blockade and related restrictions target and impose hardship on the civilian population, effectively penalizing them for acts they have not committed. As such, these measures contravene article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV) prohibiting collective penalties.[35]

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[33] See, in particular, article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV), and articles 57 and 58 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I).

[34] In September 2007, Israel's Security Cabinet declared Gaza a "hostile territory", and as a result decided that sanctions would be imposed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip, reduce the supply of fuel and electricity and restrict the movement of people to and from the Gaza Strip, see http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx. The Defense Ministry Spokesperson Peter Lerner, according to Agence France Presse, stated that the opening of the crossings will be reviewed on a daily basis and will be subject to Palestinian militants halting their rocket fire against southern Israel, see http://www.google.com/hostednews/afp/article/ALeqM5iflhCqMdfmP6fA2nNDMm-fygUu7w. According to Gisha, on 4 April 2013, top security officials called to "refrain from using the border crossings as a means for pressuring Hamas because they are not used for smuggling weapons. Therefore, closing them only increasing feelings of isolation and frustration among Gaza's residents, rather than among senior members of terrorist organizations", see http://www.gisha.org/UserFiles/File/publications/Creeping-Punishment/Creeping-Punishment-may2013-eng.pdf.

[35] Article 33 reads: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited". See also the statement of 13 June 2012 by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, available at: http://www.ochaopt.org/documents/ochaopt_vamos_stament_on_gaza_2012_06_13_english.pdf. See also the statement of the Special Rapporteur on the situation of human Rights on Palestinian territories occupied since 1967, Richard Falk, on 9 December 2008, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8380&LangID=E; the Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009,

23. As a recent example of the ongoing punitive measures against the civilian population of Gaza, the IDF and COGAT announced on 21 March[36] that "in response to rocket fire", the permitted fishing zone for Palestinians in the Gaza Strip would be narrowed from 6 to 3 miles as instructed by the Prime Minister and the Minister of Defence.[37] A Salafist jihadist group had claimed responsibility for the rocket attacks.[38] The mentioned restrictions were not directed towards members of this group, but instead targeted the civilian population by penalizing them for acts they had not committed. As noted above in paragraph 17, the fishing zone was subsequently re-extended to 6 nautical miles on 21 May 2013.

III. The situation in the West Bank

A. Settlements and related policies, practices and plans that affect Palestinian human rights

1. Settler violence and accountability

24. Acts of violence by Israeli settlers continued to be perpetrated against Palestinians and their property, impacting negatively upon their physical security, access to livelihoods and natural resources, as well as access to education. One hundred ninety-one such incidents were recorded, including 62 that resulted in 98 Palestinian casualties, and 129 that resulted in destruction of or damage to private property. At least 3,793 productive trees were destroyed or damaged in settler attacks. Five incidents hindered access to education for 1,616 children[39] and one incident at an educational facility was recorded.[40] During the same period, 27 incidents of violence by Palestinians against Israelis, resulting in 47 Israeli casualties, were recorded, including the killing of a resident of Yitzhar settlement on 30 April 2013.

25. Israel, as the occupying Power, has the obligation to maintain public order and ensure that protected persons – Palestinian civilians – are safeguarded against all acts or threats of violence (A/67/375, para. 30). This includes the obligation to protect Palestinians from settler violence, and to ensure the effective, prompt, thorough and impartial investigation of criminal attacks and prosecute those allegedly responsible. Despite repeated concerns raised by the Secretary-General, as well as statements by Israeli officials noting that steps would be taken to address this phenomenon, Israeli authorities continue to fail to prevent settler violence, protect Palestinians and their property, and ensure accountability for these criminal acts.[41]

A/HRC/12/48, paras. 74, 78, 1328 and 1329; International Committee of the Red Cross, press release of 14 June 2010, available at: http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm; and "How can Israel's blockade be legal? UN independent experts on the 'Palmer Report'", OHCHR news release, 13 September 2011, available at: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11363&LangID=E.

[36] http://www.idf.il/1153-18596-en/Dover.aspx

[37] See paragraph 17 above.

[38] http://www.as-ansar.com/vb/showthread.php?t=84600

[39] According to the United Nations Children's Fund (UNICEF), in March 2013, two incidents affecting the access to education of Palestinian children took place, while single similar incidents were recorded in January, February and April 2013.

[40] Data provided by UNICEF.

[41] See, inter alia, A/67/375 and A/66/364.

26. A lack of accountability opens the door to further violence. As referred to in a previous report (A/67/375, para. 38), the analysis of an Israeli human rights organization of 781 complaints registered from 2005 to 2011 found that an indictment was filed by Israeli authorities in less than 9 per cent of investigations, which are opened as a result of a complaint being made. Approximately 84 per cent of the investigations were closed due to investigatory failures.[42] Furthermore, Palestinians who file complaints with the Israeli police often do not have access to information regarding the status or progress of any investigation following from their complaint.

2. Forcible transfer of Palestinians in Area C of the West Bank: Bedouin and herding communities in the Jerusalem periphery and the Masafer Yatta communities

27. The Israeli Civil Administration in the West Bank maintains (A/67/372, paras. 36–37 and 55) its plans to transfer approximately 2,300 Palestinians currently living in the eastern Jerusalem periphery, in connection with its plans to expand settlements in the area.[43] An Israeli plan for a new Bedouin village in Area C, within the Jericho Governorate, is expected to be deposited for public comments later in 2013.[44] If implemented, some Bedouin and herding communities in the Jerusalem periphery and the Jordan Valley would apparently be forcibly transferred to the new village, which would have the capacity for approximately 6,000 residents.[45] Despite the prevailing coercive environment in Area C, the communities potentially affected by the different plans continue to oppose any transfer from their current locations.[46] Such transfers would adversely affect the traditional economy and would likely lead to the disintegration of the social fabric of the affected communities.

28. In July 2012, Israeli military authorities confirmed their intention to "remove" eight Palestinian farmer and shepherd communities, comprising approximately 1,000 persons, living in the Masafer Yatta area, in order to enforce a "closed military zone" ("Firing Zone 918").[47] In 1999, the Israeli military evicted most of the residents from the area (some 700 Palestinians) and destroyed or confiscated most of their homes and property.[48] The Israeli High Court of Justice, in response to a petition from the residents, allowed some of them to return until a final court decision was taken. This decision was still pending as of 25 May 2013. The affected communities have been living in the Masafer Yatta area for decades, many since before the Israeli occupation began in 1967, and the majority of residents have titles to prove ownership of their land. They are experiencing increasing pressure to leave, but continue to peacefully oppose their eviction and transfer from the area.

29. Under international humanitarian law, the forcible transfer of protected persons is prohibited, although temporary evacuations may be undertaken in the context of active hostilities where the security of the protected population or imperative military reasons so demand. Neither of these circumstances applies in the cases of the above-mentioned communities. A transfer is forcible, and thus unlawful, unless the affected persons choose

[42] Yesh Din, "Law enforcement upon Israeli civilians in the West Bank", *Yesh Din Monitoring Update* (March 2012).

[43] In December 2012, Israeli planning institutions provided initial approval for the construction of 3,426 housing units in the E1 area. See, for example, *Kfar Adumim* v. *Ministry of Defence*, HCJ (5665/11).

[44] Bimkom and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Al Jabal: a Study on the Transfer of Bedouin Palestine Refugees*, East Jerusalem, 2013, p. 7.

[45] Information provided by the Israeli NGO Bimkom (http://bimkom.org.il/eng).

[46] For example, the Letter of the Protection Committee for Bedouin Communities of 3 December 2012.

[47] Attorney General's Response, HCJ Petition 517/00 and 1199/00, July 2012.

[48] OCHA case study, "Life in a 'Firing Zone': the Masafer Yatta Communities", May 2012.

to move voluntarily without the threat of force or coercion, which is not presently the case. Accordingly, the implementation of the proposed Israeli plans to transfer Palestinian Bedouin and herding communities in the Jerusalem periphery and Jordan Valley from their current locations and to evict Palestinians in the eight villages of the Masafer Yatta area for the enforcement of "Firing Zone 918" would appear to amount to individual and mass forcible transfer, contrary to Israel's obligations under international humanitarian law. It also appears to amount to forced evictions contrary to Israel's obligations under international human rights law. Moreover, if the implementation of these plans were to entail the destruction or confiscation of the private property of protected persons, it would give rise to additional serious concerns regarding the compliance by Israel with its obligations under international humanitarian law and international human rights law.

3. Freedom of movement and the respect of unity, continuity and integrity of the territory of the Occupied Palestinian Territory

30. Restrictions on the freedom of movement of Palestinians living in the Occupied Palestinian Territory continued to represent a major human rights concern. The principal restrictions consisted of physical obstacles, including the Wall, checkpoints and roadblocks, as well as administrative and legal restrictions, including closed military zones, prohibited roads and permit requirements. These restrictions severely limit Palestinian vehicular and pedestrian movement, including between the Gaza Strip and the West Bank, movement within the West Bank itself, and movement between East Jerusalem and the remainder of the Occupied Palestinian Territory.

31. Israel has recently commenced construction of a highway through Beit Safafa in East Jerusalem, attempting to link West Jerusalem with settlements in the West Bank. This highway, if completed, would cut through the Beit Safafa community and negatively affect the livelihoods of 9,300 Palestinians, cutting off local roads and blocking access to kindergartens, schools, health clinics, offices and places of worship.

32. The construction of the Wall in the West Bank continued to have a negative impact on the human rights of Palestinian communities. Approximately 55,000 East Jerusalem Palestinians are physically separated from the urban centre of Jerusalem and must cross burdensome checkpoints to access health, education and other services to which they are entitled. Moreover, approximately four million Palestinians from the remainder of the Occupied Palestinian Territory continue to be generally prohibited from entering East Jerusalem. The Wall and related restrictions on Palestinian movement are decisively cutting off East Jerusalem from the rest of the Occupied Palestinian Territory. Planned settlement expansion in the Jerusalem area would exacerbate this separation.

33. In April 2013, the Special Appeals Committee of the Tel Aviv Magistrate's Court, citing security concerns, approved the planned route of the Wall around the Cremisan Monastery in the West Bank. This route would surround the Salesian Nuns Convent and Primary School from three sides, confiscate most of the convent's lands, and separate landowners from their private property. Overall, the completion of the Wall would cut the Bethlehem urban area from its agricultural hinterland and reduce access for approximately 23,000 Palestinians to Bethlehem, a major services centre for health, education, markets and trade.

34. In a positive development, on 2 May 2013 the Israeli High Court of Justice ordered a halt to the building of the Wall in one particular area close to Bethlehem, referring to the

cultural heritage and livelihood values of the agricultural terraces in the village of Battir.[49] The Court requested the military to submit, within three months, the reasons why the route of the Wall should not be nullified or changed in this area.[50]

4. Demolitions and forced evictions

35. Israeli planning policies continue to severely restrict the construction of new housing for Palestinians in East Jerusalem and Area C, where Israel retains full authority for planning and zoning. Permits for new houses are rarely given, and homes of West Bank and East Jerusalem identification holders are frequently demolished on the basis that they were built without permission and are therefore illegal structures. From 1 December 2012 to 21 May 2013, 271 Palestinian-owned structures in East Jerusalem and Area C were demolished due to lack of permits, resulting in the displacement of 476 Palestinians, including 263 children.[51]

36. Approximately 33 per cent of Palestinian homes in East Jerusalem lack Israeli-issued building permits, placing at least 93,100 residents at risk of displacement. Moreover, 70 per cent of Area C in the West Bank is allocated to Israeli settlements or the Israeli military. An additional 29 per cent is heavily restricted by Israel, thus greatly limiting prospects for Palestinian construction, and less than 1 per cent of Area C has been planned for Palestinian development.

B. Excessive use of force by Israeli security forces

1. Excessive use of force

37. Under international law, Israeli authorities are obliged to respect the right to life and protect the civilian population in the Occupied Palestinian Territory. In a law enforcement context, Israeli security forces are bound by the general principles on the use of force by law enforcement officials, including the principles of necessity and proportionality contained in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[52] and the Code of Conduct for Law Enforcement Officials.[53] The intentional lethal use of firearms is only permitted when strictly unavoidable in order to protect life.

38. During the reporting period, the use of force by Israeli security forces, including the IDF and the Israeli Border Police, resulted in 10 deaths, including four children and one woman, and 2,952 injuries[54] in the West Bank. This constitutes a marked increase in the killing of civilians in the West Bank compared to the rest of 2012.[55] OHCHR monitored and documented nine fatalities and several injuries. The monitoring and documentation by OHCHR identified serious concerns regarding potentially unlawful and unnecessary use of

[49] www.haaretz.com/news/diplomacy-defense/high-court-orders-defense-ministry-to-halt-construction-of-part-of-west-bank-barrier.premium-1.518888

[50] The petition was submitted to the Israeli High Court of Justice by Friends of the Earth Middle East, see http://www.skollfoundation.org/friends-of-the-earth-middle-east-helps-preserve-heritage-and-agricultural-site/.

[51] Information provided by Office for the Coordination of Humanitarian Affairs.

[52] http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx

[53] http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx

[54] Statistics on injuries compiled from the Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Reports (November 2012–April 2013).

[55] OCHA, from January to end November 2012, reported seven casualties resulting from the Israeli–Palestinian conflict, see http://www.ochaopt.org/poc.aspx?id=1010002.

force against unarmed Palestinians. The following cases, documented by OHCHR, are examples of recent incidents of possible excessive use of force by Israeli security forces.[56]

39. On 12 January, an unarmed 21-year-old Palestinian man was shot in the back and killed while attempting to enter Israel through a gap in the Wall near the village of al-Ramadin. Witnesses reported that no warnings were issued prior to the shooting. The victim was evacuated by Israeli forces to a hospital in Israel and pronounced dead upon arrival.

40. On 15 January, a 17-year-old boy was shot dead on the outskirts of the village of Budrus. The victim was part of a group of boys playing in a restricted area near the Wall, a short distance from their school. A witness indicated that an Israeli soldier fired at the victim, without prior warning, from a distance of between 5 to 10 metres. The boy turned away and started running toward the village when another soldier fired three bullets, hitting him in the head and back. According to the statements to the media by Israeli authorities, the boys had thrown stones at the soldiers.

41. On 18 January, a 15-year-old boy was shot in the head from an IDF observation tower near the Ayda refugee camp, close to Bethlehem. The boy had been walking with another boy on a road leading towards the tower. He died of his injuries on 23 January. While there had been demonstrations and clashes in front of the camp in the weeks leading up to the incident, witnesses stated that no confrontations were occurring at the time of the incident. This is supported by video footage from a surveillance camera at a nearby children's centre. According to Israeli authorities, the victim had attempted to enter Rachel's Tomb while some 30 other Palestinians gathered next to the military post threw stones, as well as a fake bomb, at the soldiers.

42. On 23 January, a 22-year-old woman was shot in the head and killed by an IDF soldier in the al-Arrub refugee camp. Another woman was injured in the incident. The two were allegedly walking out of a college when what appeared to be a civilian car stopped on the road. Witnesses reported that a uniformed IDF soldier got out of the car and shot at the women from a distance of around 150 metres. An Israeli spokesperson stated that the soldiers had been attacked by Palestinians, who had hurled multiple firebombs at them and therefore the IDF soldier had returned fire.[57] However, witnesses reported that there had been no clashes, confrontations or any similar incident in the area prior to the shooting.

43. On 3 April, IDF soldiers shot three Palestinian teenagers, two of whom were killed, outside of Anabta in the Tulkarem area. The Palestinians stated that they intended to throw stones at an IDF observation tower at the Ennab IDF checkpoint, near the settlement of Einav. This tower is fortified by concrete blocks, barbed wire and surveillance cameras. One teenager threw a stone when the group was 10 to 20 metres from the tower. IDF emerged from the tower and shouted at the teenagers to stop, whereupon the teenagers turned away and began to run back to their village. IDF allegedly opened fire as they ran back towards their village. Amer Nassar died from a gunshot wound in the back. Naji al-Bilbisi also died from a gunshot wound in the back. Fadi Abu al-Assal was treated for a gunshot wound to his upper arm and released from the hospital.

44. On 20 February, while conducting an arrest operation in the village of Birqin north of the West Bank, IDF soldiers allegedly opened fire at Rajih Qablawi, who was leaving his brother's house. The soldiers who were surrounding the house allegedly shot at Mr. Qablawi without firing any warning shots or being exposed to any threat. Mr. Qablawi,

[56] For other examples, see A/HRC/22/35 para.23 and A/67/375, para. 43.

[57] http://elderofziyon.blogspot.com/2013/01/a-small-detail-about-eyewitness-to-idf.html

who informed OHCHR that he had not even been aware of the presence of the IDF in the area, was struck in his thigh and transferred to a hospital.

45. During a demonstration held in the village of Abud on 22 February 2013, four Palestinians were shot and injured by rubber-coated steel bullets. One of them, Mohammad Sameeh Asfour, was shot with a rubber-coated steel bullet that penetrated his forehead and settled in his skull. He was evacuated to Rafidya hospital in Nablus and subsequently transferred to an Israeli hospital, where he died from his injuries on 7 March 2013.

2. Accountability

46. Under international law, the State of Israel has the obligation to conduct independent, impartial, thorough, prompt and effective investigations into incidents involving the potential excessive use of force by law enforcement officials; to open judicial and/or disciplinary proceedings against perpetrators; and to ensure access to justice and an effective remedy for victims. In April 2011, in a positive development, the MAG announced a new policy pursuant to which a military police investigation is opened automatically in every case where an "uninvolved" civilian is killed by a soldier in the West Bank (A/66/356, para. 18).

47. Military police investigations were opened in six out of the seven cases referred above, with the outcome still pending at the time of writing.[58] In addition, on 18 March 2013, an IDF soldier was convicted of negligent homicide in relation to the killing of a young Palestinian[59] trying to cross to Israel for work, following a plea bargain. On 13 May 2013, the soldier was sentenced to nine months' imprisonment.

48. However, recent figures raise concerns with regard to ensuring accountability in practice. As noted by an Israeli legal NGO with regard to investigations opened by the Israeli military, the data for the years 2009, 2010 and 2011 shows that 14 investigation files out of the 534 opened during those three years produced indictments; i.e., only 2.62 per cent.[60] In 2012, a total of 240 complaints were submitted to the Israeli military, and only 78 criminal investigations were opened. Yet no indictment was filed as a result of these investigations.[61]

C. Violations of human rights by the Palestinian Authority

49. During the reporting period, the Palestinian security services in the West Bank reportedly carried out dozens of arbitrary arrests of Palestinians, often based on the person's political affiliation. The Palestinian Independent Commission for Human Rights registered 91 complaints of arbitrary arrest during the period of January to March 2013.[62]

50. Ill-treatment, sometimes amounting to torture, was reported to have taken place in Palestinian places of detention.[63] The allegations concern various methods including *shabeh*,[64] beatings, threats, deprivation of sleep and solitary confinement. Allegations of ill-

[58] Based on information received by NGO sources and media. See paragraphs 38–44 above.

[59] See paragraph 39 above.

[60] Yesh Din, "Law enforcement upon IDF soldiers in the territories", *Data Sheet* (January 2013), available at: http://www.yesh-din.org/userfiles/file/datasheets/Law%20Enforcement%20upon%20-%202012.pdf.

[61] Ibid.

[62] http://www.ichr.ps/en/2/5

[63] Testimony collected during OHCHR visits to Palestinian detention centres.

[64] *Shabeh* refers to forcing a detainee to hold a painful position for extended periods of time.

treatment mostly arose during security campaigns carried out by the Palestinian Authority following serious incidents against its officials or institutions.

51. On 29 January 2013, Saleh Husni Abdulrahman Shomali, a Palestinian police officer on duty at Hebron Police Station, was arrested on suspicion of armed robbery and transported to Ramallah for interrogation. Mr. Shomali states that interrogators beat him continuously with a cable while his arms were tied with a rope attached to the ceiling. Two officers allegedly sprayed tear gas directly into his face, causing him to lose consciousness. During the 13-day interrogation period, he reportedly was deprived of sleep for many hours, cursed, slapped, confined in a tiny cell and subjected to *shabeh* for many hours. He was then transferred to Addahiriya interrogation centre, where he was again subjected to *shabeh*.[65]

52. In a positive development, on 14 May 2013, President Mahmoud Abbas decreed that all Palestinian agencies must abide by the provisions of the Palestinian Basic Law, which prohibits all forms of torture and degrading treatment, and any behaviour that diminishes human dignity.[66]

IV. Palestinians in Israeli detention

53. As of March 2013, approximately 6,000 Palestinians were held in Israel detention facilities,[67] of which 164 were in administrative detention.[68] The majority was held in prisons and detention centres located in Israel, in violation of international humanitarian law establishing that residents of an occupied territory shall be detained and serve their sentences within the occupied territory.[69] Israeli authorities restrict family visits through burdensome bureaucratic procedures to obtain a permit for entry into Israel.

54. On 14 May 2012, Israeli authorities agreed to certain demands made by detainees who had launched a mass hunger strike (A/67/372, para. 25). According to NGO sources,[70] the agreement has so far been partially implemented. In July 2012, visits from families based in Gaza took place. However, not all prisoners were able to see their families, in particular those detained in prisons in the north of Israel. Solitary confinement was reportedly lifted for all hunger strikers except one, who was reportedly still in isolation for security reasons.[71] Several hunger strikers were released or agreements not to renew their administrative detention were reached.[72]

55. On 23 February 2013, Arafat Jaradat, a 30-year-old Palestinian, died while detained in the Israeli Megiddo prison. An autopsy report by the Director of the Palestinian Medico-Legal Institute indicated that his death was caused by nervous shock resulting from severe

[65] Case monitored by OHCHR.

[66] http://english.wafa.ps/index.php?action=detail&id=22381

[67] http://www.btselem.org/statistics/detainees_and_prisoners

[68] The Committee on the Elimination on Racial Discrimination urged Israel to "end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law" (CERD/C/ISR/CO/14-16, para. 27).

[69] Article 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV).

[70] Information provided by the Addameer Prisoners' Support and Human Rights Association.

[71] Ibid.

[72] http://www.addameer.org/files/Quarterly%20Update%2001_09_12%20to%2015_01_13%281%29.pdf. See also http://www.btselem.org/administrative_devention/20120223_adnan_ends_hunger_strike.

pain caused by multiple injuries allegedly inflicted through torture.[73] Israeli authorities had previously announced that he died of a heart attack, although this statement was subsequently withdrawn.[74] International human rights obligations towards all Palestinian detainees and prisoners in Israeli custody must be fully respected, including the absolute prohibition on torture.

56. By 30 April 2013, there were 236 Palestinian children in Israeli detention, 44 of whom were under the age of 16.[75] Data collected by UNICEF through affidavits[76] and reports of victims collected by OHCHR show that the rights of Palestinian children were often violated by Israel. Thirty per cent of children reported being aggressively taken into custody in the middle of the night by armed Israeli soldiers. Night arrests are deeply traumatic for children, as they are akin to military operations and often include smashed windows and shouted verbal threats. Few children or parents were informed where the child was being taken, why or for how long. Parents were not allowed to accompany them, and 87 per cent of children were not informed of their right to legal counsel. Ninety-one per cent of children were painfully handtied and blindfolded and subjected to physical violence, including beating, slapping, kicking and/or verbal abuse during the journey to interrogation and detention.

57. Twenty-two per cent of children stated that during interrogations they had been threatened with death, physical violence, solitary confinement and sexual assault, against themselves or a family member. In the majority of cases, the principal evidence against a child was the child's own admission of guilt, often elicited through a document drafted in Hebrew, a language they cannot understand.[77] According to UNICEF, ill-treatment of Palestinian children in the Israeli detention system is widespread, systematic and institutionalized.[78] There are serious concerns that such treatment and combination of practices may, in some cases, amount to torture, as defined by article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such practices would also violate the Convention on the Rights of the Child (art. 37) and international humanitarian law.[79] Israeli authorities have stated that they will work towards the implementation of the UNICEF recommendations regarding children in military detention.[80]

[73] http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/677-14-palestinian-and-israeli-organisations-condemn-lack-of-accountability-for-torture-against-palestinian-detainees

[74] http://www.haaretz.com/news/diplomacy-defense/autopsy-shows-palestinian-prisoner-died-from-torture-says-pa-chief-pathologist-1.505545

[75] These numbers only include security prisoners. Information provided by B'Tselem.

[76] Through the Monitoring and Reporting Mechanism on grave violations of children's rights in situations of armed conflict, see http://www.unicef.org/protection/57929_57997.html. During the reporting period, UNICEF collected the affidavits of 23 boys arrested and detained by Israeli authorities.

[77] UNICEF, *Children in Israeli Military Detention: Observations and Recommendations*, Jerusalem, 2013, p. 13, available at: http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.

[78] Ibid.

[79] Articles 32 and 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV).

[80] http://embassies.gov.il/UnGeneva/NewsAndEvents/Pages/Israel-to-collaborate-with-UNICEF-to-implement-recommendations-Mar2013.aspx

V. Enhancing Palestinian institutions and civil society actions in relation to human rights

58. In addition to monitoring and reporting on the human rights situation in the Occupied Palestinian Territory, OHCHR continued to provide technical assistance to relevant Palestinian actors for the promotion and protection of human rights, including the Government of the State of Palestine, the Independent Commission for Human Rights and civil society actors. OHCHR also initiated a process of reaching out to community and religious leaders in Gaza, to engage in a dialogue on human rights and raise awareness of international standards.

59. OHCHR continued to support the Government, at its request, in preparing a Palestinian National Plan of Action for Human Rights, which will be an integral part of the Palestinian National Development Plan for 2014–2016. The development of the National Plan of Action, in consultation with Palestinian civil society, will provide concrete and specific targets for the State of Palestine's ongoing efforts to improve its human rights performance in all areas of development.

60. The United Nations system in the Occupied Palestinian Territory is preparing its United Nations Development Assistance Framework for 2014–2016, which defines the ways and means to support national development priorities. The United Nations is committed to providing assistance to the State of Palestine that is grounded firmly in the international human rights framework.

VI. Conclusion and recommendations

61. **Serious violations of international law continue to be committed in the Occupied Palestinian Territory. The general human rights situation remains of heightened concern and needs to be addressed as a matter of urgency. The Secretary-General is deeply concerned about the recurrence of violations already highlighted in several of his previous reports and those of the United Nations High Commissioner for Human Rights. The majority of these violations could be avoided if the relevant duty-bearers would take the necessary preventive and corrective actions as highlighted in the recommendations below.**

A. Recommendations to the Government of Israel

62. **The Government of Israel is under an obligation to conduct investigations into all allegations of serious violations of international human rights law and international humanitarian law. Investigations must be conducted independently, impartially, thoroughly, promptly and effectively. Transparency in investigations should also be ensured. Where appropriate, individuals who are allegedly responsible for violations should be prosecuted and victims should be provided with an effective remedy, including equal and effective access to justice and reparations.**

63. **The Government of Israel should review the methods and mechanisms used to enforce the access restricted areas (ARAs) in Gaza, in order to ensure full compliance with international human rights law and international humanitarian law.**

64. **Notwithstanding legitimate Israeli security concerns, the Government of Israel should fully lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population. All measures taken to address security concerns should**

comply with international law, including international human rights law and international humanitarian law.

65. **The Israeli authorities should take all necessary measures to prevent violence perpetrated by Israeli settlers, and to address all such violence that is perpetrated. Accountability for crimes, including through justice and effective remedy for victims, should be ensured without discrimination. Failure to do so will constitute a violation of Israel's human rights obligations and will perpetuate a culture of impunity.**

66. **Israeli plans that would result in the forcible transfer of Palestinian civilians should be terminated immediately. Israel, as the occupying Power, has the obligation to protect the Palestinian civilian population and to administer the occupied territory for the benefit of the Palestinians. Israel has an obligation under international law to provide Palestinian communities in Area C, including communities at risk of forcible transfer in the Jerusalem periphery and the Masafer Yatta area, with adequate housing, security of tenure and access to water and services, including health and education, in their current locations. The forcible transfer of the Palestinian population, including that part currently residing in the eastern Jerusalem periphery, would violate Israel's obligations under international humanitarian and international human rights law.**

67. **In accordance with its international obligations, the Government of Israel should take immediate steps to respect and ensure the respect of the right to freedom of movement for Palestinians in the West Bank, including East Jerusalem, as well as freedom of movement between Gaza and the West Bank.**

68. **The Government of Israel should review its use of administrative detention, with a view to ending it speedily.**

69. **The Government of Israel should treat Palestinian children in detention with due consideration of their age and in accordance with international standards, in particular the Convention on the Rights of the Child.**

70. **The Government of Israel should ensure that any use of lethal force is in compliance with international law, including during law enforcement operations, including a review of regulations on the use of weapons and crowd control in operations carried out by its forces, to ensure that these regulations are in line with Israel's international legal obligations. In cases of excessive use of force, Israel should ensure accountability, including through investigations and, where appropriate, prosecutions.**

B. Recommendations regarding accountability of the de facto authorities and Palestinian armed groups in Gaza

71. **Accountability for violations of international law committed by the de facto authorities or armed groups in Gaza, including the killing of civilians, must be ensured by relevant actors. This includes violations that occurred in the context of the 14–21 November 2012 hostilities with Israel.**

C. Recommendations to the Government of the State of Palestine

72. **The Government of the State of Palestine should conduct effective investigations into all suspected violations of international human rights law. Investigations must comply with the standards of independence, impartiality, thoroughness, promptness and effectiveness. Transparency in investigations should**

also be ensured. Individuals found responsible should be held accountable and victims compensated. Accountability for crimes must be ensured without discrimination.

73. **The Government of the State of Palestine should ensure the adoption of a comprehensive National Plan of Action for Human Rights which prioritizes compliance with international human rights law and establishes concrete targets and goals for integrating human rights into national development efforts, and should, with the assistance of international actors, ensure its full implementation through the Palestinian National Development Plan.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/29, provides information on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. It addresses continued Israeli settlement activity, settler violence and accountability, Palestinian detainees, including children in Israeli custody, as well as business and human rights in relation to the settlements. The report also includes summaries of the submissions received from Member States.

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I. Background

1. In its resolution 22/29 on the follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report to the Council at its twenty-fifth session. The present report, submitted pursuant to that request, contains the information requested and received from States to which the fact-finding mission addressed recommendations, as well as information gathered directly by the United Nations. It should be read in conjunction with the recent reports of the Secretary-General and the High Commissioner on the situation of human rights in the Occupied Palestinian Territory.[1]

II. Overview

2. In its report, the fact-finding mission made six recommendations, of which four were addressed to the State of Israel. Basing itself on article 49 of the Fourth Geneva Convention, the mission called upon Israel to cease all settlement activities without preconditions; to immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory; and to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that were a result of the settlements, in accordance with its international obligation to provide effective remedy. The mission noted that, where necessary, steps should be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community.

3. In addition, the fact-finding mission called upon Israel to put an end to the human rights violations linked to the presence of settlements, and to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity. It furthermore urged Israel to put an end to arbitrary arrests and detention of Palestinians, especially children, and to observe the prohibition of the transfer of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention.

4. In its report, the fact-finding mission called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations.

5. Lastly, the fact-finding mission stated that private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights. In this regard, the mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human

[1] A/68/513, A/68/502, A/HRC/25/38, A/HRC/25/40 and A/HRC/24/30.

rights throughout their operations. The mission recommended that the Working Group on Business and Human Rights be seized of this matter.

III. Status of implementation of the recommendations of the fact-finding mission

A. Israeli settlement activity and recourse to remedy for Palestinians

6. As noted in the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, submitted to the General Assembly at its sixty-eighth session (A/68/513), Israel has continued to play a leading role in the creation and expansion of settlements in violation of international law. Notwithstanding the recommendations made to Israel by the fact-finding mission in its report and the renewal of peace negotiations mediated by the United States of America, Israel has continued to promote settlement expansion. As affirmed by the Human Rights Council in its resolution 22/29, Israeli settlement activities undermine international efforts with respect to the peace process and the realization of a two-State solution.

7. From March to November 2013, plans for at least 8,943 new settlement units were promoted by the Government of Israel in the West Bank, including East Jerusalem.[2] Israel has also made a number of public announcements regarding settlement construction, for example on 30 October, when it announced the construction of 5,000 new units in the West Bank, including East Jerusalem, a day after the release of 26 Palestinian prisoners in the context of the peace process. The Secretary-General publicly deplored the continuing expansion of Israeli settlements in the West Bank, including East Jerusalem, on a number of occasions, and has repeatedly stated that settlements are in violation of international law, and that all settlement activity in the West Bank and East Jerusalem must cease.[3] He urged Israel to heed the calls of the international community and abide by its commitments under international law and the Quartet road map.[4]

8. The continued fragmentation of the West Bank, including East Jerusalem, through Israeli settlement expansion has gone hand-in-hand with the construction of the wall, the destruction of Palestinian-owned property and the forcible displacement of Palestinian civilians, including Bedouin communities. These acts violate Israel's obligation to protect the population under occupation and run counter to the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 4 July 2004, and may have further undermined the possibility for the Palestinian people to realize their right to self-determination through the creation of a viable State.[5]

9. As at November 2013, Israel had not provided remedy for Palestinian victims for the harm suffered as a consequence of human rights violations resulting from settlements. The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, established in 2007, collected more than 38,500 claims and more than half a million supporting documents in the Occupied Palestinian Territory. Of

[2] See A/HRC/25/38.

[3] See www.un.org/sg/statements/index.asp?nid=7314 and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[4] See www.un.org/News/Press/docs/2013/sgsm15108.doc.htm and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[5] See A/HRC/24/30.

these claims, to date 8,994 cases have been reviewed by the Board of the Register and deemed valid for inclusion in the Register.[6]

B. Settler violence and accountability

10. With regard to settler violence, in her most recent report submitted to the Human Rights Council on the implementation of resolution 22/26,[7]the High Commissioner highlighted the failure of Israel to maintain public order, contain settler violence, address the lack of meaningful accountability and afford protection from the said violence. Since February 2013, Israeli settlers have continued to attack Palestinians and their property in the West Bank, including East Jerusalem, despite Israel's obligation under international law to protect Palestinians and their property from acts of violence by settlers, to ensure accountability for crimes committed and to provide remedy for violations suffered by Palestinians. Between 2005 and 2013, only 8.5 per cent of the investigations opened in relation to settler violence incidents in the West Bank resulted in indictments, and some 84 per cent of the investigations were closed, owing mainly to investigatory failures, including the lack of identification of suspects and the inability to collect evidence for prosecution.[8]

C. Palestinian detainees, including children in Israeli custody

11. The fact-finding mission called for Israel to put an end to arbitrary arrests and detention of Palestinians, especially children. As at 1 October 2013, 5,046 Palestinians were in Israeli detention. A total of135 of them were in administrative detention on security grounds, without charge or trial; well over half of them had been held for more than six months, and some for more than three years.[9] In this connection, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,the Secretary-General, the High Commissioner, and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories have documented the treatment of Palestinian detainees, including children in Israeli custody.[10]

12. In February 2013, the United Nations Children's Fund (UNICEF) issued a report in which it documented significant alleged violations of children's rights in the West Bank, noting that the ill-treatment of Palestinian children who come in contact with the Israeli military detention system appeared to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing.[11]

13. UNICEF issued an update report in October 2013 concerning progress made by the Israeli authorities towards implementing some of the 38 recommendations contained in its previous report. The actions taken by the Israeli Military Advocate General included, inter alia, an agreement by the Israeli Defense Forces Central Command for the West Bank to pilot a test summons of children in certain areas of the West Bank, in lieu of night arrests,

[6] A/ES-10/599, annex. See also www.unrod.org.
[7] A/HRC/25/38.
[8] A/68/513, para. 52. See also A/68/502.
[9] A/HRC/25/40.
[10] A/HRC/23/21, A/HRC/24/30, A/HRC/25/40 and A/68/379.
[11] Children in Israeli Military Detention, available from http://unispal.un.org/UNISPAl.NSF/3822b5e39951876a85256b6e0058a478/1ee6b43ba34634f885257b260051c8ff?OpenDocument.

and the issuance of military orders reducing the time that a Palestinian child could be detained prior to appearing before a military court judge for the first time, as well as regulating the duration of remand prior to indictment.[12]

D. Business and human rights in relation to the settlements

14. In its resolution 22/29, the Human Rights Council called upon the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Council resolution 17/4 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. Pursuant to resolution 22/29, the Working Group on the issue of human rights and transnational corporations and other business enterprises discussed the Council's request to fulfil its mandate accordingly during its fifth session, and decided to issue a statement thereon before the twenty-sixth session of the Council.[13]

15. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reported on the involvement of companies that profit from the construction and maintenance of settlements as well as other activities related to settlements in the Occupied Palestinian Territory.[14] In his most recent report (A/68/376), the Special Rapporteur explored the implications of corporate involvement by way of a model of legal analysis to assess the probability of liability, including international criminal liability, for corporate complicity in breaches of international law related to illegal settlements.

16. In this context, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories also reported on the involvement of companies profiting from the settlements, and noted that businesses need to exercise due diligence in the light of the potential legal and reputational consequences for businesses associated with Israel's settlement enterprise.[15]

IV. Submissions by Member States pursuant to resolution 22/29

17. On 16 October 2013, the Office of the High Commissioner (OHCHR) addressed notes verbales to all Permanent Missions to the United Nations Office and other international organizations in Geneva (except Israel and the State of Palestine), in which it requested information on any steps that their Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report (A/HRC/22/63), and in particular with regard to those contained in paragraphs 116 and 117 thereof.

18. Separate notes verbales were addressed to the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine, in which OHCHR requested information on any steps that their respective Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report. At the time of the preparation of the present report, no

[12] See www.unicef.org/media/media_70666.html.
[13] A/HRC/WG.12/5/1.
[14] See A/67/379, A/68/376and A/HRC/23/21.
[15] A/68/379, para. 38.

information had been received from either the Permanent Mission of Israel or the Permanent Observer Mission of the State of Palestine.

Cuba

19. The Permanent Mission of Cuba submitted a note verbale dated 7 November 2013. Cuba condemned the colonization by Israel of the occupied Palestinian territories, including East Jerusalem, and the violence, terror, provocation and incitement by Israeli settlers against Palestinian civilians and property, including homes, orchards, mosques and churches. Cuba deplored all illegal Israeli measures associated with the continued colonization of the Occupied Palestinian Territories, including the destruction of vast tracts of land, and the construction and expansion of illegal settlements, outposts and associated settlement infrastructure.

20. Cuba also condemned the demolition of Palestinian homes, the revocation of residency permits, the ongoing construction of the wall and the imposition of arbitrary and racist restrictions on residence and movement through a regime of permits and checkpoints throughout occupied Palestine, including within and around East Jerusalem. Cuba expressed concern at the separation of East Jerusalem from the rest of the occupied territory and the fragmentation of Palestinian territory into isolated areas and walled cantons. It also expressed its concern at the displacement of thousands of Palestinians in the occupied Palestinian territories, including many Bedouin families.

21. Cuba stated that such policies and practices by Israel, the occupying Power, constituted serious violations of international law and a flagrant defiance of United Nations resolutions and the advisory opinion of the International Court of Justice of 9 July 2004. In this regard, Cuba called for the prompt implementation of the mandate of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory.

22. Cuba noted that there was an incompatibility between the peace process negotiations and the practice of illegal colonization, which aimed to impose a unilateral solution by creating facts on the ground through the illegal acquisition of land and de facto annexation of Palestinian territory. It also noted that Israel's illegal colonization seriously undermined the contiguity, integrity, unity and viability of the Occupied Palestinian Territory and threatened the prospects of a peaceful two-State solution within the borders of 1967. Cuba affirmed that illegal settlement activities remained the largest obstacle to peace, which undermined all efforts to end the Israeli occupation of Palestinian territory, including East Jerusalem.

23. Cuba stressed that Israel had no jurisdiction over the Occupied Palestinian Territory, including the "illegal" settlements, and urged the international community to continue its efforts to achieve compliance with the resolutions adopted by the Security Council, the General Assembly and the Human Rights Council.

Denmark

24. In a note verbale dated 12 November 2013, the Permanent Mission of Denmark stated that Denmark was pursuing a peaceful settlement of the Israeli-Palestinian conflict and that it actively supported the ongoing efforts made by the two parties to reach a peace agreement. Denmark associated itself fully with the efforts made by the United States of America in recent months, and noted that the present situation offered more hope than in the past few years.

25. Denmark pointed out that, as a member of the European Union, it fully associated itself with the policy and initiatives undertaken by the European Union as a whole, as well as the various efforts made by the European External Action Service and the Commission of the European Union to further peace and justice.

26. Denmark also pointed out that, in October 2012, it had issued guidance to Danish retailers on labelling certain settlement products on a voluntary basis. The correct identification of the country of origin was required for all products, and the guidance issued by the Government of Denmark prohibited the labelling of products from the Occupied Palestinian Territory as originating from "Israel". According to the guidance, settlement produce could be labelled as "Origin: the West Bank" or "Produced at the West Bank".

European Union

27. According to the note by the Permanent Delegation of the European Union submitted dated 21 November 2013, the European Union had consistently regarded Israeli settlements as illegal under international law and an obstacle to peace. Continued settlement expansion undermined the prospects of a negotiated resolution of the conflict by jeopardizing the possibility of a contiguous and viable Palestinian State, and that of Jerusalem, as the future capital of two States.

28. The European Union also pointed out that, on 19 July 2013, it had published guidelines on the eligibility of Israeli entities for European Union funding, in conformity with a series of unanimous political positions taken by the Foreign Affairs Council. This included the conclusions by the Council on the Middle East peace process of 10 December 2012, according to which all agreements between the State of Israel and the European Union had to, in accordance with international law, indicate unequivocally and explicitly their inapplicable nature to the territories occupied by Israeli in 1967. It also referred to the decision by the Council with regard to the Occupied Palestinian Territory, which stated that "settlement activity will not benefit from any sort of EU funding or programmes". The European Union also noted that these guidelines were in line with the long-standing position of the European Union not to recognize the sovereignty of Israel over the occupied territories or to consider them part of Israel.

29. The European Union reaffirmed its commitment to ensure continued, full and effective implementation of existing European Union legislation and bilateral agreements applicable to settlement products, and referred to a revised notice to importers issued on 3 August 2012 concerning imports from Israel to the European Union. It also referred to an earlier notice, published on 25 January 2005, in which operators had been reminded that products produced in the Israeli settlements located within the territories brought under Israeli administration in June 1967 were not entitled to benefit from preferential tariff treatment under the European Union-Israel Association Agreement.

30. The European Union also noted that, since 1 February 2005, the exclusion of settlement goods from preferential treatment has been implemented in the European Union in accordance with a "technical agreement" concluded by the European Union and Israel, whereby the postal code and the name of the city, village or industrial zone where production conferring originating status had taken place appeared on all proof of preferential origin issued, or made in Israel. Member States custom authorities also checked whether the postal codes appearing on Israeli proof of origin presented to them corresponded to any of the postal codes appearing in the list of non-eligible locations made available to them by the Commission, and refused preference where it was. It noted that the list of non-eligible locations had been made public as a result of the afore-mentioned revised notice of 3 August 2012.

31. In addition, on 22 June 2013, the European Commission had published implementing regulation OJEU L-170 on marketing standards that excluded fresh fruit and vegetables in the occupied territories from the possibility of being certified by Israeli authorities. The European Union also expressed its belief that the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, had to be applied globally, and called on European companies to implement the Guiding Principles in all circumstances, including in Israel and the Occupied Palestinian Territory.

Ireland

32. In a note submitted by the Permanent Mission of Ireland on 6 November 2013, the Government of Ireland pointed out that it did not recognize any transfer of sovereignty or annexation of Palestinian territory occupied by Israel in 1967 pending an agreement between the parties to the conflict. Ireland had consistently affirmed that the establishment of Israeli settlements in the Occupied Palestinian Territory was in breach of international law.

33. Ireland was considering the formulation of a national plan of action for the implementation of the Guiding Principles on Business and Human Rights. It was not aware of any Irish businesses engaged in activities in Israeli settlements. It stated that the website of the Department of Foreign Affairs and Trade of Ireland carried a warning to persons considering investing in or buying property in the settlements with regard to their legal status. The questions of access to the market and the treatment and labelling of goods produced in settlements were determined at the level of the European Union.

Saudi Arabia

34. In a note verbale dated 23 October 2013, the Permanent Mission of the Kingdom of Saudi Arabia stated that Arabia had no political, economic, trade or investment relations with Israel or with any companies referred to in the recommendation contained in paragraph 117 of the report (A/HRC/22/63) or any of their activities.

Syrian Arab Republic

35. In a note verbale dated 6 November 2013, the Permanent Mission of the Syrian Arab Republic stated that the report of the fact-finding mission had reaffirmed the “viciousness” of Israeli policies and practices towards the Palestinian people, their property and land. It noted that the said policies and practices demonstrated Israel’s contempt for international humanitarian and human rights law.

36. The Syrian Arab Republic endorsed the findings of the report of the fact-finding mission and affirmed that the continued occupation of Arab territories since 1967 was the root cause of the human rights violations witnessed. It called upon Israel to comply with United Nations resolutions, including Security Council resolution 242 (1967), and to withdraw from the Palestinian territories, including East Jerusalem, occupied since 1967. This was the only solution that would enable the Palestinians to enjoy fully their right to self-determination and to establish an independent State.

37. The Syrian Arab Republic was fully cognizant of the implications of the practices of the occupying Power in the Palestinian territories, given that Israel committed the same violations in the occupied Syrian Golan. The Syrian Arab Republic asserted that its call for Israel to end the occupation did not contradict the recommendations of the fact-finding mission, and noted that the recommendations contained in the report of the mission were temporary measures needed to mitigate the impact of the occupation, including settler violence, and to halt the encroachment on Palestinian land through illegal settlement construction.

38. In conclusion, the Syrian Arab Republic welcomed the report of the fact-finding mission and commended the efforts to seek the truth in an independent, apolitical and impartial manner. It also expressed its willingness to cooperate by furthering the implementation of the recommendations outlined by the mission in its report in order to end Israeli violations of the Palestinian people. Finally, the Syrian Arab Republic urged that serious measures be taken to end the occupation of all Arab territories occupied since 1967.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Summary

The present report is the High Commissioner's sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1.

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I. Introduction

1. The present report is the sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights. It covers the period from 30 November 2012 to 8 November 2013.

2. The information in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-oPt), within the framework of General Assembly resolution 48/141 and Human Rights Council resolutions S-9/1 and S-12/1.

3. In the present report, the High Commissioner highlights issues of concern with regard to each of the main duty bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed in the report are far from exhaustive of all human rights concerns in the Occupied Palestinian Territory. The report focuses on areas requiring priority attention by duty bearers and should be read in conjunction with four recent reports by the Secretary-General (A/HRC/24/30, A/68/502, A/68/513 and A/HRC/25/38), which address additional issues not dealt with in the present report.

4. As noted in the High Commissioner's last report on the human rights situation in the Occupied Palestinian Territory (A/HRC/22/35), in March 2012 the Government of Israel suspended its relations with the Human Rights Council and with OHCHR, following the adoption of Council resolution 19/17 establishing a fact-finding mission on Israeli settlements. The Government of Israel revised its position on 29 October 2013, when it participated in the second review of Israel under the universal periodic review. There are also positive signs regarding the re-establishment of the relationship with OHCHR, which remains ready to engage in open and ongoing cooperation with the Government of Israel. With regard to the Government of the State of Palestine,[1] OHCHR notes with appreciation the good cooperation by the ministries of Foreign Affairs, the Interior, Justice and others.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the applicable legal framework and the basis for the obligations of the different duty bearers, namely the State of Israel, as the occupying power, the Palestinian Authority and the de facto authorities in Gaza, can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras 5–9). This analysis remains valid.

[1] For the purposes of this report, Government of the State of Palestine and Palestinian Authority are used interchangeably, see A/HRC/22/35, footnote 46.

III. Human rights violations by all duty bearers

A. West Bank, including East Jerusalem

1. Excessive use of force by both Israeli and Palestinian security forces

Israeli security forces

6. The use of force by Israeli security forces, including the Israeli Defence Forces (IDF) and the Border Police, in the West Bank is of serious concern. During the reporting period, this led to the death of 23 people and at least 3,623 people were injured[2] — a significant increase from the previous reporting period (16 November 2011 to 29 November 2012), during which seven Palestinians were killed and 3,036 people injured by Israeli security forces.[3]

7. Many of the casualties were living in refugee camps, which present particular challenges, including in terms of density and, at times, hostility, of the population. Many deaths occurred inside or close to refugee camps, particularly during search and arrest operations. As of 22 October 2013, 12 refugees had been killed since the beginning of the year (compared to none in 2012).[4] Palestinians have also been killed or injured while attempting to cross the wall into Israel or during demonstrations (see para. 60 below).[5]

8. Other incidents occurred close to settlements and have been linked to settlement expansion, settler violence and the lack of protection afforded to Palestinians.[6] Nine Palestinians from Al-Jalazun refugee camp were injured, mostly by live fire by Israeli security forces, but also by rubber-coated metal bullets (RCMBs), in a series of incidents near the settlement of Bet El, in September and October 2013.[7]

9. In some of the incidents documented by OHCHR, the Israeli security forces seemed to have made the decision to use force that was not proportionate to the seriousness of the offence. For example, IDF soldiers responded to stones thrown at their convoy as it passed through a crowded market near Qabatiya on 31 October 2013 with tear gas, sound grenades and live ammunition, which resulted in the death of an unarmed 21-year-old man, Ahmad Tazaz'a.[8]

10. OHCHR documented an incident at Qalandia refugee camp on 26 August 2013, in which three Palestinians were killed and 19 others injured in a search and arrest operation. IDF and Border Police raided the camp in search of a Palestinian man in the early hours of the morning. Reportedly, the Israeli security forces used live ammunition to secure the area while searching the target's house, injuring two Palestinians, including a sanitary worker employed by the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) who was carrying out his duties at least 40 metres away, where he posed no threat.

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[2] Source: OHCHR and Office for the Coordination of Humanitarian Affairs (OCHA): one man died on 28 November 2013 from injuries, including exposure to tear gas, sustained during the reporting period.

[3] A/HRC/22/35, para. 23.

[4] Source: UNRWA.

[5] A/24/30, paras. 37–45; A/68//502, paras. 36–43.

[6] A/HRC/25/38, chaps. V and VI.

[7] Source: OHCHR-oPt.

[8] Ibid.

11. As the camp became aware of the presence of the Israeli security forces, and as IDF reinforcement arrived, major clashes ensued in the camp's main street. The Israeli security forces responded to stone-throwing with tear gas, RCMBs and live ammunition. Two people, Jihad Aslan and Younis Jahjouh, were shot and killed as they threw stones at the soldiers. UNRWA employee, Ruben Zayed, was shot and killed on his way to work by the Israeli security forces as they were leaving the camp. In all of these cases, those killed or injured presented no threat to the lives of the soldiers.[9]

12. Regarding Israeli security forces firing at Palestinians attempting to cross the wall, it often appeared that the objective was to stop people crossing at all costs. OHCHR documented the case of a man who was shot in his ankles as he tried, and failed, to cross the wall on 19 October 2013, near Meitar terminal in Hebron.[10]

13. Israel has an obligation to respect, protect and fulfil the right to life and to act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).[11] Therefore, in cases where use of force is necessary in the West Bank, including East Jerusalem, Israeli security forces must seek to exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved and to minimize damage or injury. The use of firearms is only permitted in extremely limited circumstances, primarily in self-defence or defence of others against imminent threat of death or serious injury. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.[12]

14. The large number of casualties due to the use of live ammunition by the Israeli security forces raises serious questions as to whether the rules of engagement of the Israeli security forces are in compliance with international law, whether such rules are properly implemented and respected and whether appropriate sanctions are imposed for non-compliance. On repeated occasions, the Israeli security forces have used an excessive level of force that has resulted in death and injuries to Palestinians. Without rigorous regulation and effective accountability, the actions of the Israeli security forces are likely to continue to cause unlawful deaths and injuries.

Palestinian security forces

15. An arrest operation by the Palestinian security forces on 27 August 2013 in Askar refugee camp, involving the Palestinian Preventive Security Service (PPS) and the Palestinian police, was of particular concern. A crowd gathered and began throwing stones at the Palestinian security forces. As the security forces tried to leave, one of their vehicles got stuck. The crowd continued to throw stones and a member of the security forces fired in the air. According to eyewitnesses, very soon after, many members of the security forces, apparently panicking, started firing in the air and at the crowd. Amjad Odeh, who was standing about 30 to 50 metres from the Palestinian security forces, received a shot in the head and was killed, while another man was shot in the leg.[13]

16. The Palestinian security forces also conducted a series of operations in late August to early September 2013 in El Far'a refugee camp, during which a number of Palestinians protesting the entry of the security forces into the camp were injured with live ammunition and tear gas, allegedly directed at the protestors. Some of the persons subsequently detained

[9] Ibid.

[10] See also A/HRC/24/30, paras. 37–45.

[11] International Covenant on Civil and Political Rights (ICCPR), art. 6; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), third preambular paragraph.

[12] Basic Principles, principle 9.

[13] Source: OHCHR-oPt.

were denied various due process rights and allegedly subjected to ill-treatment. While initially deployed to address a law and order problem inside the camp, the Palestinian security forces intervention involved multiple human rights violations and contributed to worsening tensions.[14]

17. The Palestinian Authority and security forces must act in accordance with the Basic Principles, which constitute the basis for the PPS code of conduct, which was drafted with the assistance of OHCHR and approved by the head of the PPS in May 2013. These incidents clearly show the need for the effective implementation of the Basic Principles.

2. Mass demolitions, forcible transfer and revocation of residency rights

18. The Israeli authorities carried out mass demolitions of villages in the West Bank, particularly in East Jerusalem and in Area C, with Bedouin and herding communities being especially vulnerable. The rate of demolitions showed no sign of abating during the reporting period; the Israeli authorities destroyed 576 structures, including 220 residences, in Area C and in East Jerusalem, displacing 964 people, including 483 children. In East Jerusalem alone, the Israeli authorities destroyed 99 structures, including 52 residences, displacing 320 people, including 161 children.[15]

19. Communities in the Jordan Valley, East Jerusalem and the South Hebron Hills were especially exposed to these processes. In August and September 2013, Israeli authorities entirely or almost entirely destroyed the Bedouin and herder communities in Tel al Adassa and Az Za'ayyem in East Jerusalem and Makhul in the northern Jordan Valley.[16]

20. Citing a lack of building permits, the Israeli authorities destroyed all of the structures in the Bedouin community of Tel al Adassa, rendering seven families (39 people) homeless. The authorities ordered the community to evacuate the area permanently or risk high monetary fines and confiscation of livestock. No alternative housing options were offered. The community was thus forced to move to two temporary locations, where they remain vulnerable to further demolitions and repeated displacement due to lack of legal security of tenure and the inability to obtain building permits.

21. These demolitions fall within the broader context of Israel's planning policy, which itself discriminates against Palestinians.[17] Such demolitions breach Israel's international legal obligations to ensure Palestinians' rights to adequate housing, including the prohibition on forced evictions and ensuring security of tenure, and to freedom from arbitrary or unlawful interference with privacy, family and home.[18] The destruction of property and permanent displacement of the communities from their initial locations may amount to violations of the prohibitions on forcible transfer and destruction of property under articles 49 and 53 of the Fourth Geneva Convention, which, as the occupying power, Israel is obliged to respect.

22. At least 3,300 Palestinians in Bedouin and herder communities in the periphery of Jerusalem, Jordan Valley and Massafer Yatta in the South Hebron Hills remain particularly vulnerable to forcible transfer and forced eviction by Israel.[19] These communities continue

[14] Ibid.

[15] Compared with 677 structures (210 residences) from 30 November 2011 to 29 November 2012, Source: OCHA.

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E; http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E.

[17] A/HRC/25/38, chap. IV.

[18] International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11; ICCPR, art. 17.

[19] A/HRC/24/30, paras. 27–29; A/67/372, paras. 36, 37 and 55.

to live in a coercive environment marked by insecurity of tenure, demolitions, settler violence and multiple human rights violations. In addition, the Israeli authorities obstruct humanitarian access to Massafer Yatta communities.

23. The insecure residency status of East Jerusalem Palestinians also remains a concern. A survey commissioned by the United Nations revealed that the equivalent of 70,000 Palestinians have changed their place of residence since September 2000 due to Israeli policies and practices. Most of this displacement was triggered by the potential revocation by the Israeli authorities of the Jerusalem identification documents of Palestinians if they lived outside the municipal boundary of Jerusalem. The majority of the displaced persons were living in the suburbs of Jerusalem and moved back into the city to avoid revocation of their status.[20]

B. Gaza

Blockade of Gaza

24. Israel continued to impose a blockade of Gaza, resulting in violations of international law, including by severely restricting the freedom of movement of Palestinians out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions.[21]

25. Since 2007, when the blockade was tightened, Israel has been allowing movement of Palestinians out of Gaza through Israel, only in "exceptional humanitarian cases".[22]

26. Given the restrictions imposed by Israel, Gazans have relied heavily on the Rafah crossing, the official border crossing between Egypt and Gaza. However, since July 2013, Egyptian authorities have severely limited the opening of the Rafah crossing. The number of Palestinians exiting Gaza through Rafah fell from an average of 40,000 per month during the first half of 2013 to 11,000 a month between July and September 2013.[23]

27. More Palestinians went through the Erez crossing to Israel. In September 2013, nearly 5,000 Palestinians crossed through Erez — 20 per cent more than the monthly average for the first half of 2013.[24] However, this does not mean that the criteria for permission to cross through Erez have been eased. Although the increase is significant, it remains insufficient to meet the needs of the Gazan population. Thousands of people wishing to travel outside of Gaza for work, education, family reunion and health care are not able to do so due to the restrictions in place.[25] Under international law, Israel, as the occupying Power, is responsible for ensuring the right to freedom of movement of Palestinians, including Gaza residents.[26]

28. Following the ceasefire understanding between the de facto authorities in Gaza and Israel in November 2012 (November 2012 agreement), Israel slightly eased restrictions on the import of goods.[27] However, such measures remain insufficient, given the limited

[20] OCHA-commissioned survey covering September 2000 to June 2012 (unpublished); A/68/502, para. 28.
[21] A/68/502, paras 5–16.
[22] Ibid.; http://www.gisha.org/item.asp?lang_id=en&p_id=2130.
[23] See http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf.
[24] See http://www.gisha.org/item.asp?lang_id=en&p_id=2154.
[25] Ibid.; also http://www.gisha.org/item.asp?lang_id=en&p_id=2130.
[26] ICCPR, art. 12; Hague Regulations, art. 43.
[27] A/HRC/24/30, paras. 13–15; also http://www.cogat.idf.il/901-10767-en/Cogat.aspx.

volumes and types of materials allowed through the Kerem Shalom border crossing, the only commercial crossing between Gaza and Israel. Gaza's imports still fall significantly short of the pre-2007 level, and Gaza's exports, representing only 2 per cent of the pre-closure level,[28] continued to be severely restricted, directly impacting livelihoods, economic sustainability and development throughout Gaza.

29. During the reporting period, Egyptian authorities destroyed numerous tunnels used to smuggle goods from Egypt to Gaza.[29] Regardless of questions regarding the legality of using the tunnels, these measures resulted in a shortage of affordable fuel, construction materials, medicine and other goods that normally entered Gaza through the tunnels from Egypt. In response to the situation in Gaza, Israel slightly eased restrictions on the movement of goods. Despite a slight increase in permitted imports, the entry of goods at Kerem Shalom still falls significantly short of meeting the full needs of the Gaza population. The shortage of fuel further disrupted the operation of basic services and exacerbated the already dire situation.[30] To make matters worse, on 1 November 2013, the only power station in Gaza was shut down due to failure by the Palestinian Authority and the de facto authorities in Gaza to agree on fuel prices; since then, the power supply has been restricted to six hours a day.

30. The blockade and related restrictions penalize and impose hardship on the civilian population. These measures contravene article 33 of the Fourth Geneva Convention, which prohibits collective penalties, and should be lifted.[31]

Access restricted areas

31. The November 2012 agreement included the easing of restrictions relating to access restricted areas imposed by Israel on land and at sea. Actual access to land in access restricted areas increased, with some Palestinians being able to access land that had been inaccessible for years. However, the Israeli authorities continued to prohibit access up to at least 300 metres from the fence between Gaza and Israel in most areas.[32] Such restrictions have resulted in the loss of large tracts of arable land.

32. Incidents of use of live ammunition by Israeli Defence Forces (IDF) causing injuries and death to Palestinians — occurring beyond 300 metres of the fence, though less frequently and at shorter distances from the fence than before November 2012 — show that improved access remains limited and precarious. During the reporting period, four Palestinian civilians were killed and 70 injured by the IDF in areas up to and beyond 300 metres of the fence, mostly in northern Gaza.[33] On 30 September, two reportedly unarmed[34]

Between 17 September and 13 October 2013, Israel allowed the entry of limited quantities of construction materials for the private sector for the first time since June 2007: see http://www.israelnationalnews.com/News/News.aspx/172039#.Um-8SHDIZcA; http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf. However, Israel reversed its decision following the discovery of a tunnel between Gaza and Israel: see http://www.gisha.org/item.asp?lang_id=en&p_id=2133.

[28] A/68/502; http://www.pchrgaza.org/files/2013/Closure_August.pdf; OCHA, Gaza Crossings Activities Database.

[29] See http://en.aswatmasriya.com/news/view.aspx?id=ddbe6c63-b774-44e5-90c5-9896780f1327; currently the import of goods from Egypt into Gaza through Rafah is not formally permitted.

[30] See http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2013_10_12_english.pdf.

[31] A/HRC/24/30, paras. 21-23.

[32] A/HRC/24/30; A/68/502.

[33] Source: OPT Protection Cluster.

[34] See http://www.haaretz.com/news/diplomacy-defense/.premium-1.549795.

Palestinians approached the fence in northern Gaza reportedly with the intention of crossing into Israel; one was killed and the other was arrested by the IDF. An ambulance retrieved the body 400 metres from the fence. According to the medical report, numerous bullet entry holes were found in the victim's back and the left side of his upper body. In another case documented by OHCHR, on 18 August, a day labourer — reportedly harvesting okra in eastern Gaza city about 400 metres from the fence — was shot in the leg without any prior warning. There is no indication that these persons constituted an imminent threat to the IDF at the time of the shootings.[35] Based on information available to OHCHR, the use of force was excessive and unnecessary.

33. In November 2012, as part of the agreement, Israel extended the imposed fishing limit from 3 to 6 nautical miles.[36] While Palestinian fishermen have since increased their catch, they are still denied access to the most productive fishing areas, which start at approximately 8 nautical miles from the shore.[37]

34. Fishermen continued to be subjected to arbitrary detention, shot at with live ammunition, and have had their fishing boats and equipment damaged and/or confiscated. During the reporting period, 36 fishermen were detained and 10 injured;[38] 11 fishing boats were confiscated and 16 were damaged; the engines of nine boats, fishing equipment of numerous boats and approximately 500 fishing nets were damaged by the Israeli Navy.[39]

35. The means used by the Israeli Navy to enforce the access restricted areas continue to put fishermen at risk. Incidents of (warning) shots fired towards fishermen — including those within the imposed limits — continue to be reported on an almost daily basis.[40] On 19 May 2013, two fishermen were about 1 nautical mile from the shore in northern Gaza and were reportedly bringing in their catch of fish when two Israeli Navy patrol boats started to shoot into the water around them. Fearing arrest, the fishermen headed towards the shore. Both were arrested, taken to Ashdod in Israel, interrogated and released the next day; their boat and fishing equipment were confiscated.

36. The confiscation and damage of fishing nets, for which there is no discernible security justification, has a particularly negative impact on the fishermen, as nets are very expensive and few can afford to replace them.

37. Restricting Palestinian access to an essential part of their agricultural lands and imposing fishing limits on Palestinian fishermen undermine the livelihood of tens of thousands of Gazans, and violate their human rights, including their rights to work, to freely dispose of their natural wealth and resources, to an adequate standard of living and to food.[41]

Rocket and mortar shell fire from Gaza and Israeli airstrikes

38. Both Israeli and Palestinian armed groups in Gaza have breached the November 2012 ceasefire understanding on a number of occasions, although no major escalation in hostilities has taken place. The United Nations Department for Safety and Security reported 65 rockets and 15 mortar shells fired from Gaza towards Israel, with an additional 19

[35] Source: OHCHR-oPt.

[36] Following rocket fire from Gaza, the fishing zone was reduced to 3 nautical miles between 21 March and 21 May 2013.

[37] Source: FAO and Palestinian Fishermen's Syndicate in Gaza.

[38] Source: OPT Protection Cluster; information gathered suggests that all but one were released.

[39] Source: Union of Agricultural Work Committees.

[40] Ibid.

[41] ICESCR, arts. 1, para. 2, 6 and 11.

rockets and five mortars landing within Gaza and 20 rockets exploding at the launching site during the reporting period. No injuries were reported. The rockets are indiscriminate and a violation of international law.[42] Israel conducted 13 airstrikes, fired at least two tank shells and opened heavy machine-gun fire from a helicopter, causing the death of five persons and injuring two others. It is alleged that six of the victims were members of an armed group. Reportedly, five Israeli soldiers were injured in one of these incidents on 1 November 2013.[43] The IDF also conducted 58 incursions into Gaza.

C. Issues affecting the West Bank, including East Jerusalem, and Gaza

1. Detention, torture and ill-treatment

39. During the reporting period, lack of respect for the rights of persons deprived of their liberty by all three duty bearers across the Occupied Palestinian Territory remained a cause of concern. There were some positive developments, with the Palestinian Preventive Security Service (PPS) allowing unannounced visits by OHCHR to their detention facilities, while Israel made some initial positive responses to United Nations Children's Fund (UNICEF) regarding the detention of minors.

Israel

40. Israel continued to detain large numbers of Palestinians. As of 1 October 2013, 5,046 Palestinians were in Israeli detention: 135 in administrative detention on security grounds, without charge or trial, with well over half of these held for more than six months, some held for more than three years.[44] As previously stressed by the Secretary-General, only in exceptional circumstances may administrative detention be permissible. One of the most problematic areas where Israeli practices fall short of applicable international standards is the use of "secret evidence" as the basis of detention.[45]

41. The Secretary-General has underlined that there are very serious concerns about Israel's treatment of minors in detention, and UNICEF has found widespread, systematic and institutionalized ill-treatment of Palestinian children in the Israeli detention system.[46] The Israeli authorities have since engaged with UNICEF on its recommendations following the publication of its findings in February 2013, including, for example, piloting a test scheme of summons in place of night arrests.

42. However, there is still cause for serious concern. In a survey of 19 cases of alleged ill-treatment in the second quarter of 2013, UNICEF documented violations including physical abuse, painful restraint techniques, blocking of family access and failure to inform detainees of their right to legal counsel.[47]

43. Concerns extend to all detainees, not just children, as underlined by the death of Arafat Jaradat in the custody of the Shin Bet (Israel Security Agency) on 23 February 2013. According to the chief pathologist of the Palestinian Authority, who was present at a preliminary autopsy performed at the National Institute of Forensic Medicine in Israel, his body showed clear signs of torture. Reportedly, the autopsy listed no cause of death,

[42] A/HRC/22/35/Add.1, para. 10.
[43] See http://www.jpost.com/Defense/Palestinians-say-one-man-killed-one-wounded-by-IDF-shelling-in-Gaza-330325.
[44] Source: B'tselem (as of 30 September 2013); Addameer (as of 1 October 2013).
[45] A/67/372, paras. 26 and 27.
[46] A/HRC/24/30, paras 56–57; CRC/C/ISR/CO/2-4, paras. 35–36.
[47] www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.

although an investigation into the circumstances of Jaradat's death is ongoing.[48] The lack of accountability for such allegations remains a very serious concern.

Palestinian Authority

44. The recent willingness of the PPS to allow OHCHR free and unannounced access to detention facilities is encouraging. It is an important step forward that will hopefully be continued and replicated by all Palestinian detaining authorities.

45. Concerns remain regarding the arbitrary detention and ill-treatment of detainees in the custody of the PPS and the Palestinian General Intelligence Service (GIS), including detainees linked to political opposition groups. While ill-treatment of detainees in GIS custody is not systematic, OHCHR documented a pattern of ill-treatment against those who do not make confessions. In several cases, detainees have alleged been blindfolded, handcuffed, slapped in the face and kicked in the legs. OHCHR also documented five cases during the reporting period where the authorities allegedly held detainees incommunicado and used sleep deprivation and stress positions. In at least one case, the detainee alleged multiple violations that may have amounted to torture.

46. OHCHR was only able to interview a small sample of detainees held by PPS in the latter part of the reporting period, but it documented one case in which a detainee alleged that he was held in stress positions, subjected to sleep and sunlight deprivation and held incommunicado for 14 days. Several detainees reported being held incommunicado in the first two weeks of detention when detainees tend to be most vulnerable. As recorded on many previous occasions, both GIS and PPS continued to detain suspects arbitrarily despite orders to release detainees by the courts, thereby undermining the rule of law.[49]

De facto authorities in Gaza

47. Arbitrary detention, torture and ill-treatment by the de facto authorities remained issues of concern in Gaza (see paras. 62–66 below). OHCHR received numerous reports of persons being arbitrarily detained for periods of up to a few months by the internal security agency across the Gaza Strip. Many detainees were allegedly subjected to *shabeh*[50] and sleep deprivation, with their heads covered with a bag for from a few days up to a few weeks. Detainees were reportedly allowed to remove the bag during prayers but, in most cases, not during interrogations. At meal times, most of the detainees were only allowed to lift the bag above their nose. Several detainees reported exposure to further ill-treatment and, at times, torture, including being hit on the soles of their feet, having their head hit against a wall and being slapped in the face or beaten with sticks, rubber tubes or lashes on other parts of their body.

48. In August 2013, two men were summoned to the internal security agency in northern Gaza and allegedly detained, interrogated and tortured because one of the men was involved in a public disagreement over a political issue. Both were blindfolded after arriving at the agency and accused of inciting people against the de facto authorities. One of the men said he was slapped in the face, kicked and beaten with sticks on his legs and on

[48] See www.haaretz.com/news/diplomacy-defense/autopsy-shows-palestinian-prisoner-died-from-torture-says-pa-chief-pathologist-1.505545; for further information see Public Committee against Torture in Israel (PCATI).

[49] A/HRC/19/20, para 42.

[50] *Shabeh* entails holding a stress position for extended periods of time.

the soles of his feet. The other was reportedly beaten with sticks and a lash, and made to stand on one leg with arms lifted, while being beaten on the leg he was standing on.[51]

49. Detainees were held longest at the interrogation centre of the security agency in Gaza City and were allegedly prevented from meeting with their families during the interrogation phase which, in some cases, lasted several months. If at all, detainees were reportedly only able to meet their lawyers after the interrogations were completed and then only in the presence of security agency officials. This was the case of a 27-year-old man who was arrested by the internal security agency in April 2013 for collaborating with Israel. He was subjected to *shabeh* and sleep deprivation, and was only allowed to see his family after a month of detention, with no access to his lawyer during that period. [52]

2. Accountability

Israel

50. According to an Israeli NGO, in 2012, Israeli Military Police Criminal Investigation Division opened 103 investigations into allegations of criminal offences by members of the IDF against Palestinians and their property in the Occupied Palestinian Territory. This represented response to approximately 40 per cent of allegations received, compared to 62 per cent between 2000 and 2011.[53]

51. Available information indicates that not a single criminal investigation was opened into allegations of violations of international humanitarian law in Gaza by the IDF during the escalation of tension in November 2012.[54] A Palestinian human rights NGO appealed 13 decisions not to open investigations; each appeal was either rejected or pending as of 8 November 2013.[55]

52. In the West Bank, criminal investigations were immediately opened in 12 of the 20 Palestinian deaths in which the IDF were implicated during the reporting period, including some of those documented above.[56] It appears that some cases were not opened because of claims that firearms were used against the IDF.

53. Many human rights violations committed by the IDF during law enforcement operations were not investigated, both in the West Bank and in Gaza. A revised policy adopted by the Military Advocate General in 2011 to automatically open investigations into certain cases applies only where a Palestinian is killed outside of "an activity with clear elements of combat," and excludes Gaza.[57] For cases outside the scope of the policy, a criminal investigation is not normally opened unless concerns are raised during an operational debriefing.[58]

54. Even when opened, criminal investigations are beset with delays and other problems and rarely result in indictments. According to information collected by human rights organizations, only six IDF soldiers have been convicted of offences related to the deaths of Palestinians since September 2000, although over 179 such investigations were opened

[51] Source: OHCHR-oPt.
[52] Ibid.
[53] See http://www.yesh-din.org/userfiles/file/datasheets/Law%20Enforcement%20upon%20-%202012.pdf.
[54] Also A/HRC/22/35/Add.1; A/HRC/24/30.
[55] Source: Palestinian Centre for Human Rights (PCHR).
[56] Source: B'tselem.
[57] See http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx; A/66/356, para. 18.
[58] See A/HRC/12/48, para. 121 for examples of shortcomings of operational debriefings.

between 2003 and 2012.[59] There was only one indictment of a soldier in relation to the killing or serious injury of a Palestinian during this reporting period. In this case, the soldier was convicted of negligent homicide of a Palestinian crossing the wall, and received a seven-month prison sentence.[60] As previously mentioned by the Secretary-General, the Turkel Commission made a number of recommendations regarding accountability for violations of international law.[61] In 2013, there were reports that the Ministry of Justice was forming a commission to study the recommendations.[62] However, by the end of the reporting period there had been no formal public announcement regarding any steps taken in that regard.

55. The lack of effectiveness of investigations into allegations of torture and ill-treatment by the Israeli security forces continues to be a cause of serious concern. Impunity for Israeli security officers is particularly prevalent, with not a single investigation into the 776 complaints made since 2001.[63] The effectiveness of the investigative system appears to be undermined, in part, by the lack of independence of the investigators.[64] Although in 2013, Israel announced the establishment of a new independent investigative mechanism for such complaints, as of November 2013, it was not yet operational. With regard to such allegations against the IDF, judicial responses, such as the conviction in November 2013 of two soldiers for beating a Palestinian in their custody, remain rare.[65]

56. Palestinians continue to face a barrage of legal and procedural barriers when seeking to access remedies for violations by the IDF.[66] Under the presiding tort law of 1952, the State is not civilly liable for acts by the IDF which are "performed in the course of a wartime action".[67] In the reporting period alone, over 30 civil cases were dismissed at the preliminary stages on the basis of this broad exemption.[68] One exceptional case was Israel's agreement to pay US$50,000 in compensation to the families of three boys killed in northern Gaza in 2001.[69]

Palestinian Authority

57. The lack of effective and transparent investigation into cases of alleged unlawful killing, torture and ill-treatment involving the Palestinian security forces is of serious concern. Of the five investigative committees established in 2012 to look into various allegations, the report of only one committee was published, and it did not provide details of any action taken against perpetrators.[70] There is also a grave failure to properly investigate allegations of torture and ill-treatment. The Independent Commission for Human Rights (ICHR) had filed 124 such complaints in respect of the West Bank as of 31

[59] See http://www.yesh-din.org/postview.asp?postid=263.

[60] Source: Yesh Din and B'tselem; the sentence was reported as nine months in A/HRC/24/30, para. 47.

[61] A/68/502, para. 29.

[62] See http://www.jpost.com/Diplomacy-and-Politics/Is-govt-following-Turkels-ideas-on-probing-war-crimes-323038.

[63] As of July 2013, according to PCATI.

[64] See http://www.stoptorture.org.il/files/PCATI_eng_web.pdf.

[65] See http://www.timesofisrael.com/soldiers-heading-to-prison-for-abusing-palestinian/.

[66] See http://adalah.org/Public/files/English/Publications/Articles/2013/Obstacles-Palestinians-Court-Fatmeh-ElAjou-05-13.pdf.

[67] Civil Wrongs (Liability of the State) Law 5712-1952, art. 5.

[68] Source: PCHR.

[69] See http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9861:12-years-following-their-deaths-pchr-succeeds-in-ensuring-remedy-for-3-children-of-lubbad-banat-and-al-madhoun-families&catid=145:in-focus.

[70] A/68/502, paras. 44–47.

October 2013, but consistently received outright denials from the authorities without initiation of a thorough and effective investigation.

De facto authorities in Gaza and armed groups

58. According to available information, no measures have been taken by the de facto authorities in Gaza to investigate credible allegations of violations of international humanitarian law by the said authorities or armed groups in Gaza, including the direct targeting of civilians and the indiscriminate firing of rockets towards Israel.[71]

59. Media reports, citing the spokesperson of the Interior Ministry of the de facto authorities, claim that following an investigation of the summary execution of alleged collaborators during the November 2012 escalation of tension,[72] measures had been taken against four prison officials "who had failed to do their jobs".[73] Besides lacking transparency, there is insufficient information to determine if any investigation met international standards. It appears that the armed men directly responsible for the killings continue to enjoy impunity.

60. In July 2013, at least 10 people were abducted and eight severely beaten by armed masked men in Gaza. The victims reported that the abductors presented themselves as members of Al-Qassam Brigades, the military wing of Hamas, and accused them of being involved in the Tramadol[74] trade. Officials of the de facto authorities were allegedly involved in providing the armed men with information about the location of the victims. During their abduction, the men — who were covered with bruises and at least eight of whom had broken legs — were allegedly blindfolded, handcuffed and severely beaten on numerous occasions, including with iron rods, prior to their release. At the time of writing this report, there were no indications that any investigations into these incidents were being conducted by the de facto authorities in Gaza.

3. Freedom of expression and peaceful assembly

Israel

61. During the reporting period, there continued to be serious concerns about the level of force used by Israeli security forces at demonstrations in the West Bank. For example, on 22 February 2013, in Abud village, Sameeh Asfour was fatally injured by an RCMB fired at demonstrators assembled to express solidarity with Palestinians in Israeli prisons.[75] Another reported incident took place on 19 July 2013 at a demonstration against settlement expansion and the seizure of a well by settlers. On that occasion a woman working for an Israeli NGO monitoring the demonstration was shot in the leg with an RCMB.[76]

Palestinian Authority

62. In the West Bank, including East Jerusalem, OHCHR continued to receive reports that journalists faced arrest and questioning for work deemed to be critical of the authorities. OHCHR documented cases of Palestinians arrested for distributing political leaflets, as reportedly was the case in the incidents at Askar and El Far'a refugee camps.

[71] Also A/HRC/22/35/Add.1; A/HRC/24/30.
[72] A/HRC/22/35/Add.1, paras. 40–45.
[73] See http://wap.npr.org/news/World/186975387?start=10.
[74] Tramadol is a painkiller that is sold illegally without a prescription; see http://tinyurl.com/po9oukw.
[75] See A/68/502, paras. 37 and 40; A/66/356, paras. 20–24; A/24/30, para. 45.
[76] http://www.btselem.org/press_releases/20130730_stop_using_rubber_coated_bullets_against_demonstrators.

While other legitimate charges may have been brought against the suspects in those cases, the fact that the authorities considered the distribution of critical political pamphlets a criminal issue is of concern.

De facto authorities in Gaza

63. The de facto authorities in Gaza continued to restrict the enjoyment of the rights to freedoms of expression and opinion and of peaceful assembly. Members of political parties, journalists, social media activists and academics were arbitrarily detained. They reported being ill-treated and, in some cases, tortured because of opinions expressed through different media platforms, including social media, and their involvement in activities considered to be political and against the de facto authorities or their policies.[77]

64. In August 2013, at least 20 Fatah members were arbitrarily detained and many reportedly ill-treated. The Fatah members were alleged to have distributed money to families of Fatah supporters who had been killed and injured during the 2007 intra-Palestinian clashes. Some were detained for weeks without charges and allegedly subjected to sleep deprivation, *shabeh*, beatings and extensive interrogation. Most stated they were obliged to sign documents stating their commitment to cease engaging in any political or other activities directed against the de facto authorities.[78]

65. A number of individuals were detained in relation to Tamarod.[79] In one case, a 40-year-old employee of the Palestinian Authority was detained for approximately 18 hours by the internal security agency in Rafah in September 2013. He was interrogated about his involvement with Tamarod and reportedly subjected to *shabeh* and other ill-treatment and repeatedly told to confess that he had received documents related to Tamarod. He was released, reportedly after the security agency discovered that its intelligence was wrong. In another case, a Fatah activist was arrested by the security agency on two occasions for his alleged pro-Tamarod campaign on Facebook. He was reportedly tortured during detention, threatened with further detention if he opened a new Facebook account, and forced to sign a paper stating that he would not engage in political activities.[80]

66. The de facto authorities also dispersed a number of peaceful demonstrations using excessive or unnecessary force. On 5 May 2013, the police of the de facto authorities forcibly dispersed a peaceful assembly organized by the Popular Front for the Liberation of Palestine protesting against Israel's attacks on Syria. Demonstrators and journalists were beaten with sticks, and some were detained for a few hours. The photography equipment of some journalists was confiscated or damaged.[81] Shortly after, officials of the de facto authorities issued a statement denouncing the use of force against the journalists and apologizing for the "harsh treatment" they had undergone. However, the authorities maintained that the protest was unlawful, arguing that legal procedures had not been followed.[82] The spokesperson of the Ministry of the Interior of the de facto authorities requested that a commission of inquiry be established to investigate the incident. Since then, there has been no indication that this commission has been formed.

[77] Source: OHCHR-oPt.

[78] Ibid.

[79] *Tamarod* means rebellion. In Gaza, there appear to be a few Tamarod groups that gather followers through social media, independently from any political party. Tamarod is also the name of a protest movement in Egypt.

[80] Source: OHCHR-oPt.

[81] Ibid.

[82] See http://tinyurl.com/o4hw3tn.

67. Another serious issue of concern was the closure of two media offices. On 25 July 2013, the Prosecutor General of the de facto authorities in Gaza issued an order to temporarily close Ma'an News Agency and Al-Arabiya News Channel, accusing them of distributing false news regarding Hamas and its role in relation to political developments in Egypt. Ma'an News Agency reported that the de facto authorities provided it with a list of preconditions to be met in order to reopen the news agency, which were inconsistent with press freedom. Both offices were reopened in mid-November, without preconditions.

4. Death penalty and the right to life

Palestinian Authority

68. On 4 May 2013, the Permanent Military Court in Jenin sentenced a security officer to death by firing squad for collaborating with Israel. In line with recent practice, the Palestinian President did not ratify this or any other death sentences. Pursuant to the President's instruction, Palestinian military courts have retried a number of death-row prisoners and sentenced them instead to terms of imprisonment.

De facto authorities in Gaza

69. Since 2008, courts of the de facto authorities in Gaza have issued 60 and upheld eight death sentences previously issued by the courts of the Palestinian Authority in Gaza.[83] The de facto authorities executed three persons during the reporting period, bringing to a total of 17, the number of executions since its takeover of Gaza.

70. Palestinian Basic Law rightly restricts the jurisdiction of military courts to "military affairs" (art. 101 (2)). In Gaza, under existing laws,[84] the de facto authorities can impose the death penalty for a broad range of crimes, and civilians continue to be tried by military courts[85] despite the recommendations of the United Nations Human Rights Committee.[86] On a number of occasions, the United Nations High Commissioner for Human Rights has urged the de facto authorities to halt executions, and raised concerns about the process by which death sentences were imposed in Gaza.[87] OHCHR consistently documented allegations of denial of the right to receive legal assistance, the use of ill-treatment and torture during interrogations and violations of the right to a fair trial by both civilian and military courts of persons later sentenced to death.

71. In addition, persons sentenced to death are being denied the right to seek pardon or commutation of their sentences. None of the 17 executions in Gaza were ratified by the President, as required under Palestinian law. Moreover, trials failed to meet fair trial standards, which is of heightened concern where the death penalty may be applied.[88]

[83] Source: PCHR, ICHR, B'tselem. No official figures on the number of persons on death row are available.

[84] Mandatory Criminal Code Ordinance No. 74 of 1936, amended by Egypt's Military Governor Order No. 555 of 2 April 1957 and the Revolutionary Penal Code of 1979.

[85] As of 28 October 2013, 44 death sentences were issued by Military Courts, out of a total of 60 in Gaza.

[86] Human Rights Committee general comment No. 32 (2007) on Article 14, para. 22; also CCPR/CO/70/PER, para. 12; Basic Principles on the Independence of the Judiciary (1985), principle 5.

[87] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13628&LangID=E.

[88] Ibid.

5. Violence against women

72. Women in the Occupied Palestinian Territory face multiple layers of violence and discrimination. The analysis made by the Special Rapporteur on violence against women in 2005 remains valid. She found that the combination of decades of Israeli occupation, the use of force against Palestinians by Israel, the different forms of resistance used by Palestinians against such use of force and the patriarchy prevailing in Palestinian society expose women to a continuum of violence in all spheres of life.[89]

73. Palestinian NGOs report that violence against women continues to be widespread[90] and so-called "honour killings"[91] remain of concern. Family honour plays a fundamental role in Palestinian society. Although there are no reliable statistics on "honour killings,"[92] in 2012,[93] ICHR documented five such cases across the Occupied Palestinian Territory.[94] However, there appears to be underreporting of cases; 13 additional cases of murder of women were documented as occurring under "mysterious" circumstances, which indicates that the number of "honour killings" may be higher.[95]

74. In 2011, the Palestinian President abolished article 340 of the 1960 Jordanian Penal Code,[96] which had been in force in the West Bank, and which allowed effective impunity for men who kill or injure their wives or female relatives (*maharim*) [97] whom they consider to be involved in adultery. However, this measure has not been effective as provisions establishing mitigating circumstances remain in force, in particular article 98 of the Penal Code,[98] which provides for reduced penalties for a person who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim.[99] An NGO study of cases of "honour killings" between 2005 and 2010 showed that the evocation of such mitigating circumstances had dramatically reduced penalties.[100] In eight out of 10 cases, the perpetrators were charged with premeditated murder, which carries life imprisonment,[101] however, in most of the cases, due to a combination of mitigating circumstances and the victim's family's decision to "drop" the victim's personal rights,[102]

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89 A/HRC/13/54, para. 54; E/CN.4/2005/72/Add. 4.

90 Women's Studies Centre and Women's Affairs Center, Palestinian women in the cycle of violence, December 2012.

91 While some Palestinian NGOs prefer the term "femicide", this report follows the terminology used by the Committee on the Elimination of Discrimination against Women.

92 A/HRC/13/54, para 56; also http://www.pwrdc.ps/site_files/Fact%20Sheet%20E%20-%20Womens.pdf.

93 The Women's Centre for Legal Aid and Counselling (WCLAC) recorded 25 cases of gender-based killings between January and October 2013.

94 ICHR, Eighteenth Annual Report, 2012, p. 68.

95 Reportedly, in one case the medical report falsely stated that the cause of the death was natural; see ICHR, Eighteenth Annual Report, 2012, p. 275.

96 Gaza applies the Mandatory Criminal Code Ordinance No. 74 of 1936.

97 *Maharim* means relatives whom one cannot marry. See also OHCHR, "The consistency of applicable Palestinian legislation with international human rights law", 2013, p. 9.

98 Also articles 97 and 99.

99 This provision has been used repeatedly to reduce penalties for perpetrators of "honour killings"; see also Lynn Welchman and Sara Hossain, eds., *'Honour': Crimes, Paradigms and Violence Against Women*, (London, U.K., Zed Books, 2005), pp. 174–176.

100 WCLAC, "Court judgments issued against perpetrators of murders of women", 2011 (in Arabic).

101 Article 328 of the 1960 Jordanian Penal Code establishes the death penalty for premeditated murder. However, ordinarily, this is replaced by life imprisonment.

102 The Jordanian Penal Code provides for the protection of two types of rights: personal and societal; a victim, in this case, the victim's family, can renounce the criminal action related to personal rights. However, victims cannot renounce criminal actions related to societal rights, since they fall outside of the personal sphere.

penalties did not exceed five years. Furthermore, in most of the cases, the perpetrators were close family members, including brothers, fathers and mothers. The study also revealed that only 10 judgments were handed down in such cases between 2005 and 2010.[103]

IV. Recommendations

A. Recommendations to the Government of Israel

75. **Lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population, and ensure that any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza are consistent with international law.**

76. **Ensure that the use of force by its security forces, including in the access restricted areas, in situations other than hostilities is in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by carrying out an independent review and any necessary revisions of rules of engagement or regulations on opening fire to ensure their consistency with international law.**

77. **Carry out prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, torture and ill-treatment and ensure that the investigations are subject to public scrutiny and allow for meaningful victim participation. Prosecute individuals responsible for violations and provide victims with an effective remedy. As an initial step to reforming the investigative system, implement the recommendations contained in the second report of the Turkel Commission.**

78. **Immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, including Massafer Yatta. Permit and facilitate the return of those communities already subjected to forcible transfer or eviction to the their original dwellings and ensure adequate housing and legal security of tenure.**

79. **Charge or release any detainees held in administrative detention and bring to an end the administrative detention regime.**

80. **Implement the recommendations made by UNICEF and the Committee on the Rights of the Child[104] regarding the treatment of Palestinian children in detention.**

B. Recommendations to the Government of the State of Palestine

81. **Ensure that the use of force and treatment of detainees by all security forces is in compliance with international human rights law and principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that the new PPS Code of Conduct is applied in practice. Conduct regular training on international human rights law, the Basic Principles and the PPS Code of Conduct for security officers, and investigate and review operations to ensure regular compliance.**

[103] WCLAC, "Court judgment", 2011 (see footnote 113 above).

[104] UNICEF, *Children in Israeli Military Detention: Observations and Recommendations*, February 2013; CRC/C/ISR/CO/2-4, especially paras. 35 and 36.

82. **Conduct prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing, injury, torture and ill-treatment by security forces, including, for example, the killing of Amjad Odeh at Askar refugee camp. Ensure that such investigations are transparent, that the results are made public and that those responsible are brought to justice in fair trials.**

83. **Publish in full the reports of investigative committees.**[105]

84. **Ensure that court decisions ordering the release of detainees are respected and promptly enforced and take appropriate measures against those institutions and individuals not respecting such orders.**

85. **Ensure that journalists and political activists are able to carry out their work without hindrance, in particular, ensure that security services refrain from arresting or harassing people for distributing or publishing materials that are critical of the Palestinian Authority.**

86. **Officially declare a formal moratorium on the death penalty, pending abolition.**

87. **Adopt necessary measures to effectively investigate, prosecute and bring to justice perpetrators of all acts involving violence against women and, in particular, amend the criminal legislation in order to prevent impunity and reduced penalties for so-called "honour crimes".**

C. Recommendations to the de facto authorities and Palestinian armed groups in Gaza

88. **The de facto authorities in Gaza must respect international humanitarian law, especially in relation to the principle of distinction, and ensure accountability for violations.**

89. **Palestinian armed groups in Gaza must respect international humanitarian law.**

90. **The de facto authorities must refrain from unlawful restrictions on free speech and peaceful assembly, including closing entire media outlets, and must allow journalists, political activists, social media activists, academics and others to carry out their work and exercise their public freedoms without hindrance, including freedom from arbitrary arrest, torture and ill-treatment. The authorities must investigate any violations against such persons.**

91. **The de facto authorities must take all necessary measures to ensure that detentions are in line with international human rights norms and standards, and must ensure the immediate end of the use of torture and ill-treatment by its security forces. They must promptly, thoroughly, effectively, independently, impartially and transparently investigate all allegations of torture and ill-treatment, as well as impose appropriate sanctions against those responsible based on fair trials, and provide victims with adequate, effective and prompt reparations for the harm suffered.**

92. **The de facto authorities in Gaza should impose an immediate moratorium on executions, and cease the use of military tribunals to try civilians.**

[105] See para. 56 above.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolution S-21/1 on ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem*

Summary

The present report is submitted pursuant to Human Rights Council resolution S-21/1 on ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem. It provides information on the status of implementation of the resolution, including measures taken to ensure accountability.

The report provides an update on the steps taken by the Government of Switzerland to resume consultations on the question of reconvening a conference of the High Contracting Parties to the Fourth Geneva Convention and outlines the steps taken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the commission of inquiry, pursuant to resolution S-21/1. It also contains information on the activities of special procedures mandate holders in relation to their efforts to seek and gather information on all human rights violations in the Occupied Palestinian Territory, including East Jerusalem.

The report further presents preliminary information, generally covering the period from 12 June to 26 August 2014, gathered by OHCHR on the situation of human rights in the West Bank, including East Jerusalem, and in the Gaza Strip.

* Late submission.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution S-21/1, adopted at the twenty-first special session of the Council on 23 July 2014. The report addresses the status of implementation of resolution S-21/1, notably with regard to the reconvening of the conference of High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (the Convention), support to the Commission of Inquiry established pursuant to resolution S-21/1 and the relevant activities by special procedures mandate holders.

2. The report also presents preliminary information gathered, primarily between June and August 2014, by the Office of the United Nations High Commissioner for Human Rights (OHCHR), on violations of international human rights law and international humanitarian law in the West Bank, including East Jerusalem and in the Gaza Strip. It also includes information available as of August 2014 on accountability measures relating to such violations.

II. Status of implementation of resolution S-21/1

A. Conference of High Contracting Parties to the Fourth Geneva Convention

3. In resolution S-21/1, the Human Rights Council recommended that the Government of Switzerland promptly reconvene the conference of High Contracting Parties to the Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1 common to the four Geneva Conventions (para. 11). On 12 August 2014, by note verbale to the Permanent Mission of Switzerland to the United Nations at Geneva, OHCHR requested information regarding the steps taken by the Government of Switzerland in that regard.

4. By note verbale dated 25 August 2014, the Permanent Mission of Switzerland stated that it had received two letters, from the President of the State of Palestine, dated 9 July 2014, and from the Foreign Minister of the State of Palestine, dated 22 July 2014, regarding the application of the Convention in the Occupied Palestinian Territory. Switzerland noted that, on 22 July 2014, it had sent the two letters to the High Contracting Parties, informing them of its intention, as the depositary of the Convention, to resume the consultations, which had been suspended in 2011, on the question of reconvening the conference of the High Contracting Parties.

5. Switzerland emphasized that, as the depositary of the Convention, it could only convene such conference if the High Contracting Parties so wished, but that it would act as facilitator and lead the consultation in a spirit of impartiality. It also suggested that any conference should be inclusive and focus on the object of the Convention, namely the humanitarian needs and protection of the civilian population affected by the conflict.

6. On 28 July 2014, with reference to General Assembly resolution 64/80 and Human Rights Council resolution S-21/1, Switzerland initiated consultations with High Contracting Parties to ascertain the existence of a critical mass of support to engage in a conference of the High Contracting Parties on compliance with the Convention in the Occupied Palestinian Territory. It approached a representative sample of more than 40 parties to the Convention, as well as international organizations, including the International Committee of the Red Cross, stating its readiness to engage bilaterally with any other party which so

wished. Parties were invited to submit their input regarding the format, themes and expected results of such a conference by early September 2014, which would be reflected in a second round of consultations. Switzerland noted that the process would enable the High Contracting Parties to make a fully informed decision regarding any eventual reconvening of the conference of the High Contracting Parties.

B. Establishment of the commission of inquiry

7. In resolution S-21/1, the Human Rights Council decided to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Council, to the Occupied Palestinian Territory, including East Jerusalem. The commission was mandated to, inter alia, investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults (para. 13).

8. On 11 and 25 August 2014, the President of the Human Rights Council appointed William Schabas (Canada) as Chair, and Doudou Diène (Senegal) and Mary McGowan Davis (United States of America) as members of the commission of inquiry.[1]

9. The commission of inquiry will be operational once its secretariat has been established. On 30 July 2014, OHCHR advertised seven temporary posts for that purpose, and recommendations of candidates for core posts were submitted to the High Commissioner during the last week of August and the first week of September. Several secretariat staff members have been selected. The commission convened its first meeting and held briefings in Geneva in September 2014. It will undertake approximately six weeks of field visits, starting as soon as possible, and return to Geneva for two weeks in March 2015 to finalize and submit its report to the Human Rights Council at its twenty-eight session.

C. Activities of special procedures mandate holders

10. The Human Rights Council requested all relevant special procedures mandate holders to urgently seek and gather information on all human rights violations in the Occupied Palestinian Territory, including East Jerusalem (resolution S-21/1, para. 12).

11. At the twenty-first special session of the Human Rights Council, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 delivered a statement on behalf of the Coordination Committee of the Special Procedures of the Human Rights Council.[2] In the statement, the special procedures mandate holders urged prompt, independent and effective investigations into all allegations of violations of international humanitarian and human rights law, and offered the independent human rights expertise of the respective mandate holders to assist in the conduct of those investigations. The mandate holders also requested unhindered access to all affected areas and cooperation by the respective Governments of Israel and of the State of Palestine.

[1] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14934&LangID=E and http://unispal.un.org/UNISPAL.NSF/0/F3F05FA912746BB285257D3F0070BEFD.

[2] See text of statement at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14894&LangID=E.

12. The State of Palestine extended a standing invitation to all special procedures mandate holders, and communicated its acceptance of a country visit by the Special Rapporteur on violence against women and proposed that it take place in January 2015. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 formally requested the respective Governments of Israel and of the State of Palestine to grant him access to the Occupied Palestinian Territory in September 2014. The Government of the State of Palestine responded positively to the request in a note verbale dated 27 August 2014. No response had been received from Israel as of the end of August 2014.

13. A wide array of civil society organizations submitted information to thematic special procedures mandate holders working in the areas of economic, social and cultural rights. The human rights concerns raised relate to the destruction of homes and essential infrastructure, the lack of safe shelter and overcrowded living conditions, due to mass displacement, electricity blackouts and shortages of food, drinking water and medical supplies. The impact on the population in Gaza, particularly on the most vulnerable, including children, persons with disabilities and older men and women, continues to be of serious concern.

14. Summaries of relevant special procedure communications sent to the countries concerned can be found in the joint communications report of special procedures.

III. Monitoring by the Office of the United Nations High Commissioner for Human Rights

15. The field presence of OHCHR in the Occupied Palestinian Territory continued to monitor the human rights and humanitarian law situation in the West Bank, including East Jerusalem, and in the Gaza Strip during the period from 12 June to 26 August 2014, when an open-ended ceasefire between the parties to the hostilities entered into force. The overwhelming scale of the monitoring demands and the prevailing security situation in Gaza made it impossible to undertake a complete verification and analysis of all the information received in the time available for the preparation of the present report. As such, all data and findings contained herein are preliminary and subject to further verification.

A. Situation in the West Bank, including East Jerusalem

16. Following the kidnapping of three Israeli youths on 12 June 2014, the Israeli Security Forces launched extensive search and arrest operations in the West Bank, including East Jerusalem, especially in the Hebron area. Reportedly, between 1,100 and 1,500 Palestinians were detained, including 27 members of the Palestinian Legislative Council. Restrictions on the freedom of movement of Palestinians and damage to property were reported during the operations. The bodies of the three youths were discovered on 30 June. Shortly thereafter, the Israeli authorities resumed the practice of punitive house demolitions, which had been suspended in 2005, partially demolishing the homes of two Palestinians suspected, but not convicted, of the murders. Six relatives of the suspects, including two children, were consequently displaced.[3] In August 2014, complete court-sanctioned demolitions were carried out of the homes of the two suspects. Furthermore, on 31 August, the Israeli Civil Administration declared 988 acres (3,799 dunums) of

[3] See United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Protection of Civilians Weekly Report, 24–30 June 2014, available from www.ochaopt.org/reports.aspx?id=104.

Palestinian land, south of Bethlehem, as State land, reportedly "in response" to the kidnapping and murders.[4]

17. Amid the climate of incitement and racial hatred following the discovery of the three murdered Israeli youths, a 16-year-old Palestinian boy from Shu'fat, East Jerusalem, was found murdered on 2 July, in an apparent revenge killing. Israeli police arrested three suspects shortly afterwards, who have since been charged and are awaiting trial.

18. Clashes between Palestinians and Israeli Security Forces took place throughout the reporting period. In the first wave between 12 and 30 June 2014, in the context of extensive search and arrest operations, seven Palestinians were killed and more than 780 injured. From 2 to 7 July 2014, following the murder of the Palestinian boy, some 570 Palestinians were reportedly injured by Israeli Security Forces, including 31 people injured by live fire. Seventeen Israeli Security Force officers were reportedly also injured in the violence. Clashes between Palestinians and Israeli Security Forces in the West Bank continued after Israel launched its military operation in Gaza on the night of 7 July, killing 12 Palestinians and injuring more than 1,000 people in the last two weeks of July alone. From 12 June to 26 August 2014, a total of 27 Palestinians were killed, including four children, and almost 3,000 were injured, including 980 people who were apparently hit by live ammunition.[5] According to initial findings by OHCHR, in a number of cases, there did not appear to be any imminent lethal threat posed by those killed by the Israeli Security Forces. The high number of killings and injuries during the reporting period give rise to serious concerns over excessive use of force by Israeli Security Forces.[6]

19. The serious deterioration in the situation in the West Bank, including East Jerusalem, during the reporting period has been largely overshadowed by events in Gaza, but remains grave cause for concern. With regard to violations of international humanitarian and human rights law, the actions of the Israeli forces raise various concerns: excessive use of force, including use of live ammunition against unarmed demonstrators; arrest and detention of hundreds of Palestinians, including members of the Palestinian Legislative Council, in violation of fair trial rights; and restrictions on the freedom of movement of Palestinians. Some actions by the Israeli authorities, especially in the Hebron area, may amount to collective punishment.

B. Situation in Gaza

20. An increase in hostilities between Israel and Palestinian armed groups was already noted since early June 2014. During that month, the Israeli Defense Forces carried out targeted killings of six members of armed groups, which also resulted in the killing of one child and injury to three Palestinian civilians. Around 60 civilians were injured in Israeli airstrikes on targets across the Gaza Strip.[7] The firing of rockets and mortars from Gaza towards Israel also increased noticeably. Three Israelis were reported injured in those

[4] See "Israel appropriates massive tracts of West Bank land", available from www.haaretz.com/news/diplomacy-defense/.premium-1.613319.

[5] Source: OHCHR (fatalities) and OCHA (injuries). Note: The injured include those suffering from tear gas inhalation and requiring medical attention.

[6] There were reports of isolated incidents of Palestinians firing live ammunition towards Israeli Security Forces, although no injuries were reported.

[7] Source: OCHA, Protection of Civilians Weekly Reports, available from www.ochaopt.org/reports.aspx?id=104..

attacks.[8] Furthermore a two-year-old Palestinian girl was killed, and one adult and four children were injured by rockets that apparently fell short and landed in Gaza.[9]

21. Late on 7 July 2014, Israel launched a military operation in Gaza, code-named "Protective Edge".[10] The operation can be broken into three phases: a period of air, land and naval strikes, between 7 and 17 July; a ground operation by Israeli forces entering the Gaza Strip, from 18 July to 5 August, accompanied by continuing airstrikes; a period of alternating ceasefire and military strikes, until an indefinite ceasefire came into effect on 26 August. Between 8 July and 26 August, 5,830 missiles in 4,028 air raids, 16,507 artillery and tank projectiles and 3,494 naval shells were fired at targets in the Gaza Strip. During the same period, Palestinian armed groups fired 4,844 rockets and 1,734 mortars towards Israel, of which, at least 243 were intercepted by the Iron Dome anti-missile defence system.[11] At least 31 more fell short and landed in Gaza.

22. According to preliminary data as of 9 September 2014,[12] 2,142 Palestinians were killed, between 7 July and 26 August, or died from injuries sustained during that period. Of those, 1,474 are believed to have been civilians, including 501 children and 257 women. Another 381 could either not be identified or their status has yet to be determined, while 287 members of armed groups are believed to have been killed.[13] According to Israeli media reports, as of 4 September 2014, at least four Israeli civilians, including one child, one foreign civilian in Israel, 66 Israeli soldiers and one person, whose status is not yet known, were killed during the reporting period.[14] Dozens more Israelis, including at least six children, were directly injured by rockets, mortars or shrapnel.[15] More than 180 Israeli soldiers were reportedly injured.

23. According to the Ministry of Health in Gaza, 11,100 Palestinians, including 2,088 women and 3,374 children, were injured between 7 July and 26 August 2014. Furthermore, during the same period, 18,080 housing units were totally destroyed or had become uninhabitable, leaving approximately 108,500 people homeless.[16] As of 26 August 2014, approximately 479,000 Palestinians—more than a quarter of the entire population of

[8] See www.jpost.com/Defense/Two-more-Gaza-rockets-fired-at-southern-Israel-after-hit-on-Sderot-factory-360872.

[9] Source: OHCHR.

[10] See https://twitter.com/IDFSpokesperson/status/486274187636396035; also www.idfblog.com/blog/2014/08/05/operation-protective-edge-numbers/.

[11] Source: United Nations Department of Security and Safety.

[12] Throughout the hostilities, OHCHR, in its capacity as leader of the Protection Cluster in the Occupied Palestinian Territory, compiled figures on fatalities . The methodology involved the compilation of initial reports of fatalities in the media and from other sources, which were then cross-checked and verified in collaboration with a number of international, Palestinian and Israeli partner organizations. Where possible, each individual's name, age, sex, place of death as well as status (civilian or combatant) was determined and recorded. Multiple sources were cross-referenced, not only from media and various human rights organizations, but also information released by the Israeli Defense Forces and by the armed groups regarding the identity of combatants. Information from the Ministry of Health in Gaza was one, but not exclusive, source of information. Verification of the preliminary information was continuing through interviews, as the security situation eased, and preliminary data was being revised and updated. OHCHR updates the information daily and overall figures have been published on the OCHA website on behalf of the Protection Cluster.

[13] This fatality toll does not include the approximately 25 Palestinians reported killed by armed groups in Gaza since 21 August 2014 , for allegedly collaborating with Israel.

[14] See www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf; and www.jpost.com/Operation-Protective-Edge/In-Memoriam-The-27-IDF-soldiers-who-gave-their-lives-to-protect-Israel-368493.

[15] See www.ochaopt.org/documents/ocha_opt_sitrep_27_08_2014.pdf.

[16] See OCHA documents in footnotes 16 and 17 above.

Gaza—had been displaced, including approximately 289,109 people, who were sheltering in schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), 48,742 people in government shelters and at least 140,895 who were staying with relatives.[17]

24. OHCHR preliminary monitoring and external reports on the conduct of hostilities by the Israeli forces raised concerns under international law, including international humanitarian law and international human rights law. In particular, serious questions arose over the apparent failure to respect the principles of distinction, proportionality and precaution under international humanitarian law in attacks, including the targeting of civilian objects, leading to the killing of civilians; the targeting of apparent military objectives, with possible failure to take all necessary precautions; attacks which may fail the proportionality test; indiscriminate attacks impacting the civilian population and civilian objects without distinction, especially during the ground operations; attacks on schools, including the UNRWA schools that were used as shelters for internally displaced persons, in breach of the inviolability of United Nations premises; attacks on hospitals, ambulances and ambulance staff; and allegations of the use of Palestinians as human shields.[18]

25. OHCHR preliminary monitoring and external reports on the conduct of Palestinian armed groups, including Hamas, during hostilities also raised human rights concerns and concerns under international humanitarian law. Of particular concern were the indiscriminate nature of attacks and the placing of weapons in UNRWA schools, in breach of the inviolability of United Nations premises. There were also reports of military objects placed in populated areas; killing of persons suspected of collaborating with Israel; and alleged violation of the freedom of movement and right to physical integrity of members of Fatah. In addition, Israeli authorities alleged that tunnels for military purposes had been constructed under civilian objects; rocket attacks were launched from densely populated areas; hospitals and ambulances were used for military purposes;[19] and the use of human shields.[20] OHCHR continues to work to verify those reports and allegations.

26. The scale of hostilities far exceeded that of previous hostilities in 2012 and in 2008–2009, in terms of duration and fatalities, and have resulted in an unprecedented level of destruction in Gaza. It has not yet been possible to assess the longer term impact of the destruction on the enjoyment of economic, social and cultural rights by Palestinians, but it is seems clear that enormous effort will be necessary to rebuild basic infrastructure and deal with the psychosocial consequences of the traumatic events.

C. Promoting accountability for violations of international humanitarian and human rights law

27. At this stage, it would be premature to even attempt to offer a comprehensive assessment of necessary accountability measures. Further information gathering, verification and analysis will be necessary in the coming months, before definite conclusions on violations and required accountability measures can be drawn. Current monitoring and investigation efforts are essential in order to establish the facts and pave the way for the establishment of such measures at the international level. Investigations and accountability measures by parties to the conflict, at the domestic level, are of critical

[17] See www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf.
[18] See www.dci-palestine.org/documents/israeli-forces-use-palestinian-child-human-shield-gaza.
[19] See www.idfblog.com/blog/2014/07/28/hamas-uses-hospitals-ambulances-military-purposes/.
[20] See www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/.

importance. The adequacy of the measures taken at the domestic level will necessarily inform the measures taken at the international level.

28. OHCHR continues its monitoring activities in the Occupied Palestinian Territory and is verifying information which appears to indicate violations of international humanitarian law and international human rights law, including war crimes, during the reporting period, for presentation in future reports. It is expected that the commission of inquiry will undertake its own investigations in parallel.

29. The events that took place between June and August 2014, in the West Bank, including East Jerusalem, and in Gaza, saw both sides once again resorted to violence. Yet, respect for human rights and international law remains the only way to guarantee peace and justice for all. The primary responsibility for ensuring accountability, remedies for victims and ending impunity rests with both the Israeli and the Palestinian authorities. Serious shortcomings in the systems of accountability have been highlighted in the past by the Secretary-General, the High Commissioner for Human Rights and the Fact-finding mission on the Gaza conflict,[21] with the latter recommending that the situation be referred to the International Criminal Court. Given the ongoing failure to ensure effective accountability, that recommendation remains relevant. Accountability for violations committed by both sides is an essential step towards restoring respect for human rights and ensuring non-repetition of recurrent violent crises in the area.

[21] See, inter alia, A/HRC/12/48, paras. 1773–1873; A/HRC/25/40, paras. 50–60; and A/68/502, paras. 29-47.

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Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 25/28, provides information on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. It addresses continued Israeli settlement activity; settler violence and accountability; Palestinian detainees, including children in Israeli custody; and business and human rights in relation to the settlements. The report also reflects submissions received from Member States on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission.

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I. Background

1. In its resolution 25/28 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report to the Council at its twenty-eighth session, detailing the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63).

2. The present report, submitted pursuant to resolution 25/28, contains the information requested and received from States to which the fact-finding mission addressed recommendations, as well as information gathered by the Office of the United Nations High Commissioner for Human Rights. The present report contains information up until 25 November 2014 and follows the report on the same subject matter which included information up until November 2013 and was presented at the twenty-fifth session of the Human Rights Council (A/HRC/25/39). It should be read in conjunction with the report of the Secretary-General to the twenty-eighth session of the Human Rights Council on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (A/HRC/28/44) and recent reports of the Secretary-General and the High Commissioner on the situation of human rights in the Occupied Palestinian Territory.[1]

II. Overview of the recommendations of the fact-finding mission

3. In its report, the fact-finding mission made six recommendations, of which four were addressed to the State of Israel. Basing itself on article 49 of the Fourth Geneva Convention, the mission called upon Israel to cease all settlement activities without preconditions; to immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory; and to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that were a result of the settlements, in accordance with its international obligation to provide effective remedy. The mission noted that, where necessary, steps should be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community (para. 112).

4. In addition, the fact-finding mission called upon Israel to put an end to the human rights violations linked to the presence of settlements, and to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity. It furthermore urged Israel to put an end to arbitrary arrests and detention of Palestinians, especially children, and to observe the prohibition of the transfer of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention (paras. 113–115).

5. In its report, the fact-finding mission called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations (para. 116).

6. Lastly, the fact-finding mission stated that private companies must assess the human rights impact of their activities and take all necessary steps — including by terminating

[1] Including A/HRC/28/45, A/HRC/28/80 and Add.1, A/69/348 and A/69/347.

their business interests in the settlements — to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights. In this regard, the mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human rights throughout their operations. The mission recommended that the Working Group on the issue of human rights and transnational corporations and other business enterprises be seized of this matter (para. 117).

III. Status of implementation of the recommendations of the fact-finding mission

A. Israeli settlement activity and recourse to remedy for Palestinians

7. As noted in the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan submitted to the General Assembly at its sixty-ninth session (A/69/348), Israel continues to expand existing settlements in occupied territory and to advance new settlements in the West Bank, including East Jerusalem.[2] Settlements are directly linked to a broad range of violations of the human rights of Palestinians, including their rights to non-discrimination, liberty, security of person and fair trial, freedom of movement, adequate housing, health, education, work and an adequate standard of living.[3]

8. Reportedly, between 1 November 2013 and 31 October 2014, 4,554 housing units were tendered in Israeli settlements in the West Bank, including East Jerusalem, and 10,183 housing units advanced in the planning process towards realization, including 6,042 in the West Bank and 4,141 in East Jerusalem.[4]

9. In late September 2014, the number of settlers in the Silwan area of East Jerusalem increased after settlers moved into six houses, ostensibly after having purchased them, although this is reportedly disputed by some of the Palestinian owners.[5] New settlements in the West Bank in 2014 included the long-disputed Al-Rajabi house in Hebron, capable of housing 40 families, and the settlement of Leshem, near Salfit in the central West Bank.[6]

10. In a briefing to the Security Council on 17 November 2014, the Interim Assistant Secretary-General for Political Affairs noted that despite the "unanimous opposition to increased settlement activity expressed in the recent Security Council session on Jerusalem, plans have since been advanced to build some 500 residential units in the settlement of Ramat Shlomo. In addition, 28 new building permits and 200 new residential units were

[2] See A/HRC/28/44.
[3] A/69/348, para. 11.
[4] A/HRC/28/44, section III (information from the Israeli non-governmental organization, Peace Now), and A/HRC/25/38, footnote 10.
[5] A/HRC/28/44, section III, and Peace Now, "Settlers take over 6 houses in Silwan", 30 September 2014 (available from http://peacenow.org.il/eng/Silwan_new_homes).
[6] A/69/348, paras. 22 and 23 (source: Peace Now).

approved in the settlement of Ramot, in East Jerusalem."[7] Illegal Israeli settlement activity in East Jerusalem is one contributing factor to the volatile situation there.[8]

11. As reported to the twenty-fifth session of the Human Rights Council (A/HRC/25/39), "the continued fragmentation of the West Bank, including East Jerusalem, through Israeli settlement expansion has gone hand-in-hand with the construction of the wall, the destruction of Palestinian-owned property and the forcible displacement of Palestinian civilians, including Bedouin communities". At the time of writing, an Israeli plan was being advanced to move Bedouin and herder communities from the East Jerusalem periphery and Jordan Valley to three allocated sites.[9] On 21 October 2014, the Secretary-General expressed his concern over this plan, stating that "if implemented in a forcible manner, [it] would be contrary to international human rights and humanitarian law".[10] The risk of forced eviction and forcible transfer of these communities appeared imminent. Reportedly, demolitions of buildings belonging to these Bedouin communities were ongoing.[11] It is moreover of concern that the plan may enable additional expansion of illegal settlements in the Occupied Palestinian Territory and may further undermine the possibility for the Palestinian people to realize their right to self-determination.

12. The Secretary-General has previously noted that land which is declared by Israel as State land is often allocated to settlements.[12] Large land appropriations in 2014, in the vicinity of Bethlehem, may facilitate future settlement expansion. On 25 August, the Israeli Civil Administration declared 3,799 dunums (930 acres) around the settlement of Gva'ot, near Bethlehem, as State land.[13] This followed an earlier declaration of State land west of Bethlehem in April.[14]

13. In the 10 years since the International Court of Justice, in its advisory opinion of July 2004,[15] conclusively found that the construction of the wall in occupied territory and settlements were illegal, the settler population in the West Bank, including East Jerusalem, has increased substantially.[16] The advisory opinion noted that the wall "has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem)" (para. 119).

14. In 2007, the United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory was established by the General Assembly in its resolution ES-10/17. It is mandated to record "damage caused to all natural and legal persons concerned as a result of the construction of the wall by Israel … in the Occupied Palestinian Territory, including in and around East Jerusalem". According to the Register's website, as of October 2014, it had collected more than 43,850 claims and over 650,000 supporting documents in the Occupied Palestinian Territory. At the time of writing, 15,798

[7] Delivered by Jens Toyberg-Frandzen, Assistant Secretary-General for Political Affairs ad interim.

[8] Briefing to the Security Council on the situation in Jerusalem, 29 October 2014, delivered by Under-Secretary-General for Political Affairs, Jeffrey Feltman.

[9] A/69/348, section IV.A. Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory (OCHA-oPt), Fact Sheet September 2014, "Bedouin Communities at risk of forcible transfer ".

[10] Remarks to the Security Council on the situation in the Middle East.

[11] A/69/348, section IV.A.

[12] A/HRC/28/44, section IV, and A/69/348, para. 20.

[13] A/HRC/28/44, section III, and OCHA, "Humanitarian Bulletin: Monthly Report — June–August 2014" (available from www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf).

[14] A/HRC/28/44, section III, and A/69/348, para. 19.

[15] A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

[16] A/69/348, para. 10.

of the collected claims had been reviewed by the Board of the Register and deemed valid for inclusion in the Register.[17]

B. Settler violence and accountability

15. As reported by the Secretary-General, "acts of violence by Israeli settlers against Palestinians and their property continue to take place on a regular basis".[18] According to figures published by the Office for the Coordination of Humanitarian Affairs, as of 24 November 2014, the total number of settler violence incidents resulting in Palestinian injuries or damage to their property in 2014 was 304. This compares to 389 recorded incidents in the equivalent period of 2013.[19] However, this relative decrease was accompanied by a significant increase in Palestinian deaths and injuries caused by Israeli Security Forces. The same period also saw a four-fold increase in violent incidents involving Palestinians leading to settler casualties or damage to property.[20]

16. In October 2014, the Human Rights Committee issued its concluding observations on the fourth periodic report of Israel (CCPR/C/ISR/CO/4). Regarding settler violence, the Committee noted the establishment of an interministerial team to deal with ideologically motivated crimes, but was concerned at "the lack of effective accountability and protection" from settler violence. It recommended that Israel "strengthen its efforts with a view to ensuring that prompt, thorough, independent and impartial investigations are launched, in a non-discriminatory manner, into all incidents of violence by private actors against Palestinians and their property, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and victims are provided with effective remedies" (para. 16).

C. Palestinian detainees, including children in Israeli custody

17. As concluded by the fact-finding mission, the existence of the settlements heavily impact a wide range of Palestinians' human rights, including their rights to equality, due process, fair trial, not to be arbitrarily detained, and liberty of person (A/HRC/22/63, para. 105). According to the Palestinian non-governmental organization Addameer, as at 1 October 2014, 6,500 Palestinians were in Israeli detention, including 500 in administrative detention on security grounds — held without charge or trial.[21] The total number of Palestinian prisoners and detainees held by Israel was reportedly up by some 1,450 persons compared to the previous year.[22] The summer of 2014 witnessed a period of mass arrests of

[17] www.unrod.org (accessed November 2014).

[18] A/69/348, section V, para. 37.

[19] OCHA–oPt, "Protection of Civilians Weekly Report: 18–24 November 2014". Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_11_28_english.pdf.

[20] Ibid.

[21] Addameer, "Monthly Detention Report —1 October 2014". Available from www.addameer.org/etemplate.php?id=729. Some Palestinians are held in Israeli detention centres and the Ofer prison in the Occupied Palestinian Territory, while others are transferred to Israeli interrogation centres and several prisons, within Israel, contrary to the Fourth Geneva Convention (see para. 4 above). Information available from www.addameer.org/etemplate.php?id=302.

[22] Addameer, "Monthly Detention Report — 1 October 2013". Available from www.addameer.org/etemplate.php?id=651. Figures may vary according to the source. Statistics on Palestinian prisoners are also available on website of the Israeli non-governmental organization, B'Tselem: www.btselem.org/statistics/detainees_and_prisoners. According to B'Tselem's figures, at

Palestinians, especially following the kidnapping and murders of three Israeli youths in the occupied West Bank in June 2014. An estimated 1,100 to 1,500 Palestinians, including 300 children, were detained in the West Bank, including East Jerusalem, at some point between 12 June and mid-August 2014.[23]

18. The Secretary-General has consistently called for administrative detainees to be formally charged or released without delay.[24] In April, a large group of Palestinian detainees went on hunger strike to protest the use by Israel of administrative detention. The number fluctuated, reaching several hundred between April and late June 2014 when the hunger strikers ended their protest.[25]

19. In February 2013, the United Nations Children's Fund (UNICEF) issued a report, entitled "Children in Israeli Military Detention", which found that the ill-treatment of Palestinian children from the West Bank who come in contact with the Israeli military detention system appeared to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing.[26] In an update report of October 2013, UNICEF referenced the commitment made by the Ministry of Foreign Affairs of Israel to study the recommendations and cooperate with UNICEF for their implementation.[27] However, treatment of Palestinian children in Israeli detention continues to be gravely worrying and in need of action to protect children's rights.[28] In its concluding observations, the Human Rights Committee expressed concern "that Palestinian children are still exposed to arbitrary arrest and detention" (CCPR/C/ISR/CO/4, para. 19). It further expressed concern "at reports of the use of torture and other ill-treatment in the State party's detention facilities, including widespread, systematic and institutionalized ill-treatment of Palestinian children" and recommended that Israel "take robust measures to eradicate torture and ill-treatment against adult and child detainees" (para. 15).

D. Business and human rights in relation to the settlements

20. In its resolution 25/28, the Human Rights Council reiterated its call (made previously in resolution 22/29) upon the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to

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the end of September 2014, there were 5,439 Palestinian so-called "security prisoners or detainees" in Israeli prisons, including 368 from the Gaza Strip. In addition, there were 1,231 Palestinians held in Israel for being in Israel illegally (accessed in November 2014).

[23] Addendum to the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1: the human rights situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, including the escalation in hostilities in between the State of Israel and Palestinian armed groups in Gaza, presented to the twenty-eighth session of the Human Rights Council, section A.

[24] A/69/347, section III.B.

[25] Ibid. Press release, "UN Special Committee concerned over deteriorating health of Palestinian detainees on mass hunger strike", Geneva/Cairo, 5 June 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14665.

[26] Available from http://unispal.un.org/UNISPAl.NSF/3822b5e39951876a85256b6e0058a478/1ee6b43ba34634f885257b260051c8ff?OpenDocument.

[27] Available from www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.

[28] A/69/355, paras. 25–32.

ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem.

21. The international fact-finding mission recommended that the Working Group on the issue of human rights and transnational corporations and other business enterprises remained seized of the matter of corporate engagement with settlements (A/HRC/22/63, para. 117). On 6 June 2014, pursuant to Human Rights Council resolution 22/29, the Working Group on the issue of human rights and transnational corporations and other business enterprises issued a statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory.[29]

22. In the statement, the Working Group indicated that, in carrying out due diligence, in accordance with the Guiding Principles on Business and Human Rights, corporations should be cognizant of the illegal status of settlements under international law, and should be informed by the publicly available information about the relation between settlements and human rights violations in the Occupied Palestinian Territory. The Working Group further stated that the fact that the Occupied Palestinian Territory, including areas with settlements, was a conflict-affected area resulted in a heightened risk of negative human rights impacts which in turn required that companies act with heightened due diligence. The Working Group noted that where a business could not prevent or mitigate human rights risks, it might need to consider termination of operations (guiding principle 19).

23. In its report to the sixty-ninth session of the General Assembly, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories reported on information received regarding the continuing exploitation of natural resources in the Occupied Palestinian Territory by Israeli and foreign companies, and on corporate involvement in a number of Israeli measures with adverse human rights impacts, including involvement in Israeli settlements. It noted, as examples of corporate activities of concern from a business and human rights perspective, three companies with activities in the Occupied Palestinian Territory and one company in the occupied Syrian Golan.[30]

IV. Submissions by Member States pursuant to resolution 25/28

24. On 21 October 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed notes verbales to all Permanent Missions to the United Nations Office and other international organizations in Geneva, in which it requested information on any steps that their Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report (A/HRC/22/63), and in particular with regard to those contained in paragraphs 116 and 117 thereof (see paras. 5 and 6 above).

25. Also on 21 October, separate notes verbales were addressed to the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine. OHCHR requested the Government of Israel to provide information on any steps that it had taken or envisaged taking concerning the status of implementation of the recommendations of the

[29] Available from www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf.

[30] The companies mentioned were HeidelbergCement, G4S, Ahava and Genie Energy. A/69/355, sections IV.D and V.

fact-finding mission report. OHCHR also requested the Government of the State of Palestine to present relevant information concerning the status of the same recommendations. At the time of the preparation of the present report, no information had been received from either the Permanent Mission of Israel or the Permanent Observer Mission of the State of Palestine.

Cuba

26. The Permanent Mission of Cuba submitted a note verbale dated 10 November 2014. Cuba noted with grave concern that, despite repeated appeals from the international community for Israel to completely halt all illegal settlement activities and violence, and to stop and reverse the construction of the wall, among other illegal policies and practices, Israel continued to colonize the Occupied Palestinian Territory, including East Jerusalem, and the Syrian Golan. Cuba stated that, in doing so, Israel displaced Palestinian civilians, imposed collective punishment on the people and violated international law.

27. Cuba reiterated the fundamental principle that acquisition of territory by force is inadmissible under international law and the Charter of the United Nations. It noted that the continued Israeli military occupation of the Syrian Golan since 1967 was unacceptable.

28. Cuba condemned settlement policies enacted by the Government of Israel in the occupied Syrian Golan, with disregard for international law, international conventions, the Charter and the resolutions of the United Nations. Cuba specifically referenced General Assembly resolution 68/17, which highlighted the illegality of construction of settlements and other Israeli activities in the occupied Syrian Golan, and General Assembly resolution 68/84, which calls upon Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan, and, in particular, to desist from the establishment of settlements.

29. Regarding the construction of settlements in the Occupied Palestinian Territory, including in and around East Jerusalem, Cuba stated that this was in flagrant violation of international law and an obvious challenge to United Nations resolutions and the July 2004 advisory opinion of the International Court of Justice.

30. Cuba demanded an immediate end to the construction and expansion of settlements and the Wall; transfer of settlers; house demolitions; intensification of land confiscations; evictions; excavations in the Old City of Jerusalem, including its religious sites and surroundings; displacement of Palestinian civilians; imposition of arbitrary and racist residency and movement restrictions on Palestinians; and all other measures to depopulate the city of its Palestinian inhabitants and achieve the illegal annexation of East Jerusalem to Israel.

31. Cuba stated that, since the negotiations resumed in 2013,[31] Israel has announced plans to build more than 13,000 [settler] homes, in addition to the ongoing construction of thousands more throughout the Occupied Palestinian Territory, including in East Jerusalem and its surrounding area. In this context, Cuba noted that, in 2013, at least 200 Palestinian homes were demolished, forcibly displacing hundreds of people. Cuba also stressed that the continued construction of the wall isolates entire communities and hinders the formation of a Palestinian state.

32. Cuba stated that, in the nine months of negotiations, more than 60 Palestinians, including children, were killed by the occupation forces, and that, in the same period, over four thousand Palestinians, including children, joined thousands of Palestinian prisoners

[31] The referenced round of negotiations ended in April 2014.

suffering constant violations of their human rights, torture and humiliation in Israeli prisons.

33. Cuba reaffirmed its support for, and solidarity with, the Palestinian people, who, for more than 45 years, have suffered under the brutal military occupation of their land, and been denied their basic human rights, including the right to self-determination. Cuba stated that the international community must assume its responsibilities, in accordance with international law and United Nations resolutions, to prevent Israel in persisting in its ongoing violations.

Denmark

34. In a note verbale dated 7 November 2014, the Permanent Mission of Denmark stated that Denmark was pursuing a peaceful settlement of the Israeli-Arab conflict, including between Israel and the Syrian Arab Republic and between Israel and Palestine. Denmark expressed the view that the conflict contributes to a destabilization of the overall security situation in the Middle East and must be resolved.

35. As a member of the European Union, Denmark noted that it fully associated itself with the policy and initiatives undertaken by the European Union as a whole, as well as the various efforts made by the European External Action Service and the Commission of the European Union to further peace and justice in the context of the conflict.

36. At national level, Denmark pointed out that, in July 2014, it had introduced to the Danish public the common messages from the European Union, aimed at raising awareness among European citizens and businesses regarding involvement in financing, and economic activities in, the settlements, including in the occupied Syrian Golan.[32] Denmark noted that in accordance with these messages, the European Union and its member States would not recognize any changes to the pre-1967 borders which were not agreed by the parties, including with regard to Jerusalem. Denmark affirmed that Gaza and West Bank, including East Jerusalem, and the [Syrian] Golan are territories occupied since 1967.

Ireland

37. In a note submitted by the Permanent Mission of Ireland on 3 November 2014, the Government of Ireland noted that it did not recognize any transfer of sovereignty or annexation of Palestinian territory occupied by Israel in 1967, pending any agreement between the parties to the conflict. Ireland had consistently affirmed that the establishment of Israeli settlements in the Occupied Palestinian Territory was in breach of international law.

38. Ireland noted that it was considering the formulation of a national plan of action for the implementation of the Guiding Principles on Business and Human Rights. It was not aware of any Irish businesses engaged in activities in Israeli settlements. It stated that, in July 2014, the Department of Foreign Affairs and Trade of Ireland had issued new advice for Irish citizens and businesses warning of the risks involved in financial and economic activities in Israeli settlements in the Occupied Palestinian Territory.

The European Union

39. In a note verbale dated 24 November 2014, the Permanent Mission of the European Union provided an update to its contribution of 21 November 2013, which was reflected in

[32] Information published on the website of the Ministry of Foreign Affairs of Denmark, available from http://um.dk/da/eksportraadet/markeder/markedsnyheder/newsdisplaypage/?newsid=5e152fbb-4d71-4045-bea5-d9438b0c1e67.

the report of the High Commissioner on the same subject matter, presented in March 2014 (A/HRC/25/39).

40. The European Union reaffirmed its commitment to its long-standing position not to recognize Israel's sovereignty over territories occupied in 1967, namely, the West Bank, including East Jerusalem, the Gaza Strip, and the [Syrian] Golan Heights.

41. The European Union referred to its latest Council conclusions of 17 November 2014 in which it recalled that actions which called into question stated commitments to a negotiated solution must be avoided. Further, the European Union deeply deplored and strongly opposed the recent expropriation of land near Bethlehem, and recent announcements of plans for new settlement construction, in particular in Givat Hamatos, Ramat Shlomo, Har Homa and Ramot, as well as plans to displace Bedouins in the West Bank, and the continued demolitions, including of projects funded by the European Union and member States. The European Union noted that it had urged Israel to reverse these decisions, which ran counter to international law and directly threatened the two state solution. The European Union further stated that recent settlement activity in East Jerusalem seriously jeopardized the possibility of Jerusalem serving as the future capital of both states.

42. The European Union recalled the illegality of settlements under international law, and that the European Union and its member States remained committed to ensuring continued, full and effective implementation of existing European Union legislation and bilateral agreements applicable to settlement products. The European Union noted that it closely monitored the situation and its broader implications and remained ready to take further action in order to protect the viability of the two state solution.

43. The European Union pointed out that it had, since 1 January 2014, applied guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union. The European Union stated its belief that the United Nations Guiding Principles on Business and Human Rights should be applied globally, and further noted that it had called upon European companies to apply these principles in all circumstances, including in Israel and in the Occupied Palestinian Territory.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-f inding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

Report of the United Nations High Commissioner for Human Rights

Corrigendum

In the masthead of document A/HRC/28/43, the date *should read* 12 January 2015

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, the United Nations High Commissioner for Human Rights highlights issues of concern in the Occupied Palestinian Territory, and makes recommendations with regard to each of the main duty-bearers concerned, namely the Government of Israel, the Palestinian Authority and the authorities in Gaza. With regard to issues in the West Bank, including East Jerusalem, the High Commissioner examines the excessive use of force by Israeli and Palestinian security forces, which has led to an increase in deaths in the past year. With regard to Gaza, he addresses the ongoing blockade and the enforcement of access restricted areas, noting the hardships and human rights violations that these measures created. In particular, he draws attention to the impact of the blockade on freedom of movement and reconstruction and economic development in Gaza.

* Late submission.

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I. Introduction

1. The present report, the seventh periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Occupied Palestinian Territory, covers the period from 9 November 2013 to 31 October 2014.

2. The period from 12 June to 26 August 2014 was marked by violence throughout the West Bank, including East Jerusalem, and an unprecedented escalation of hostilities in Gaza. The possible violations of international humanitarian law and international human rights law and the human rights abuses committed during that period have been addressed separately (see A/HRC/28/80/Add.1). The International Commission of Inquiry, established pursuant to Human Rights Council resolution S-21/1, is due to report on the events between 12 June and 26 August 2014, and will address issues of accountability for violations of international law at the twenty-eighth session of the Council.

3. The information contained in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the High Commissioner (OHCHR) in the Occupied Palestinian Territory. Monitoring activities are implemented within the framework of General Assembly resolution 48/141 and Human Rights Council resolutions S-9/1 and S-12/1.

II. Legal background

4. International human rights law and international humanitarian law apply in the Occupied Palestinian Territory. A detailed analysis of the legal obligations of Israel, as the occupying Power, the Palestinian Authority, the de facto authorities and Palestinian armed groups in Gaza are contained in the first periodic report of the High Commissioner on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras. 5-9).

5. In 2014, the State of Palestine deposited instruments of accession to 20 international treaties,[1] including seven of the nine core international human rights treaties (see paras. 67 – 70 below).[2] By acceding to these treaties, the State of Palestine has assumed legal obligations under international law, including that of reporting to various human rights treaty bodies. Nevertheless, Israel, as the occupying Power, remains bound by international human rights law and international humanitarian law, while other relevant actors also remain bound by international law.

6. On 23 April 2014, Fatah and Hamas agreed to form a government of national consensus, which was sworn in by President Mahmoud Abbas, under the leadership of Prime Minister Rami Hamdallah, on 2 June 2014. At the end of the period under review, however, uncertainty remained with regard to the actual power exercised by the Government and the degree to which it or any other authority or group exercised control in Gaza. In any event, those authorities or groups exercising government-like functions and effective control over territory in Gaza are bound by relevant human rights law in that territory (see A/HRC/8/17, para. 9).

[1] See "Palestine's Accession to International Treaties Q&A", 2 April 2014, available on the website of the Negotiations Affairs Department of the Palestine Liberation Organization (www.nad-plo.org).

[2] See also A/69/347, para. 4.

III. Human rights violations by all duty-bearers

A. Israel

1. Blockade of Gaza and access restricted areas

7. The blockade imposed by Israel on Gaza since 2007 in violation of international law continued to affect adversely the enjoyment of human rights in Gaza, in particular economic, social and cultural rights (A/HRC/28/45, paras. 34–42). In the access restricted areas, the continued use of live fire by Israel Defense Forces resulted in the injury and death of several Palestinians.

8. Import and export restrictions imposed by Israel continue to reduce economic activity in Gaza, thereby stifling the economy.[3] The Kerem Shalom crossing, the only operating commercial crossing between Gaza and Israel, allows a maximum of 500 truckloads of goods to enter Gaza a day, which is insufficient to meet the needs of the population. According to the Office for the Coordination of Humanitarian Affairs, the weekly average number of truckloads in 2014, when compared to pre-blockade levels, stood at 32 per cent for imports and less than 1 per cent for exports.[4] Unemployment increased in Gaza from 26.4 per cent in the second quarter of 2007 to 44.5 per cent in the same quarter of 2014. [5] Before the Israeli military operation "Protective Edge", 57 per cent of the population in Gaza were food insecure; and by the end of 2014, 70 per cent were dependent on humanitarian aid.[6]

9. Israel continues to limit the passage of Palestinians through the Erez crossing to "exceptional humanitarian cases". As a result, Palestinians in Gaza were unable to go to the West Bank, including East Jerusalem, or abroad, for educational or professional purposes. They thus relied heavily on the Rafah crossing, between Gaza and Egypt, until its closure in October 2014. Since then, the Erez crossing is the only option for Palestinians to leave Gaza.

10. The access of Palestinians in Gaza to emergency medical treatment outside Gaza through Erez remained unpredictable and fluctuated. Given the vast number of seriously injured Palestinians requiring medical treatment during and after the escalation of hostilities in July and August 2014, and the damage sustained to the already limited health facilities and capacity in Gaza, the number of permits granted did not meet the needs of the population. With the repeated closure of the Rafah crossing, many people requiring medical treatment unavailable in Gaza were unable to seek medical treatment outside of it.

11. The restrictions on the freedom of movement of Palestinians from Gaza were further compounded by the frequent closure of the Rafah crossing between Gaza and Egypt. Prior to the escalation, the crossing had operated irregularly, with entry and exit limited to Palestinians with dual citizenship, those with foreign visas and/or Egyptian residency status, and patients requiring emergency medical care.[7] The crossing was open daily between 26 August and 24 October 2014 for the same category of people, but was closed

[3] See reliefweb, Gaza: Fact Sheet, September 2014.

[4] Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, Protection of Civilians report, reporting period 23 – 29 December 2014.

[5] See Palestinian Central Bureau of Statistics, Labour Force Surveys (April – June 2007) and (April – June 2014).

[6] Gisha, the Gaza Cheat Sheet: Real Data on the Gaza Closure, 19 January 2015.

[7] Gisha, "One step at a time: Israel revises criteria for exiting Gaza", 26 October 2014.

thereafter following an attack on Egyptian military troops in the Sinai. It was still closed at the end of the period under review.

12. The restricted access of fishermen to fishing waters continued. Israeli Naval Forces arrested approximately 53 fishermen, confiscated 22 boats, damaged one and destroyed two others during the period under review.

13. The restrictions of Israel on the entry of construction materials into Gaza continued to undermine the reconstruction and economic development in Gaza. The Gaza Reconstruction Mechanism, a temporary agreement between the Government of Palestine and the Government of Israel brokered by the United Nations in September 2014 and launched on 20 October 2014, represents an attempt to ease the crisis and to begin reconstruction. Given the scale of reconstruction needs, the initial phase of implementation of the Mechanism produced only limited results;[8] and whether it will lead to significant increases in the flow of materials, such as cement, iron bars and gravel, into Gaza remains to be seen. At the end of October 2014, more than 70,000 people remained homeless, their homes having been damaged or destroyed during the hostilities.[9]

14. Although accelerating the Mechanism is critical to addressing the situation of internally displaced persons, it is no substitute for lifting the blockade. The continued imposition of the blockade is contrary to international law and constitutes a form of collective punishment that denies the rights of the population in Gaza (see A/HRC/28/45, paras. 34 – 42).

2. Excessive use of force and accountability

15. During the period under review, a dramatic increase was seen in the number of incidents involving Israeli security forces in the West Bank, including East Jerusalem, resulting in 47 Palestinian fatalities.[10] By comparison, there were 27 fatalities in the whole of 2013 and eight in 2012.

16. Twenty fatalities were recorded in the context of demonstrations against the hostilities in Gaza while they were ongoing (see A/HRC/28/80/Add.1). As in previous years, both in the context of demonstrations and in other incidents, OHCHR documented that Israeli security forces appeared to be under little or no threat at the time of the incidents, indicating the unnecessary or disproportionate use of force (A/69/347, paras. 44 – 51).

17. Of particular concern was the killing of two Palestinian youths, shot at Beituniya in the West Bank on 15 May 2014 in demonstrations commemorating what Palestinians call "Nakba day". OHCHR found that the Israeli security forces faced no threat when the two youths were killed. During the period under review, a total of six people were shot and killed (including two children) and 128 were injured as a result of enforcement of access restricted areas by Israeli security forces in Gaza. In some incidents, shooting by Israeli security forces occurred in circumstances that, according to information available to OHCHR, posed no threat to soldiers (A/HRC/28/45, paras. 15-17). Nine fishermen were injured between 9 November 2013 and 31 October 2014 while reportedly fishing in the permitted fishing zone. According to information gathered by OHCHR, the fishermen

[8] As at 4 November 2014, some 700 Gazans had been able to purchase materials.

[9] Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, Protection of Civilians report, reporting period 28 October – 3 November 2014.

[10] Figures do not include the death of two Palestinians who allegedly died of tear gas inhalation during clashes between Palestinians and the Israel Defense Forces (on 1 January and 14 April 2014 respectively).

posed no lethal threat to the Israeli security officers when they were shot, although some of them reportedly attempted to approach the shore when they saw Israeli security forces ships in the area.

18. B'tselem, an Israeli non-governmental organization, informed OHCHR that, since the adoption of the policy of automatically opening of investigations regarding Palestinian fatalities involving Israeli security forces in incidents outside of "combat activity", there had only been two indictments and one conviction out of 36 investigations launched. With regard to the access restricted areas, OHCHR was informed by the Legal Centre for Arab Minority Rights in Israel (Adalah) that one investigation into an incident involving the use of excessive force by Israeli security forces. Both the High Commissioner and the Secretary-General have highlighted the imperative need to ensure accountability for incidents involving excessive use of force (see A/HRC/24/30 and A/69/347). In that connection, the High Commissioner takes note of the indictment of a border police officer allegedly involved in one of the killings at Beituniya on 15 May 2014. No one has yet been indicted in relation to the other killing on the same day.

3. Settlements and settler violence[11]

19. During the period under review, Israeli settlements continued to expand in the West Bank, including East Jerusalem. For instance, in April and August 2014, more than 1,000 acres of land located nearby Bethlehem were declared State land (see A/HRC/28/44). Once land is declared as such, it is often allocated for settlements (see A/69/348, para. 20 and A/HRC/28/44, chap. IV).

20. Israeli settlements and settler violence continue to be a root cause of many violations of the Palestinians' human rights. The well-documented failure of Israel to address settler violence against Palestinians, either by protecting vulnerable communities or through ensuring accountability for violence committed by settlers, has led to repeated violations (see A/HRC/28/44, chap. V). According to one Israeli non-governmental organization, between 2005 and 2014, 91.4 per cent of the complaints it monitored were closed without an indictment.[12]

4. Demolitions and forcible transfer

21. The High Commissioner has expressed concern on several occasions regarding forced evictions and demolitions in the West Bank, including East Jerusalem (A/HRC/25/40, paras. 17-22). According to the Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory during the period under review, 620 Palestinian structures were demolished, of which 244 were residential. A total of 1,246 people were consequently displaced, including 699 children.

22. In most cases, demolitions were carried out under the Israeli planning regime, which unlawfully discriminates against Palestinians (A/HRC/25/38, paras. 19-20). The implementation of demolition orders under such a regime violates the State's obligations to respect the right to adequate housing, including the security of tenure and freedom from arbitrary or unlawful interference with privacy, family and home (see A/HRC/25/40, para. 20).

23. In addition, thousands of Palestinian Bedouins and herders living in Area C of the Central West Bank continued to be at risk of forcible transfer owing to a plan advanced by

[11] See also A/HRC/28/44.

[12] Yesh Din, Law Enforcement on Israeli Civilians in the West Bank, Data Sheet, November 2014. See also A/HRC/28/44, chap. V.

Israeli authorities to transfer them to three centralized sites (see A/69/348, paras.12-16). Forcible transfer would be in violation of article 49 of the Fourth Geneva Convention (see A/69/348, para.53 and CCPR/C/ISR/CO/4, para. 9). It is expected that the Israeli Higher Planning Council will make a decision on the objections presented to the plan by the communities affected before mid-2015. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), such decisions may be reviewed by the Supreme Court of Israel.

24. The Israeli Civil Administration has been taking actions aimed at facilitating such a transfer by creating a coercive environment, including by issuing demolition, seizure and stop work orders against structures belonging to the Bedouin communities affected, restricting access to grazing lands and markets for their products, and limiting the issuance of building permits (see A/69/348, paras.12-16). According to UNRWA, there were 229 demolitions of Bedouin-owned structures, including 129 concerning residential structures during the period under review.

5. Situation in East Jerusalem

25. The situation in East Jerusalem deteriorated significantly during the period under review, which witnessed demonstrations by Palestinians, an increase in incidents involving the use of force by Israeli security forces resulting in Palestinian casualties, and attacks by Palestinians on Israelis (see A/HRC/28/80/Add.1). The significance of East Jerusalem and its holy sites makes it a sensitive trigger point for friction and violence and its status of central importance to any peaceful resolution of the conflict.

6. Detention

26. Non-governmental organizations and lawyers with access to Israeli detention facilities reported to OHCHR many allegations of torture and ill-treatment of detainees by Israeli authorities, particularly by the Internal Security Agency. These allegations were consistent with reports received in previous years;[13] for example, an Israeli non-governmental organization documented allegations of the use by the Agency of incommunicado detention, sleep deprivation, beatings (slapping, kicking and punching), stress positions, strangulation and prolonged shackling.[14] It expressed particular concern that, in the aftermath of the abduction and murder of three Israeli youths, detainees were at a heightened risk of torture and ill-treatment.[15]

27. To date, no crime of torture under international law has been incorporated into legislation in Israel; "defence of necessity" continues to be legal, and is used as a possible justification of torture (see CCPR/C/ISR/CO/4, para. 14). This compounds the long-standing concern at the apparent complete lack of accountability for allegations of torture and ill-treatment. For more than a decade, not a single criminal investigation has been opened into hundreds of complaints lodged against the Internal Security Agency.[16] While the appointment in February 2014 of a new civilian inspector responsible for handling complaints within the Agency marked a minor improvement in the system of accountability, as at October 2014 no criminal investigation had been opened for at least a decade (see CCPR/C/ISR/CO/4, para. 14).

[13] Public Committee against Torture in Israel, "Activities and Achievements 2013",. See also CCPR/C/ISR/CO/4, para. 15.

[14] See Public Committee against Torture in Israel (PCATI), "Activities and Achievements 2013", and, its submission to the Human Rights Committee, 112th session, 14 September 2014, pp. 14-26.

[15] PCATI submission, pp. 20-24.

[16] PCATI submission, p. 6.

7. Detention of children

28. At the end of September 2014, 181 boys and one girl were in Israeli detention for alleged security offences. Their ages ranged from 14 to 17 years, with 125 in pretrial detention and 57 serving a sentence.[17] This was approximately the same as the monthly average seen in 2013.[18] Approximately 49 per cent of children in detention were unlawfully transferred to Israel, in violation of article 76 of the Fourth Geneva Convention.

29. Some of the testimonies gathered by the Working Group on Grave Violations against Children between May 2013 and September 2014 from 159 children illustrate what children experience in Israeli detention. These showed that many of the issues highlighted by the United Nations Children's Fund (UNICEF) in February 2013[19] remained a concern. Many stated that they had been arrested by Israeli security forces during military night raids despite the recommendation made by UNICEF that they be stopped and that the pilot scheme introduced by Israel in October 2013 to issue summonses be adopted instead.[20] In most cases, parents were not clearly informed at the time of arrest of where their child was being taken or the reason for the arrest. In all the cases documented, parents were not allowed to accompany their children, and three-quarters of the children stated that they had not been informed of their right to legal counsel. A total of 89 per cent of those interviewed reported being painfully hand-tied, 76 per cent blindfolded and 77 per cent subjected to beating, slapping, kicking and beatings with a stick on various parts of the body, including the head and face. Almost 40 per cent of the children suffered from painful restraints or from being forced to lie on the floor of a vehicle used by the Israeli security forces.[21]

30. According to some affidavits seen, children had been subjected to torture and/or ill-treatment during interrogation with the purpose of obtaining a confession, as previously reported by the Secretary-General and non-governmental organizations.[22] Children reported having been restrained to a chair, in some cases for extended periods, which caused them pain in their hands, back and legs. Many children experienced physical violence or were threatened with solitary confinement, sexual assault against them or a family member, and reportedly received death threats. Some were coerced to sign a confession in Hebrew, a language most did not understand. According to UNICEF, most children saw their lawyers for the first time when they were brought to court.

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[17] UNICEF, Children in Israeli Military Detention, Bulletin No. 2, February 2015, p. 3.

[18] Military Court Watch, a non-governmental organization, informed OHCHR that the figures given might not reflect the real number of children arrested and detained since, for example, children detained for short periods by the Israeli security forces and not transferred to Israeli prisons were not included.

[19] UNICEF, Children in Israeli Military Detention, Observations and Recommendations, February 2013.

[20] See ibid, Timing of arrests and arrest warrants, recommendation (i), p. 15. See also UNICEF, Children in Israeli Military Detention, Bulletin No. 2, February 2015.

[21] Information provided by the monitoring and reporting mechanism, managed by country-based task forces co-led by UNICEF to provide timely and reliable information on grave violations of children's rights. The UNICEF-led Working Group on Grave Violations against Children in the Occupied Palestinian Territory informed OHCHR that the mechanism database stores records on all cases of physical violence and verbal abuse, but not on the time of the event. The statistics related to physical violence and verbal abuse relate to the whole detention process including the arrest, transfer and interrogation.

[22] See CRC/C/ISR/CO/2-4, paras. 35-36. DCI-Palestine and Military Court Watch also documented many similar allegations in their submissions to OHCHR. See also A/HRC/24/30, paras.56-57.

31. In the majority of cases, the principal evidence against the child was the child's own confession.[23] Israeli Military Order 1745, which came into effect on 10 September 2014, provides for the audiovisual recording of police interrogations of children, but only in relation to non-security offences. The majority of Palestinian children in detention are, however, reportedly prosecuted for alleged security offences (under Israeli Military Order 1651), in particular stone throwing.

8. Administrative detention

32. According to an Israeli non-governmental organization, in May 2014, Israel was holding 196 administrative detainees.[24] By the end of August 2014, this number reached 493 (see A/HRC/28/80/Add.1); by the end of October, there were still 457 Palestinian administrative detainees.[25]

33. Israel's practice of administrative detention has been condemned by the Secretary-General (A/69/347, para. 29), the High Commissioner (A/HRC/25/40, para. 40) and the Human Rights Committee (CCPR/C/ISR/CO/4, para. 10); the concerns raised remain valid today. Detainees are brought before a judge in a military court and not charged with any criminal offence. The Secretary-General and the Human Rights Committee called for an end to the administrative detention regime and stressed that detainees should be allowed to challenge their detention and, in the absence of prompt criminal charges, be released without delay (A/69/347, para. 29 and CCPR/C/ISR/CO/4, para. 10). The use of secret evidence in most cases makes it impossible for detainees to challenge the basis of their detention (A/HRC/25/40, para. 40 and CCP/C/ISR/CO/4, para. 10). Detention orders are moreover issued for one to six months, and may be renewed indefinitely.

9. Hunger strikes and sick detainees

34. From 24 April to 25 June 2014, a large number of detainees (as many as125) went on a hunger strike to protest against Israel's continued use of administrative detention (A/69/347, para. 28). OHCHR received reports that the authorities had made attempts to break the strike, allegedly by punishing the detainees for going on strike, for instance by transferring them to other facilities, putting them in isolation, and through repeated and extensive cell searches and the denial of medical treatment. The detainees were also reportedly denied access to counsel during the hunger strike. This raises concern at the possible violations of detainees' right to freedom of expression and with regard to the prohibition of torture and ill-treatment. At the time of the hunger strike, a bill amending the Prisons Act was brought before the Knesset that would permit force-feeding and medical treatment of prisoners on hunger strike against their will under certain conditions, in contravention of international standards.[26] The timing of the bill suggested that it may have been intended to break the strike. Following the end of the hunger strike on 25 June 2014,

[23] UNICEF, Children in Israeli Military Detention (see footnote 19), p. 11. According to the No Legal Frontiers, a non-governmental organization, between 2010 and 2011, the vast majority of files in the juvenile justice system in Israel were based on defendants' confessions given during police interrogations, and on incrimination by boys of similar ages given in the same circumstances. In no case was there a trial within a trial on the admissibility of the confessions" (see "All Guilty! Observations in the Military Juvenile Court 2010-11"). See also Defence for Children International Palestine, "Bound, Blindfolded and Convicted: Children held in military detention", April 2012, p. 41.

[24] B'tselem, Statistics on Administrative Detention, 1 January 2011.

[25] Ibid.

[26] OHCHR, Press briefing notes on Israel / Occupied Palestinian Territory, 20 June 2014.

consideration of the bill was postponed in the face of domestic and international opposition, although it had not been withdrawn at the end of the period under review.

10. Gaza

35. According to Palestinian human rights organizations, as at December 2014 some 400 Palestinians from Gaza were detained in Israel for security and political reasons. Under international law, and in particular article 76 of the Fourth Geneva Convention, protected persons accused of offences must be detained and, if convicted, serve their sentences within the occupied territory.

36. During the military operation in Gaza, the Israel Defense Forces arrested 66 men (A/HRC/28/80/Add.1), 31 of whom were transferred to Israel; the remaining 35 were subsequently released. According to the Palestinian Centre for Human Rights and the Al Mezan Center for Human Rights as at October 2014, 22 Palestinian detainees arrested during the escalation remained in detention in Israel. At the end of the period under review, the Al Mezan Center informed OHCHR that one of the 22 detainees had been reportedly held since 24 August 2014without trial under the Unlawful Combatant Act 5762-2002.

37. The right to family visits of Palestinian detainees from Gaza remained severely restricted during the period under review. At 11 June 2014, no more than four relatives could visit detainees once a month. Following the disappearance of three Israeli youths on the West Bank on 12 June 2014, and throughout the escalation of hostilities in Gaza, however, family visits were suspended for four months. They resumed in October 2014, when the Government of Israel announced that it was easing measures, including a decision to permit 50 detainees to receive family visits once a week. Detainees could receive up to six relatives, including their parents, spouse and three children.[27] However, human rights organizations reported that, in practice, each detainee was only permitted to have three visitors per visit.[28]

B. Palestinian Authority

1. Torture, ill-treatment and arbitrary detention

38. During the period under review, OHCHR continued to monitor detention facilities managed by the Palestinian Authority, focusing on detention centres managed by General Intelligence and the Palestinian Preventive Security Service. Palestinian authorities continued to cooperate with OHCHR, in particular by allowing it to have unannounced and unrestricted access to the detention facilities of the Palestinian Preventive Security Service (see A/HRC/25/40, para. 44). In 2014, OHCHR was also granted unannounced and unrestricted access to the detention centres run by General Intelligence.

39. Torture and ill-treatment are prohibited under international and Palestinian law alike. On 14 May 2013, President Abbas issued an order requiring authorities competent to make arrests and order detention and interrogations to abide by the Palestinian Basic Law and relevant laws that prohibit all forms of torture and degrading treatment, as well as relevant international human rights treaties.[29] Notwithstanding these legal provisions, OHCHR

[27] Gisha, "One step at a time: Israel revises criteria for exiting Gaza", 26 October 2014.

[28] Addameer, "The Palestinian prisoners of Israel". Reportedly, as at November 2014, only three relatives and only children younger than 10 years of age were allowed to visit detainees.

[29] International Covenant on Civil and Political Rights, art. 7; Palestinian Basic Law, art. 13; Palestinian Law of Penal Procedure No. 3, art. 29.

documented cases of torture and ill–treatment, as well as arbitrary detention, in particular of persons affiliated with political opposition groups.

40. Detainees informed OHCHR that they had often been blindfolded, handcuffed, slapped in the face, beaten on different parts of their bodies, forced into *shabeh* (a stress position for an extended period of time) and received threats against themselves and their families with the aim of obtaining a confession. In a case monitored by OHCHR in September 2014, a detainee reported being forced to stand with his hands up against the wall for some 13 hours during the first day of his interrogation. On the second day, he was slapped in the face, and kicked in the legs and abdomen for about three hours. The detainee claimed that he confessed in order to avoid further beating.

41. Detention conditions, including overcrowding, inadequate sanitary conditions, and lack of access to natural light and recreational exercise remain causes for concern. Detainees were in many cases held for days in very small cells (approximately 2 by 1.7 metres), with almost no ventilation or natural light. In one case monitored by OHCHR in January 2014, a detainee was held in such a cell for 25 days. He was reportedly transferred to a larger cell with other detainees after he commenced a hunger strike to protest against his conditions of detention. In some cases, detainees were held in such cells for long periods of time, in high temperatures during the summer and cold temperatures in winter. In another case monitored by OHCHR in January 2014, 12 people were held in a small cell (approximately 5 m^2).

42. OHCHR documented multiple violations of the right to a fair trial and due process of law. In most cases, individuals were not informed of the reason for their arrest, in violation of article 9.2 of the International Covenant on Civil and Political Rights and Principle l0 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (see also CCPR/C/GC/35, paras. 25 and 27). Most detainees reported being brought before the court 72 hours after their arrest.[30] International law provides that anyone arrested or detained must be brought promptly before a judge. In its general comment No. 35, the Human Rights Committee stated that any delay longer than 48 hours must remain absolutely exceptional; prolonged detention without judicial control (given that a public prosecutor cannot be considered an officer exercising judicial power under article 9.3 of the International Covenant on Civil and Political Rights) increases the risk of ill-treatment (CCPR/C/GC/35, paras. 32-33).

43. Courts usually extended the detention for investigation purposes for weeks, and, in some cases, months.[31] Several detainees reported, however, that they had not been interrogated after their detention had been extended. Although the courts generally review detention orders, they do not appear to be subjecting detention and the action of security

[30] Palestinian Law of Penal Procedure No. 3 establishes that a detainee may be held for questioning for 24 hours, after which the detainee must be brought before the Prosecutor, who will decide whether to release or to keep the detainee, for a maximum of 48 hours, for further interrogation. Thereafter, any extension of detention requires court authorization (arts. 107, 108 and 115).

[31] According to Palestinian Law of Penal Procedure No. 3, art. 120, magistrates courts may extend detention for 15 days during the first hearing. Thereafter, they may extend it for a period not exceeding 45 days in total. Upon request of the Attorney General or his/her assistants, detention may be further extended by a court of first instance for a period not exceeding three months.

forces to sufficient scrutiny, which raises concerns that such cases of detention may be arbitrary.[32]

44. OHCHR is concerned that, in most of the cases monitored, detainees were unable to meet their lawyers in private during the interrogation period, in contravention of Palestinian and international law.[33] Many detainees reported meeting their lawyers for the first time at the first hearing in court (usually held 72 hours after the arrest).

45. Incommunicado detention remains a cause for concern (A/HRC/25/40, para. 45). In a case monitored by OHCHR in January 2014, a detainee reported that he had been denied contact with his family and his lawyer for 22 days. In another case monitored in October 2014, a detainee reported that he was not permitted to contact his lawyer and family for 13 days. In its general comments No. 20 (CCPR/C/GC/20, para. 11) and No. 35 (CCPR/C/GC/35, para. 35), the Human Rights Committee noted that incommunicado detention increased the risk of torture and ill-treatment, and could also violate several other rights, including the rights to life, to personal integrity and to due process of law.

46. OHCHR received information from numerous detainees claiming that they had been detained by order of the provincial Governor. Such detention is provided for under domestic law,[34] with the stated objective of protecting detainees, maintaining public order and preventing crimes related to national security.[35] This type of detention is reportedly not reviewed by a judge or any other officer authorized by law to exercise judicial power, in contravention of international law.[36]

47. In one case monitored by OHCHR, a Palestinian man was detained by governor order four times over a seven-month period. On 27 March 2014, a court issued a release order that was not implemented because the Governor decided to keep the detainee in detention for an additional three weeks on the grounds of public order. He was detained again from 7 to 14 August, and from 1 to 7 and from 12 to 16 November. According to the information received, the order was aimed at protecting the man from alleged death threats in relation a case of a so-called "honour" killing. In that case, the Palestinian authorities should have taken the measures necessary to protect the man's life, including by investigating the death threats, rather than deprive him of liberty as a "protective" measure.

[32] According to the Human Rights Committee, the decision to keep a person in detention is arbitrary if it is not subjected to a periodic review of the justification to continue detention. See for example CCPR/C88/D/1324/2004, para. 7.2.

[33] International Covenant on Civil and Political Rights, art. 14; Human Rights Committee general comment No. 32 (CCPR/C/GC/32), para. 34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18. The Basic Principles on the Role of Lawyers establish that States should ensure prompt access to a lawyer in any case no later than 48 hours after the arrest or detention. According to Palestinian Law on Penal Procedure No. 3, art. 103, communication restrictions imposed during the interrogation period do not apply to lawyers, who may contact their clients without any restriction.

[34] Jordanian Crime Prevention Law 1954, Palestinian Presidential Decree No. (22) of 2003 on the capacities of Governors. Palestinian law still includes some Jordanian law dating from the time of Jordanian control over the West Bank, including East Jerusalem.

[35] Jordanian Crime Prevention Law 1954, art. 4 and Jordanian Administrative Divisions Regulation 1966, art. 12

[36] International Covenant of Civil and Political Rights, art. 9. Judicial control of detentions applies in all cases, without exception. See also CCPR/C/GC/35, para. 32.

2. Violence against women

48. Palestinian women face multiple forms of violence and discrimination (A/HRC/25/40, paras. 72-74). So-called "honour" killings continue to be a matter of concern. Although no reliable figures were available for the period under review, the Palestinian Independent Commission for Human Rights, in its ninth annual report, found that, in 2013, there had been three cases of such killings and 16 cases of women killed in "mysterious circumstances" in the Occupied Palestinian Territory.[37]. The accuracy of figures might also be affected by underreporting.[38]

49. A study commissioned by OHCHR on the response by the Palestinian judiciary to so-called "honour killings" concluded that the broad use of mitigating circumstances led to impunity for such crimes.[39] The study analysed a sample of 37 rulings by the courts of first instance in the West Bank (32) and Gaza (five) issued between 1993 and 2013 on cases involving the killing of women "under the pretext of honour". In 29 cases, the judges reduced the perpetrator's penalty on the basis of extenuating circumstances established in articles 98 and 99 of the Penal Code 16 of 1960.[40] Reasons for extenuating culpability include the waiving of personal rights (37.8 per cent),[41] the "fit of rage" justification (16.2 per cent) and the defence of "honour" (8.1 per cent).

50. In May 2014, the President issued a Decree Law amending article 98 of the Penal Code so that perpetrators of crimes of so-called "honour" crimes against women could not benefit from article 98, which allows for mitigation in sentencing. The High Commissioner commends this measure. However, concerns remain regarding article 99, which gives broad discretionary power to judges in the application of mitigating factors. Of the 37 cases analysed in the OHCHR study, judges used article 99 in 23 cases as a basis for allowing perpetrators of crimes of so-called "honour" to benefit from mitigating factors in sentencing.[42]

C. Authorities in Gaza

1. Arbitrary detention, torture and ill-treatment

51. Arbitrary detention, torture and ill-treatment by the security forces remain issues of concern in Gaza. During the period under review, the Internal Security Agency and the police allegedly subjected detainees to torture and ill-treatment, and arbitrarily summoned and detained several civilians on various charges.

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[37] Among the cases of women killed in "mysterious circumstances", one was shot and killed by her son, one was stabbed to death by her husband and three others "fell" from high floors or their own balconies.

[38] The Women's Centre for Legal Aid and Counselling, a non-governmental organization, recorded 27 cases of so-called "honour" killings in 2013, significantly higher than those recorded by the Palestinian Independent Commission for Human Rights.

[39] Ahmad Al Ashqar, "Murder of women in Palestine under the pretext of honour", OHCHR, April 2014.

[40] Such circumstances include a state of great anger resulting from a wrongful or dangerous act by the victim (art. 98) and "extenuating reasons" (art. 99), which are however not defined. See A/HRC/25/40, para.74.

[41] Palestinian courts in general allow one of the heirs to the victim to waive their personal right to punishment of the perpetrator of a so-called "honour" killing. See Al Ashqar, "Murder of women in Palestine" (see footnote 39), pp. 10-11.

[42] Ibid., p. 13.

2. Wide-scale arrest campaigns against social activists and Fatah members and supporters

52. Many Fatah members and supporters across the Gaza Strip were reportedly summoned or arrested by the Internal Security Agency and questioned about Fatah's plans to mark the anniversary of the death of Yasser Arafat on 11 November 2013.

53. Alleged members of Salafist groups were also subjected to arbitrary arrest and detention by the Internal Security Agency. From 4 to 6 March 2014, the Agency arrested without warrant two people suspected of organizing an attack targeting a church in the south of Gaza. One of them was accused of being affiliated with the Islamic State group.

54. OHCHR also documented several cases related to the arrest, reportedly without a warrant, of persons suspected of treason. The absence of a legal warrant is one illustration of a wider pattern of abuse by the Internal Security Agency and of violations of the rights of persons deprived of their liberty.

3. Torture, ill-treatment and violations of due process

55. Many detainees held in detention by the Internal Security Agency were allegedly subjected to torture and ill-treatment upon arrest and during interrogation. Torture methods included beating with sticks, sensory deprivation (blindfolding), *shabeh*, solitary confinement and intimidation. Gazan security agencies appeared to use harsher interrogation techniques with detainees suspected of treason.

56. In a case monitored by OHCHR, in February 2014, a 27-year-old man accused of treason was arrested by the Internal Security Agency. He was detained and transferred to the civilian prison in Al-Katiba, west of Gaza city, where he was held for another six days. He claimed that, during interrogations, he was beaten with a rubber stick and forced into *shabeh*. He was reportedly detained in solitary confinement with the aim of obtaining information on his alleged collaboration with Israel. Following his transfer back to the Agency detention facility, he was held again in solitary confinement. He was allegedly denied access to a lawyer and family visits.

57. In a similar case, in March 2014, a 38-year-old man suspected of treason was arrested by the Internal Security Agency. He was reportedly held in solitary confinement and threatened with hanging. Although he was permitted to see the prosecutor, who extended his detention for 15 days, he was denied the right to contact his wife and a lawyer. Moreover, he was reportedly denied access to medical treatment while suffering from a serious liver illness.

58. Alleged members of the Tamarod movement (see A/HRC/25/40, para. 65) arrested in November 2013 were also allegedly subjected to beatings on the hands and feet with a stick, punching, shackling for extensive time periods and *shabeh*. A 16-year-old youth suspected of being affiliated with Tamarod was arrested by the investigation police and was held in detention for two days before being released. He was allegedly subjected to beatings on the soles of the feet, *shabeh* and sleep deprivation. The victim reported to OHCHR that nine other people were in detention on the same charges during his detention. He had been detained on previous occasions for similar accusations. Some Fatah members also alleged that they had been subjected to ill-treatment during detention. In March 2014, a 21-year-old Fatah member was held in detention for several hours by the investigation police owing to his participation in a demonstration supporting the Israeli-Palestinian peace process. He was reportedly held in solitary confinement and slapped in the face numerous times, forced to stand on a wet and dirty floor, and verbally abused. He was subsequently released with no charges.

4. Deaths in custody

59. In March 2014, a 45-year-old man from Deir El Balah suffering from several health conditions died in police custody. He had been arrested by the Police Criminal Investigation Department without an arrest warrant on 1 March 2014 in connection with a family dispute. The police were reportedly aware of the victim's heart, kidney and lung conditions, and his family had repeatedly requested the police to transfer him for medical treatment. On 7 March, the man was transferred to Nasser Hospital, in Khan Younis, for medical treatment. Subsequently, after a few hours of treatment on the same day, he was transferred back to Khan Younis police station, where he died on 12 March 2014. OHCHR received information indicating that the police headquarters had established an investigation committee and that the findings would be made public. At the end of the period under review, OHCHR was not aware of any outcome of the investigation committee.

60. Two other cases of death in custody were reported to OHCHR during the period under review. The first case, on 14 May 2014, related to a 33-year-old man detained in Beit Lahia prison for drug dealing who died in custody after spending 27 days in detention.[43] The second case, also in Beit Lahia prison, arose on 16 May 2014, where a 28-year-old man was being detained on criminal charges. In both cases, the Gaza Ministry of the Interior stated that the cause of death was a heart attack.[44] It launched an investigation into the first case, but the findings have yet to be been published. The circumstances of the cases and the lack of public information on the investigations raise concerns regarding the treatment to which the detainees may have been subjected while in custody, including if they were provided with an adequate medical health care.

5. Freedom of expression and peaceful assembly

61. In November 2013, the Internal Security Agency launched a wide-scale campaign targeting alleged members of the Tamarod movement across the Gaza Strip, including by raiding their houses, confiscating property (such as laptop computers and mobile telephones) and arresting and detaining them (see paras. 55-58 above).

62. From 6 to 18 November 2013, the Internal Security Agency and the Police Criminal Investigation Department summoned and arrested several people from different parts of Gaza based on their alleged political affiliation with Fatah and Tamarod. Many Palestinians in Gaza reported to OHCHR that they were forced to sign a document stating that they would not participate in any movement and not incite hatred against the authorities in Gaza, nor engage in any hostile activities or demonstration against them.

63. During the period under review, OHCHR continued to document cases of arbitrary arrest and detention of journalists and human rights defenders for participating in public events (see also A/HRC/25/40, paras. 63-67). On 12 November 2013, the head of the General Union of Palestinian Women and several other women were briefly detained by the Internal Security Agency following a protest against the political split between Hamas and Fatah. On 24 March 2014, a journalist was detained by the Police Criminal Investigation Department after posting a video clip on Facebook criticizing the political situation in Gaza.

[43] Palestinian Centre for Human Rights, "PCHR calls for investigating death of detainee in Beit Lahia detention facility", 14 May 2014.

[44] Palestinian Centre for Human Rights, "Another detainee dies in Beit Lahia detention facility; PCHR calls for establishing independent inquiry committee to investigate detention conditions in the facility", 18 May 2014.

6. Violations in the context of the escalation of hostilities

64. In a case monitored by OHCHR, in August 2014, a 28-year-old man suspected of treason was arrested by the Internal Security Agency and held in an unknown detention facility in Gaza for approximately 10 days. He was reportedly subjected to beatings and solitary confinement, and was denied access to a lawyer and family visits. He was subsequently transferred to an Agency prison in Ansar. Reportedly, his sister was detained in another detention facility on suspicion of treason and brought to an Agency detention facility for interrogation on several occasions, where she was allegedly tortured.

65. A total of 21 alleged collaborators were reportedly summarily executed by Palestinian armed groups in August 2014. Some of them were allegedly tortured prior to execution (see also A/HRC/28/80/Add.1, paras. 73-74).

IV. Accession of the State of Palestine to international human rights treaties

66. In April 2014, the State of Palestine deposited instruments of accession to 20 international treaties, including seven human rights treaties and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Geneva Conventions of 12 August 1949, Additional Protocol I to the Geneva Conventions and the Convention respecting the Laws and Customs of War on Land. Each accession was effected without reservations, a notable decision in a region with a large number of reservations to human rights treaties. Accession by the State of Palestine to the core international human rights treaties represents a significant strengthening of the legal framework for the protection and promotion of human rights in Palestine. The challenge will be to put these legal commitments into effect in law and in practice.

67. Since 2011, OHCHR has been working with the Ministry of Justice and the Ministry of Planning and Administrative Development of the Palestinian Authority to develop a rights-based framework for the national development agenda. A broad-based collaborative process produced a comprehensive 160-page guidance document setting out concrete recommendations on how to incorporate human rights more effectively into development programming. The document was finalized by the Government of the State of Palestine in January 2014.

68. Most of the recommendations in the guidance document were integrated into the Palestinian National Development Plan for 2014–2016, which was finalized in February 2014, providing a strong human rights-based framework in the four sectors covered by the Plan: social development, economic development, infrastructure and governance. The document was framed to provide guidance for integrating human rights into the Plan as well as in future Palestinian development plans. The document has been available to those involved in the damage and needs assessment exercise being conducted by the Government of the State of Palestine for the long-term reconstruction of Gaza after the escalation of July and August 2014.

69. Accession to international human rights treaties has provided an opportunity for OHCHR to build on its work with the Palestinian authorities, as well as with the Palestine Independent Commission for Human Rights and civil society, to ensure that the political commitments contained in the Palestinian National Development Plan are implemented in accordance with the legal commitments contained in the treaties. The Government has adopted a coordinated approach to its treaty reporting, which aims to draw on the linkages between treaty provisions and the Plan. With this approach, it is hoped that the initial treaty reports will provide a comprehensive baseline assessment for implementation of human

rights in the context of national development programming. Such an assessment can provide a firm starting point to address some of the human rights concerns raised in the present and previous reports of the High Commissioner and the Secretary-General.

V. Recommendations

A. Government of Israel

70. **The High Commissioner recommends that the Government of Israel take all possible measures:**

(a) To ensure full respect of its obligations under international humanitarian law, particularly obligations governing the conduct of hostilities, such as the principles of distinction, proportionality and precaution, and international human rights law in the Occupied Palestinian Territory, as well as full accountability for violations of the said obligations;

(b) Lift the blockade of Gaza in order to halt the ongoing punitive measures against civilians; measures should be taken to ensure the freedom of movement of civilians and the transfer of goods into and out of, and within, Gaza, including materials necessary for its reconstruction, in accordance with international law and with due regard to security concerns;

(c) Ensure that the use of force by the Israeli security forces in situations other than hostilities, including in the areas of restricted access, is in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and allow for an independent assessment and review of open fire regulations and the rules of engagement to ensure their compatibility with international law;

(d) Carry out prompt, effective, independent, impartial, thorough and transparent investigations of alleged unlawful killings and injuries of Palestinians, and of allegations of torture and ill-treatment, allowing for meaningful participation of victims and their relatives and for public scrutiny; and ensure that perpetrators are be brought to justice and that victims have access to an effective remedy;

(e) Halt any plans that would result in the forcible transfer of Palestinian Bedouin communities and herders currently residing in Area C of the West Bank;

(f) Ensure that all acts of violence committed by Israeli settlers against Palestinians and their property are investigated independently, impartially, thoroughly, promptly, effectively and in a non-discriminatory manner, and that perpetrators are brought to justice and victims have access to an effective remedy;

(g) Implement UNICEF recommendations that remain unimplemented, and those made by the Committee on the Rights of the Child with regard to Palestinian children in Israeli detention;

(h) Either charge and bring to trial or release any person in administrative detention, and put an end to the administrative detention regime in its current form in Israel.

B. Government of the State of Palestine

71. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) Take measures to respect and protect the rights of persons deprived of their liberty, particularly the rights to physical integrity, to a fair trial and to due process of law;

(b) Conduct prompt, effective, independent, impartial, thorough and transparent investigations of allegations of torture and ill-treatment, and ensure that perpetrators are brought to justice and victims have access to an effective remedy;

(c) Either charge and bring to trial or release all detainees under the governor orders, and end the practice of detentions based on governor orders;

(d) Ensure periodic and effective judicial review of a person's detention in all cases, without exception;

(e) Take all necessary measures to ensure that perpetrators of all acts involving violence against women, including so-called "honour killings", are prosecuted and appropriately sentenced; for instance, amend article 99 of the Penal Code to prevent mitigating circumstances leading to impunity for such crimes.

C. Authorities in Gaza

72. **The High Commissioner calls upon the authorities in Gaza:**

(a) To respect international humanitarian law, particularly the principles of distinction, proportionality and precaution, and to ensure accountability for violations;

(b) To take all the necessary measures to ensure that the rights of persons deprived of liberty are respected, including by ensuring effective, independent, impartial, thorough and transparent investigations into allegations of torture and ill-treatment, and to ensure that perpetrators are brought to justice and that victims have access to an effective remedy;

(c) To conduct prompt, effective, independent, impartial, thorough and transparent investigations on allegations of summary executions and cases of death of persons in the custody of the authorities;

(d) To refrain from unlawful restrictions on the freedoms of expression and of peaceful assembly.

D. Palestinian armed groups in Gaza

73. **The High Commissioner calls upon Palestinian armed groups in Gaza to respect international humanitarian law, particularly the principles of distinction, proportionality and precaution, and to ensure accountability for violations.**

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Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Addendum

The human rights situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, including the escalation in hostilities between the State of Israel and Palestinian armed groups in Gaza*

* Reproduced as received in the language of submission only.

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I. Introduction

1. This addendum presents information on alleged violations of international law related to events in the West Bank, including East Jerusalem, and the Gaza Strip between 12 June and 26 August 2014. It provides additional information to the Report of the United Nations High Commissioner for Human Rights on the implementation of resolution S-21/1 (A/HRC/27/76) of 19 September 2014, based on OHCHR monitoring in the Occupied Palestinian Territory.

2. Following the kidnapping, on 12 June, of three Israeli youths who were later found murdered near Hebron, Israeli security forces launched an operation involving mass arrests of individuals perceived to be associated with Hamas, amid a climate of hatred in some parts of Israeli and Palestinian society. This and the murder, on 2 July, of a 16-year-old Palestinian youth, in apparent revenge for the murder of the three Israelis, in turn provoked widespread clashes between Palestinians and Israeli Security Forces (ISF), resulting in many Palestinian deaths and injuries, as well as injuries to ISF officers.

3. This situation formed the backdrop to the military escalation in Gaza, where an increase in hostilities between Israel on the one hand, and Hamas and other Palestinian armed groups on the other, had already been noted in early June when the Israeli Defense Forces (IDF) carried out targeted killings of Palestinians, and Palestinian armed groups increased mortar and rocket fire towards Israel. The situation continued to deteriorate, and Israel formally launched a military operation, which lasted from 7 July until the final ceasefire on 26 August.

4. This period saw destruction in Gaza on an unprecedented scale, resulting in a huge loss of life, disproportionately affecting civilians, and massive damage to homes, infrastructure, hospitals and schools. The response by the ISF to widespread protests against the military operation in Gaza by Palestinians in the West Bank, including East Jerusalem, resulted in numerous Palestinian deaths and many more injuries.

5. Throughout the events, OHCHR maintained a continued monitoring presence in the Occupied Palestinian Territory. In Gaza, the overwhelming number of alleged violations, coupled with the prevailing security situation during the escalation, which severely restricted staff movements, made difficult the gathering of first-hand information or the verification of second-hand information on individual incidents. In addition, OHCHR has encountered difficulties in Gaza gathering information about alleged violations by Palestinian armed groups, some witnesses apparently fearing reprisals or reluctant to criticize the actions of armed groups. Since the 26 August ceasefire, conditions have allowed verification to proceed. It will be for the independent, international commission of inquiry, established pursuant to Human Rights Council resolution S-21/1, to further establish the facts and circumstances of possible violations and to identify responsibilities.

II. The situation in the West Bank

Overview

6. On 12 June, three Israeli youths disappeared in the Hebron Governorate of the southern West Bank. In response, the ISF conducted extensive search operations across the governorate, during which many allegations of damage to property and theft of money and gold from Palestinian houses and shops were reported. ISF imposed restrictions on freedom

of movement of Palestinians. Clashes between the ISF and Palestinians resulted in Palestinian deaths and injuries: between 12 June and 7 July 2014, seven Palestinians were killed,[1] and 786 were injured,[2] in incidents involving the ISF in the West Bank. The ISF detained hundreds of Palestinians, and raided a number of Palestinian welfare organizations, universities and media throughout the West Bank, including East Jerusalem.[3] The bodies of the three Israeli youths - Naftali Fraenkel (16-year-old), Gilad Shaer (16-year-old), and Eyal Yifrah (19-year-old) - were discovered on 30 June 2014 in a shallow grave near the city of Hebron.

7. The kidnapping and murder of the three Israeli youths and the security response were accompanied by a rise in the use of extreme anti-Palestinian rhetoric in Israel. Calls appeared in Israeli social media inciting revenge and hatred.[4] On 1 July 2014, around 200 Israelis marched through the centre of Jerusalem chanting "death to Arabs". They reportedly harassed Palestinians, entered restaurants looking for Palestinian employees, tried to attack them and caused damage to businesses employing Palestinians.[5] On 2 July, the burned body of Mohammed Abu Khdeir, a 16-year-old Palestinian youth from Shu'fat in East Jerusalem, was found in West Jerusalem. Six Israelis were arrested on suspicion of committing the killing on 6 July.[6] On 17 July, the Israeli authorities indicted three Israeli suspects for the murder. The indictment also charged two of the defendants with the attempted kidnapping of a seven year-old Palestinian boy the night before the murder.[7]

8. Following the killing of Mohammed Abu Khdeir, there were widespread protests and violent clashes between Palestinians and ISF, notably in Shu'fat. Between 2 and 7 July, 568 Palestinians were reportedly injured during these clashes, including 31 by live ammunition.[8] Seventeen ISF officers were also reported injured.[9] At that time, Israel resumed its policy of punitive demolitions, which had been suspended in 2005.[10]

9. After a short lull, the launch of ISF military operations in Gaza prompted further clashes between Palestinians and ISF, with particular intensity during the last two weeks of July, during which 12 Palestinians were killed and more than 1,000 reportedly injured.[11]

Excessive use of force by ISF

10. Between 12 June and 26 August 2014, 27 Palestinians, including five children, were allegedly killed by the ISF. Three of the 27 fatalities during this period were recorded in East Jerusalem. This figure equals the total number of Palestinian fatalities in such incidents in the whole of 2013.[12] Sixteen of these deaths occurred in the context of

[1] Source: OHCHR.
[2] Source: United Nations Office for the Coordination of Humanitarian Affairs (OCHA).
[3] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_6_26_english.pdf.
[4] www.haaretz.com/news/national/1.602661 and www.haaretz.com/jewish-world/jewish-world-news/.premium-1.602675.
[5] www.timesofisrael.com/dozens-arrested-in-far-right-demonstration-in-jerusalem/
[6] www.haaretz.com/news/diplomacy-defense/1.603317.
[7] www.timesofisrael.com/3-suspects-indicted-in-killing-of-muhammad-abu-khdeir/
[8] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_11_english.pdf.
[9] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_11_english.pdf.
[10] www.jpost.com/Diplomacy-and-Politics/Israel-to-renew-demolition-of-terrorists-homes-360274. See also section below on punitive demolitions.
[11] Source: OCHA.
[12] OHCHR documented a total of 27 Palestinian fatalities in incidents involving ISF in the West Bank, including East Jerusalem, in 2013.

demonstrations against the Israeli military operation in Gaza and related clashes.[13] In addition, according to OCHA, some 3,000 were injured, including more than 980 injured by live ISF ammunition, and around 1,200 by rubber-coated metal bullets.[14] Whilst clashes were intense in East Jerusalem, the proportion of those injured by live fire was much lower than in the rest of the West Bank: 193 of 1,321 injured in East Jerusalem.

11. During these demonstrations, Palestinians often threw stones, burning tires, Molotov cocktails, and fireworks, among other objects, at the ISF. Use of live fire against the ISF was also reported on a few occasions. ISF often used tear gas, skunk water,[15] stun grenades, rubber bullets, rubber-coated metal bullets, and live ammunition to disperse demonstrations and clashes.[16]

12. OHCHR's initial findings indicate that many of those allegedly killed by the ISF did not appear to pose a lethal threat.[17] If verified by further examination and established, this would raise concerns about the effective enforcement of the ISF rules of engagement and their adherence to international legal principles of necessity and proportionality and other relevant human rights standards.[18]

13. In one case documented by OHCHR, three men were killed by live ammunition in the context of clashes following a demonstration in Beit Ummar in Hebron Governorate on 25 July. A 47-year-old Palestinian man working for the non-governmental organization Defence for Children International was observing the demonstration from around 200 metres away and was not taking part in the clashes when he was killed by live ammunition fired by ISF officers reportedly located on a corner in the main street. In the same incident, a 30-year-old Palestinian man, also allegedly not taking part in the clashes, was hit in his chest by live ammunition fired by ISF officers reportedly located on the roof of a building some 80 metres from the victim. A third Palestinian man (36-year-old), who came to help him, was also hit by live ammunition in his leg and chest and killed.

Mass detentions

14. Between 12 June and mid-August 2014, between 1,100 and 1,500 Palestinians were detained in the West Bank, including East Jerusalem.[19] These included about 300 children, 27 Palestinian Legislative Council members and more than 60 of those freed in the prisoner exchange that secured the release of the Israeli soldier Gilad Shalit in 2011. Most of those detained were from East Jerusalem or the southern West Bank. About 170 Palestinians were reported to have been placed under administrative detention.[20]

[13] Source: OHCHR/OCHA.

[14] Source: OHCHR/OCHA. Fatality numbers do not include one Palestinian killed in Mea Shearim in Jerusalem (04.08.2014) and one Palestinian child killed by an UXO in Tubas (11.08.2014).

[15] Dark chemical liquid with strong and disagreeable smell. www.skunk-skunk.com/image/users/121755/ftp/my_files/MSDS_Skunk.pdf?id=3225191

[16] Source: OHCHR; see also www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf.

[17] Non-governmental organisations found similarly: www.btselem.org/press_releases/20140729_13_palestinian_fatalities_since_gaza_operation_begun and www.alhaq.org/documentation/weekly-focuses/839-seventeen-palestinians-killed-in-the-west-bank-since-the-beginning-of-israeli-offensive-on-the-gaza-strip.

[18] Basic Principles on the Use of Force and Firearms and A/69/347 para.51.

[19] The wide estimation range is due to the mass arrests and releases during a short period of time. Source: Addameer. According to B'tselem, 265 Palestinians were detained during June 2014. www.btselem.org/statistics/detainees_and_prisoners.

[20] Bringing the total number of Palestinians under administrative detention to 365, the highest number in five years. Source: Addameer.

15. During the same period, of those Palestinians detained, approximately 500 were reportedly East Jerusalemites, including some 200 children. Generally they were arrested either during clashes or for alleged participation in clashes and demonstrations.[21] They included 184 individuals who were indicted.[22] Sixty Palestinians were arrested on 13 August, and 40 more on 15 August in East Jerusalem. According to residents, the ISF typically broke the main doors of the houses in early morning raids while families were sleeping and many of those arrested were blindfolded.[23] On 16 August, the Israeli authorities released about 90 East Jerusalemites detained during previous days, reportedly imposed house arrest for five days and set bail at up to 5,000 NIS for many of them.[24]

16. In the southern West Bank, search and arrest operations allegedly targeted organizers and participants of demonstrations and clashes, as well as former detainees. In July and August, about 500 persons were reportedly detained in the southern West Bank,[25] including 129 between 1 and 26 August 2014.[26] ISF conducted frequent arrest operations in the city of Hebron, the villages of Beit Ummar and Husan, and Ayda Refugee Camp near Bethlehem. Further arrests were carried out in the central and northern areas of the West Bank.

Punitive demolitions

17. Shortly after the discovery of the bodies of the three Israelis on 30 June 2014, ISF forcibly removed the families of two men suspected of having committed the killings from their respective apartments in Hebron and partially destroyed both dwellings. Six relatives of the suspects, including two children, were forcibly displaced as a result.[27] On 18 August 2014, the apartments of the two suspects were completely destroyed and the apartment of a third suspect was sealed,[28] following a decision of the Israeli High Court of Justice. According to media reports, the IDF stated that the demolitions "issue a severe message of deterrence to terrorists and their accomplices – that they will pay a price if they continue their terrorist activities and harm innocent people".[29] Earlier, on 1 July 2014, the Israeli High Court sanctioned the punitive demolition of parts of the house of the family of a Palestinian from Idhna (Hebron) suspected of killing an Israeli police officer in April 2014. As a result, eight people, including four children, were forcibly displaced.[30]

18. Israel had formally ended its policy of punitive demolitions in 2005, following a recommendation of a military commission which reportedly indicated that they were not an effective deterrent, although one house and one apartment in East Jerusalem were demolished and sealed respectively in 2009.[31] The apparent resumption of this practice is a matter of concern. Punitive home demolitions impact the entire family constitute a form of

[21] Detention figures are not exact given the high number of detentions and releases in short periods of time. Source: Addameer.

[22] http://silwanic.net/?p=52154.

[23] http://silwanic.net/?p=52154.

[24] http://silwanic.net/?p=52277.

[25] Source: Addameer.

[26] Source: OHCHR.

[27] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_8_22_english.pdf.

[28] Sealing involves the complete or partial closing off of the rooms of an apartment with concrete or metal sheeting with access to it prohibited indefinitely or for a specified period. Depending on the method used, sealing may or may not be reversible.

[29] www.jpost.com/Arab-Israeli-Conflict/IDF-destroys-homes-of-the-murderers-of-the-three-kidnapped-Jewish-teens-371375.

[30] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_7_11_english.pdf.

[31] www.hamoked.org//timeline.aspx?pageID=timelinehousedemolitions; www.haaretz.com/print-edition/news/idf-panel-recommends-ending-punitive-house-demolitions-for-terrorists-families-1.150620.

collective penalty in breach of Article 33 of the Fourth Geneva Convention[32] and breaches Israel's obligations to ensure Palestinians' rights to adequate housing and to freedom from arbitrary or unlawful interference with privacy, family or home,[33] and other relevant norms.

Restrictions to freedom of movement

19. Severe restrictions on movement were imposed on Palestinians following the disappearance of the three Israeli youths, in particular in Hebron Governorate. The Hebron area was effectively cut off from the rest of the West Bank for days by closures imposed by the IDF; male Palestinians aged between 16 and 50 were not allowed to travel abroad through the Allenby Bridge; and workers holding valid work permits for Israel were prevented from travelling to work for several days.[34] Restrictions on Palestinians travelling across the Allenby Bridge to Jordan also increased.

20. Although Israeli officials claimed that no special restrictions were imposed on Palestinians, figures provided by the Palestinian police indicate that the number of Palestinians who were denied access to the bridge increased by more than 2,000 per cent between July and early August 2014 when compared with the previous year, although reportedly by mid-August 2014 numbers had returned to the 2013 average.[35] Israeli authorities reportedly cited "security concerns" when denying access. Palestinians who were denied access allegedly did not have the possibility to challenge the decision or to obtain the reasons for denial of access in writing. These restrictions on freedom of movement raise concerns as to Israel's compliance with its obligations under Article 12 of the International Covenant on Civil and Political Rights.

Settler violence

21. After the discovery of the bodies of the three Israelis on 30 June 2014, settler violence against Palestinians reportedly erupted throughout the West Bank, including East Jerusalem. It was in this context that the youth Mohammed Abu Khdeir was killed.

22. Several attacks by Israeli settlers against Palestinians were documented, including physical assaults, stone-throwing at Palestinian cars, and "price tag" incidents. Attacks by Palestinians against settlers or other Israelis were also recorded. In a case monitored by OHCHR, on 25 July, an Israeli settler opened fire at a group of Palestinian demonstrators on the road to Huwwara village (Nablus) killing a 19-year-old Palestinian and injuring four others, after some Palestinian protestors threw stones at cars driven by settlers. Shortly after, a 22-year-old Palestinian was killed by live ammunition in related clashes with ISF.[36]

III. The situation in the Gaza Strip

Overview

23. The increase in hostilities between Israel and Palestinian armed groups that had been noted in the preceding months continued in early June 2014.[37] Between 12 June and 6 July

[32] CCPR/C/ISR/CO/4, para 9(a).
[33] International Covenant on Economic, Social and Cultural Rights, art. 11; International Covenant on Civil and Political Rights, art. 17.
[34] www.btselem.org/press_releases/20140617_collective_punishment_in_hebron_district
[35] Source: Palestinian Police. Number of Palestinians denied, July 2013: 46; July 2014: 1152.
[36] Source : OHCHR.
[37] Section A and A/69/347, paras.40-43.

2014, the IDF killed six members of armed groups and injured six others in air strikes.[38] One child was reportedly killed and three Palestinian civilians reportedly injured in these attacks. Over the same period, around 60 Palestinian civilians were reportedly injured in Israeli airstrikes in the vicinity of sites of armed group activity and empty land.[39] At the same time, the number of rockets and mortars fired from Gaza towards Israel also increased in comparison to the previous month, reportedly injuring three Israelis.[40] A two-year-old Palestinian girl was killed, and one adult and four children were injured, apparently due to rockets falling short in Beit Lahia.[41]

24. On the night of 7 July 2014, Israel announced the launch of the military operation in Gaza.[42] Between 7 July and 26 August, according to the United Nations Department of Safety and Security, the IDF carried out 4,028 air raids, firing 5,830 missiles, as well as 16,507 artillery and tank projectiles and 3,494 naval shells. According to data compiled by the Protection Cluster, which is still being verified,[43] a total of 2,256 Palestinians, including 1,572 civilians were killed during the summer's escalation in hostilities. Among these, 306 were women and 538 were children. According to the Palestinian Ministry of Health, 11,231 Palestinians (including 3,540 women and 3,436 children) were injured during the same period.[44]

25. Between 8 July and 26 August, Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel.[45] According to the IDF, the Israeli Internal Security Agency and the Ministry of Foreign Affairs, 66 Israeli soldiers and six civilians were killed, while 369 soldiers and civilians were injured during the fighting.[46]

26. During the escalation, 18,080 units, housing approximately 108,500 persons, were totally destroyed or severely damaged in the Gaza Strip and had become uninhabitable.[47] At

[38] OHCHR, Protection of Civilians updates, www.ochaopt.org/reports.aspx?id=104&page=2.

[39] Source: OHCHR, see also www.ochaopt.org/reports.aspx?id=104&page=1.

[40] www.jpost.com/Defense/Two-more-Gaza-rockets-fired-at-southern-Israel-after-hit-on-Sderot-factory-360872.

[41] Source: OHCHR.

[42] twitter.com/IDFSpokesperson/status/486274187636396035; www.idfblog.com/blog/2014/08/05/operation-protective-edge-numbers/.

[43] The Protection Cluster is the mechanism for coordinating humanitarian action by humanitarian organizations (UN and non-UN) working in the protection sector. It is one of several such sectoral clusters. OHCHR leads the Protection Cluster in OPT. For more on the cluster system, see www.ochaopt.org/content.aspx?id=1010056. OHCHR compiled figures on fatalities in its capacity as leader of the Protection Cluster. The methodology used involves the compilation of initial reports of fatalities from the media and other sources which are then crosschecked and verified in collaboration with a number of international, Palestinian and Israeli partner organizations. Where available, each individual's name, age, sex and place of death is determined, as well as their status as a civilian or combatant where this can be determined. Multiple sources are cross-referenced, not only from media and various human rights organizations, but also information released by the IDF and by the Palestinian armed groups regarding the identity of combatants. Information from the Ministry of Health in Gaza is one, but not an exclusive, source of information. Verification of the information collected is continuing. Figures are published on the website of OCHA on behalf of the Protection Cluster.

[44] www.moh.ps/attach/761.pdf

[45] Source: UNDSS.

[46] www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthly0814.aspx; www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthlysummary%E2%80%93July2014.aspx; www.idfblog.com/blog/2014/07/19/fallen-soldiers-operation-protective-edge/; mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/,DanaInfo=www.mfa.gov.il+In%20Memory%20of%20the%20Victims%20of%20Palestinian%20Violence%20a.aspx.

[47] Source: Shelter Cluster.

the height of the escalation, approximately 500,000 Palestinians, more than a quarter of the entire population in Gaza, were displaced, including approximately 289,109 sheltering in schools run by the United Nations Relief and Works Agency (UNWRA), 48,742 in government shelters and 140,895 hosted by relatives.[48] This was the largest displacement in Gaza since the Israeli occupation began in 1967.[49]

27. During the first phase of air, land and naval strikes between 7 and 17 July, Israeli forces hit open areas and fields that were allegedly used to launch rockets against Israel, training sites belonging to armed groups, and members of armed groups. According to data compiled as of 17 July, 245 Palestinians, including 157 civilians had been killed. [50] Civilian objects, including buildings and installations belonging to the local authorities, industrial infrastructure, and civilian homes were damaged.[51]

28. The ground operation, accompanied by air and naval strikes, ran from the night of 17 July until 5 August. During this phase, there was a significant increase in Palestinian civilian casualties and displacement. On 18 July, the Israeli Civilian Affairs Liaison Office announced a three-kilometre restricted access area on the Gaza side of the fence between Israel and the Gaza Strip, making approximately 44 per cent of the Strip a declared "no-go-zone".[52] Until 5 August, the areas most severely affected by the Israeli military ground operation were east of Salahadeen Road, the main highway running the length of the Strip, although some areas west of the road were also affected. According to data compiled by the Protection Cluster, 1,791 Palestinians, including 1,286 civilians, were killed between 18 July and 4 August.[53]

29. From 5 August, there was a period of alternate ceasefires and strikes by air, land and sea as the IDF withdrew its ground forces and reduced the "no-go-zone" to 500 metres from the fence.[54] Two ceasefire agreements were reached on 5 August and on 10 August but broke respectively on 8 August and 19 August. On 21 August, the IDF targeted and killed senior members of the Izz Al-Din Al-Qassam Brigades, the military wing of Hamas.[55] Two days later, on 23 August, the IDF destroyed six high-rise apartment buildings.[56] Reports, including of warnings given to residents and statements by the IDF, indicate that at least some of these buildings were targeted.[57] According to data compiled, between 5 and 26 August, 201 Palestinians were killed, including 130 civilians.[58]

30. As illustrated below, information received raises serious concerns with regard to the alleged failure of the IDF to respect the legal principles of distinction, proportionality and precaution in attack. These concerns arise in the context of targeting decisions, the taking of all necessary precautions; proportionality of the attacks; respect for the distinction between civilians and civilian and military objectives, especially during the ground operation;

[48] www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf.
[49] www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-42
[50] Source: Protection Cluster
[51] www.ochaopt.org/documents/ocha_opt_sitrep_17_07_2014_.pdf
[52] Source: UN Access Coordination Unit.
[53] Source: Protection Cluster.
[54] www.haaretz.com/news/diplomacy-defense/1.608928, and www.ochaopt.org/documents/ocha_opt_sitrep_05_08_2014.pdf
[55] www.idfblog.com/blog/2014/07/18/live-updates-ground-operation-gaza/.
[56] www.ochaopt.org/documents/ocha_opt_sitrep_25_08_2014.pdf, www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf.
[57] http://rt.com/news/182416-gaza-large-buildings-leveled/; www.amnesty.org/en/library/asset/MDE15/029/2014/en/469b8cd3-f2b3-4d3e-ad5b-bb7d2c1e4f20/mde150292014en.pdf;
[58] Source: Protection Cluster.

attacks on and close to schools, including those used as shelters for the displaced; attacks on hospitals, ambulances and ambulance staff; and the alleged arrest and transfer of Palestinians from Gaza to Israel during the ground operation.[59]

31. Actions by Palestinian armed groups also raise serious concerns, as set out below, including regarding targeting decisions; indiscriminate attacks; respect for distinction and proportionality; locating military objects in civilian buildings; launching rockets from densely populated areas; and execution of suspected collaborators. The IDF has accused Palestinian armed groups of: locating tunnels used for military purposes under civilian objects; using hospitals and ambulances for military purposes;[60] using civilians as human shields.[61] UNRWA confirmed and condemned the placing of weapons in UNRWA schools in breach of the inviolability of United Nations premises.[62]

A. Alleged violations by the Israeli Defence Forces

Air and naval strikes

32. Throughout the military operation, the IDF destroyed civilian homes, including homes of employees of the local authorities, of alleged members of Hamas and of armed groups, and of civilians with no apparent affiliation to an armed group, causing a large number of civilian casualties and housing units destroyed or severely damaged.[63] Up to 26 August 2014, 142 Palestinian families in Gaza had three or more family members killed in the same incident, amounting to 739 fatalities,[64] the majority having occurred in the course of the destruction of civilian homes.

33. Some of these attacks appeared to be targeting specific individuals alleged to be members of armed groups but appear disproportionate due to the large numbers of civilian casualties. For example, on 12 July 2014, at approximately 2100 hours, an Israeli air strike completely destroyed a two-storey house belonging to the Al-Batsh family, in Tofah area, eastern Gaza city, killing at least nineteen Al-Batsh family members, including five children and four women, one pregnant.[65] Witnesses told OHCHR that the house was targeted with two missiles, flattening it and causing severe damage to neighbouring houses. Three Palestinians living in a house across the road were killed. According to leaflets dropped by the IDF above Gaza City on 28 July 2014, two persons killed in this attack were allegedly members of an armed group.

34. In other attacks, it was unclear what the target was. At around 1830 hours on 20 July, three missiles hit two apartments in a nine-storey building in the Remal area of Gaza City. Eleven persons, including seven children and three women, were killed. Residents said no prior warning of the planned attack was given. Some of the casualties were displaced persons who had sought refuge with their relatives. According to information received by OHCHR, none of the residents or the visitors in the two apartments was a

[59] OHCHR monitoring; www.timesofisrael.com/150-palestinians-surrender-to-idf-in-gaza/; www.wafa.ps/arabic/index.php?action=detail&id=181607.

[60] www.idfblog.com/blog/2014/07/28/hamas-uses-hospitals-ambulances-military-purposes/

[61] www.idfblog.com/blog/2014/07/14/hamas-use-human-shields-war-crime/

[62] www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school.

[63] Overview of figures in Section B and www.jpost.com/Operation-Protective-Edge/IAF-targets-Hamas-naval-commander-Palestinians-say-4-killed-in-strike-361947.

[64] www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf.

[65] Amnesty International, *Families under the Rubble: Israeli attacks on inhabited homes*, November 2014.

member of an armed group. OHCHR has no information on the possible military objective for which the two apartments may have been targeted.

35. In a number of cases, IDF launched its attacks on houses and residential buildings either around the time of breaking the Ramadan fast at sunset, or at the beginning of the fast at dawn. This is a time when families are known to congregate to eat together, making it very likely that any such attack targeting an individual would be disproportionate, and therefore raising questions whether sufficient precautions were taken to protect civilian life. In one such case documented by OHCHR, at 1948 hours on 20 July 2014, an Israeli air strike hit a three-storey residential building of six apartments belonging to Abu Jamá family in Bani Suhaila, east of Khan Younis, south of the Gaza Strip, killing 25 members of the same family. The fatalities included 19 children, a one-day-old baby, and five women (three were pregnant). Surviving family members said they received no prior warning from the IDF. The Military Advocate-General has ordered a criminal investigation into this incident.[66]

36. In another incident, on 16 July 2014, four children (aged between nine and eleven years) were killed, and one adult and two children were injured, on a beach in Gaza City.[67] Witnesses reported that the children had been playing hide and seek on the beach when the attack took place. One child went to hide in an empty zinc-roofed building, while others were approximately 50 metres away. An air strike reportedly hit the building and the child died immediately. The remaining children then ran towards the beach road. Reportedly, as they were running, a shell from the sea landed in the area killing three children and injuring two others. Witnesses claimed that the Israeli Naval Forces aimed at the group of children running away from the sea, and reported that a third missile landed in a nearby area, hitting one person who had been trying to rescue the children. According to media reports, the IDF claimed that it had aimed at "Hamas terrorist operatives" and that the "reported civilian casualties from this strike are a tragic outcome".[68] In a television interview, a spokesperson for the Israeli Prime Minister said that the children had been killed due to "mistaken fire".[69] Based on information collected by OHCHR, there were no apparent military targets: the area was calm and no rockets were fired towards Israel from that location at that time. The Military Advocate-General has ordered a criminal investigation into this incident.[70]

Ground operation

37. OHCHR documented a number of cases relating to the ground operation in which civilians were killed in possibly indiscriminate and/or disproportionate Israeli attacks, or in situations where there was a possible failure to take all feasible precautions to protect civilians.

Beit Hanoun

38. OHCHR documented a case in which at least eight civilians from one family were killed in the morning of 26 July 2014 in a strike on their residential building. Some 50 members of the Wahdan family lived in the four-storey building, located approximately two kilometres from the fence in Beit Hanoun in northern Gaza. On 16 July 2014, following the escalation of hostilities, the majority of the family members left the building seeking greater security in Jabalia and Beit Hanoun, but 15 were unable or unwilling to leave before

[66] www.mag.idf.il/261-6958-en/Patzar.aspx.
[67] Related footage and photos: www.youtube.com/watch?v=VQv6s9y48B0
[68] www.theguardian.com/world/2014/jul/16/witness-gaza-shelling-first-hand-account.
[69] edition.cnn.com/2014/07/16/world/meast/mideast-crisis/.
[70] www.mag.idf.il/163-6859-en/Patzar.aspx?pos=9 and www.mag.idf.il/261-6958-en/Patzar.aspx

the shelling made it too dangerous to do so. On 18 July 2014, at 0100 hours, the IDF reportedly arrested seven men in the building, who were subsequently interrogated at Erez in Israel and released after three days. The men sought refuge elsewhere, but remained in contact by mobile phone with the family members remaining in the building. In their last contact they were told that IDF soldiers had remained in the building until 25 July 2014. Hours later, on 26 July, the house and those neighbouring it were bombarded, killing all eight family members.

39. According to media reports, an IDF commander confirmed that the presence of civilians in the houses was known to the IDF.[71] Witnesses told OHCHR that the family was in contact with the ICRC requesting evacuation from the house prior to the attack, but were told it was not possible due to intense military activities in the area. During a lull in fighting on 5 August 2014, two of the bodies were recovered from the rubble; another body was recovered on 10 August, and the remaining five several days later.

40. The presence of IDF soldiers in the house is an indication that the IDF was aware that civilians were in the house, and may still have been in the area at the time of the attack. It is unclear in this case whether the IDF took all feasible precautions to ensure that the area was free of civilians before its attack and that it warned the civilians remaining in the area of an imminent attack. The number of civilian casualties and the scale of damage in the area – almost the whole surrounding area was flattened – raises concerns as to whether the attack was disproportionate and/or indiscriminate.

Shuja'iya

41. Between 19 and 21 July 2014, the IDF carried out attacks in Shuja'iya, reportedly with artillery, tank projectiles and airstrikes. Many residents of this densely-populated area to the southeast of Gaza City, reported hearing heavy shelling from late night on 19 July. On 20 July, a family living on Al-Biltaji Street decided to leave their house for safety when shells hit the house. As the family of 16 and a neighbour were attempting to leave, numerous shells hit their staircase, killing three children, three women and two men and injuring five others.[72]

42. Residents of Shuja'iya also reported continuous shelling as they fled their homes. Shells hit houses, shops, cars and streets in an apparently indiscriminate manner. Between 0600 hours to 0700 hours on 20 July in the Al-Turkman area, many residents fled their houses after a night of heavy bombardment. As the Ayyad family was running westward on Mansura Street, at least two shells hit the street, killing 11 family members, including five women and four children, and killing eight other persons.[73]

43. OHCHR also received reports of attacks on civilians during humanitarian pauses. In Shuja'iya, a 22-year-old Palestinian, searching for his relatives with other rescuers during a humanitarian pause on the afternoon of 20 July, was allegedly shot several times by the IDF and killed. The man, who had helped to carry the stretcher of an injured person, was clearly unarmed and was shouting the name of his lost cousin as he walked to his relative's house across rubble from destroyed houses. As the victim stepped into an alley, he was shot from an easterly direction. Based on witness accounts and video footage provided to OHCHR, he

[71] www.spiegel.de/international/world/the-story-of-a-gaza-family-destroyed-by-israeli-bombs-a-986728-druck.html.
[72] Source: OHCHR.
[73] Source: OHCHR.

fell to the ground after the first bullet hit him; at least two further shots were fired and hit him.[74]

Khuzza'a

44. On 23 and 24 July 2014, in Khuzza'a, another densely-populated area in southern Gaza, hundreds of residents fled or tried to flee their homes during heavy bombardment of their respective neighbourhoods. A 16-year-old girl with a disability, who fled her home in a wheelchair with her family on 24 July, was found dead on 1 August near the entrance to the town. Reportedly, her body had injuries indicating that she might have been killed by shelling. The girl's relatives left her behind reportedly after the IDF opened fire on them, injuring the girl's brother who was pushing her wheelchair. Attempts by the family to retrieve the girl in the following days were impeded by continued strikes.[75] Witnesses told OHCHR that IDF soldiers fired indiscriminately at civilians trying to escape the area including some with white flags.

45. In another instance at around 0600 hours on 24 July, several hundred residents trying to leave their homes reportedly found themselves surrounded by IDF tanks and IDF soldiers. The group, many of them carrying white flags, were reportedly asked by IDF soldiers to sit on the floor. IDF soldiers reportedly asked for a Hebrew speaker in the group to stand up. As a 57-year-old man attempted to do so, he was reportedly shot and killed.[76]

Rafah

46. On 1 August 2014, in eastern Rafah, in the context of reports that an IDF soldier had been captured, the IDF carried out massive shelling and bombardment in the neighbourhoods of Al-Shoka, Zalata and the vicinity of the defunct airport.[77] According to information gathered by the Protection Cluster, 111 Palestinians, including 94 civilians and 11 confirmed members of armed groups, were killed, some while fleeing their homes.[78] OCHA reported that thousands of residents from Rafah Governorate were displaced, fleeing to seek refuge, including in UNRWA shelters.[79] As of the afternoon of 3 August 2014, UNRWA was providing shelter to 259,321 in 90 schools across the Gaza Strip; 6,000 more than on 2 August.[80]

47. Witnesses told OHCHR that ambulances were prevented from reaching the dead and wounded. Instead, relatives were exposed to enormous risks amidst continuous shelling as they carried the corpses and injured to nearby hospitals. Based on the information available to OHCHR, it is hard to understand how the very high number of civilian casualties and the scale of damage caused by the shelling and bombardment carried out in Rafah, reportedly as a response to the alleged capture of the soldier, could be consistent with the principles of proportionality and distinction enshrined in international humanitarian law.[81]

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[74] Source: OHCHR; www.channel4.com/news/gaza-israel-killing-salem-shamaly-shujaiya-inside-story.
[75] Source: OHCHR.
[76] Source: OHCHR.
[77] Not functioning since September 2000. Source: OHCHR. See also www.haaretz.com/news/diplomacy-defense/.premium-1.608715, www.timesofisrael.com/has-the-hannibal-protocol-run-its-course/.
[78] Source: Protection Cluster.
[79] www.ochaopt.org/documents/ocha_opt_sitrep_03_08_2014.pdf; www.ochaopt.org/documents/ocha_opt_sitrep_05_08_2014.pdf.
[80] www.ochaopt.org/documents/ocha_opt_sitrep_02_08_2014.pdf and www.ochaopt.org/documents/ocha_opt_sitrep_03_08_2014.pdf.
[81] www.idfblog.com/blog/2014/07/18/live-updates-ground-operation-gaza/.

Attacks on schools serving as United Nations-designated shelters for internally-displaced persons

48. OHCHR documented a number of cases where those seeking shelter found they had nowhere safe to go. Of particular concern were the seven separate occasions when UNRWA schools that had been used as Designated Emergency Shelters were either hit directly or struck nearby by shells or other munitions, injuring and in three cases, killing civilians sheltering there.

49. The three most egregious cases in which UNRWA schools used as shelters were hit were at Beit Hanoun Elementary Co-educational "A" and "D" School (on 24 July 2014), Jabalia Elementary Girls "A" and "B" School (30 July 2014) and Rafah Preparatory Boys "A" School (3 August 2014), which were roundly condemned by the Secretary-General, the High Commissioner, the UNRWA Commissioner-General and others.[82]

50. In total, some 45 civilians were killed and more than 200 injured. United Nations premises are inviolable under international law, whilst civilians are protected from direct attack under international humanitarian law. The Military Advocate General (MAG) has stated it is launching a criminal investigation into the incident in Beit Hanoun.[83]

51. The case in Rafah, on 3 August 2014, illustrates the concerns. At around 1045 hours, a missile hit an area approximately five metres from the main gate of a UNRWA school used as a shelter for some 2,700 internally displaced persons, killing 12 people, including an UNRWA guard. Six of those killed were inside the school premises and five were outside when the attack occurred. The location of the twelfth victim has not been determined. Among the dead were eight children. A number of people passing by were injured. According to witness accounts, the children from the shelter were buying ice-cream from a street vendor at the gate of the school, when the missile hit the road. UNRWA notified the Israeli authorities 33 times of the coordinates of the shelter, and the fact that it was housing displaced persons, the last time one hour before the incident.[84] Eyewitnesses said that there were no activities of armed groups in the area at the time. Media reported that the IDF were targeting three members of an armed group on a motorcycle or firing at IDF in the vicinity of the school.[85]

52. An internal Board of Inquiry has been established by the Secretary-General which will "*review and investigate a number of specific incidents in which death or injuries occurred at, and/or damage [was] done to, United Nations premises".*[86]

Attacks on hospitals and medical personnel

53. According to the World Health Organization, 17 hospitals and 56 primary health clinics were destroyed or sustained damages during hostilities.[87]

[82] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14916&LangID=E and www.unrwa.org/newsroom/official-statements/unrwa-strongly-condemns-israeli-shelling-its-school-gaza-serious; www.unrwa.org/newsroom/official-statements/unrwa-condemns-israeli-strike-next-unrwa-school-killing-civilians; Secretary-General's remarks to media on arrival in San Jose, Costa Rica, 30 July 2014 available at http://www.un.org/sg/offthecuff/index.asp?nid=3503; Press Statement, Jen Psaki, US State Department Spokesperson, Washington, DC, August 3, 2014, www.state.gov/r/pa/prs/ps/2014/230160.htm.

[83] www.mag.idf.il/163-6859-en/Patzar.aspx?pos=9 and www.mag.idf.il/261-6958-en/Patzar.aspx.

[84] www.unrwa.org/newsroom/official-statements/unrwa-condemns-israeli-strike-next-unrwa-school-killing-civilians.

[85] www.ynetnews.com/articles/0,7340,L-4554369,00.html; www.nytimes.com/2014/07/31/world/middleeast/israel-gaza.html?_r=0.

[86] www.un.org/press/en/2014/sgsm16324.doc.htm

54. In one case OHCHR monitored, a warning given by the IDF before an attack on a private medical clinic in Al-Shaf, east of Gaza City, did allow civilians to evacuate, despite extremely short notice. On 12 July 2014, a neighbour living adjacent to the medical clinic received a telephone call from the IDF requesting him to warn the staff at the clinic of an imminent attack. The neighbour passed on the warning to family members of clinic staff. Thirty minutes later, he received another telephone call from IDF stating that the aerial attack would start in five minutes. People were evacuated from the clinic and its vicinity and there were no civilian casualties. Notwithstanding the successful evacuation, this attack still raises concerns regarding compliance with the special protection for hospitals under international humanitarian law.[88]

55. At least 17 out of 32 hospitals were damaged,[89] many directly impacted by Israeli strikes; one hospital and 54 primary health clinics were destroyed outright.[90] On 21 July 2014, Al-Aqsa Martyrs Hospital in Deir El Balah was directly hit numerous times, killing three people, including one patient, and injuring at least 40 others. At least two others who were evacuated from Al-Aqsa Martyrs Hospital died in other hospitals from their wounds. According to witnesses, intense shelling of the area had been ongoing for some time when the hospital was hit several times, including the Special Surgery Department, completely destroying several rooms. Reportedly, no warning of the pending attack was given. The IDF claimed that the target was a cache of anti-tank missiles in the hospital's immediate vicinity.[91]

56. This attack would appear to violate the special protections given to hospitals under international law. Due to their vital importance to the civilian population, and the function they perform, there are specific provisions in international humanitarian law regarding when hospitals lose their protection. Where hospitals are being used to commit acts harmful to the enemy, they may lose their protection from attack. However, their protective status may only cease after due warning has been given specifying a reasonable time limit, and after such warning has remained unheeded. The time given must be long enough to allow the unlawful acts to be stopped or for the hospital patients to be removed to a place of safety.[92]

57. There are also numerous reports of attacks on or near ambulances and ambulance staff, causing death, injury and damage. In several cases, this was even after ambulances coordinated their movement directly with the Israeli Civil Liaison Office or through the ICRC. For example, on 25 July 2014, at around 2310 hours, a Palestinian Red Crescent Society (PRCS) ambulance went to Al-Qarara in Khan Younis after the ICRC was contacted by the Liaison Office to evacuate a child. Three PRCS staff, including the driver, had to leave the vehicle to reach the child, which they did only after coordination with the IDF via the ICRC. The IDF then allegedly shot the driver. The remaining PRCS staff were allegedly shot at several times and only able to evacuate the driver 30 minutes later. He subsequently died from his injuries. The Military Advocate-General has ordered a criminal investigation into this incident.[93]

[87] www.emro.who.int/pse/publications-who/monthly-referral-reports.html.

[88] Articles 19-20, Fourth Geneva Convention.

[89] www.ochaopt.org/documents/gaza_mira_report_9september.pdf

[90] www.emro.who.int/images/stories/palestine/documents/Joint_Health_Sector_Assessment_Report_Gaza_Sept_2014-final.pdf?ua=1.

[91] www.bbc.com/news/world-middle-east-28399292.

[92] Rule 28, ICRC Customary IHL Study.

[93] www.mag.idf.il/261-6958-en/Patzar.aspx.

58. These attacks raise concerns in relation to Israel's obligations under international law. Ambulances and medical personnel are protected as civilians and civilian objects,[94] but also have specific protections under international humanitarian law.[95] In addition, attacks against medical personnel displaying the Red Crescent emblem are specifically prohibited.[96] Moreover, parties are obliged to take all possible measures to protect the wounded.[97]

Attacks on other civilian objects and infrastructure

59. Civilian objects protected under international humanitarian law - such as industrial infrastructure, farms, water and sanitation installations, the Gaza Power Plant, a water desalination station, mosques, and universities - sustained severe damage or were destroyed. Many of these are subject to special protection, including mosques and educational institutions,[98] as well as objects, such as the power plant and water and sanitation facilities, which may be seen as objects indispensable to the survival of the civilian population and whose destruction will have a significant impact on the population's enjoyment of human rights, including the rights to health, water and an adequate standard of living.[99] In any event, the widespread impact of destruction of such facilities would make it very unlikely that such attacks could be proportionate. While the IDF reportedly denied targeting the power plant,[100] the Israeli authorities confirmed that they had targeted mosques on a number of occasions and the Islamic University in Gaza.[101]

60. According to United Nations figures, 26 government schools were totally destroyed and 209 schools sustained damages (122 government schools, 83 UNRWA schools and four private schools) due to their proximity to targeted sites, or as result of direct attacks.[102] UNRWA estimates that 118 of its installations, including schools, health centres, and warehouses, have been damaged during the war.[103] Furthermore, three universities were directly hit in Israeli strikes and eight universities sustained collateral damage.[104]

61. Water and sanitation infrastructure in the Gaza Strip sustained damage reportedly amounting to USD 33 million.[105] According to the Coastal Municipalities Water Utility, 63 water facilities were damaged; among them 23 were completely destroyed.[106] As a result, 40 per cent of the population were deprived of access to running water while, by 20 August, the rest of the population were receiving running water only on average every three to four days.[107] A wastewater pumping station serving 200,000 people was also damaged in Gaza

94 Rule 1, ICRC Customary IHL Study.
95 Rule 25, ICRC Customary IHL Study.
96 Rule 30, ICRC Customary IHL Study.
97 Rules 110-111, ICRC Customary IHL Study.
98 Rule 38, ICRC Customary IHL Study.
99 Rule 55, ICRC Customary IHL Study; Articles 11 and 12, ICESCR.
100 www.timesofisrael.com/idf-general-israel-did-not-target-gazas-power-plant/.
101 http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Rise-in-rocket-fire-from-Gaza-3-Jul-2014.aspx.
102 Source: Education Cluster (OPT)/UNRWA.
103 www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-64.
104 Source: Education Cluster.
105 gisha.org/updates/3363, www.maannews.net/eng/ViewDetails.aspx?ID=720672.
106 gisha.org/updates/3363.
107 gisha.org/updates/3363.

City.[108] According to the Coastal Municipalities Water Utility, six of its staff members were killed during Israeli attacks while they were working.[109]

62. The sole power station in Gaza was forced to shut down after its fuel tanks and one turbine were hit in Israeli strikes. According to media, the IDF denied intentionally targeting the power plant, but did not rule out that the plant was hit by mistake.[110] The shutdown of the power plant deprived households of both electricity and access to water and sewage treatment. It also increased the vulnerability of hospitals forced to rely on precarious generators.[111] The cost of repairing the power plant is estimated at USD 10 million, and will take several months provided all necessary materials are allowed to enter Gaza.[112]

63. The escalation severely affected the livelihoods of farmers and fisherfolk. According to the United Nations Food and Agriculture Organization, 17,000 hectares of cropland and other agricultural infrastructure was substantially damaged, and half of Gaza's population of poultry birds was lost directly in Israeli strikes or through lack of water, feed or care resulting from access restrictions.[113] On 6 July, the fishing limit was reduced from six to three nautical miles.[114] The fishing sector lost an estimated 234.6 tons of fish - 9.3 per cent of the local fishermen's yearly catch - during the first month of hostilities.[115]

Transfer of detainees to Israel and forced work for military purposes

64. Approximately 66 Palestinians were detained by IDF in Gaza during the offensive.[116] Of these, 31 were transferred to Israel and the rest were subsequently released. In late October, local human rights organizations reported that 22 were still in Israeli detention,[117] many charged with membership of or affiliation with armed groups, with one detainee held under the Unlawful Combatants Act. According to a local human rights group, 10 detainees were allegedly subjected to beating, prolonged standing and stress positions during interrogation.[118]

65. In another case, a 17-year-old Palestinian youth told OHCHR he was detained and forced to work with the IDF for several days. On 23 July, at approximately 1300-1400 hours, the boy was walking through an IDF checkpoint on Al-Basteen Street in Khuzza'a after clearance was given to civilians to evacuate their homes to safer places in Khan Younis. He said that he was detained, interrogated and forced to spend a night in a dark room without windows, and forced to escort soldiers more than once to locate tunnels inside water wells and houses. The Military Advocate-General has ordered a criminal investigation into this incident.[119]

[108] www.cmwu.ps/en/news.php?view=107.
[109] www.cmwu.ps/en/news.php?view=111.
[110] www.timesofisrael.com/day-23-us-and-israel-deny-report-of-harsh-obama-netanyahu-call-rockets-fired-on-ta-confusion-over-truce/
[111] www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack.
[112] gisha.org/updates/3363.
[113] www.fao.org/news/story/en/item/240924/icode/.
[114] www.maannews.net/eng/ViewDetails.aspx?ID=710377
[115] www.fao.org/news/story/en/item/240924/icode/.
[116] Source: Palestinian Centre for Human Rights.
[117] Source: Palestinian Centre for Human Rights and Al Mezan Centre for Human Rights.
[118] Source: Al Mezan Centre for Human Rights.
[119] www.mag.idf.il/261-6958-en/Patzar.aspx.

B. Alleged violations by Palestinian armed groups

Indiscriminate rocket fire and targeting of civilians

66. Palestinian armed groups fired large numbers of projectiles towards Israel.[120] While some projectiles, especially mortars, may have been directed at military objectives, rockets lack precision in terms of aiming at specific targets. Many Palestinian armed groups reportedly indicated their intention to attack large population centres in Israel.[121] In numerous statements, Palestinian armed groups claimed responsibility for rocket fire at Israeli towns "in reprisal for Israeli abuses or aggression".[122] In other statements, Palestinian armed groups warned Israeli civilians living in "… the Gaza rim and the towns close by… not to return to their homes. Those of them who stay out of necessity should remain inside shelters and protected places".[123] Attacks directed at civilians are prohibited under international law. Also, the vast majority of rockets fired cannot be precisely targeted and, as such, are indiscriminate in nature and violate the principle of distinction.

67. According to Israeli Government sources, attacks by Palestinian armed groups resulted in the killing of six civilians in Israel.[124] On 21 August 2014, a four-year-old boy was killed, when a mortar hit a car in a community near Gaza.[125] Approximately 224 rockets reportedly hit Israeli residential buildings, cars and a synagogue, during the escalation.[126]

Military operations in densely-populated areas and locating weapons in United Nations facilities

68. The IDF, on 20 August 2014, reported that 1,600 out of 3,600 rockets had been fired from civilian areas.[127] Allegedly, rockets and mortars were fired from or in the vicinity of United Nations facilities, schools, graveyards, mosques and the power plant.[128] OHCHR documented two cases involving rocket fire from populated areas.

69. At around 2200 hours, on 20 July 2014, six civilians in different locations, north of the main cemetery in Al-Faluja neighbourhood of Jabalia, sustained stone and shrapnel injuries when a rocket fired by Palestinian armed groups fell short and landed on a house north of the cemetery. OHCHR received multiple reports that members of Palestinian armed groups frequently fired rockets from the cemetery towards Israel. The cemetery was repeatedly hit by the IDF during the escalation.

70. On 29 July 2014, at approximately 1630 hours, a number of Israeli shells consecutively hit a house in Al-Qasaseeb neighbourhood, a short distance from the aforementioned cemetery, killing 11 people from the same family. OHCHR received reports that members of Palestinian armed groups sought refuge or were in close proximity

[120] Source: Al Mezan Centre for Human Rights.
[121] www.saraya.ps/index.php?act=Show&id=36899, www.alqassam.ps/arabic/#!/29409/الأخبار,
[122] www.saraya.ps/index.php?act=Show&id=36899, www.alqassam.ps/arabic/#!/الأخبار
[123] www.qassam.ps/statement-1509-Press_Release_of_Abu_Obeida_Al_Qassam_spokesperson.html
[124] www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthlysummary–July2014.aspx; www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthly0814.aspx.
[125] www.timesofisrael.com/four-year-old-boy-killed-in-mortar-attack-on-shaar-hanegev/
[126] www.ynetnews.com/articles/0,7340,L-4564678,00.html.
[127] www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/. www.idfblog.com/blog/2014/07/31/hamas-launches-rockets-civilians-gaza/
[128] www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/. www.idfblog.com/blog/2014/07/31/hamas-launches-rockets-civilians-gaza/

to the house after having fired a number of rockets towards Israel, possibly from the cemetery the same day.

71. There are allegations that weapons belonging to Palestinian armed groups were stored in homes and in other civilian structures.[129]

72. On three occasions UNRWA confirmed that weapons components had been placed in three vacant UNRWA schools in Gaza in breach of the inviolability of United Nations premises.[130] As highlighted by UNRWA, the incident endangered civilians, including staff, and put at risk UNRWA mission to assist and protect Palestine refugees in Gaza. Immediately after discovering the items, UNRWA informed all key parties and condemned these violations of international law. On all occasions when weapons were found, they were found in schools that had been shut down for the summer, and which were not being used to shelter displaced persons.

Summary executions of alleged collaborators

73. Approximately 21 Palestinians accused of collaborating with Israel were allegedly executed by Palestinian armed groups during the escalation, of whom 16 were allegedly taken from Katiba Prison by armed masked men and summarily executed, while the five others were allegedly executed in other locations.[131] The majority of these executions took place immediately after the killing of three Izz Al-Din Al-Qassam Brigades commanders in Rafah by the IDF. Witnesses reported seeing at least 10 dead bodies, apparently executed by Palestinian armed groups, on 22 August 2014.[132]

74. According to available information, two of those killed were already held in detention in Katiba prison, one of the main prisons in Gaza City, accused of collaborating with Israel during the period prior to the July-August escalation. OHCHR documented the execution of a 23-year-old man on 23 August 2014. The man had been arrested on 23 October 2013 and charged with treason. He had appeared in court twice since the arrest, but there was no court decision before his execution.[133] In another case, a 45-year-old man, a former Palestinian Authority civil police officer who had been sentenced by a military court on 9 April 2013 to 15 years' imprisonment for collaboration with Israel, was executed on 22 August. According to the man's relatives, masked men took him from the Hamas-controlled prison at around 0230 hours to an empty building nearby where he was allegedly ill-treated before being shot dead. His family received no official notification of the execution but his body was handed over to them later that morning.

IV. Accountability

Israel

75. During the Israeli military operation in Gaza, the IDF Chief of Staff ordered that a General Staff Mechanism for Fact-Finding Assessments (the 'FFA Mechanism') would examine "Exceptional Incidents" that occurred during Operation Protective Edge.[134] The FFA Mechanism was established in response and as part of the implementation of the

[129] www.idfblog.com/blog/2014/07/27/hamas-uses-palestinian-houses-as-military-compounds/
[130] www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school.
[131] Source: OHCHR; see also http://alray.ps/en/index.php?act=post&id=5195#.U_8l38V_v90.
[132] Source: OHCHR.
[133] Source: OHCHR.
[134] www.mag.idf.il/261-6858-en/Patzar.aspx

recommendations of the "Turkel Commission".[135] According to information published by the MAG in December 2014 regarding "exceptional incidents", the MAG has conducted an initial examination with regard to more than 100 incidents. Allegations with regard to approximately 100 incidents have been referred to the FFA Mechanism for assessment. Fifty of these incidents have been examined by the FFA Mechanism and referred to the MAG for a decision. The MAG decided to close nine of these cases without opening a criminal investigation, while 11 incidents have been referred back to the FFA Mechanism for further examination.[136]

76. The MAG has ordered the opening of a total of thirteen criminal investigations, five following referral by the FFA Mechanism, and eight more on the basis of allegations that, according to the MAG, "indicated *prima facie* grounds for a reasonable suspicion of criminal misconduct without the need for prior examination by" the FFA Mechanism. Included in the list of incidents to be subject to a criminal investigation are the attack on the UNRWA school in Beit Hanoun on 24 July, the attack on the Abu Jamá home on 20 July 2014, the attack on Gaza beach on 16 July 2014, the attack on the ambulance driver near Khan Younis on 25 July 2014, and the alleged mistreatment of the 17-year-old boy who said that he was held by the IDF from 23 July 2014, amongst other incidents. The remaining cases await a decision.[137]

77. The MAG has decided to close the investigations into nine cases. One of these relates to the killing of Abu Kaware family members in Khan Younis on 8 July 2014. The investigation found that the attack was "carried out against the building due to its use for military purposes by Hamas", noting that "the IDF provided precautions to the residents of the building to vacate the premises. These precautions included an individual telephone call and the firing of a non-explosive projective at the roof of the premises, as part of the 'knock on the roof' procedure…" The investigation's findings continue: "Following the provision of the precautions, the residents vacated the building. Subsequently, a number of people were identified as returning to the premises for unknown reasons. However, at this stage, the bomb had already been released and could not be diverted from its target".[138] The investigation report does not specify the timings of the telephone call and the firing of the non-explosive projective and the time lapse between them and the actual attack. Thus, it is unclear whether the IDF gave the civilians sufficient time to evacuate the premises. Witnesses informed OHCHR that soon after the "roof knocking" rocket hit the building, people in the vicinity started running toward the attacked house to see what had happened, just when the major attack occurred killing nine people (including six from the Kaware family).[139] "Roof-knocking" is an inherently ambiguous method of warning. In this case, it is possible that people mistook the "roof knocking" for the main attack.

78. OHCHR notes that the investigations carried out by the FFA Mechanism and reviewed by the MAG are positive steps towards establishing accountability and justice for victims in Gaza. However, there are two significant shortcomings: firstly, the focus of the FFA is on "exceptional incidents", as opposed to all incidents that trigger the State's duty to investigate or any policies or tactics that may infringe international law; and, secondly, the

[135] The Turkel Commission, established to investigate the May 2010 Gaza flotilla raid, was given a mandate to review Israel's mechanisms for investigating alleged violations of the laws of armed conflict, and made specific recommendations to strengthen these mechanisms.

[136] www.mag.idf.il/261-6958-en/Patzar.aspx. This was an update to information released by the MAG in September 2014, and was included in this report just prior to its finalisation without it being possible to fully analyse the updated information published by the MAG.

[137] www.mag.idf.il/261-6958-en/Patzar.aspx.

[138] www.mag.idf.il/261-6958-en/Patzar.aspx

[139] Source: OHCHR.

MAG has a dual role as both legal advisor and investigator. On the one hand, the MAG advises the IDF on the legality of military operations, whilst on the other hand, it is responsible for investigating allegations of unlawful actions, including potentially those carried out on the basis of MAG advice. This raises concerns that investigations will be limited to selected incidents and will not address failures to ensure respect for international law at the policy level.

79. These concerns endure in the context of the continued failure to ensure meaningful accountability in respect of earlier escalations in Gaza. According to local human rights groups, despite numerous allegations of crimes under international law, only four Israeli soldiers have been prosecuted and convicted for three incidents that occurred during the 2008-09 escalation; one of the convictions was for stealing a credit card.[140] In 2013, the Military Advocate General publicly stated that it found no basis for opening criminal investigations into some 65 incidents involving the IDF during the November 2012 escalation.[141]

80. There are also concerns regarding accountability, including a remedy for victims, in respect of alleged violations in the West Bank, including East Jerusalem. The past lack of human rights compliant investigations and access to an effective remedy in cases of alleged excessive use of force by the ISF and settler violence is well documented.[142] There was little information available at the time of writing on the opening or progress of investigations into specific incidents. Israeli authorities must ensure that effective accountability measures are put in place and that victims of the aforementioned alleged violations are afforded a remedy. Additionally, the policies of administrative detention and punitive demolitions must end and remedy must be provided to their victims.

Accountability for violations by Palestinian armed groups in Gaza

81. The Palestinian authorities have an obligation to ensure that allegations of violations of international law are promptly, thoroughly, effectively, independently, impartially and transparently investigated, and that those responsible are brought to justice. To date, OHCHR has no information that such investigations are being carried out. There are again fears that impunity will prevail and only add further fuel to the possibility of more violence in the future.[143]

Commission of Inquiry

82. The Commission of Inquiry established by resolution S-21/1 and mandated to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, "*in the context of the military operations conducted since 13 June 2014, whether before, during or after*", is continuing its investigations. It will report to the Human Rights Council at its twenty-eighth session.[144]

[140] www.btselem.org/accountability/20140905_failure_to_investigate.

[141] The Secretary-General has also highlighted concerns regarding accountability following the 2012 escalation (A/68/502, paras.30-34).

[142] A/69/347, paras.52-69.; A/69/348, paras.36-44; A/HRC/28/44.

[143] Regarding impunity in relation to the 2012 escalation, see A/68/502, paras.33-34.

[144] A/HRC/27/76.

V. Conclusion

83. **The events of 12 June to 26 August 2014 were utterly devastating, and their consequences will continue to be felt by Palestinians across the Gaza Strip for some time to come. These events were unprecedented, but tragically not unfamiliar, occurring against a backdrop of ongoing violations of international human rights and humanitarian law across the Occupied Palestinian Territory. The violations and the violence only sow the seeds for further breaches, more loss of life, and ongoing instability in the region.**

84. **Effective accountability is a key means to break the cycle of violence, human rights violations and impunity. Today, as Palestinians in Gaza struggle to try to rebuild their broken lives, they battle with the fear that similar escalations will again erupt, and that Gaza will again be devastated as has happened repeatedly in recent years. On their side, Israelis too will continue to live in fear of attacks. Meanwhile, violations in the West Bank, including East Jerusalem, continue to drive the conflict, with wider implications for peace and security in the region. This protracted conflict is at a critical juncture, with recent heightened tensions emphasising the imperative for an end to the ongoing and recurrent human rights violations by all parties and to the prolonged occupation, as well as the full realisation of the right to self-determination.**

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 25/29 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It presents an analysis of how key violations of international human rights law and international humanitarian law and abuses of human rights by all duty bearers drive the conflict and violence, and explains how an end to those violations and abuses is a key component of any enduring peace.

* Late submission.

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I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 25/29, covers the period from 26 May 2013 to 31 October 2014. It is based primarily on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory. It also contains information obtained from Israeli and Palestinian non-governmental organizations (NGOs), and from media sources.

2. The report does not provide a comprehensive account of all human rights concerns in the Occupied Palestinian Territory and should be read in conjunction with the reports of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan (A/HRC/28/44 and A/69/348) and other recent reports of the Secretary-General and the High Commissioner (A/HRC/28/80 and Add.1, and A/69/347).

II. Legal background

3. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the legal obligations of Israel as the occupying Power, the Palestinian Authority, the de facto authorities and Palestinian armed groups in Gaza can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras. 5–9).

4. In 2014, the State of Palestine acceded to 20 international treaties,[1] including seven of the nine core international human rights treaties.

5. By acceding to those treaties, the State of Palestine has assumed legal obligations under international law, including the obligation to report to various human rights treaty bodies. Nevertheless, Israel, as the occupying Power, remains bound by international human rights law and humanitarian law, while other relevant actors also remain bound by international law.

6. On 23 April 2014, Fatah and Hamas agreed to form a government of national consensus, which was sworn in by the President, Mahmoud Abbas, under the leadership of the Prime Minister, Rami Hamdallah, on 2 June 2014. However, from 2 June 2014 to the end of the reporting period, there remained uncertainty regarding the actual power exercised by the Government and the degree to which it or any other authority or group exercised control in Gaza. In any event, it must be recalled that those authorities or groups exercising government-like functions and effective control over territory in Gaza are bound by relevant human rights law in that territory (see A/HRC/8/17, para. 9).

[1] http://nad-plo.org/userfiles/file/fact%20sheets/Q&A%20Accession.pdf.

III. Violations and abuses by all duty bearers as drivers of violence and conflict

A. Introduction

7. The period covered by the present report spans yet another deterioration of the conflict, with increased levels of violence and widespread violations of international human rights law and international humanitarian law. That deterioration was not confined to the Gaza Strip, where an escalation in hostilities in July and August 2014 led to unprecedented, but all too familiar, destruction and bloodshed. It extended also to the West Bank, including East Jerusalem, which saw its bloodiest year for many years and a resumption of some of the harshest policies of the Israeli occupation.

8. Although the violations by all duty bearers documented by OHCHR reached levels not seen for some years, they were not new. The population in the Occupied Palestinian Territory has been subjected to those same violations to varying degrees since the beginning of the occupation in 1967, with the situation seemingly locked into an endless succession of violations, violence and impunity. Human rights violations are not just a symptom of the conflict; they drive it in an ever-worsening cycle of violence.

9. That cycle must be ended. As has been repeatedly highlighted, for there to be an enduring peace, the root causes of the conflict must be addressed. These include ending the occupation and addressing the legitimate security concerns of Israel.[2] At the same time, there can be no meaningful peace unless human rights are placed at the centre of the process. Understanding the link acknowledged in the Universal Declaration of Human Rights[3] between human rights and peace and security is essential. The former High Commissioner for Human Rights recently described how numerous conflicts had "built up over years — and sometimes decades — of human rights grievances".[4] The Security Council has highlighted that any comprehensive approach to conflict prevention includes strengthening "respect for, and protection of, human rights".[5] Ending the cycle of conflict and violence means addressing past, present and future violations of human rights.

10. The Security Council has also stressed "the importance of accountability in preventing future conflicts, avoiding the recurrence of serious violations of international law, including international humanitarian law and human rights law" and ensuring an end to impunity for such violations.[6] Alongside accountability, other efforts to address the current human rights situation are needed. The Secretary-General, in his Human Rights Up Front initiative, has suggested that human rights information can be a powerful tool in shaping effective responses to conflict with "transformational impact".[7] There is no shortage of comprehensive reports setting out the human rights situation in the Occupied Palestinian Territory. It is time for that information to be acted upon. It is only by addressing the human rights issues set out in the present and numerous previous reports that the Occupied Palestinian Territory can be set on a more hopeful course. If left unaddressed, they will only serve to aggravate the conflict.

[2] See S/PV.7291.

[3] The preamble states that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

[4] See S/PV.7247.

[5] Security Council Resolution 2171 (2014), preamble.

[6] Ibid., preamble.

[7] www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2068#.VGoFO7ccSB8.

B. Cycles of violence and impunity

Escalations in Gaza

11. During the reporting period, active hostilities again flared up between Israel and Palestinian armed groups in Gaza. An increase in hostilities could be observed from the second half of 2013,[8] with 13 Palestinians, including a 3-year-old girl, and one Israeli killed during the period between 26 May 2013 and 6 July 2014.[9] On the night of 7 July, Israel launched a military operation in Gaza. Over the next 51 days, until a sustained ceasefire on 26 August, the parties engaged in intense hostilities, causing damage and destruction on an unprecedented scale in Gaza.

12. According to information gathered by the Protection Cluster[10] as of 1 December 2014,[11] a total of 1,549 Palestinian civilians, including 306 women and 539 children, had been killed. Palestinian Ministry of Health figures indicate that 11,231 Palestinians, including 3,540 women and 3,436 children, had been injured.[12] Almost 22,000 housing units, home to an estimated 132,000 people, had been totally destroyed or so severely damaged as to be uninhabitable.[13] At the height of the escalation, approximately 500,000 Palestinians, more than a quarter of the entire population in Gaza, were internally displaced.[14]

13. Between 8 July and 26 August, Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel.[15] According to official Israeli sources, 66 soldiers and six civilians were killed, while 369 soldiers and civilians were injured during the fighting or as a result of rocket attacks.[16]

14. The 2014 escalation, together with previous large-scale escalations in 2008/09 and 2012 and sporadic violent escalations in between, form part of a recurrent pattern of serious violations of international humanitarian law and international human rights law by all parties. Each escalation involved significant loss of life; in each case, civilians have paid a heavy price in terms of fatalities, injuries and suffering.

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[8] See the report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/69/347), paras. 40–43.

[9] Source: Al-Mezan Centre for Human Rights (figures do not include casualties in the access-restricted areas (see paras. 18–20 below)); United Nations Department of Safety and Security (UNDSS); A/69/347, paras. 40–43.

[10] The Protection Cluster is the mechanism for coordinating humanitarian action by United Nations and non-United Nations humanitarian organizations working in the protection sector. It is one of several such sectoral clusters. OHCHR leads the Protection Cluster in the Occupied Palestinian Territory. For more information on the cluster system, see www.ochaopt.org/content.aspx?id=1010056. The casualty figures are subject to ongoing verification.

[11] Updated figures outside the reporting period are provided where available.

[12] www.moh.ps/attach/761.pdf.

[13] Source: Shelter Cluster.

[14] www.ochaopt.org/documents/ocha_opt_sitrep_26_08_2014.pdf and www.ochaopt.org/documents/gaza_mira_report_9september.pdf.

[15] Source: UNDSS.

[16] www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthly0814.aspx; www.shabak.gov.il/English/EnTerrorData/Reports/Pages/Monthlysummary%E2%80%93July2014.aspx; www.idfblog.com/blog/2014/07/19/fallen-soldiers-operation-protective-edge/; and http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/In%20Memory%20of%20the%20Victims%20of%20Palestinian%20Violence%20a.aspx.

Comparative fatalities, injuries and displacement in Gaza escalations

	2008/09	*2012*	*2014*
Fatalities in Gaza Strip	Between 1387 and 1417	174	2256
Fatalities in Israel/of Israelis	13	6	72
Injuries in Gaza Strip	5300	Between 900 and 1500	11231
Injuries in Israel/of Israelis	918	239	369
Peak number of displaced persons in Gaza Strip	Approx. 90000	Approx. 27000	Approx. 500000
Houses severely damaged or destroyed in Gaza Strip	6,228	382	21921
Houses partially damaged in Gaza Strip	56646	Approx. 8000	91445
Houses damaged or destroyed in Israel	No data[a]	80	No data

Sources: http://shelterpalestine.org/Upload/Doc/0804b125-6e13-49ea-830f-8da090c9c64f.pdf http://shelterpalestine.org/Upload/Doc/8c3ade5f-b82a-4ae7-bf90-cf93719a970f.pdf www.shelterpalestine.org/Upload/Doc/8dd75495-b24d-4aeb-80c2-1f4cae79e6ee.pdf

[a] See A/HRC/12/48, paras. 1,659–1,661.

15. After the 2008/09 escalation, the report of the United Nations Fact-Finding Mission on the Gaza Conflict (the Goldstone Report) concluded that Israel, the responsible Palestinian authorities and Palestinian armed groups had committed violations of international human rights law and international humanitarian law, some amounting to "war crimes" and "crimes against humanity" (A/HRC/12/48, paras. 311–1772). Similarly, in relation to the Israeli military operation in November 2012, OHCHR documented violations of international law committed by both the Israel Defence Forces and Palestinian armed groups (A/HRC/22/35/Add.1). Numerous allegations of violations of international human rights law and international humanitarian law were documented by OHCHR during the 2014 hostilities. Those findings are presented in an addendum to the High Commissioner's annual report on the Occupied Palestinian Territory (A/HRC/28/80/Add.1). As noted in the addendum, those alleged violations can only be distinguished from the alleged violations documented in relation to the previous escalations in Gaza by their elevated number and devastating impact. It will fall to the independent commission of inquiry established under Human Rights Council resolution S-21/1 to investigate those allegations in full.

16. The alleged violations, documented by OHCHR in 2014, mirror those documented and investigated in 2008/09 and 2012, thereby underscoring the recurrent nature of the violations in Gaza and the failure of efforts to prevent their repetition. They included serious concerns about targeting decisions taken by Palestinian armed groups; indiscriminate attacks; respect for distinction and proportionality; locating military objects in civilian buildings; launching rockets from densely populated areas; and execution of suspected collaborators.[17] The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) also confirmed that weapons had been placed in vacant UNRWA schools during the 2014 escalation, in breach of the inviolability of United

[17] A/HRC/12/48, paras. 439–498; A/HRC/22/35/Add.1, paras. 32–45.

Nations premises.[18] In relation to Israel, there are serious concerns with regard to the alleged failure of the Israel Defence Forces to respect the legal principles of distinction, proportionality and precaution in attack. Those concerns arise in the context of targeting decisions; the taking of all necessary precautions; the proportionality of the attacks; respect for the distinction between civilians and civilian objects and military objectives, especially during the ground operation; attacks on and close to schools, including those used as shelters for the displaced; attacks on hospitals, ambulances and ambulance staff; and the alleged arrest and transfer of Palestinians from Gaza to Israel during the ground operation.[19]

17. Following the ceasefire on 26 August, OHCHR observed a significant decrease in violence, recording no deaths, six rockets fired and no air strikes as of 24 October 2014. The limited ceasefire which, as in the case of each previous escalation, ended the 2014 escalation, involved some easing of the restrictive measures on the movement of people and goods from and into Gaza. Each ceasefire agreement has consistently failed to address the root causes of the conflict, namely the prolonged occupation of the Occupied Palestinian Territory, the blockade with its negative impact on enjoyment of economic, social and cultural rights, and the lack of accountability for violations of international human rights law and international humanitarian law. The agreements have served merely to paper over the cracks of the conflict, which has continued to simmer before re-erupting in yet more violence and yet more violations of international law.

Enforcement of the access-restricted areas

18. Between 25 May 2013 and 6 July 2014, a total of seven people were shot and killed and 131 were injured in the access-restricted areas on the Gaza side of the fence erected by Israel around the Gaza Strip.[20] In some incidents, shooting occurred in circumstances that, according to information available to OHCHR, posed no threat to the soldiers. For example, on 24 January 2014, the Israel Defence Forces shot and killed a 19-year-old Palestinian while he was taking photographs a few hundred metres away from the fence in Beit Lahia, northern Gaza.

19. Similar violations occurred at sea, where Israeli naval forces continue to restrict the access of Palestinian fishermen to fishing waters. Between 25 May 2013 and 6 July 2014, one fisherman was killed and 13 others were injured. Israeli naval forces arrested approximately 46 fishermen, confiscated 20 boats and damaged six boats during the reporting period.[21]

20. Despite an expansion of the fishing limit off the Gaza shore from three to six nautical miles, reportedly under the terms of the ceasefire agreement,[22] as of 24 October 2014, at least one fisherman had been injured, 13 arrested, four boats confiscated and one boat destroyed.[23] Israel resumed its enforcement of the access-restricted areas in the same manner as before the 2014 escalation, by using lethal force. Several incidents of shooting at Palestinians close to the fence were reported between 26 August 2014 and 25 October 2014, with seven civilians injured in the access-restricted areas.[24]

[18] www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school.
[19] A/HRC/12/48, paras. 499–1344; A/HRC/22/35/Add.1, paras. 11–31; A/HRC/28/80/Add.1, paras. 32–65.
[20] Source: OHCHR.
[21] Source: OHCHR.
[22] www.reuters.com/article/2014/08/26/us-mideast-gaza-ceasefire-details-idUSKBN0GQ1XQ20140826.
[23] Source: OHCHR.
[24] Source: OHCHR.

Excessive use of force by Israeli security forces in the West Bank, including East Jerusalem

21. Palestinian fatalities in incidents involving the Israeli security forces in the West Bank, including East Jerusalem, soared during the reporting period. There were 67 Palestinian fatalities, compared to 22 in the same period in 2012/13.[25] During 2014, as at 31 October, there had been 48 fatalities.[26]

22. The Secretary-General and the High Commissioner have frequently raised concerns about the excessive use of force by Israeli authorities, particularly as casualties have spiked.[27] Concerns that the rules of engagement are either not compliant with international human rights law, or are not being respected or enforced, are heightened by the dramatic increase in injuries from live ammunition. During the reporting period, 1,276 Palestinians were injured by live ammunition out of 5,799 injured in total, compared with 175 out of a total of 4,884 in the equivalent period for 2012/13.[28]

23. Those incidents are both a cause and consequence of the conflict and of further human rights violations. They fuel violence and foster distrust and hostility between the Israeli security forces and the Palestinian population they are in the Occupied Territory to protect. In many cases monitored by OHCHR, the funeral of someone killed in that manner was followed by clashes between Palestinians and the Israeli security forces in which more people were injured and some sometimes killed, in a seemingly endless cycle of violence and tension. Examples include a series of incidents documented by OHCHR involving injuries from live ammunition, the victims of which were Palestinians from al-Jalazun refugee camp in the West Bank in September and October 2013,[29] and the case of a 13-year-old boy who was allegedly beaten by the Israeli security forces on 8 September 2014 after attending the funeral of Mohammad Sonnokrot in East Jerusalem.[30]

Attacks by Palestinian armed groups and individuals on Israelis

24. Violent attacks by Palestinians on Israelis also continue to occur throughout the West Bank, including East Jerusalem. During 2013, the Internal Security Agency of Israel recorded 5 fatalities, including 3 soldiers, and 44 injured persons, including 29 security personnel, in attacks on Israelis in the West Bank, including East Jerusalem.[31] Violence against Israelis has also been notable with the abduction and murder of three Israeli teenagers in June 2014,[32] but also the shooting of a 46-year-old man near Idhna, in the southern West Bank[33] and an alleged car attack on a light rail station in Jerusalem on 22 October 2014 which resulted in the death of one Israeli infant and an Ecuadorian woman.[34]

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[25] Source: Office for the Coordination of Humanitarian Affairs (OCHA)/OHCHR.

[26] Sources: OHCHR/OCHA. Fatality figures do not include one Palestinian killed in Mea Shearim in Jerusalem on 4 August 2014 and one Palestinian child killed by unexploded ordnance in Tubas on 11 August 2014; A/HRC/28/80/Add.1.

[27] A/69/347, paras. 44–51; A/HRC/25/40, paras. 6–14.

[28] Source: OCHA.

[29] A/HRC/25/40, para. 8.

[30] Mr. Sonnokrot died as a result of injuries sustained in an incident involving the Israeli security forces in Wadi Joz, East Jerusalem, on 31 August 2014. OHCHR has expressed concerns about the legality of the use of force in that incident.

[31] www.shabak.gov.il/English/EnTerrorData/Reports/Pages/2013AnnualSummary.aspx.

[32] A/HRC/28/80/Add.1, paras. 6–22.

[33] www.btselem.org/israeli_civilians/20140415_israeli_civilian_killed_by_palestinian_gunfire_near_idna.

[34] Source: OHCHR.

25. The abduction and murder of the three Israeli youths had a very damaging impact and contributed to the serious deterioration in the human rights situation across the Occupied Palestinian Territory. Attacks such as those drive the conflict and foment division, making Israelis feel unsafe and prompting further attacks by settlers and others. They fuel a political discourse in Israel that demands harsh measures against the Palestinian population, as was evident during the summer of 2014.[35] Whilst Israel must act to maintain law and order, such actions must be grounded in respect for human rights. As the Security Council has underlined, failing to comply with human rights and other international legal obligations contributes to "increased radicalization and fosters a sense of impunity".[36]

Impunity and the failure to ensure accountability

26. At the General Assembly on 6 August 2014, the former High Commissioner for Human Rights stated that it was "a terrible failure for humanity not to act to avert yet another devastating crisis in Gaza" and highlighted how the "need for investigation and accountability" raised in the aftermath of the 2008/09 and 2012 escalations had "not been met".[37] The Secretary-General and the United Nations Special Coordinator for the Middle East Peace Process have also stressed the importance of accountability on all sides.[38] Yet the failures of the past do not bode well for the future, with impunity prevailing despite the fact that numerous violations of international humanitarian law and international human rights law have been documented.

27. The Goldstone Report highlighted the defects in the investigative mechanisms in respect of both Israel and the Palestinian authorities in Gaza.[39] Many of those concerns were echoed by the committee of independent experts appointed to monitor investigations on both the Israeli and Palestinian sides into the 2008/09 escalation, which found that accountability measures on both sides were severely lacking.[40] Thereafter, according to the Israeli NGO B'tselem, at least 52 military police investigations were opened, with only three investigations ending with indictments, resulting in the conviction of four soldiers.[41] Of the sentences handed down, the longest was 15 months of imprisonment for credit card fraud.

28. Following the November 2012 escalation, OHCHR called on all duty bearers to ensure accountability for violations of international law.[42] In April 2013, the Israeli Military Advocate General stated that it found no basis for opening military police investigations into approximately 65 incidents it had examined and that the cases would be closed. As of 31 October 2014, decisions were still pending in approximately 15 outstanding incidents. Two fact-finding committees were formed to investigate specific incidents, according to the latest available information, but as at 31 October 2014, no criminal investigations had yet been opened.[43] Additionally, OHCHR is aware of only one investigation into an incident

[35] A/HRC/28/80/Add.1.

[36] S/RES/2178 (2014), preamble.

[37] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14921&LangID=E#sthash.2CDohR7N.dpuf.

[38] S/PV.7266.

[39] A/HRC/12/48, paras. 1957–1966.

[40] A/HRC/15/50; A/HRC/16/24.

[41] www.btselem.org/accountability/20140905_failure_to_investigate; also The Public Commission to Examine the Maritime Incident of 31 May 2010 (Turkel Commission), Second Report, p. 345.

[42] A/HRC/22/35, paras. 66–75.

[43] www.law.idf.il/SIP_STORAGE/files/1/1381.pdf; www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10103:concerning-qpillar-of-defenseq-victims-for-the-first-time-israeli-committee-headed-by-general-doron-almog-initiates-investigation-in-a-case-followed-up-by-

involving the use of force by Israeli security forces in the access-restricted areas in Gaza: an investigation opened in March 2014, almost four years after the incident, into the killing of a fisherman in 2010.

29. During the latest Israeli military operation in Gaza, the Israel Defence Forces Chief of Staff ordered the establishment of a general staff mechanism for fact-finding assessments to examine "exceptional incidents" that had occurred during "Operation Protective Edge".[44] The mechanism was established in response to and as part of the implementation of the recommendations of the Turkel Commission.[45] It is hoped that it will lead to meaningful accountability.

30. On the Palestinian side, the lack of accountability is also stark. OHCHR is not aware of any steps taken by the relevant Palestinian authorities to bring perpetrators to justice in response to the Goldstone Report. Nor is OHCHR aware that any measures have been taken by the authorities in Gaza to ensure accountability for violations in relation to the November 2012 escalation, including the direct targeting of civilians and indiscriminate firing of rockets.[46]

31. Those failures are not confined to the situation in Gaza. Both the Secretary-General and the High Commissioner have repeatedly highlighted the failure to ensure accountability and an adequate remedy for victims across the Occupied Palestinian Territory, including victims of killings and injuries involving Israeli security forces in the West Bank, including East Jerusalem.[47] Under international human rights law, all incidents of killings and serious injury must be promptly, thoroughly, effectively, independently, impartially and transparently investigated.[48] However, as outlined in previous reports of the Secretary-General and highlighted by the Human Rights Committee, Israel has not met its obligations in that regard.[49]

32. The ongoing impunity that prevails is in clear violation of the obligations of the duty bearers, and the repercussions are felt as each side commits the same or similar violations again and again, safe in the knowledge that they will not be brought to justice.

33. The fact that the Israeli authorities and the Israeli security forces, as well as relevant Palestinian authorities and Palestinian armed groups, are never held to account for violations undermines the protective force of international law. The resulting enmity and lack of trust drives violence. As the former High Commissioner has highlighted, "adherence to international humanitarian law and international human rights law, and ensuring accountability for violations, are essential prerequisites for any lasting peace".[50]

pchr&catid=36:pchrpressreleases&Itemid=194.

[44] www.mag.idf.il/261-6858-en/Patzar.aspx.

[45] The Turkel Commission, established to investigate the May 2010 Gaza flotilla raid, was mandated to review Israeli mechanisms for investigating alleged violations of the laws of armed conflict, and made recommendations to strengthen those mechanisms.

[46] A/HRC/25/40, paras. 58–60.

[47] A/69/347, paras. 52–69; A/HRC/25/40, paras. 50–56.

[48] Human Rights Committee, general comment No. 31 (2004) on the nature of the general obligation imposed on States parties to the Covenant, para. 15.

[49] A/69/347, paras. 52–69; CCPR/C/ISR/CO/4, para. 13.

[50] Statement by Navi Pillay at the Informal Plenary Meeting of the General Assembly on the situation in Gaza, 6 August 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14921&LangID=E.

C. Cycles of humanitarian crisis, deprivation and despair

Humanitarian impact of hostilities and the blockade

34. The blockade that Israel has imposed on Gaza, as consistently documented by the Secretary-General and the High Commissioner,[51] contravenes international law and has further impoverished the population. Its continued imposition runs counter to the measures that are essential to ensure that Palestinians can enjoy human rights, including economic, social and cultural rights that can provide a bedrock for resolution of the conflict.[52] In that connection, the United Nations Special Coordinator for the Middle East Peace Process highlighted in August 2014 the importance of not leaving Gaza "in the condition it was in before this latest escalation" and how "the restrictions on the [Gaza] Strip on the exit and entry of goods and people will continue to fuel instability, underdevelopment and conflict".[53]

35. Some efforts have been made in that regard. On 14 October 2014, within the framework of the Gaza Reconstruction Mechanism, the first shipment of materials for private construction reportedly entered Gaza.[54] There has also been some easing of movement restrictions since the 26 August 2014 ceasefire, including allowing increased numbers of family members to visit Gaza detainees and the granting of permission for the Palestinian Government of National Consensus to move between the West Bank and Gaza.[55] However, those measures are insufficient to address the level of destruction caused during the escalation, particularly to the housing sector. Furthermore, they are no replacement for the lifting of the blockade, which is now more urgently needed than ever. The decision of Egypt to close the Rafah crossing on 24 October 2014, following a reported suicide attack on Egyptian troops in Sinai, has exacerbated the situation, and the movement of goods from and into Gaza remains severely restricted. Gaza imports for the whole of the year 2014 are still on average at 30.6 per cent of the level they were at prior to the blockade.[56]

36. During the recent hostilities, some 13,529 houses were destroyed and 8,392 were severely damaged,[57] exacerbating an existing housing shortage generated by previous escalations.[58] Approximately 4,000 truckloads of cement aggregates and iron bars are required per day to meet the construction demands.[59] Construction materials are necessary, not just for the economic recovery and development of the Gaza Strip, but also for the

[51] A/69/347, paras. 30–34; A/HRC/25/40, paras. 24–30.

[52] The Security Council has highlighted the need to address the root causes of conflict, including through poverty eradication. See Security Council resolution 2171 (2014), preamble.

[53] S/PV.7243.

[54] Under the Gaza Reconstruction Mechanism, the Government of Palestine is to take the lead in the Gaza reconstruction process while addressing the security concerns of Israel. See the Protection of Civilians Weekly Report 14–20 October 2014 of the Office for the Coordination of Humanitarian Affairs. Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_10_24_english.pdf.

[55] http://gisha.org/updates/3498 and http://gisha.org/updates/3614.

[56] www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_10_31_english.pdf.

[57] www.shelterpalestine.org/Upload/Doc/8dd75495-b24d-4aeb-80c2-1f4cae79e6ee.pdf.

[58] www.shelterpalestine.org/Upload/Doc/f504f516-502c-4000-9372-bc72aca186f0.pdf.

[59] Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report 14–20 October 2014. Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_10_24_english.pdf.

employment of thousands of construction workers who have lost their livelihoods. It is worth noting that nearly half of the US$ 5.4 billion pledged at a donors' meeting in Cairo on 12 October 2014 were for reconstruction in Gaza.[60]

37. As at 20 October 2014, an estimated 42,500 internally displaced persons continued to take refuge in 18 UNRWA schools, with 47,000 more being hosted by their relatives.[61] Internally displaced persons are in need of shelter, food, water and sanitation, and also psychosocial support and protection.

38. Humanitarian conditions in Gaza continue to be compounded by the limited availability and accessibility of utilities, including potable water and electricity. Before the 2014 escalation, some 90 per cent of Gaza's water from its coastal aquifer was considered undrinkable without treatment.[62] Most areas experienced power cuts of 12 hours a day; they have increased to 18 hours daily after the conflict and the attack by Israel on the Gaza power station.[63] Economic recovery remains stagnant, resulting in high unemployment, food insecurity and reliance on food aid, with 830,000 people receiving food aid from UNRWA. That has consequences for the health of the Gazan population — even prior to the recent escalation, 35.8 per cent of pregnant women and 33.7 per cent of infants were suffering from anaemia.[64]

39. At least 1,000 persons injured in the 2014 war will suffer permanent disability.[65] In addition to their particular health and psychological needs, those people remain in need of specific equipment that is unavailable in Gaza owing to the continued blockade. Children constitute 30 per cent of those suffering from a disability as a result of injuries sustained during the war.[66] Over 1,500 children have reportedly become orphaned,[67] with thousands of others traumatized by the latest violence.

40. The health system is in disarray. According to the World Health Organization (WHO), some 17 hospitals and 56 public health centres were either destroyed or sustained damage during the hostilities. Damage inflicted on health institutions, the prevailing shortage in essential drugs (estimated at 40 per cent) and the lack of spare parts for certain medical equipment have reduced the availability and accessibility of health services. For example, outpatient services decreased by 14.75 per cent, Intensive care unit capacity decreased by 21.42 per cent and the availability of basic laboratories was reduced by 12.74 per cent.[68]

41. Violence during the conflict has forced thousands of women to neglect their own needs to save and support their families,[69] with large numbers of them suffering from post-

[60] www.timesofisrael.com/donor-conference-pledges-5-4-billion-for-gaza/.

[61] See note 70 above.

[62] Office of the United Nations Special Coordinator for the Middle East Peace Process, *Gaza in 2020: A liveable place?* (August 2012). Available from www.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf.

[63] www.ochaopt.org/documents/ocha_opt_sitrep_30_07_2014.pdfhttp:///.

[64] www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf.

[65] Ibid.

[66] Ibid.

[67] Ibid., p.6.

[68] Health Cluster in the occupied Palestinian territory, *Gaza Strip: Joint Health Sector Assessment Report* (September 2014). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/Joint_Health_Sector_Assessment_Report_Gaza_Sept_2014.pdf.

[69] Al-Jazeera, "Gaza women bear psychological scars of war", 28 July 2014. Available from www.aljazeera.com/news/middleeast/2014/07/gaza-women-psychological-scars-war-20147236293732764 6.html.

traumatic stress disorder, anxiety, depression and, in many cases, permanent disabilities. Mental health issues extend to the wider population. Overall, according to WHO, 20 per cent of the Gazan population, some 360,000 people, are suffering from mental health challenges following the hostilities.[70]

42. The Palestinian people in Gaza were already suffering the severe human cost of past hostilities and the blockade when the situation was further compounded by the recent escalation in July and August 2014. The tragic deaths by drowning of hundreds of migrants from Gaza as they attempted to make perilous journeys across the Mediterranean in overcrowded boats in September 2014 is evidence of just how desperate many people there have become.[71] The desperate situation in Gaza is a stark illustration of the often-referenced summary of the aims of the United Nations: that there can be no peace and security without development, no development without peace and security, and neither without respect for human rights.[72]

D. Settlements

History and recent developments

43. As the Secretary-General has repeatedly stated, settlement activity in the West Bank, including East Jerusalem, is "illegal under international law and runs totally counter to the pursuit of a two-State solution".[73] Israel is prohibited under article 49 of the Fourth Geneva Convention from transferring parts of its own civilian population into the territory that it occupies. The settlements in the West Bank, including East Jerusalem, stand in stark contravention of that obligation.[74] The Secretary-General has consistently urged Israel to reverse its settlement activities.[75] However, the number of settlements and settlers in the West Bank, including East Jerusalem, has continued to grow, from 10,608 settlers in 1972[76] to between 500,000 and 650,000 today.[77] The finding of a commission mandated by the Security Council to examine the situation relating to settlements in 1979 that the settlement policy of Israel was causing "profound and irreversible changes of a geographical and demographic nature in those territories, including Jerusalem" remains pertinent today.[78]

44. As attempts to ensure a lasting peace have again faltered, the settlements stand as arguably the biggest obstacle to peace and the two-State solution. Settlement activity must be ended if the two-State solution is to have any chance. It is therefore particularly concerning, in the months following the 26 August ceasefire agreement, that the Israeli

[70] www.who.int/features/2014/gazans-mental-health-services/en/.

[71] http://euromid.org/en/article/612.

[72] A/59/2005, para. 17.

[73] See www.unsco.org/Documents/Statements/SG/2014/SG%20statement%201%20September%202014.pdf and www.unsco.org/Documents/Statements/MSCB/2008/Security%20Council%20Briefing%20-%2021%20October%202014.pdf.

[74] Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1), para. 120; CCPR/C/ISR/CO/4, para. 17.

[75] www.un.org/sg/statements/index.asp?nid=8120.

[76] www.fmep.org/settlement_info/settlement-info-and-tables/stats-data/comprehensive-settlement-population-1972-2006.

[77] A/HRC/28/44, sect. III.

[78] S/13450, para. 233.

authorities have pressed ahead with a number of plans that either pave the way for the expansion of settlements or enlarge existing settlements.[79]

The settlements as drivers of conflict and human rights violations

45. The settlements are at the centre of many of the ongoing human rights violations in the West Bank, including East Jerusalem.[80] The mere presence of settlements, and the associated restrictions that are imposed on Palestinians, fragment the Palestinian landscape, undermining the core right of the Palestinian people to self-determination, a right which is at the heart of the two-State solution. Every expansion, such as the declaration of State land near the Israeli settlement of Gush Etzion in August 2014[81] and the approval of new housing units in the Ramat Sholomo and Har Homa settlements in East Jerusalem in October 2014,[82] compounds that process.[83] Plans to transfer thousands of Bedouin and herders from the Jordan Valley may also be connected with settlement expansion. The Bedouin and herders are at risk of forcible transfer, a grave breach of the Fourth Geneva Convention, as well as multiple human rights violations.[84]

46. The impact of the settlements on the enjoyment of Palestinians' economic, social and cultural rights has been well documented. The settlements have had a markedly detrimental effect on Palestinians' rights to water, food, an adequate standard of living and education.[85] Moreover, the mere presence of the settlements has an impact on the rights of Palestinians and they are sources of tension and conflict across the West Bank, including East Jerusalem. That has a corresponding impact on Palestinians' enjoyment of civil and political rights, including the rights to life and to freedom of expression, of peaceful assembly and of movement.[86] A number of the main flashpoints for demonstrations and clashes, which often result in killings and injury of Palestinians, centre on the settlements or are in reaction to settler violence, particularly in places such as Silwan in East Jerusalem, and An Nabi Saleh and Silwad in the central West Bank. Additionally, around some settlements, such as Bracha and Yitzhar near to Nablus, settler attacks on Palestinians and Palestinian property are common.[87]

47. The Israeli authorities' pursuit of settlement expansion only fuels violations of international law, which in turn fan the flames of violence and conflict. It is of concern that the endeavour is backed at the highest levels. Successive Israeli governments have ignored calls to reverse settlement activities. In the wake of an announcement of settlement expansion in East Jerusalem, the current Prime Minister proclaimed that "we have built in Jerusalem, we are building in Jerusalem and we will continue to build in Jerusalem", even as that very exercise fuels tension and conflict in the city and across the Occupied Palestinian Territory.[88]

[79] A/HRC/28/44.
[80] A/69/348, para. 11; A/68/513, paras. 12–14.
[81] A/HRC/28/44, sect. III; A/68/348, para. 19.
[82] A/HRC/28/44, sect. III.
[83] A/HRC/22/63, paras. 32–28; A/67/375, paras. 10–11.
[84] A/69/348, paras. 12–16.
[85] A/HRC/28/44; A/HRC/22/63, paras. 80–95; A/HRC/25/38, paras. 21–36.
[86] A/HRC/22/63, paras. 72–79.
[87] A/HRC/28/44.
[88] www.pmo.gov.il/English/MediaCenter/Speeches/Pages/speechHarbor281014.aspx.

E. Arbitrary and collective measures in the West Bank, including East Jerusalem

48. During the reporting period, Israel extended some measures already used in the West Bank, including East Jerusalem. The authorities significantly increased their use of administrative detention, continued carrying out home demolitions in the context of a discriminatory planning policy, resumed a policy of punitive demolitions and imposed restrictions on Palestinians' freedom of movement and access to religious sites. While the Israeli authorities had a duty to seek to bring the perpetrators of the June 2014 murders of the three teenagers to justice, the use of measures that violate international human rights law and international humanitarian law has contributed to stoking up resentment amongst the Palestinian population.

Administrative and mass arrest and detention

49. The reporting period witnessed a significant increase in the number of Palestinians subjected to administrative detention without charge. According to statistics collected by the Israeli NGO B'tselem from the Israeli Prison Service, 196 Palestinians were being held in administrative detention at the end of May 2014. The figure peaked at 473 in August, according to B'tselem the highest number since April 2009, before falling back to 468 by 30 September. [89] The increased use of the practice by Israel, despite consistent denunciations by the Secretary-General, the Human Rights Committee, the High Commissioner for Human Rights and others, is of concern.[90]

50. The increase in administrative detention came in the context of alleged mass arbitrary arrests and detentions, particularly in the Hebron area and in East Jerusalem, as well as other parts of the West Bank. Those mass measures, combined with other collective measures, helped contribute to a pressure cooker environment in the West Bank, including East Jerusalem.[91]

Demolitions, including punitive and mass demolitions

51. In the summer of 2014, the resumption of punitive demolitions of the homes of the suspects in the abduction and murder of the three Israeli teenagers and one other, was another retrograde step. Israel formally ended its policy of punitive demolitions in 2005, although one isolated instance was noted in 2009.[92] Those measures, supposedly intended as a deterrent, but entailing multiple violations of international law, only serve to alienate the population, particularly owing to their collective nature and the impact on people innocent of any alleged crime.[93] In 2005, an Israeli commission recommended an end to punitive demolitions, reportedly assessing that punitive demolitions were not an effective deterrent and caused damage to Israel by generating hatred and hostility.[94]

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[89] www.btselem.org/administrative_detention/20141007_spike_in_number_of_administrative_detainees; www.btselem.org/statistics/detainees_and_prisoners.

[90] CCPR/C/ISR/CO/4; www.un.org/sg/statements/index.asp?nid=7751; www.un.org/apps/news/story.asp?NewsID=48092; www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14770&LangID=E#sthash.IU1rEHYi.dpuf.

[91] A/HRC/28/80/Add.1, paras. 6–22.

[92] A/HRC/28/80/Add.1, para. 18; www.hamoked.org//timeline.aspx?pageID=timelinehousedemolitions; www.haaretz.com/print-edition/news/idf-panel-recommends-ending-punitive-house-demolitions-for-terrorists-families-1.150620.

[93] A/HRC/28/80/Add.1, paras. 6–22.

[94] www.haaretz.com/print-edition/news/idf-panel-recommends-ending-punitive-house-demolitions-for-

52. The demolition of Palestinian homes built without Israeli permits continued apace during the reporting period: 871 structures were demolished (310 residential and 561 livelihood structures), resulting in the displacement of 1,300 people. Figures for the past years show that the number of demolitions in the West Bank, including East Jerusalem, has remained above 600 annually since 2011, with more than 1,000 people displaced each year since then except for 2012, when 886 people were displaced.

53. Those demolitions take place in the context of discriminatory Israeli planning policy and in many cases are linked to settlement expansion.[95] The threat to the Bedouin population in the Jordan Valley and the Jerusalem periphery, where they have been subjected to multiple mass demolitions and forcible transfer, as well as in the E1 zone, where they face the same fate on an even larger scale, is of grave concern.[96]

Freedoms of movement and religion

54. Palestinians continued to face restrictions on their freedom of movement, including because of the existence and continued construction of the wall. The wall has been extended considerably and continues to have a severely detrimental impact on the lives of Palestinians in the West Bank, including East Jerusalem, restricting the ability of many to access their land and crucial services, such as schools and health clinics. Generally, together with the restrictions on movement within the West Bank, it severely affects Palestinians' freedom of movement.[97] Like the settlements, the wall is a focus of resentment and regular demonstrations are held against it in places like Nil'in and Bil'in.

55. The issue of access to religious sites and freedom of religion came to the fore during Ramadan, when thousands of Palestinians from the West Bank were denied access to Jerusalem to pray at the al-Aqsa mosque. For example, on 25 July 2014, 7,791 Palestinians were able to enter Jerusalem through checkpoints, approximately 8 per cent of the figure for the equivalent night in 2013.

Situation in East Jerusalem

56. During the reporting period, the situation in East Jerusalem deteriorated significantly. Following the abduction of three Israeli teenagers in June 2014, the Israeli authorities focused some operations on East Jerusalem, and many of the collective measures set out above had a particular impact on Palestinians in East Jerusalem.[98] In the context of the Gaza war and anger over the abduction and killing of Mohammad Abu Khdeir, widespread demonstrations and clashes took place in which hundreds of people were injured.[99]

57. While anger over Gaza and the killing of Mr. Abu Khdeir dissipated towards the end of the summer, the situation in Jerusalem remained volatile, and by the end of the reporting period, tension and violence revived as extreme right Israeli religious and nationalist groups agitated and tried to gain access to the compound housing the al-Aqsa mosque. Israeli security forces sometimes escorted them in, but sometimes prevented them from entering. Reportedly, some 8,500 Jews gained access to the compound in 2013, compared with 5,800 in 2010.[100] Concerns that the status quo, in which Muslims are allowed to pray at the al-

terrorists-families-1.150620.

[95] A/HRC/25/38, paras. 9–20; A/HRC/22/63, paras. 62–71; A/67/375, para. 8; A/66/364, para. 11.

[96] A/69/347, paras. 23–26.

[97] A/69/347, paras. 7–27; www.ochaopt.org/documents/ocha_opt_10_years_barrier_report_english.pdf.

[98] A/HRC/28/80/Add.1.

[99] Ibid.

[100] www.nytimes.com/2014/10/31/world/middleeast/yehuda-glick-shooting-suspect-killed-

Aqsa mosque within the compound and Jews at the Western Wall outside, would be changed touch on some of the most sensitive religious and political issues surrounding the conflict.

58. On 29 October 2014, a rabbi involved with organizations aiming to build a Jewish temple in the compound was shot and seriously injured in West Jerusalem, shortly after the 22 October light rail incident (see para. 24 above). The alleged perpetrator was killed the same night by the Israeli security forces. In an apparent response to the increased tension and clashes, the Israeli authorities reportedly launched a campaign of enforcement of municipal laws that had previously been largely unenforced, specifically in East Jerusalem.[101] East Jerusalem was only made subject to those laws as a result of its illegal annexation by Israel. The enforcement campaign was criticized for being selective and discriminatory.[102] An increase in demolitions of houses without building permits at the end of the reporting period only prompted further demonstrations and clashes amid heightened tension in the city.[103]

F. Palestinian disunity as a driver of conflict and human rights violations

59. The seven-year political split between Hamas and Fatah, which began with serious intra-Palestinian violence in 2007, has contributed to serious human rights violations and abuses and the lack of accountability in the Occupied Palestinian Territory. Palestinian division is not only a key driver of intra-Palestinian conflict and human rights violations and abuses; it also makes peace harder to achieve.[104]

Summary executions and the death penalty

60. During the 2014 escalation in Gaza, members of Palestinian armed groups allegedly summarily executed at least 21 "collaborators", including 16 prisoners taken from Katiba Prison by masked men and five others executed at different locations.[105] As far as OHCHR is aware, no investigations into those incidents had been initiated by the end of the reporting period. The de facto authorities in Gaza also imposed the death penalty on numerous occasions, at least in some cases after unfair trials.[106] During all three escalations in the past six years, Palestinian armed groups carried out a number of summary executions of suspected collaborators. In the West Bank, there are concerns regarding the use of force by Palestinian security forces, including during the reporting period, and the lack of accountability in such cases.[107]

Arbitrary detention, torture and ill-treatment of political opponents

61. OHCHR has for some time documented the arbitrary detention, torture and ill-treatment of political opponents by Palestinian security forces in the West Bank and in

jerusalem.html.

101 www.haaretz.com/news/national/.premium-1.623297; www.timesofisrael.com/mayor-tells-police-to-up-home-demolitions-in-e-jerusalem-amid-riots/.

102 www.btselem.org/jerusalem/20141105_draconian_steps_in_jerusalem.

103 www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_11_07_english.pdf.

104 Security Council resolutions 1850 (2008) and 1860 (2009);,www.un.org/sg/statements/?nid=5240.

105 Source: OHCHR.

106 A/HRC/25/40, paras. 69–71.

107 A/HRC/25/40, paras. 15–17 and 57.

Gaza.[108] That has been one of the key features of the schism between Fatah and Hamas. At times of political confrontation, detention of opposition activists is common on both sides.

62. In the West Bank, both before and during the reporting period,[109] OHCHR documented a number of cases of violations, particularly against perceived political opponents and activists, including the use of vague and overly broad laws as a basis for detention,[110] non-compliance with court orders for release, the use of the executive powers of the Governor to detain on an administrative basis, and non-compliance with time limits for court appearances prescribed by law.[111]

63. OHCHR has similarly documented cases in Gaza in which detainees, particularly political detainees, suspected collaborators, journalists and people alleged to have committed moral crimes or misconduct, have been subjected to torture and ill-treatment.[112] The overwhelming majority of those cases have not been investigated and the perpetrators have not been held accountable.

Freedom of assembly and of expression

64. Palestinian security forces in both the West Bank and Gaza have used arrest and detention as a way of stifling the rights to freedom of assembly and of expression. That only serves to breed mistrust amongst political groups, not only Fatah and Hamas but also other smaller groups, many of which are already disenchanted by the lack of a functioning Palestinian legislature and their difficulty having their political voice heard.

65. In one case documented by OHCHR in the West Bank, on 29 March 2014, four Palestinian security agencies arrested more than 130 people from the Jamal Abdelnaser mosque in al-Bireh, near Ramallah. Most of those arrested were Hizb-at-Tahrir party members gathering to hear a speech by a party leader. Other crackdowns on Hizb-at-Tahrir have been documented by OHCHR.[113]

66. In Gaza, the authorities have restricted freedom of expression during the reporting period, including by prohibiting the daily publication of newspapers, including *Al-Ayyam*, *Al-Hayat Al-Jadida* and *Al-Quds*, and closing media outlets, including Al-Arabiya, Ma'an News Agency and Reuters.[114] An August 2007 directive banning any peaceful assembly without prior authorization from the Ministry of the Interior remains in force.[115] OHCHR documented several incidents involving forcible dispersion of peaceful assemblies for which the organizers had failed to obtain prior authorization.[116]

G. Conclusion

67. The human rights situation in the Occupied Palestinian Territory remains of grave concern. The murders of the Israeli teenagers and the Palestinian boy in June

[108] A/HRC/24/30, paras. 49–52; A/HRC/25/40, paras. 44–46.
[109] A/HRC/24/30, paras. 49–52; A/HRC/25/40, paras. 44–46.
[110] Such as article 150 of the Jordanian Penal Code, which includes the offence of "inciting sectarian strife".
[111] A/HRC/28/80, sect. III.
[112] Ibid.; A/HRC/25/40, paras. 47–49.
[113] www.maannews.net/eng/ViewDetails.aspx?ID=672063.
[114] A/HRC/25/40, paras. 63–67.
[115] www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=721:pchr-calls-upon-the-executive-force-to-cancel-the-decision-to-ban-demonstrations-without-official-permission-from-the-force&catid=133:press-releases-from-other-years-05-08&Itemid=300.
[116] A/HRC/25/40, paras. 63–67.

and July 2014, and the subsequent security operations in the West Bank, followed by rocket fire and the escalation in Gaza, inflamed tensions and entrenched the divisions and suspicion that have characterized the situation for decades. Accordingly, the "criticality of immediately diffusing the escalating tensions in East Jerusalem without delay" was underscored to the Security Council in its session on the situation in East Jerusalem on 29 October 2014.[117] The same must be said of the situation in Gaza and the rest of the West Bank, which remains fragile and volatile. For the diffusion of tension to be lasting in any kind of meaningful way, all sides need to address the human rights dimensions of the conflict.

68. Yet another year of bloodshed and recurrent violations and abuses underlines that there needs to be a break from the past: an end to the violations of international law that foment tension and drive violence; and the prevention of future violations, including through accountability and a reckoning with the past. As the present report and the numerous previous United Nations reports on the Occupied Palestinian Territory make clear, there are several key areas on which that change could focus.

69. The settlements in the West Bank, including East Jerusalem, violate international law and run counter to the two-State solution. They are at the centre of many other human rights violations in the occupied West Bank, including East Jerusalem, and a source of constant friction, demonstrations, incidents involving the excessive use of force by Israeli security forces, settler violence and widespread discriminatory policies affecting Palestinians' enjoyment of their human rights. On the Palestinian side, attacks on Israelis only heighten tension and provide material for a justification of hard-line measures that reinforce the cycle of violence.

70. The settlements also undermine Palestinian territorial integrity, contrary to international law, and Palestinians' right to self-determination.[118] So does the ongoing blockade, which is a continuing collective penalty against the population in Gaza; it weakens links between Gaza and the West Bank, and must be ended. Intra-Palestinian fighting and disunity, which lead to violations and abuses by the Palestinian Authority and armed groups against political opponents, exacerbate that fragmentation.

71. Impunity for violations and abuses by all sides reinforces those problems. After three escalations of violence in six years in Gaza, and recurring violations and violence in the West Bank, including East Jerusalem, a line needs to be drawn and accountability ensured. The failure to ensure accountability runs counter to the legal obligations of the duty bearers and completely undercuts the credibility of each side in the eyes of the other, driving resentment and creating an environment in which perpetrators on all sides are able to get away with violations, fuelling further abuses.

72. As the Secretary-General has said, "the cycle of build-and-destroy must end".[119] That applies as much to people's hopes of dignity, rights and peace as it does to Gaza reconstruction. It is clear that an enduring solution to the conflict must embrace human rights. Respect for human rights leads to the mutual respect, dialogue and understanding upon which the foundations of peace are laid. Without addressing the violations and abuses of international human rights law and international humanitarian law that are both a cause and consequence of the conflict and violence, a sustainable political solution will be impossible to reach. Those two dimensions — political and human rights — are inextricably linked. After yet another escalation in

[117] www.un.org/wcm/content/site/undpa/main/about/speeches/pid/25503.
[118] A/ES-10/273 and Corr.1.
[119] S/PV.7281, p. 3.

Gaza, and with the West Bank, including East Jerusalem, again on the brink of increased violence, the cycle of violations and conflict must be brought to an end.

IV. Recommendations

73. All duty bearers must comply fully with international law, including by adequately remedying, and ensuring accountability for, violations and abuses. That involves fully complying with the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory and with the recommendations of the United Nations human rights treaty bodies, and implementing previous recommendations by the Secretary-General and the High Commissioner for Human Rights, which remain valid but unimplemented.

74. Obstacles to peace and to Palestinians' enjoyment of their human rights, including their right to self-determination, must be removed. That means the ending and reversal of all settlement activity in the West Bank, including East Jerusalem, the full lifting of the blockade on Gaza and the ending of the occupation of Palestinian land. At the same time, due consideration should be given to ensuring the legitimate security needs of Israel with due respect for international humanitarian law and international human rights law.

75. All parties should refrain from unilateral actions that only exacerbate tensions and resentment. They should promote an environment that is conducive to peace, mutual understanding and respect for human rights.

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Human rights situation in Palestine and other occupied Arab territories

Progress made in the implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict by all parties concerned, including United Nations bodies, in accordance with Human Rights Council resolution S-12/1

Report of the Secretary-General*

Summary

The present report focuses on progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report (A/HRC/12/48). It reviews all recommendations made by the Mission, and provides detailed information on non-implementation and the measures required to ensure the most adequate and effective implementation.

* The present document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

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I. Introduction

1. In its resolution 19/18, the Human Rights Council reiterated its call for all concerned parties to ensure the full and immediate implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48). It also requested the Secretary-General to submit a comprehensive report on progress made in the implementation of the Mission's recommendations, in particular by providing detailed information on non-implementation and the measures required to ensure the most adequate and effective implementation of the recommendations by all parties concerned, in accordance with Council resolution S-12/1, to the Council at its twenty-first session. The present report is submitted pursuant to that request.

2. The present report updates and supplements the information contained in the previous reports of the Secretary-General on progress in implementing the Mission's recommendations (A/HRC/13/55, A/HRC/15/51 and A/HRC/18/49). It contains the information requested and received from States, organizations and other entities to which the Mission addressed recommendations, as well as information gathered directly by the United Nations.

II. Progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report

A. Human Rights Council

3. With regard to the recommendation that the Human Rights Council endorse the recommendations made by the Mission in its report, take appropriate action to implement them as recommended by the Mission and through other means it deems appropriate, and continue to review their implementation at future sessions (A/HRC/12/48, para. 1968 (a), the Council, in its resolution S-12/1, endorsed the recommendations and called upon all concerned parties to ensure their implementation in accordance with their respective mandates. In its resolution 13/9, the Council reiterated that call and decided to follow up on the status of implementation at its fifteenth session. In its resolution 15/6, the Council requested the Secretary-General to follow up on the implementation of the Mission's recommendations, in accordance with resolution S-12/1. In its resolution 16/32, the Council reiterated its call upon all concerned parties to ensure the full and immediate implementation of the recommendations in accordance with their respective mandates. Also in resolution 16/32, the Council decided to follow up on the status of implementation at its nineteenth session. At its nineteenth session, in its resolution 19/18, the Council reiterated its call upon all concerned parties to ensure the full and immediate implementation of the Mission's recommendations. In addition, the Council recommended that the General Assembly remain apprised of the matter until it was satisfied that appropriate action with regard to implementing the recommendations had been taken at the domestic or the international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers was required in the interests of justice. The Secretary-General notes that the Human Rights Council has endorsed the Mission's recommendations, in accordance with the specific recommendation made by the Mission in its report, and that the recommendation is being implemented further on an ongoing basis.

4. With regard to the implementation that the Human Rights Council bring the report of the Fact-Finding Mission to the attention of the Security Council pursuant to Article 99 of the Charter of the United Nations so that the Security Council could consider action (A/HRC/12/48, para. 1968 (b)), the Secretary-General notes that, to date, the Human Rights Council has not requested the Secretary-General to bring the report to the attention of the Security Council under Article 99 of the Charter. The Secretary-General also notes that, in order to ensure adequate and effective implementation of the recommendation, the Council would need to make a specific request, in accordance with its mandate and procedures, that the Sectary-General bring the report to the attention of the Security Council under Article 99 of the Charter.

5. With regard to the recommendation that the Human Rights Council formally submit the report to the Prosecutor of the International Criminal Court (A/HRC/12/48, para. 1968 (c)), the Secretary-General recalls that, as stated in his first progress report on the status of implementation of the Mission's recommendations (A/HRC/13/55), the report of the Mission was transmitted to the Prosecutor of the International Criminal Court on 10 December 2009. The Secretary-General notes that the Council has implemented the Mission's recommendation.

6. With regard to the recommendation that the Human Rights Council submit the report of the Mission to the General Assembly with a request that the report be considered (A/HRC/12/48, para. 1968 (d)), the Secretary-General recalls that, as stated in his first progress report on the status of implementation of the recommendations made by the Mission (A/HRC/13/55), the Council, in its resolution S-12/1, recommended that the Assembly consider the report at its sixty-fourth session. In its resolution 16/32, the Council recommended that the Assembly reconsider the report at its sixty-sixth session. The Secretary-General notes that the Council has implemented the Mission's recommendation.

7. The Secretary-General notes that the recommendation that the Human Rights Council bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include a review of progress in their implementation in their periodic review of compliance by Israel with its human rights obligations (A/HRC/12/48, para. 1968 (e)) has been partially implemented. He recalls that, as stated in his first progress report on the status of implementation of the Mission's recommendations (A/HRC/13/55), the report of the Mission was transmitted to the treaty bodies that monitor compliance by Israel with the human rights treaties to which it is party[1] on 10 December 2009. To date, the Human Rights Committee and the Committee on the Rights of the Child have issued concluding observations and recommendations concerning implementation by Israel of the Mission's recommendations. To ensure adequate and effective implementation of the Mission's recommendation, the Council would need to review the progress made by Israel in implementing the Mission's recommendations as part of the State's participation in the second cycle of the universal periodic review process, to be held during the fifteenth session of the Working Group on the Universal Periodic Review, from 21 January to 1 February 2013.

B. Security Council

8. With regard to the Mission's recommendation that the Security Council require the Government of Israel, under Article 40 of the Charter, (i) to take all appropriate steps,

[1] The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child.

within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention; and (ii) to inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government to inquire into, investigate and prosecute such serious violations (A/HRC/12/48, para. 1969 (a)), the Security Council has to date not required that the Government take all appropriate steps to launch appropriate investigations into the serious violations of international humanitarian and international human rights law reported by the Mission. However, with regard to adequate and effective implementation of the Mission's recommendation, the Secretary-General notes that the Security Council has not, to date, established a committee such as that detailed by the Mission (see A/HRC/12/48, para. 1969, subparas. (b) – (e)). He nonetheless notes that the Human Rights Council, in its resolution 13/9, established a committee of independent experts in international humanitarian and human rights laws to monitor and assess domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, including the independence, effectiveness and genuineness of these investigations and their conformity with international standards. In accordance with resolution 15/6, the committee reported to the Council at its fifteenth session (A/HRC/15/50). In its resolution 15/6, the Council welcomed that report and renewed and resumed the mandate of the committee. The committee presented its second report to the Council at its sixteenth session (A/HRC/16/24). In its resolution 16/32, the Council took note of the two reports submitted by the committee and called for the implementation of its conclusions.

C. Prosecutor of the International Criminal Court

9. With regard to the Mission's recommendation that the Prosecutor take the required legal steps to determine as expeditiously as possible that accountability for victims and the interests of peace and justice in the region are ensured, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine (A/HRC/12/48, para. 1970), the Office of the Prosecutor informed, by letter dated 23 May 2012, the United Nations High Commissioner for Human Rights that, on 3 April 2012, it had issued an update on the Palestine situation in which it assessed that it was "for the relevant bodies at the United Nations or the Assembly of States Parties [to the Rome Statute of the International Criminal Court] to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction under article 12 (1)." The Office of the Prosecutor also informed the High Commissioner that the Rome Statute "provides no authority for the Office […]to adopt a method to define the term "State" under article 12 (3), which would be at variance with that established for the purpose of article 12 (1)." The Office pointed out that it could, in future, consider allegations of crimes committed in Palestine should the competent bodies of the United Nations or […]the Assembly of States Parties resolve the legal issue relating to an assessment of article 12, or should the Security Council, in accordance with article 13 (b), make a referral providing jurisdiction. The Secretary-General therefore notes that the Office of the Prosecutor has implemented the Mission's recommendation.

D. General Assembly

10. With regard to the Mission's recommendation that the General Assembly request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts

in its report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the recommendations (A/HRC/12/48, para. 1971 (a))**,** the Secretary-General notes that, to date, the Assembly has not made the request to the Council. With regard to the adequate and effective implementation of the recommendation, the Secretary-General refers to the developments reported above (see para. 9).

11. The Secretary-General notes that, to date, the General Assembly has not established an escrow fund as described by the Mission in its report (A/HRC/12/48, para. 1971 (b)), to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December–January military operation and actions in connection with it. He notes, however, that, in its resolution 13/9, the Human Rights Council called upon the High Commissioner to explore and determine the appropriate modalities for the establishment of such a fund. The High Commissioner reported to the Council on this matter in her report on the follow-up to the report of the Mission (A/HRC/15/52/Add.1). In her report, the High Commissioner summarized the advice received from the Office of Legal Affairs, according to which a number of decisions would need to be taken by a competent organ of the United Nations (for example, the General Assembly) if the decision were to be made to follow up on the recommendation made by the Mission. According to the Office, this would include (a) a decision to establish the escrow fund; (b) a decision on the source(s) of funding for the fund; (c) a decision to establish a body to administer the fund; (d) a decision on the extent to which the body would rely on the investigations carried out by the Government of Israel and the Palestinian authorities in order to determine the factual basis of a claim for compensation for the fund; and (e) a decision to establish a secretariat of the body administering the fund. The Office also identified a set of ancillary decisions that would need to be taken, including decisions on the identification of persons eligible to receive compensation from the fund; the particular types of loss for which compensation might be paid from the fund; the process for the submission of claims for compensation; a timetable for the submission of claims; and a target date for the completion of claims processing. Subsequently, the High Commissioner reiterated the advice given the Office in her progress report submitted to the Human Rights Council pursuant to its resolution 16/32 (A/HRC/18/50). With regard to the most adequate and effective implementation of the Mission's recommendation, the Secretary-General refers to the advice provided by the Office of Legal Affairs.

12. With regard to the recommendation that the General Assembly request the Government of Switzerland to convene a conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1 (A/HRC/12/48, para. 1971 (c)), the steps taken by the Assembly to implement the recommendation were outlined in a previous progress report of the Secretary-General (A/HRC/15/51). Since then, the Assembly has not taken any further action. The Secretary-General notes that, with reference to paragraph 5 of Assembly resolution 64/10, the Assembly has implemented the recommendation made by the Mission in its report. Furthermore, in its resolution 16/32, the Human Rights Council welcomed the efforts made by the Government of Switzerland to reconvene such a conference, and recommended that itpursue its efforts with the aim of resuming the conference before September 2011. The High Commissioner reported on the efforts made by the Government in this regard in her progress report on the implementation of Council resolution 16/32 (A/HRC/18/50). Subsequently, in its resolution 19/18, the Council welcomed the efforts made by the Government of Switzerland and recommended that it pursue its efforts with the aim of resuming the above-mentioned conference as soon as possible. In a note verbale addressed to OHCHR on 23 May 2012, the Government recalled that, in July 2011, it had concluded that, following a year of consultations, a cross-regional critical mass had not been reached in support of the convening of such a conference. It pointed out that it had received, on 16 January 2012, correspondence from the President of the coordinating office of the Non-

Aligned Movement reiterating the urgency of undertaking further consultations with the objective of convening such a conference as soon as possible. On 22 March 2012, the Government informed the President of the Non-Aligned Movement of its intention to undertake discussions with the parties concerned. In this regard, it met with representatives of Israel and Palestine on 28 March and 2 April 2012 respectively. On 17 April 2012, the Government of Switzerland submitted an informal document to the parties that included suggestions for a collaborative approach to attain concrete goals. At the time of transmission of the note verbale from the Government, the parties concerned were considering the informal document. The Government reiterated its readiness to cooperate with the High Contracting Parties and other interested parties in this respect.

13. With regard to the recommendation that the General Assembly promote an urgent discussion on the future legality of the use of certain munitions referred to in its report, and in particular white phosphorous, flechettes and heavy metals, such as tungsten, and that, in its discussion, the Assembly draw on, inter alia, the expertise of the International Committee of the Red Cross (ICRC) (A/HRC/12/48, para. 1971 (d)), the Secretary-General notes that, to date, the Assembly has not taken action to promote such a discussion. He notes, however, that the Human Rights Council, in its resolution 13/9, called upon the Assembly to promote an urgent discussion on the future legality of the use of certain munitions, as referred to by the Mission in its report. The Council reiterated its call in its resolution 16/32, and subsequently recommended, in its resolution 19/18, that the Assembly consider launching such a discussion. The Secretary-General has not been informed of any moratorium on the use of such weapons by the Government of Israel. In order to ensure the most adequate and effective implementation of this aspect of the Mission's recommendation, the Government of Israel would need to take appropriate action within its own national legal and political framework.

E. Israel[2]

14. With regard to the recommendation that Israel immediately cease border closures and the restrictions on passage through border crossings with the Gaza Strip, and allow the passage of goods necessary and sufficient to meet the needs of the population for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip (A/HRC/12/48, para. 1972 (a)), positive steps towards the resumption of meaningful economic activity include the export of 150 truckloads of goods from Gaza and the approval by Israel, in August 2012, of $360 million worth of United Nations projects for recovery and reconstruction. The approval of $85 million worth of United Nations projects is still pending. Although Israel recently released 20,000 tons of construction materials for the private sector in Gaza, the border closures and restrictions on passage through border crossings continue to have a serious negative effect on the population in the Gaza Strip. More than 75 per cent of the units needed to replace homes destroyed during Operation Cast Lead have not been constructed. The unemployment rate in Gaza remains high. This situation is compounded by the urgent demand for construction materials to rebuild homes, schools and other infrastructure, resulting in thousands of people continuing to risk their lives working in tunnels along the border with Egypt. The Secretary-General notes that Israel, notwithstanding the above-mentioned positive steps, has yet to implement fully the recommendation made by the

[2] On 3 May 2012, OHCHR, on behalf of the Secretary-General, addressed a note verbale to the Permanent Mission of Israel to the United Nations Office at Geneva, in which it requested information regarding measures taken or envisaged to implement the recommendations made to Israel, as well as information on non-implementation and measures required to ensure the most adequate and effective implementation of the said recommendations. No response had been received at the time of finalization of the present report.

Mission in its report. With regard to the most adequate and effective implementation of the recommendation, Israel should lift the closure, in compliance with Security Council resolution 1860 (2009), and prioritize the unrestricted import of key building materials, particularly aggregate, iron bars and cement.

15. With regard to the recommendation that Israel lift its restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles, as provided for in the Oslo Accords, and that it allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel (A/HRC/12/48, para. 1972 (b)), Israel continues to limit the access of Palestinians to the sea to three nautical miles. According to investigations carried out by OHCHR, the means used by Israel to enforce this limit raise serious concerns with regard to its obligations under international human rights and international humanitarian law (see A/HRC/19/20). Specific concerns include incidents involving the use of live ammunition and rubber bullets against unarmed fishermen, arbitrary detention, ill-treatment, the illegal confiscation of private property, and impinging upon the fishermen's access to work and a livelihood. While an estimated 35,000 Palestinians depend on the fishing industry as their primary source of income, in 2011 the Food and Agriculture Organization of the United Nations (FAO) recorded an 80 per cent drop in the overall catch since Israel limited the fishing area to three nautical miles. Israel has not changed its policy regarding agricultural activity within areas in the vicinity of the borders of Gaza with Israel. The Secretary-General notes that Israel has yet to implement fully the Mission's recommendations. With regard to the most adequate and effective implementation of these recommendations, Israel should fulfil its commitments pursuant to the Oslo Accords and allow resumption of agricultural activity inside the Gaza Strip, taking into full account its international legal obligations and with due regard for its legitimate security concerns.

16. The Secretary-General recalls that certain actions taken by Israel to implement the recommendation that it initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel, and that it avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law (A/HRC/12/48, para. 1972 (c)) were outlined in a previous progress report (A/HRC/15/51). With regard to ensuring the most adequate and effective implementation of the recommendation, Israel may wish to avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts and civil society organizations with the relevant expertise and specialization in order to ensure that the actions it has taken will allow it to comply fully with international humanitarian law and international human rights law.

17. With regard to the recommendation that Israel allow freedom of movement for Palestinians within the Occupied Palestinian Territory – within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world – in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people (A/HRC/12/48. para. 1972 (d)), in April 2012, Israeli authorities instituted less-restrictive measures for Palestinian movement to and from Nablus, Tulkarm, Salfit and Ramallah. Nonetheless, according to information received from the Office for the Coordination of Humanitarian Affairs, there were some 540 obstacles to Palestinian movement within the West Bank (excluding the East Jerusalem area of the West Bank). These included 59 permanently-staffed checkpoints (excluding checkpoints on the Green Line), 26 partial checkpoints (staffed on an ad hoc basis) and around 455 unstaffed physical obstacles. This does not include extensive obstacles to Palestinian movement to and from East Jerusalem. The severe restrictions imposed by Israel on passage through its border

crossings with the Gaza Strip continued to limit travel between the West Bank and Gaza. Among other things, such restrictions limited the access of the population of Gaza to health services, legal counsel and judicial mechanisms (see A/HRC/19/20). Palestinian human rights defenders continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world owing to the travel bans imposed by Israel. To ensure the most adequate and effective implementation of the Mission's recommendations, Israel should take additional measures to allow freedom of movement for Palestinians throughout the Occupied Palestinian Territory. Such measures should extend to removing obstacles to Palestinian movement, including with respect to limiting travel between the West Bank and Gaza, in accordance with Israel's international human rights commitments and taking into account legitimate security concerns. Such measures should also extend to removing travel bans on Palestinian human rights defenders.

18. With regard to the recommendations that Israel release Palestinians who are detained in Israeli prisons in connection with the occupation, and that it cease the discriminatory treatment of Palestinian detainees (A/HRC/12/48, para. 1972 (e)), according to information gathered by the non-governmental organizations Addameer and B'Tselem, at the end of July 2012 approximately 4,500 Palestinians, including 210 children, still remained in Israeli prisons, while 250 Palestinians were being held in administrative detention by Israel. Throughout 2012, Palestinian prisoners went on hunger strikes to protest against their conditions of detention and treatment by Israeli authorities. A mass hunger strike was launched on 17 April 2012, in which 1,200 Palestinians reportedly participated. To end the strike, on 14 May 2012 Israel reportedly agreed to end solitary confinement, to allow prisoners from Gaza to receive family visits and to discuss improved conditions and the conditional non-extension of existing administrative detention orders against certain Palestinians. The Secretary-General reiterates his view that administrative detention should only be used in exceptional circumstances, in compliance with international human rights law and international humanitarian law. In general, persons detained must either be charged and face trial with all judicial guarantees or released without delay. The Secretary-General welcomes reports that family visits for prisoners from Gaza resumed in July 2012 after a five-year suspension.[3] With regard to ensuring the most adequate and effective implementation of the Mission's recommendations, the Secretary-General urges Israel to launch, as a first step, a transparent process to identify Palestinians detained in Israeli prisons in connection with the occupation with a view to their release. The situation of each child detainee should be reviewed as matter of the highest priority. The Secretary-General also urges Israel to undertake a review of its policies and practices relating to the treatment of Palestinian detainees with the objective of ending any discriminatory treatment of them.

19. The Secretary-General notes that the recommendation that Israel cease interference in national political processes in the Occupied Palestinian Territory, release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning (A/HRC/12/48, para. 1972 (f)) remains to be fully implemented. At the end of July 2012, 14 members of the Council were still in Israeli detention. Council member Abu Teir, who in 2010 was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces and arrested again by Israeli authorities in September 2011, is currently in administrative detention. Of the three other Council members who had sought refuge at the premises of ICRC in East Jerusalem, Mohamed Attoun was detained by Israel, on the premises of ICRC, in September 2011 and forcibly transferred to another part of the West Bank on 7 December 2011.[4] Mohamed Totah and Khaled Abu Arafeh were detained

[3] ICRC, "Gaza: ICRC facilitates first family visits for five years", news release, 16 July 2012.

[4] ICRC, "Jerusalem: member of Palestinian Legislative Council arrested", news release, 26 September 2011.

by Israel, on the premises of ICRC, on 23 January 2012.[5] The latter two Council members were charged with illegal presence in Israel and are currently held by the Israeli authorities. With regard to the most adequate and effective implementation of the Mission's recommendation, the Secretary-General refers to his observations in paragraphs 18 and 19 above.

20. With regard to the recommendations that the Government of Israel cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning its policies and conduct during the military operations in the Gaza Strip, and that it set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory (A/HRC/12/48, para. 1972 (g)), Israel has not organized an independent inquiry. In the Knesset (Parliament), a draft bill amending the Income Tax Order, whereby funding from foreign States for non-profit organizations would be taxed at a rate of 45 per cent, and a draft bill amending the Associations Act, which would limit donations from a foreign entity to non-profit organizations to 20,000 NIS per year, were combined into the Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity (Legislative Amendments). Both the bill and the amendment to the Associations Law are currently dormant in the Knesset. The Secretary-General notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conducted a mission to Israel and the Occupied Palestinian Territory in December 2011. The Secretary-General refers, in the first instance, to the report of the Special Rapporteur thereon (A/HRC/20/17/Add.2) with regard to the most adequate and effective implementation of the Mission's recommendations.

21. The Secretary-General is not aware of any reprisals taken by the Government of Israel against Palestinian or Israeli individuals who cooperated with the Mission. In this regard, the Secretary-General notes that, to date, it appears that the relevant recommendation made by the Mission (A/HRC/12/48, para. 1972 (h)) has been implemented.

22. With regard to the recommendation that Israel reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it take all appropriate measures to ensure that there is no repetition of violations in the future (A/HRC/12/48, para. 1972 (i)), the United Nations has still not received any formal communication from the Government of Israel reiterating such a commitment. Information on reparations was included in the first progress report of the Secretary-General on the status of implementation of the Mission's recommendations (A/HRC/13/55). To ensure the most adequate and effective implementation of the recommendation of the Mission, Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel.

[5] ICRC, "Jerusalem: former minister for Jerusalem Affairs and PLC member arrested", news release, 23 January 2012.

F. Palestinian armed groups[6]

23. The Secretary-General notes that the recommendation that Palestinian armed groups pledge to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities (A/HRC/12/48, para. 1973 (a)) has not been implemented. Palestinian armed groups continued to fire indiscriminate rockets and mortar shells at Israel. According to information provided by the Department of Safety and Security to OHCHR on 17 June 2012, a total of 752 rockets, including 642 homemade rockets and 110 Grad rockets, and 175 mortar shells were fired toward Israel from 1 July 2011 to 15 June 2012. Rocket and mortar fire against Israel resulted in the death of one Israeli civilian. A Palestinian child was also killed and six others injured by a rocket that landed in Gaza. While the Secretary-General is unable to confirm whether Palestinian armed groups have taken all feasible precautionary measures to avoid causing harm to Palestinian civilians during hostilities, it has been alleged that rockets and mortars are often fired from densely populated areas, which would not only endanger Palestinian civilians but also violate international humanitarian law. Furthermore, such weapons do not discriminate between civilian objects and military objectives and are therefore contrary to international humanitarian law. The Secretary-General urges Palestinian armed groups to comply with their international humanitarian law obligations, including by renouncing attacks on Israeli civilians and civilian objects and taking all feasible precautionary measures to avoid harm to civilians during hostilities, with a view to ensuring the most adequate and effective implementation of the Mission's recommendation.

24. The Secretary-General notes that, notwithstanding the non-implementation of the recommendation that Palestinian armed groups holding Israeli soldier Gilad Shalit in detention release him on humanitarian grounds (A/HRC/12/48, para. 1973 (b)), on 18 October 2011 Gilad Shalit was released in exchange for hundreds of Palestinians detained by Israel.[7]

G. Palestinian authorities

25. With regard to the recommendations that the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end the resort to military justice to deal with cases involving civilians (A/HRC/12/48, para. 1974 (a)), OHCHR, in a meeting with the Palestinian Security Service in February 2011, was informed that, on 31 December 2010, the decision to end use of military courts for civilians had come into force; all detainees would henceforth be tried by civilian courts, with the exception of those held prior to that date. The Secretary-General recalls his previous finding on progress in the implementation of the

[6] On 3 May 2012, OHCHR, on behalf of the Secretary-General, addressed a note verbale to the Permanent Observer Mission of the National Palestinian Authority to the United Nations Office at Geneva in which it requested information on measures taken or envisaged to implement the recommendations made to "responsible Palestinian authorities", the "Palestinian authorities" and "Palestinian armed groups", as well as on non-implementation and measures required to ensure the most adequate and effective implementation of the said recommendations. No response had been received at the time of finalization of the present report.

[7] Statement attributable to the Spokesperson for the Secretary-General on the release of Israeli Staff Sergeant Gilad Shalit and hundreds of Palestinian prisoners, New York, 18 October 2011.

Mission's recommendations (A/HRC/13/55), and notes that significant progress appears to have been made in implementing the recommendations.

26. With regard to the recommendation that the Palestinian Authority and the Gaza authorities release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law (A/HRC/12/48, para. 1974 (b)), the de facto authorities in Gaza continue to detain Fatah members and supporters. They also continue to summon and interrogate Fatah members and supporters regarding their political activities. At times, this extends to harassment and/or ill-treatment by the security officers of the de facto authorities in Gaza.[8] For instance, on 3 July 2012, the "Internal Security Apparatus" summoned and subsequently detained and interrogated a 33-year-old Fatah activist from Khan Younis. According to information collected by OHCHR, he was held without charge until 2 August and ill-treated. In the West Bank, Palestinian Authority security agencies continue to arbitrarily arrest and detain Palestinians affiliated with Islamist parties, demonstrators supporting the "Arab spring" and Palestinian reconciliation, and journalists critical of the Palestinian Authority. Cases documented by OHCHR concern incidents of arrest and detention without a warrant and without informing the persons concerned of the charges against them. The Secretary-General notes that, to ensure the most adequate and effective implementation of the Mission's recommendation, the Palestinian Authority and the de facto authorities in Gaza should launch, as a first step, a transparent process to identify Palestinian political detainees currently detained with a view to their release. Furthermore, they should also desist from making further arrests on political grounds.

27. With regard to the recommendation that the Palestinian Authority and the Gaza authorities continue to enable free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights (A/HRC/12/48, para. 1974 (c)), efforts to limit freedom of expression and the work of civil society organizations persist in the West Bank and Gaza. In August 2010, a Hamas bloc in the Palestinian Legislative Council adopted a bill that would enable it to control the Independent Commission for Human Rights. The bill was officially published in December 2010, but has not yet been enforced. In January 2011, the de facto authorities in Gaza stated that the Commission was not legally qualified to operate.[9] In July 2011, Gaza authorities formally dissolved the Sharek Youth Forum, alleging that it lacked the required operating licenses.[10] The Secretary-General notes that the Mission's recommendation has not yet been implemented. In order to ensure the most adequate and effective implementation of the recommendation, the Palestinian Authority and the de facto authorities in Gaza should, as a first step, address the concerns raised in the present and previous reports on the status of implementation of the recommendation (A/HRC/13/55, A/HRC/15/51 and A/HRC/18/49).

H. International community[11]

28. The Secretary-General is not aware of any further action taken since his previous progress report (A/HRC/18/49) to implement the recommendation that States parties to the

[8] Palestinian Centre for Human Rights. "PCHR gravely concerned over the Internal Security Service's summons against Fatah members in the Gaza Strip", press release, 27 March 2012.

[9] Ma'an News Agency, "Gaza ministry slams rights group report", 8 January 2011.

[10] Al Mezan Center for Human Rights, "Al Mezan and Al Dameer call on the Minister of Interior to reconsider his decision dissolving Sharek Forum Youth", 19 July 2011.

[11] In order to gather information regarding the status of implementation of the recommendations made by the Mission addressed to the international community (A/HRC/12/48, paras. 1975, 1976 and 1977), OHCHR addressed letters to United Nations agencies working in the Occupied Palestinian Territory. The information on the recommendations is based on replies received.

Geneva Conventions initiate criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Conventions (A/HRC/12/48, para. 1975 (a)). With regard to the most adequate and effective implementation of the recommendation, the Secretary-General refers, in the first instance, to the developments reported in paragraph 9 above.

29. With regard to the recommendation that international aid providers step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population (A/HRC/12/48, para. 1975 (b)), the United Nations Children's Fund (UNICEF) reported the receipt of $11,412,192 from donors to support its efforts to protect and provide psychosocial support to Palestinian families and children. Such efforts include partnering non-governmental organizations to deploy emergency psychosocial teams, consisting of 11 in the West Bank and five in Gaza, which reach 17,460 children and 7,970 caregivers. The teams are composed of 25 community-based psychologists, educators and legal counsellors. In the first half of June 2012, 3,574 children in Gaza and 5,449 children in the West Bank were provided with emergency psychosocial support services. In Gaza, 21 family centres provide psychosocial, educational and recreational services for the benefit of 23,000 Palestinian children. In-depth counselling is provided to 1,501 children, while holistic support services are provided for 11,899 children and 6,527 caregivers. In addition, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that children who suffered from trauma after Operation Cast Lead were initially supported through a special initiative under the UNRWA community mental health programme. After completing targeted counselling in late 2009, children who continued to show symptoms were given additional care through existing counselling activities in UNRWA schools throughout Gaza. Furthermore, the World Health Organization (WHO) reported that it had continued to provide technical advice and training in relation to the national mental health strategic plan, including by supporting the integration of mental health in primary health-care services by training 450 doctors and nurses and the establishment of family associations in both the West Bank and the Gaza Strip. It further reported that, under its leadership, the Health and Nutrition Cluster in the Occupied Palestinian Territory conducted a needs assessment in 2011, which identified mental health and psychosocial support as a programmatic priority for the health sector in Gaza. WHO referred to an assessment made in March 2012, according to which 40 per cent of the 1,831 people surveyed experienced significant symptoms of anxiety, 41 per cent experienced deep feelings of hopelessness and 41 per cent experienced significant symptoms of depression. Against this backdrop, WHO anticipated that the Cluster would provide mental health and psychosocial support services to around 20,000 people in Gaza in 2012.

30. The Secretary-General notes that the implementation of the recommendation that international aid providers step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population (A/HRC/12/48, para. 1975 (b)) is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, donor countries and assistance providers should continue to step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population.

31. With regard to the recommendation that donor countries/assistance providers continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law (A/HRC/12/48, para. 1975 (c)), Palestinian and Israeli human rights organizations continue to monitor and document violations of human rights and international humanitarian law throughout the Occupied Palestinian Territory. Much of this work relies on financial assistance from international sources. In response to informal queries from

OHCHR, neither Israeli nor Palestinian non-governmental organizations have reported any major changes in their funding since the finalization of the present report. In addition, OHCHR continues to lead the Protection Cluster in the Occupied Palestinian Territory. The Cluster includes Palestinian and Israeli non-governmental organizations that monitor, document, share information, report and carry out advocacy relating to, inter alia, violations of and accountability for human rights and international humanitarian law in access-restricted areas in Gaza and settler violence in the West Bank. UNICEF continues to lead the inter-agency working group that reports to the Working Group of the Security Council on Children and Armed Conflict. The Working Group submitted six reports to the Security Council in 2011 in which it had documented grave violations against children in the Occupied Palestinian Territory by Israeli security forces and Palestinian armed groups, as well as abuses by Israeli settlers. In 2011, UNICEF reported a significant increase in the number of children being killed or injured owing to the Israeli-Palestinian conflict. Twenty Palestinian children were killed and 448 were injured, while five Israeli children were killed and two were injured. Furthermore, UNICEF recorded 36 cases of Palestinian schools being attacked, resulting in disruption to education, damage to educational facilities and injury to Palestinian children. UNICEF also provides direct support to Palestinian and Israeli human rights organizations to strengthen their capacity to document human rights violations, and is currently working to strengthen those efforts.

32. The Secretary-General notes that the implementation of the recommendation is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, donor countries and assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law.

33. The Secretary-General notes that the implementation of the recommendation that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, ensure that respect for the rule of law, international law and human rights assumes a central role in internationally-sponsored peace initiatives (A/HRC/12/48, para. 1975 (d)) is ongoing. On 11 April 2012, the Quartet issued a statement in which it, inter alia, called upon the Palestinian Authority to continue to make every effort to improve law and order, to fight violent extremism and to end incitement, expressed concern regarding Israeli settler violence and incitement in the West Bank, and called upon Israel to take effective measures, including bringing the perpetrators of such acts to justice. The Quartet expressed further concern at unilateral and provocative actions by both parties, including continued Israeli settlement activity. In its statement of 11 April 2012, the Quartet, while stressing the need for calm and security for Palestinians and Israelis, condemned rocket attacks from Gaza. The Secretary-General also notes that, in order to ensure the most adequate and effective implementation of the recommendation, the States involved in peace negotiations between Israel and representatives of the Palestinian people, including through the Quartet, should use all opportunities to ensure that respect for the rule of law, international law and human rights are advanced through such negotiations.

34. The Secretary-General is not aware of developments further to what was communicated in his previous report (A/HRC/18/49) in relation to the recommendation that a programme of environmental monitoring be conducted under the auspices of the United Nations for as long as deemed necessary (A/HRC/12/48, para. 1975 (e)). With regard to the most adequate and effective implementation of the recommendation, the Secretary-General refers to the initiatives of the United Nations Environment Programme noted in previous progress reports (A/HRC/13/55 and A/HRC/18/49) and would, in the first instance, encourage relevant actors to implement the recommendations and proposals detailed therein.

I. International community and responsible Palestinian authorities

35. The Secretary-General notes that, to date, no mechanism has been established to track, receive and allow disbursal of funds for the reconstruction of Gaza, pursuant to the Mission's recommendation (A/HRC/12/48, para. 1976 (a)). UNRWA reports that United Nations agencies have difficulty in obtaining access to and use of funds pledged at the International Conference in support of the Palestinian Economy for the Reconstruction of Gaza in March 2009, for construction activities for the benefit of the civilian population. UNRWA received $69.9 million from one donor, which had been pledged at the Conference to help to rehouse Palestinians displaced from their homes by the conflict. UNRWA also reported that it had proposed to Israeli authorities a streamlined process of project approvals and transfers of construction supplies through the crossings established under the Agreement on Movement and Access of 2005, with a view to expediting the implementation of construction and reconstruction projects. With regard to the most adequate and effective implementation of the recommendation, the Secretary-General encourages the international community to work with responsible Palestinian authorities to establish such a mechanism.

36. The Secretary-General noted in his previous progress reports (A/HRC/15/51 and A/HRC/18/49) that he was not aware of any action taken by responsible Palestinian authorities or Palestinian structures in response to the recommendation that responsible Palestinian authorities as well as international aid providers pay special attention to the needs of persons with disabilities (A/HRC/12/48, para. 1976 (b)). This continues to be the case. UNRWA reported, however, that it continued to work with local organizations to ensure that patients who sustained injuries during Operation Cast Lead receive prosthetic devices and artificial limbs. It also continues to provide community organizations with financial assistance and technical advice to help to deliver services to target groups, and to deliver direct psychosocial support, physiotherapy, occupational therapy and assistive devices to affected individuals and families. In addition, WHO noted that, in 2010 and 2011, 2,421 Palestinians were referred outside of the Gaza Strip to receive specialized health services, thus indicating serious gaps in access to health care for patients from Gaza who suffered injuries during the Gaza conflict. It also reported that, in its 2011 needs assessment, the Health and Nutrition Cluster had identified support for people with disabilities as a programmatic priority for the health sector in Gaza for 2012. In this connection, the Cluster had developed a strategy to provide health care and rehabilitation services to around 5,400 persons with disabilities in Gaza. WHO also noted that, as at May 2012, only 36 per cent of the Cluster projects had been funded.

37. The Secretary-General observes that, thanks in particular to the efforts of UNRWA and WHO, the implementation of the Mission's recommendation is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, responsible Palestinian authorities and structures should initiate efforts to provide the necessary medical treatment and follow-up to persons with disabilities, and international aid providers should continue to support efforts in this regard.

J. International community, Israel and Palestinian authorities

38. The Secretary-General is not aware of any developments further to what was communicated in his previous report (A/HRC/18/49) in relation to the implementation of the recommendation that Israel and representatives of the Palestinian people, and international actors involved in the peace process, involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law (A/HRC/12/48, para. 1977 (a)). During his visit to the region in February 2012, the Secretary-General met with Palestinian civil society activists, many of whom voiced

scepticism about the peace process and frustration regarding the lack of Palestinian unity and the impact of Israeli settlements on their daily lives.[12] In order to ensure the most adequate and effective implementation of the Mission's recommendation, the Secretary-General urges Israel, representatives of the Palestinian people and international actors to strengthen their efforts to involve Israeli and Palestinian civil society, particularly women, in accordance with Security Council resolution 1325 (2000), in the peace process.

39. With regard to the recommendation that attention be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security (A/HRC/12/48, para. 1977(b)), UNRWA reports that it continues to provide women whose homes were damaged or demolished during Operation Cast Lead with cash assistance and rental subsidies. Subsidies have been disbursed to enable female-headed households who had their homes or shelters damaged to pay for repairs. In cases where homes or shelters were completely destroyed, UNRWA continues to pay one-year rental subsidies. Women continue to account for one third of employees in the UNRWA job creation programme. Since Operation Cast Lead, several Gaza women programme centres supported by UNRWA have offered psychosocial and legal support to women. The Secretary-General notes that, thanks to the efforts of UNRWA, the implementation of the Mission's recommendation is ongoing. He also notes that, in order to ensure the most adequate and effective implementation of the recommendation, international aid providers should ensure sufficient financial support for such efforts.

K. Secretary-General

40. With regard to the recommendation that the Secretary-General develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and the request addressed by the Mission to the United Nations High Commissioner for Human Rights to provide the expertise required to implement that recommendation (A/HRC/12/48, para. 1978), OHCHR and the Office of the United Nations Special Coordinator for the Middle East Peace Process are working in close cooperation on an ongoing basis. This cooperation extends to the provision of expertise to identify and respond to human rights issues, including for the purposes of briefings to the Security Council[13] and in the broader context of the peace process. In addition, United Nations partners in the Occupied Palestinian Territory have developed an integrated strategic framework that addresses human rights, including with respect to the peace process. The Secretary-General notes that the Mission's recommendation is being implemented on an ongoing basis.

L. Office of the United Nations High Commissioner for Human Rights

41. With regard to the recommendation that OHCHR monitor the situation of persons who have cooperated with the Mission and periodically update the Human Rights Council through its public reports and in other ways it deems appropriate (A/HRC/12/48, para.

[12] See Secretary-General, briefing to the Security Council, 8 February 2012.

[13] See for example the briefings of the Assistant Secretary-General for Political Affairs to the Security Council on 24 January 2012; of the Secretary-General on 8 February 2012; of the Under Secretary-General for Political Affairs on 28 February 2012; of the Special Coordinator for the Middle East Peace Process on27 March 2012; of the Under Secretary-General for Political Affairs on 23 April 2012; of the Special Coordinator for the Middle East Peace Process on 29 May 2012; of the Special Coordinator for the Middle East Peace Process on 25 July 2012; of the Assistant Secretary-General for Political Affairs on 19 June 2012; and of the Under Secretary-General for Political Affairs on 22 August 2012.

1979(a)), OHCHR continues to monitor and report on the situation of human rights in the Occupied Palestinian Territory. Any situation of concern regarding persons who cooperated with the Mission would be identified and addressed by OHCHR through such activities. The Mission's recommendation is being implemented on an ongoing basis.

42. The most recent report of the High Commissioner on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/19/20) contains information relevant to the status of implementation of many of the Mission's recommendations. The Secretary-General notes that the recommendation that OHCHR give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council is being implemented on an ongoing basis.

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Human rights situation in Palestine and other occupied Arab territories

Progress made in the implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict by all parties concerned, including United Nations bodies, in accordance with Human Rights Council resolution S-12/1

Report of the Secretary-General*

Summary

The present report focuses on progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report (A/HRC/12/48). It reviews all recommendations made by the Mission, and provides detailed information on non-implementation and the measures required to ensure the most adequate and effective implementation.

* The present document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

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I. Introduction

1. In its resolution 19/18, the Human Rights Council reiterated its call for all concerned parties to ensure the full and immediate implementation of the recommendations contained in the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48). It also requested the Secretary-General to submit a comprehensive report on progress made in the implementation of the Mission's recommendations, in particular by providing detailed information on non-implementation and the measures required to ensure the most adequate and effective implementation of the recommendations by all parties concerned, in accordance with Council resolution S-12/1, to the Council at its twenty-first session. The present report is submitted pursuant to that request.

2. The present report updates and supplements the information contained in the previous reports of the Secretary-General on progress in implementing the Mission's recommendations (A/HRC/13/55, A/HRC/15/51 and A/HRC/18/49). It contains the information requested and received from States, organizations and other entities to which the Mission addressed recommendations, as well as information gathered directly by the United Nations.

II. Progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict in its report

A. Human Rights Council

3. With regard to the recommendation that the Human Rights Council endorse the recommendations made by the Mission in its report, take appropriate action to implement them as recommended by the Mission and through other means it deems appropriate, and continue to review their implementation at future sessions (A/HRC/12/48, para. 1968 (a), the Council, in its resolution S-12/1, endorsed the recommendations and called upon all concerned parties to ensure their implementation in accordance with their respective mandates. In its resolution 13/9, the Council reiterated that call and decided to follow up on the status of implementation at its fifteenth session. In its resolution 15/6, the Council requested the Secretary-General to follow up on the implementation of the Mission's recommendations, in accordance with resolution S-12/1. In its resolution 16/32, the Council reiterated its call upon all concerned parties to ensure the full and immediate implementation of the recommendations in accordance with their respective mandates. Also in resolution 16/32, the Council decided to follow up on the status of implementation at its nineteenth session. At its nineteenth session, in its resolution 19/18, the Council reiterated its call upon all concerned parties to ensure the full and immediate implementation of the Mission's recommendations. In addition, the Council recommended that the General Assembly remain apprised of the matter until it was satisfied that appropriate action with regard to implementing the recommendations had been taken at the domestic or the international level to ensure justice for victims and accountability for perpetrators, and also remain ready to consider whether additional action within its powers was required in the interests of justice. The Secretary-General notes that the Human Rights Council has endorsed the Mission's recommendations, in accordance with the specific recommendation made by the Mission in its report, and that the recommendation is being implemented further on an ongoing basis.

4. With regard to the implementation that the Human Rights Council bring the report of the Fact-Finding Mission to the attention of the Security Council pursuant to Article 99 of the Charter of the United Nations so that the Security Council could consider action (A/HRC/12/48, para. 1968 (b)), the Secretary-General notes that, to date, the Human Rights Council has not requested the Secretary-General to bring the report to the attention of the Security Council under Article 99 of the Charter. The Secretary-General also notes that, in order to ensure adequate and effective implementation of the recommendation, the Council would need to make a specific request, in accordance with its mandate and procedures, that the Sectary-General bring the report to the attention of the Security Council under Article 99 of the Charter.

5. With regard to the recommendation that the Human Rights Council formally submit the report to the Prosecutor of the International Criminal Court (A/HRC/12/48, para. 1968 (c)), the Secretary-General recalls that, as stated in his first progress report on the status of implementation of the Mission's recommendations (A/HRC/13/55), the report of the Mission was transmitted to the Prosecutor of the International Criminal Court on 10 December 2009. The Secretary-General notes that the Council has implemented the Mission's recommendation.

6. With regard to the recommendation that the Human Rights Council submit the report of the Mission to the General Assembly with a request that the report be considered (A/HRC/12/48, para. 1968 (d)), the Secretary-General recalls that, as stated in his first progress report on the status of implementation of the recommendations made by the Mission (A/HRC/13/55), the Council, in its resolution S-12/1, recommended that the Assembly consider the report at its sixty-fourth session. In its resolution 16/32, the Council recommended that the Assembly reconsider the report at its sixty-sixth session. The Secretary-General notes that the Council has implemented the Mission's recommendation.

7. The Secretary-General notes that the recommendation that the Human Rights Council bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include a review of progress in their implementation in their periodic review of compliance by Israel with its human rights obligations (A/HRC/12/48, para. 1968 (e)) has been partially implemented. He recalls that, as stated in his first progress report on the status of implementation of the Mission's recommendations (A/HRC/13/55), the report of the Mission was transmitted to the treaty bodies that monitor compliance by Israel with the human rights treaties to which it is party[1] on 10 December 2009. To date, the Human Rights Committee and the Committee on the Rights of the Child have issued concluding observations and recommendations concerning implementation by Israel of the Mission's recommendations. To ensure adequate and effective implementation of the Mission's recommendation, the Council would need to review the progress made by Israel in implementing the Mission's recommendations as part of the State's participation in the second cycle of the universal periodic review process, to be held during the fifteenth session of the Working Group on the Universal Periodic Review, from 21 January to 1 February 2013.

B. Security Council

8. With regard to the Mission's recommendation that the Security Council require the Government of Israel, under Article 40 of the Charter, (i) to take all appropriate steps,

[1] The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child.

within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention; and (ii) to inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government to inquire into, investigate and prosecute such serious violations (A/HRC/12/48, para. 1969 (a)), the Security Council has to date not required that the Government take all appropriate steps to launch appropriate investigations into the serious violations of international humanitarian and international human rights law reported by the Mission. However, with regard to adequate and effective implementation of the Mission's recommendation, the Secretary-General notes that the Security Council has not, to date, established a committee such as that detailed by the Mission (see A/HRC/12/48, para. 1969, subparas. (b) – (e)). He nonetheless notes that the Human Rights Council, in its resolution 13/9, established a committee of independent experts in international humanitarian and human rights laws to monitor and assess domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, including the independence, effectiveness and genuineness of these investigations and their conformity with international standards. In accordance with resolution 15/6, the committee reported to the Council at its fifteenth session (A/HRC/15/50). In its resolution 15/6, the Council welcomed that report and renewed and resumed the mandate of the committee. The committee presented its second report to the Council at its sixteenth session (A/HRC/16/24). In its resolution 16/32, the Council took note of the two reports submitted by the committee and called for the implementation of its conclusions.

C. Prosecutor of the International Criminal Court

9. With regard to the Mission's recommendation that the Prosecutor take the required legal steps to determine as expeditiously as possible that accountability for victims and the interests of peace and justice in the region are ensured, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine (A/HRC/12/48, para. 1970), the Office of the Prosecutor informed, by letter dated 23 May 2012, the United Nations High Commissioner for Human Rights that, on 3 April 2012, it had issued an update on the Palestine situation in which it assessed that it was "for the relevant bodies at the United Nations or the Assembly of States Parties [to the Rome Statute of the International Criminal Court] to make the legal determination whether Palestine qualifies as a State for the purpose of acceding to the Rome Statute and thereby enabling the exercise of jurisdiction under article 12 (1)." The Office of the Prosecutor also informed the High Commissioner that the Rome Statute "provides no authority for the Office […]to adopt a method to define the term "State" under article 12 (3), which would be at variance with that established for the purpose of article 12 (1)." The Office pointed out that it could, in future, consider allegations of crimes committed in Palestine should the competent bodies of the United Nations or […]the Assembly of States Parties resolve the legal issue relating to an assessment of article 12, or should the Security Council, in accordance with article 13 (b), make a referral providing jurisdiction. The Secretary-General therefore notes that the Office of the Prosecutor has implemented the Mission's recommendation.

D. General Assembly

10. With regard to the Mission's recommendation that the General Assembly request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts

in its report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the recommendations (A/HRC/12/48, para. 1971 (a))**,** the Secretary-General notes that, to date, the Assembly has not made the request to the Council. With regard to the adequate and effective implementation of the recommendation, the Secretary-General refers to the developments reported above (see para. 9).

11. The Secretary-General notes that, to date, the General Assembly has not established an escrow fund as described by the Mission in its report (A/HRC/12/48, para. 1971 (b)), to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December–January military operation and actions in connection with it. He notes, however, that, in its resolution 13/9, the Human Rights Council called upon the High Commissioner to explore and determine the appropriate modalities for the establishment of such a fund. The High Commissioner reported to the Council on this matter in her report on the follow-up to the report of the Mission (A/HRC/15/52/Add.1). In her report, the High Commissioner summarized the advice received from the Office of Legal Affairs, according to which a number of decisions would need to be taken by a competent organ of the United Nations (for example, the General Assembly) if the decision were to be made to follow up on the recommendation made by the Mission. According to the Office, this would include (a) a decision to establish the escrow fund; (b) a decision on the source(s) of funding for the fund; (c) a decision to establish a body to administer the fund; (d) a decision on the extent to which the body would rely on the investigations carried out by the Government of Israel and the Palestinian authorities in order to determine the factual basis of a claim for compensation for the fund; and (e) a decision to establish a secretariat of the body administering the fund. The Office also identified a set of ancillary decisions that would need to be taken, including decisions on the identification of persons eligible to receive compensation from the fund; the particular types of loss for which compensation might be paid from the fund; the process for the submission of claims for compensation; a timetable for the submission of claims; and a target date for the completion of claims processing. Subsequently, the High Commissioner reiterated the advice given the Office in her progress report submitted to the Human Rights Council pursuant to its resolution 16/32 (A/HRC/18/50). With regard to the most adequate and effective implementation of the Mission's recommendation, the Secretary-General refers to the advice provided by the Office of Legal Affairs.

12. With regard to the recommendation that the General Assembly request the Government of Switzerland to convene a conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1 (A/HRC/12/48, para. 1971 (c)), the steps taken by the Assembly to implement the recommendation were outlined in a previous progress report of the Secretary-General (A/HRC/15/51). Since then, the Assembly has not taken any further action. The Secretary-General notes that, with reference to paragraph 5 of Assembly resolution 64/10, the Assembly has implemented the recommendation made by the Mission in its report. Furthermore, in its resolution 16/32, the Human Rights Council welcomed the efforts made by the Government of Switzerland to reconvene such a conference, and recommended that itpursue its efforts with the aim of resuming the conference before September 2011. The High Commissioner reported on the efforts made by the Government in this regard in her progress report on the implementation of Council resolution 16/32 (A/HRC/18/50). Subsequently, in its resolution 19/18, the Council welcomed the efforts made by the Government of Switzerland and recommended that it pursue its efforts with the aim of resuming the above-mentioned conference as soon as possible. In a note verbale addressed to OHCHR on 23 May 2012, the Government recalled that, in July 2011, it had concluded that, following a year of consultations, a cross-regional critical mass had not been reached in support of the convening of such a conference. It pointed out that it had received, on 16 January 2012, correspondence from the President of the coordinating office of the Non-

Aligned Movement reiterating the urgency of undertaking further consultations with the objective of convening such a conference as soon as possible. On 22 March 2012, the Government informed the President of the Non-Aligned Movement of its intention to undertake discussions with the parties concerned. In this regard, it met with representatives of Israel and Palestine on 28 March and 2 April 2012 respectively. On 17 April 2012, the Government of Switzerland submitted an informal document to the parties that included suggestions for a collaborative approach to attain concrete goals. At the time of transmission of the note verbale from the Government, the parties concerned were considering the informal document. The Government reiterated its readiness to cooperate with the High Contracting Parties and other interested parties in this respect.

13. With regard to the recommendation that the General Assembly promote an urgent discussion on the future legality of the use of certain munitions referred to in its report, and in particular white phosphorous, flechettes and heavy metals, such as tungsten, and that, in its discussion, the Assembly draw on, inter alia, the expertise of the International Committee of the Red Cross (ICRC) (A/HRC/12/48, para. 1971 (d)), the Secretary-General notes that, to date, the Assembly has not taken action to promote such a discussion. He notes, however, that the Human Rights Council, in its resolution 13/9, called upon the Assembly to promote an urgent discussion on the future legality of the use of certain munitions, as referred to by the Mission in its report. The Council reiterated its call in its resolution 16/32, and subsequently recommended, in its resolution 19/18, that the Assembly consider launching such a discussion. The Secretary-General has not been informed of any moratorium on the use of such weapons by the Government of Israel. In order to ensure the most adequate and effective implementation of this aspect of the Mission's recommendation, the Government of Israel would need to take appropriate action within its own national legal and political framework.

E. Israel[2]

14. With regard to the recommendation that Israel immediately cease border closures and the restrictions on passage through border crossings with the Gaza Strip, and allow the passage of goods necessary and sufficient to meet the needs of the population for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip (A/HRC/12/48, para. 1972 (a)), positive steps towards the resumption of meaningful economic activity include the export of 150 truckloads of goods from Gaza and the approval by Israel, in August 2012, of $360 million worth of United Nations projects for recovery and reconstruction. The approval of $85 million worth of United Nations projects is still pending. Although Israel recently released 20,000 tons of construction materials for the private sector in Gaza, the border closures and restrictions on passage through border crossings continue to have a serious negative effect on the population in the Gaza Strip. More than 75 per cent of the units needed to replace homes destroyed during Operation Cast Lead have not been constructed. The unemployment rate in Gaza remains high. This situation is compounded by the urgent demand for construction materials to rebuild homes, schools and other infrastructure, resulting in thousands of people continuing to risk their lives working in tunnels along the border with Egypt. The Secretary-General notes that Israel, notwithstanding the above-mentioned positive steps, has yet to implement fully the recommendation made by the

[2] On 3 May 2012, OHCHR, on behalf of the Secretary-General, addressed a note verbale to the Permanent Mission of Israel to the United Nations Office at Geneva, in which it requested information regarding measures taken or envisaged to implement the recommendations made to Israel, as well as information on non-implementation and measures required to ensure the most adequate and effective implementation of the said recommendations. No response had been received at the time of finalization of the present report.

Mission in its report. With regard to the most adequate and effective implementation of the recommendation, Israel should lift the closure, in compliance with Security Council resolution 1860 (2009), and prioritize the unrestricted import of key building materials, particularly aggregate, iron bars and cement.

15. With regard to the recommendation that Israel lift its restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles, as provided for in the Oslo Accords, and that it allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel (A/HRC/12/48, para. 1972 (b)), Israel continues to limit the access of Palestinians to the sea to three nautical miles. According to investigations carried out by OHCHR, the means used by Israel to enforce this limit raise serious concerns with regard to its obligations under international human rights and international humanitarian law (see A/HRC/19/20). Specific concerns include incidents involving the use of live ammunition and rubber bullets against unarmed fishermen, arbitrary detention, ill-treatment, the illegal confiscation of private property, and impinging upon the fishermen's access to work and a livelihood. While an estimated 35,000 Palestinians depend on the fishing industry as their primary source of income, in 2011 the Food and Agriculture Organization of the United Nations (FAO) recorded an 80 per cent drop in the overall catch since Israel limited the fishing area to three nautical miles. Israel has not changed its policy regarding agricultural activity within areas in the vicinity of the borders of Gaza with Israel. The Secretary-General notes that Israel has yet to implement fully the Mission's recommendations. With regard to the most adequate and effective implementation of these recommendations, Israel should fulfil its commitments pursuant to the Oslo Accords and allow resumption of agricultural activity inside the Gaza Strip, taking into full account its international legal obligations and with due regard for its legitimate security concerns.

16. The Secretary-General recalls that certain actions taken by Israel to implement the recommendation that it initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel, and that it avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law (A/HRC/12/48, para. 1972 (c)) were outlined in a previous progress report (A/HRC/15/51). With regard to ensuring the most adequate and effective implementation of the recommendation, Israel may wish to avail itself of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts and civil society organizations with the relevant expertise and specialization in order to ensure that the actions it has taken will allow it to comply fully with international humanitarian law and international human rights law.

17. With regard to the recommendation that Israel allow freedom of movement for Palestinians within the Occupied Palestinian Territory – within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world – in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people (A/HRC/12/48. para. 1972 (d)), in April 2012, Israeli authorities instituted less-restrictive measures for Palestinian movement to and from Nablus, Tulkarm, Salfit and Ramallah. Nonetheless, according to information received from the Office for the Coordination of Humanitarian Affairs, there were some 540 obstacles to Palestinian movement within the West Bank (excluding the East Jerusalem area of the West Bank). These included 59 permanently-staffed checkpoints (excluding checkpoints on the Green Line), 26 partial checkpoints (staffed on an ad hoc basis) and around 455 unstaffed physical obstacles. This does not include extensive obstacles to Palestinian movement to and from East Jerusalem. The severe restrictions imposed by Israel on passage through its border

crossings with the Gaza Strip continued to limit travel between the West Bank and Gaza. Among other things, such restrictions limited the access of the population of Gaza to health services, legal counsel and judicial mechanisms (see A/HRC/19/20). Palestinian human rights defenders continue to face difficulties travelling between the Occupied Palestinian Territory and the outside world owing to the travel bans imposed by Israel. To ensure the most adequate and effective implementation of the Mission's recommendations, Israel should take additional measures to allow freedom of movement for Palestinians throughout the Occupied Palestinian Territory. Such measures should extend to removing obstacles to Palestinian movement, including with respect to limiting travel between the West Bank and Gaza, in accordance with Israel's international human rights commitments and taking into account legitimate security concerns. Such measures should also extend to removing travel bans on Palestinian human rights defenders.

18. With regard to the recommendations that Israel release Palestinians who are detained in Israeli prisons in connection with the occupation, and that it cease the discriminatory treatment of Palestinian detainees (A/HRC/12/48, para. 1972 (e)), according to information gathered by the non-governmental organizations Addameer and B'Tselem, at the end of July 2012 approximately 4,500 Palestinians, including 210 children, still remained in Israeli prisons, while 250 Palestinians were being held in administrative detention by Israel. Throughout 2012, Palestinian prisoners went on hunger strikes to protest against their conditions of detention and treatment by Israeli authorities. A mass hunger strike was launched on 17 April 2012, in which 1,200 Palestinians reportedly participated. To end the strike, on 14 May 2012 Israel reportedly agreed to end solitary confinement, to allow prisoners from Gaza to receive family visits and to discuss improved conditions and the conditional non-extension of existing administrative detention orders against certain Palestinians. The Secretary-General reiterates his view that administrative detention should only be used in exceptional circumstances, in compliance with international human rights law and international humanitarian law. In general, persons detained must either be charged and face trial with all judicial guarantees or released without delay. The Secretary-General welcomes reports that family visits for prisoners from Gaza resumed in July 2012 after a five-year suspension.[3] With regard to ensuring the most adequate and effective implementation of the Mission's recommendations, the Secretary-General urges Israel to launch, as a first step, a transparent process to identify Palestinians detained in Israeli prisons in connection with the occupation with a view to their release. The situation of each child detainee should be reviewed as matter of the highest priority. The Secretary-General also urges Israel to undertake a review of its policies and practices relating to the treatment of Palestinian detainees with the objective of ending any discriminatory treatment of them.

19. The Secretary-General notes that the recommendation that Israel cease interference in national political processes in the Occupied Palestinian Territory, release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning (A/HRC/12/48, para. 1972 (f)) remains to be fully implemented. At the end of July 2012, 14 members of the Council were still in Israeli detention. Council member Abu Teir, who in 2010 was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces and arrested again by Israeli authorities in September 2011, is currently in administrative detention. Of the three other Council members who had sought refuge at the premises of ICRC in East Jerusalem, Mohamed Attoun was detained by Israel, on the premises of ICRC, in September 2011 and forcibly transferred to another part of the West Bank on 7 December 2011.[4] Mohamed Totah and Khaled Abu Arafeh were detained

[3] ICRC, "Gaza: ICRC facilitates first family visits for five years", news release, 16 July 2012.

[4] ICRC, "Jerusalem: member of Palestinian Legislative Council arrested", news release, 26 September 2011.

by Israel, on the premises of ICRC, on 23 January 2012.[5] The latter two Council members were charged with illegal presence in Israel and are currently held by the Israeli authorities. With regard to the most adequate and effective implementation of the Mission's recommendation, the Secretary-General refers to his observations in paragraphs 18 and 19 above.

20. With regard to the recommendations that the Government of Israel cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning its policies and conduct during the military operations in the Gaza Strip, and that it set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory (A/HRC/12/48, para. 1972 (g)), Israel has not organized an independent inquiry. In the Knesset (Parliament), a draft bill amending the Income Tax Order, whereby funding from foreign States for non-profit organizations would be taxed at a rate of 45 per cent, and a draft bill amending the Associations Act, which would limit donations from a foreign entity to non-profit organizations to 20,000 NIS per year, were combined into the Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity (Legislative Amendments). Both the bill and the amendment to the Associations Law are currently dormant in the Knesset. The Secretary-General notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conducted a mission to Israel and the Occupied Palestinian Territory in December 2011. The Secretary-General refers, in the first instance, to the report of the Special Rapporteur thereon (A/HRC/20/17/Add.2) with regard to the most adequate and effective implementation of the Mission's recommendations.

21. The Secretary-General is not aware of any reprisals taken by the Government of Israel against Palestinian or Israeli individuals who cooperated with the Mission. In this regard, the Secretary-General notes that, to date, it appears that the relevant recommendation made by the Mission (A/HRC/12/48, para. 1972 (h)) has been implemented.

22. With regard to the recommendation that Israel reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it take all appropriate measures to ensure that there is no repetition of violations in the future (A/HRC/12/48, para. 1972 (i)), the United Nations has still not received any formal communication from the Government of Israel reiterating such a commitment. Information on reparations was included in the first progress report of the Secretary-General on the status of implementation of the Mission's recommendations (A/HRC/13/55). To ensure the most adequate and effective implementation of the recommendation of the Mission, Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel.

[5] ICRC, "Jerusalem: former minister for Jerusalem Affairs and PLC member arrested", news release, 23 January 2012.

F. Palestinian armed groups[6]

23. The Secretary-General notes that the recommendation that Palestinian armed groups pledge to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities (A/HRC/12/48, para. 1973 (a)) has not been implemented. Palestinian armed groups continued to fire indiscriminate rockets and mortar shells at Israel. According to information provided by the Department of Safety and Security to OHCHR on 17 June 2012, a total of 752 rockets, including 642 homemade rockets and 110 Grad rockets, and 175 mortar shells were fired toward Israel from 1 July 2011 to 15 June 2012. Rocket and mortar fire against Israel resulted in the death of one Israeli civilian. A Palestinian child was also killed and six others injured by a rocket that landed in Gaza. While the Secretary-General is unable to confirm whether Palestinian armed groups have taken all feasible precautionary measures to avoid causing harm to Palestinian civilians during hostilities, it has been alleged that rockets and mortars are often fired from densely populated areas, which would not only endanger Palestinian civilians but also violate international humanitarian law. Furthermore, such weapons do not discriminate between civilian objects and military objectives and are therefore contrary to international humanitarian law. The Secretary-General urges Palestinian armed groups to comply with their international humanitarian law obligations, including by renouncing attacks on Israeli civilians and civilian objects and taking all feasible precautionary measures to avoid harm to civilians during hostilities, with a view to ensuring the most adequate and effective implementation of the Mission's recommendation.

24. The Secretary-General notes that, notwithstanding the non-implementation of the recommendation that Palestinian armed groups holding Israeli soldier Gilad Shalit in detention release him on humanitarian grounds (A/HRC/12/48, para. 1973 (b)), on 18 October 2011 Gilad Shalit was released in exchange for hundreds of Palestinians detained by Israel.[7]

G. Palestinian authorities

25. With regard to the recommendations that the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end the resort to military justice to deal with cases involving civilians (A/HRC/12/48, para. 1974 (a)), OHCHR, in a meeting with the Palestinian Security Service in February 2011, was informed that, on 31 December 2010, the decision to end use of military courts for civilians had come into force; all detainees would henceforth be tried by civilian courts, with the exception of those held prior to that date. The Secretary-General recalls his previous finding on progress in the implementation of the

[6] On 3 May 2012, OHCHR, on behalf of the Secretary-General, addressed a note verbale to the Permanent Observer Mission of the National Palestinian Authority to the United Nations Office at Geneva in which it requested information on measures taken or envisaged to implement the recommendations made to "responsible Palestinian authorities", the "Palestinian authorities" and "Palestinian armed groups", as well as on non-implementation and measures required to ensure the most adequate and effective implementation of the said recommendations. No response had been received at the time of finalization of the present report.

[7] Statement attributable to the Spokesperson for the Secretary-General on the release of Israeli Staff Sergeant Gilad Shalit and hundreds of Palestinian prisoners, New York, 18 October 2011.

Mission's recommendations (A/HRC/13/55), and notes that significant progress appears to have been made in implementing the recommendations.

26. With regard to the recommendation that the Palestinian Authority and the Gaza authorities release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law (A/HRC/12/48, para. 1974 (b)), the de facto authorities in Gaza continue to detain Fatah members and supporters. They also continue to summon and interrogate Fatah members and supporters regarding their political activities. At times, this extends to harassment and/or ill-treatment by the security officers of the de facto authorities in Gaza.[8] For instance, on 3 July 2012, the "Internal Security Apparatus" summoned and subsequently detained and interrogated a 33-year-old Fatah activist from Khan Younis. According to information collected by OHCHR, he was held without charge until 2 August and ill-treated. In the West Bank, Palestinian Authority security agencies continue to arbitrarily arrest and detain Palestinians affiliated with Islamist parties, demonstrators supporting the "Arab spring" and Palestinian reconciliation, and journalists critical of the Palestinian Authority. Cases documented by OHCHR concern incidents of arrest and detention without a warrant and without informing the persons concerned of the charges against them. The Secretary-General notes that, to ensure the most adequate and effective implementation of the Mission's recommendation, the Palestinian Authority and the de facto authorities in Gaza should launch, as a first step, a transparent process to identify Palestinian political detainees currently detained with a view to their release. Furthermore, they should also desist from making further arrests on political grounds.

27. With regard to the recommendation that the Palestinian Authority and the Gaza authorities continue to enable free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights (A/HRC/12/48, para. 1974 (c)), efforts to limit freedom of expression and the work of civil society organizations persist in the West Bank and Gaza. In August 2010, a Hamas bloc in the Palestinian Legislative Council adopted a bill that would enable it to control the Independent Commission for Human Rights. The bill was officially published in December 2010, but has not yet been enforced. In January 2011, the de facto authorities in Gaza stated that the Commission was not legally qualified to operate.[9] In July 2011, Gaza authorities formally dissolved the Sharek Youth Forum, alleging that it lacked the required operating licenses.[10] The Secretary-General notes that the Mission's recommendation has not yet been implemented. In order to ensure the most adequate and effective implementation of the recommendation, the Palestinian Authority and the de facto authorities in Gaza should, as a first step, address the concerns raised in the present and previous reports on the status of implementation of the recommendation (A/HRC/13/55, A/HRC/15/51 and A/HRC/18/49).

H. International community[11]

28. The Secretary-General is not aware of any further action taken since his previous progress report (A/HRC/18/49) to implement the recommendation that States parties to the

[8] Palestinian Centre for Human Rights. "PCHR gravely concerned over the Internal Security Service's summons against Fatah members in the Gaza Strip", press release, 27 March 2012.

[9] Ma'an News Agency, "Gaza ministry slams rights group report", 8 January 2011.

[10] Al Mezan Center for Human Rights, "Al Mezan and Al Dameer call on the Minister of Interior to reconsider his decision dissolving Sharek Forum Youth", 19 July 2011.

[11] In order to gather information regarding the status of implementation of the recommendations made by the Mission addressed to the international community (A/HRC/12/48, paras. 1975, 1976 and 1977), OHCHR addressed letters to United Nations agencies working in the Occupied Palestinian Territory. The information on the recommendations is based on replies received.

Geneva Conventions initiate criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Conventions (A/HRC/12/48, para. 1975 (a)). With regard to the most adequate and effective implementation of the recommendation, the Secretary-General refers, in the first instance, to the developments reported in paragraph 9 above.

29. With regard to the recommendation that international aid providers step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population (A/HRC/12/48, para. 1975 (b)), the United Nations Children's Fund (UNICEF) reported the receipt of $11,412,192 from donors to support its efforts to protect and provide psychosocial support to Palestinian families and children. Such efforts include partnering non-governmental organizations to deploy emergency psychosocial teams, consisting of 11 in the West Bank and five in Gaza, which reach 17,460 children and 7,970 caregivers. The teams are composed of 25 community-based psychologists, educators and legal counsellors. In the first half of June 2012, 3,574 children in Gaza and 5,449 children in the West Bank were provided with emergency psychosocial support services. In Gaza, 21 family centres provide psychosocial, educational and recreational services for the benefit of 23,000 Palestinian children. In-depth counselling is provided to 1,501 children, while holistic support services are provided for 11,899 children and 6,527 caregivers. In addition, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that children who suffered from trauma after Operation Cast Lead were initially supported through a special initiative under the UNRWA community mental health programme. After completing targeted counselling in late 2009, children who continued to show symptoms were given additional care through existing counselling activities in UNRWA schools throughout Gaza. Furthermore, the World Health Organization (WHO) reported that it had continued to provide technical advice and training in relation to the national mental health strategic plan, including by supporting the integration of mental health in primary health-care services by training 450 doctors and nurses and the establishment of family associations in both the West Bank and the Gaza Strip. It further reported that, under its leadership, the Health and Nutrition Cluster in the Occupied Palestinian Territory conducted a needs assessment in 2011, which identified mental health and psychosocial support as a programmatic priority for the health sector in Gaza. WHO referred to an assessment made in March 2012, according to which 40 per cent of the 1,831 people surveyed experienced significant symptoms of anxiety, 41 per cent experienced deep feelings of hopelessness and 41 per cent experienced significant symptoms of depression. Against this backdrop, WHO anticipated that the Cluster would provide mental health and psychosocial support services to around 20,000 people in Gaza in 2012.

30. The Secretary-General notes that the implementation of the recommendation that international aid providers step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population (A/HRC/12/48, para. 1975 (b)) is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, donor countries and assistance providers should continue to step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population.

31. With regard to the recommendation that donor countries/assistance providers continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law (A/HRC/12/48, para. 1975 (c)), Palestinian and Israeli human rights organizations continue to monitor and document violations of human rights and international humanitarian law throughout the Occupied Palestinian Territory. Much of this work relies on financial assistance from international sources. In response to informal queries from

OHCHR, neither Israeli nor Palestinian non-governmental organizations have reported any major changes in their funding since the finalization of the present report. In addition, OHCHR continues to lead the Protection Cluster in the Occupied Palestinian Territory. The Cluster includes Palestinian and Israeli non-governmental organizations that monitor, document, share information, report and carry out advocacy relating to, inter alia, violations of and accountability for human rights and international humanitarian law in access-restricted areas in Gaza and settler violence in the West Bank. UNICEF continues to lead the inter-agency working group that reports to the Working Group of the Security Council on Children and Armed Conflict. The Working Group submitted six reports to the Security Council in 2011 in which it had documented grave violations against children in the Occupied Palestinian Territory by Israeli security forces and Palestinian armed groups, as well as abuses by Israeli settlers. In 2011, UNICEF reported a significant increase in the number of children being killed or injured owing to the Israeli-Palestinian conflict. Twenty Palestinian children were killed and 448 were injured, while five Israeli children were killed and two were injured. Furthermore, UNICEF recorded 36 cases of Palestinian schools being attacked, resulting in disruption to education, damage to educational facilities and injury to Palestinian children. UNICEF also provides direct support to Palestinian and Israeli human rights organizations to strengthen their capacity to document human rights violations, and is currently working to strengthen those efforts.

32. The Secretary-General notes that the implementation of the recommendation is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, donor countries and assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law.

33. The Secretary-General notes that the implementation of the recommendation that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, ensure that respect for the rule of law, international law and human rights assumes a central role in internationally-sponsored peace initiatives (A/HRC/12/48, para. 1975 (d)) is ongoing. On 11 April 2012, the Quartet issued a statement in which it, inter alia, called upon the Palestinian Authority to continue to make every effort to improve law and order, to fight violent extremism and to end incitement, expressed concern regarding Israeli settler violence and incitement in the West Bank, and called upon Israel to take effective measures, including bringing the perpetrators of such acts to justice. The Quartet expressed further concern at unilateral and provocative actions by both parties, including continued Israeli settlement activity. In its statement of 11 April 2012, the Quartet, while stressing the need for calm and security for Palestinians and Israelis, condemned rocket attacks from Gaza. The Secretary-General also notes that, in order to ensure the most adequate and effective implementation of the recommendation, the States involved in peace negotiations between Israel and representatives of the Palestinian people, including through the Quartet, should use all opportunities to ensure that respect for the rule of law, international law and human rights are advanced through such negotiations.

34. The Secretary-General is not aware of developments further to what was communicated in his previous report (A/HRC/18/49) in relation to the recommendation that a programme of environmental monitoring be conducted under the auspices of the United Nations for as long as deemed necessary (A/HRC/12/48, para. 1975 (e)). With regard to the most adequate and effective implementation of the recommendation, the Secretary-General refers to the initiatives of the United Nations Environment Programme noted in previous progress reports (A/HRC/13/55 and A/HRC/18/49) and would, in the first instance, encourage relevant actors to implement the recommendations and proposals detailed therein.

I. International community and responsible Palestinian authorities

35. The Secretary-General notes that, to date, no mechanism has been established to track, receive and allow disbursal of funds for the reconstruction of Gaza, pursuant to the Mission's recommendation (A/HRC/12/48, para. 1976 (a)). UNRWA reports that United Nations agencies have difficulty in obtaining access to and use of funds pledged at the International Conference in support of the Palestinian Economy for the Reconstruction of Gaza in March 2009, for construction activities for the benefit of the civilian population. UNRWA received $69.9 million from one donor, which had been pledged at the Conference to help to rehouse Palestinians displaced from their homes by the conflict. UNRWA also reported that it had proposed to Israeli authorities a streamlined process of project approvals and transfers of construction supplies through the crossings established under the Agreement on Movement and Access of 2005, with a view to expediting the implementation of construction and reconstruction projects. With regard to the most adequate and effective implementation of the recommendation, the Secretary-General encourages the international community to work with responsible Palestinian authorities to establish such a mechanism.

36. The Secretary-General noted in his previous progress reports (A/HRC/15/51 and A/HRC/18/49) that he was not aware of any action taken by responsible Palestinian authorities or Palestinian structures in response to the recommendation that responsible Palestinian authorities as well as international aid providers pay special attention to the needs of persons with disabilities (A/HRC/12/48, para. 1976 (b)). This continues to be the case. UNRWA reported, however, that it continued to work with local organizations to ensure that patients who sustained injuries during Operation Cast Lead receive prosthetic devices and artificial limbs. It also continues to provide community organizations with financial assistance and technical advice to help to deliver services to target groups, and to deliver direct psychosocial support, physiotherapy, occupational therapy and assistive devices to affected individuals and families. In addition, WHO noted that, in 2010 and 2011, 2,421 Palestinians were referred outside of the Gaza Strip to receive specialized health services, thus indicating serious gaps in access to health care for patients from Gaza who suffered injuries during the Gaza conflict. It also reported that, in its 2011 needs assessment, the Health and Nutrition Cluster had identified support for people with disabilities as a programmatic priority for the health sector in Gaza for 2012. In this connection, the Cluster had developed a strategy to provide health care and rehabilitation services to around 5,400 persons with disabilities in Gaza. WHO also noted that, as at May 2012, only 36 per cent of the Cluster projects had been funded.

37. The Secretary-General observes that, thanks in particular to the efforts of UNRWA and WHO, the implementation of the Mission's recommendation is ongoing. In order to ensure the most adequate and effective implementation of the recommendation, responsible Palestinian authorities and structures should initiate efforts to provide the necessary medical treatment and follow-up to persons with disabilities, and international aid providers should continue to support efforts in this regard.

J. International community, Israel and Palestinian authorities

38. The Secretary-General is not aware of any developments further to what was communicated in his previous report (A/HRC/18/49) in relation to the implementation of the recommendation that Israel and representatives of the Palestinian people, and international actors involved in the peace process, involve Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law (A/HRC/12/48, para. 1977 (a)). During his visit to the region in February 2012, the Secretary-General met with Palestinian civil society activists, many of whom voiced

scepticism about the peace process and frustration regarding the lack of Palestinian unity and the impact of Israeli settlements on their daily lives.[12] In order to ensure the most adequate and effective implementation of the Mission's recommendation, the Secretary-General urges Israel, representatives of the Palestinian people and international actors to strengthen their efforts to involve Israeli and Palestinian civil society, particularly women, in accordance with Security Council resolution 1325 (2000), in the peace process.

39. With regard to the recommendation that attention be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security (A/HRC/12/48, para. 1977(b)), UNRWA reports that it continues to provide women whose homes were damaged or demolished during Operation Cast Lead with cash assistance and rental subsidies. Subsidies have been disbursed to enable female-headed households who had their homes or shelters damaged to pay for repairs. In cases where homes or shelters were completely destroyed, UNRWA continues to pay one-year rental subsidies. Women continue to account for one third of employees in the UNRWA job creation programme. Since Operation Cast Lead, several Gaza women programme centres supported by UNRWA have offered psychosocial and legal support to women. The Secretary-General notes that, thanks to the efforts of UNRWA, the implementation of the Mission's recommendation is ongoing. He also notes that, in order to ensure the most adequate and effective implementation of the recommendation, international aid providers should ensure sufficient financial support for such efforts.

K. Secretary-General

40. With regard to the recommendation that the Secretary-General develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and the request addressed by the Mission to the United Nations High Commissioner for Human Rights to provide the expertise required to implement that recommendation (A/HRC/12/48, para. 1978), OHCHR and the Office of the United Nations Special Coordinator for the Middle East Peace Process are working in close cooperation on an ongoing basis. This cooperation extends to the provision of expertise to identify and respond to human rights issues, including for the purposes of briefings to the Security Council[13] and in the broader context of the peace process. In addition, United Nations partners in the Occupied Palestinian Territory have developed an integrated strategic framework that addresses human rights, including with respect to the peace process. The Secretary-General notes that the Mission's recommendation is being implemented on an ongoing basis.

L. Office of the United Nations High Commissioner for Human Rights

41. With regard to the recommendation that OHCHR monitor the situation of persons who have cooperated with the Mission and periodically update the Human Rights Council through its public reports and in other ways it deems appropriate (A/HRC/12/48, para.

[12] See Secretary-General, briefing to the Security Council, 8 February 2012.

[13] See for example the briefings of the Assistant Secretary-General for Political Affairs to the Security Council on 24 January 2012; of the Secretary-General on 8 February 2012; of the Under Secretary-General for Political Affairs on 28 February 2012; of the Special Coordinator for the Middle East Peace Process on27 March 2012; of the Under Secretary-General for Political Affairs on 23 April 2012; of the Special Coordinator for the Middle East Peace Process on 29 May 2012; of the Special Coordinator for the Middle East Peace Process on 25 July 2012; of the Assistant Secretary-General for Political Affairs on 19 June 2012; and of the Under Secretary-General for Political Affairs on 22 August 2012.

1979(a)), OHCHR continues to monitor and report on the situation of human rights in the Occupied Palestinian Territory. Any situation of concern regarding persons who cooperated with the Mission would be identified and addressed by OHCHR through such activities. The Mission's recommendation is being implemented on an ongoing basis.

42. The most recent report of the High Commissioner on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/19/20) contains information relevant to the status of implementation of many of the Mission's recommendations. The Secretary-General notes that the recommendation that OHCHR give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council is being implemented on an ongoing basis.

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 28/27 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It presents the human rights situation through an analysis of how the occupation and associated measures restrict freedom of movement, and examines the impact of those restrictions on Palestinians' enjoyment of their economic, social and cultural rights.

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I. Introduction

1. The present report, which covers the period from 1 November 2014 to 31 October 2015, assesses the implementation of Human Rights Council resolution 28/27. It is based on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities in the Occupied Palestinian Territory. It also draws on information obtained from Israeli and Palestinian non-governmental organizations (NGOs) and from media sources.

2. In the present report, the human rights situation is viewed through the lens of the ongoing restrictions on the right to freedom of movement in the Occupied Palestinian Territory and their impact on the enjoyment of a wide range of other human rights. The report does not provide a comprehensive account of all human rights concerns in the Occupied Palestinian Territory. It should be read in conjunction with the reports of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/70/351) and on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/70/421), as well as the reports of the Secretary-General (A/HRC/31/43) and the High Commissioner (A/HRC/31/40) before the Human Rights Council at its thirty-first session.

II. Legal background

3. International humanitarian law and international human rights law are applicable in the Occupied Palestinian Territory. The detailed analysis of the applicable legal framework, including the basis of the legal obligations of the duty bearers, presented in the report of the High Commissioner on the implementation of Council resolution S-9/1 (see A/HRC/12/37, paras. 5-9) and the 2014 report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (see A/69/347, paras. 3-6), remains valid.

4. Freedom of movement is guaranteed under international human rights law[1] and international humanitarian law.[2] Israel, as the occupying Power, has an obligation to facilitate the freedom of movement of persons residing in the Occupied Palestinian Territory. Palestinian duty bearers too are obliged to respect and ensure freedom of movement.

5. While certain restrictions on freedom of movement are allowed under international law, including for reasons of security,[3] they must be strictly necessary for that purpose, proportionate and non-discriminatory.[4]

[1] See the International Covenant on Civil and Political Rights, art. 12; and the Universal Declaration of Human Rights, art. 13.

[2] See the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 27; and the 1958 commentary of the International Committee of the Red Cross on that same article.

[3] See the Fourth Geneva Convention, arts. 27 and 64 (2); the 1958 commentary of the International Committee of the Red Cross on that same article; and the Convention respecting the Laws and Customs of War on Land, annex, art. 43.

[4] See the advisory opinion of the International Court of Justice on the legal consequences of the construction of the wall in the Occupied Palestinian Territory, paras. 135-137.

6. Freedom of movement is also a prerequisite for the enjoyment of a broad range of civil, political, economic, social and cultural rights. The exercise of some rights, such as the rights to work, health and education, depends to a large extent on the ability to move freely and to choose one's residence. Thus, restrictions to freedom of movement can lead to limitations on a range of other human rights.[5]

7. Israel has positive obligations under both international humanitarian law and human rights law. Under international humanitarian law, the occupying Power retains positive obligations to ensure the welfare of the population, including the provision of medical supplies.[6] The principle of non-discrimination[7] is also relevant, especially in relation to the differential treatment of settlers and Palestinians living in the Occupied Palestinian Territory.

III. Restrictions on freedom of movement and their impact on human rights

A. Introduction

8. During the reporting period, the human rights situation in the Occupied Palestinian Territory remained difficult, and was characterized by violations of a range of rights. Long-standing restrictions on free movement between Gaza and the West Bank and within the West Bank exacerbated the situation.

9. In the Oslo Accords it is provided that, "without derogating from Israel's security powers and responsibilities", the movement of people and vehicles in the West Bank "will be free and normal, and shall not need to be effected through checkpoints or roadblocks". Furthermore, it is recognized that the West Bank and Gaza should be maintained as a "single territorial unit … respecting and preserving without obstacles, normal and smooth movement of people".

10. During the reporting period, movement restrictions remained in place, many of them in contradiction with previous agreements and international law. The restrictions have contributed to a fragmentation of the Occupied Palestinian Territory to a point where freedom of movement is severely impeded.

11. The current situation must be reversed. In his previous report, the Secretary-General noted that human rights violations by all duty bearers were driving the conflict in an ever-worsening cycle of violence (see A/HRC/28/45, para. 8). Movement restrictions undermine individuals' rights to health care, work, education and family life, and result in the rupture of social, economic, cultural and family ties. Cumulatively, these violations undermine the right of Palestinians to self-determination and to an adequate standard of living.

[5] Ibid., paras. 133-134.

[6] Fourth Geneva Convention.

[7] See the International Covenant on Economic, Social and Cultural Rights, art. 2 (1); and the International Covenant on Civil and Political Rights, arts. 2 (1) and 26.

B. Israeli restrictions on the freedom of movement of Palestinians

1. Administrative measures restricting freedom of movement

12. Palestinians' freedom of movement is restricted through a complex and multilayered system of administrative, bureaucratic and physical constraints that permeate almost all facets of everyday life.

13. Although the Ministry of the Interior of the State of Palestine issues identity cards for Palestinians on the basis of the Palestinian population registry, Israel retains the power to approve or reject all changes of address and permanent residency applications. In 2000, with the outbreak of the second intifada, Israel suspended updates to the register. Attempts to resolve the large backlog of applications between 2007 and 2009, and again in 2011,[8] had limited impact (see A/68/502, para. 9).

14. The permit regime allows Israeli authorities to limit and control Palestinians' movement in the Occupied Palestinian Territory beyond their immediate residential area. This permit regime dates back to the cancellation by Israel, during the first intifada, of the "general exit permit", which had allowed Palestinians to move freely between Gaza, the West Bank and Israel.[9] Since then, Palestinian residents of the Occupied Palestinian Territory are required to have individual permits to enter Israel and East Jerusalem. Following the outbreak of the second intifada in 2000, Israel further tightened movement restrictions, requiring Palestinians to obtain permits to cross between Gaza and the West Bank.[10] Permits are also required to enter and remain in large areas inside the West Bank, including the so-called "seam zone".[11]

15. The requirements for obtaining a permit are set out in protocols and procedures issued by the Israeli authorities, most of which have not been made public until recently. Following a series of freedom of information petitions filed by the Israeli NGO Gisha, several procedures have been posted on the website of the Coordination of Government Activities in the Territories Unit (COGAT) but a number remain unavailable to the public.[12] Moreover, of those published, only some have been translated into Arabic. As a result, both the procedures and the criteria by which applications are evaluated remain unclear to many applicants, most of whom read and understand Arabic.[13]

16. During the reporting period, COGAT eased requirements for selected groups, including by authorizing men over the age of 55 and women over the age of 50 from the West Bank to enter East Jerusalem or Israel without a permit.[14] In June, for the first time since the second intifada broke out in 2000, the Israeli authorities reportedly allowed some 100 Palestinian doctors from the West Bank to drive their cars into East Jerusalem and Israel.[15] Movement restrictions were also eased during Ramadan when exceptions for

[8] See www.pmo.gov.il/English/MediaCenter/Events/Pages/eventblair040211.aspx.

[9] B'Tselem and HaMoked, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, 2005, p. 9.

[10] Ibid.

[11] B'Tselem, *Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank* (2007), pp. 24-25. The "seam zone" is the section of Palestinian land located between the wall and the 1949 armistice line that was declared "closed" following construction of the wall.

[12] Gisha, "Procedures and policies", 2015. Available from www.gisha.org/legal/procedures-and-protocols.

[13] Ibid.

[14] COGAT, "Status of permits for the entry into Israel of Palestinians, for overseas departures and the crossing points between Judea and Samaria and the Gaza Strip" (November 2015).

[15] Y-Net News, "Israel increases relief measures to Palestinians in the West Bank," June 14, 2015.

permit requirements were extended on Fridays to men over 40 and boys under 13 and to all women and girls, although some of those steps were revoked following unrest in July.[16]

17. The monthly quota of merchants allowed to leave Gaza during the reporting period was raised from 3,000 to 5,000 and the daily number of exits increased from 400 to 800.[17] The quota of Palestinian patients allowed to exit Gaza for medical treatment in Israel was raised from 80 to 120 per day. Israeli authorities also eased restrictions on the passage of Palestinian athletes from Gaza. Thus, in March 2015, 46 runners from Gaza were granted permits to enter the West Bank to take part in the annual Palestine Marathon.[18] During Ramadan, 500 Palestinians from Gaza were given a permit to travel to participate in prayers at Al-Aqsa Mosque, in Jerusalem.[19] While those measures are welcome, they are unlikely to lead, by themselves, to a long-lasting improvement as long as the permit regime remains in place.

18. Over the years, tens of thousands of Palestinians who have sought to enter Israel, Israeli settlements and the "seam zone", or to go abroad through the Allenby crossing to Jordan, have had their permits rescinded or their applications rejected after being blacklisted by the Israel Security Agency.[20] No reasons are given for the rejection, and restrictions are usually instituted without prior warning. As a result, many Palestinians only learn about the restrictions when they attempt to cross a checkpoint and are blocked.[21]

19. The Israeli NGO Machsom Watch assists blacklisted Palestinians in lodging appeals with the District Coordination Office.[22] In 59 per cent of the cases handled in 2014, the organization was able to remove individuals from the blacklist.[23] This high rate of successful challenges raises questions about the overall arbitrariness of the system.

20. Freedom of movement is a human right, yet the individual permit regime makes it a privilege to be granted or denied by Israeli authorities as an exception to the norm. While protection of national security may justify some restrictions in specific circumstances, the requirement that applicants meet narrowly defined criteria, such as visiting a sick relative or requiring hospital treatment, constitutes a fundamental breach of the International Covenant on Civil and Political Rights. The relation between rights and restrictions must not be reversed, and freedom of movement must not be made dependent on any particular purpose or reason.[24]

2. Restrictions on freedom of movement in the West Bank, including East Jerusalem

21. Movement by Palestinians within the West Bank is restricted by a system of checkpoint and permit requirements, as well as by the expansion of settlements and related

[16] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", July 2015, p. 6.

[17] See http://gaza.ochaopt.org/2015/02/further-easing-of-criteria-and-quotas-for israeli-permits-to-exit-gaza/.

[18] Gisha, "Forty-six runners exited this morning from Gaza", March 2015.

[19] Agence France Presse, "Thousands pray at Jerusalem's Al-Aqsa for Ramadan", 19 June 2015.

[20] In addition, tens of thousands of Palestinians have been blacklisted by the police, usually punitively, after having entered Israel without a valid permit. Yet others are administratively blacklisted, for example for unpaid fines. Machsom Watch, "Year-end report, January-December 2014", January 2015, pp. 16-18.

[21] Ibid., p. 16.

[22] The District Coordination Office is the Israeli governing body that operates in the West Bank. It was established in order to carry out practical functions within the Occupied Palestinian Territories.

[23] Machsom Watch, "Year-end report, January-December 2014", January 2015, p. 17.

[24] See Human Rights Committee general comment No. 27 (1999) on freedom of movement, paras. 5 and 13.

infrastructure. The two main areas in the West Bank that most Palestinians cannot access without a permit are the area west of the wall, known as the "seam zone", and East Jerusalem.

Movement restrictions linked to settlements and other closed areas

22. A number of movement restrictions are linked to the presence of Israeli settlements in Area C and East Jerusalem. There are approximately 142 settlements in the West Bank, including East Jerusalem.[25] Some restrictions on Palestinians' freedom of movement have been justified by the Israeli authorities as a means of protecting settlers and facilitating their movement throughout the West Bank. They include restrictions on Palestinians' access to private land located in the vicinity of settlements and limitations on Palestinians' use of roads used by Israeli settlers (see A/67/375 and A/HRC/31/43).

23. Particularly severe restrictions are imposed on the movement of Palestinians who live in close proximity to Israeli settlers. In the H2 area of Hebron, where approximately 6,000 Palestinians live near settlements, the vehicular and, in some cases, pedestrian movement has been restricted for the past 15 years by approximately 95 physical obstacles, including 19 permanently staffed checkpoints.[26] Consequently, access to educational and health-care institutions has been severely impeded, many Palestinian shops, as well as the city's main vegetable and wholesale markets, which are located in the closed areas, have been shut down and thousands of Palestinians have been compelled to move out of their homes.[27]

24. Since October 2015, following a series of attacks and clashes, Palestinians' movement in H2 has been further restricted. The area of Tel Rumeida was declared a closed military zone on 29 October and two of the checkpoints leading to the area have since become accessible only to Palestinian residents registered in advance with Israeli authorities.[28]

Movement restrictions linked to the wall and the "seam zone"

25. The wall is a key obstacle to freedom of movement in the West Bank. The International Court of Justice, in its advisory opinion on the legal consequences of the construction of the wall in the Occupied Palestinian Territory, recognized as illegal those sections of the wall that depart from the Green Line. To date, however, approximately 64.2 per cent of the projected 712 km-long wall has been completed, 85 per cent of which runs through the West Bank.[29] The Secretary-General has described how the gate and permit regime, which regulates access to the "seam zone", impedes the rights of the approximately 11,000 Palestinians residing there from living normal lives and enjoying the right to work, family life and medical treatment (see A/68/502, para. 23).

26. During the reporting period, the High Court of Justice of Israel issued a decision permitting resumption of the construction of a section of the wall in the Wadi Cremisan

[25] B'Tselem, statistics on settlements and settler population for May 2015, available from www.btselem.org/settlements/statistics.

[26] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", November 2015, p. 4.

[27] Global Protection Cluster, "Protection concerns and humanitarian impacts of settlement activity in Hebron city", April 2014.

[28] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", November 2015, p. 4.

[29] Office of the United Nations Special Coordinator for the Middle East Peace Process, "Report to the Ad Hoc Liaison Committee", September 2015, para. 38.

area of Beit Jala, near Bethlehem. Preparation for construction began on 17 August 2015.[30] That section of the wall will cut the town off from 3,000 dunams of agricultural land belonging to 58 Palestinian families, which provides the community with an indispensable source of income.[31]

27. While Israeli authorities have committed to the construction of agricultural gates to facilitate farmers' access to their lands, access is expected to be limited.[32] Of the 85 agricultural gates built to facilitate Palestinians' access to agricultural land in the "seam zone", only nine are open daily.[33] As a result, many farmers have been forced to give up farming their land or have switched to lower-yielding and less-labour-intensive crops.

28. According to the military orders governing the West Bank, Israeli citizens require an Israel Defense Forces permit to enter Area A — the Palestinian urban centres under full Palestinian Authority control, covering 18 per cent of the West Bank.

Isolation of East Jerusalem from the rest of the West Bank

29. During the reporting period, Israeli authorities continued to implement restrictions isolating East Jerusalem from the rest of the West Bank and restricting movement within East Jerusalem. Palestinians residing in East Jerusalem are required to hold Israeli-issued ID cards granting bearers the status of "permanent resident". These ID cards can be revoked if the authorities determine that Jerusalem ceases to be the bearer's "centre of life" (see A/68/502, para. 28). Hence, Palestinians in East Jerusalem who wish to travel abroad for long periods of time, whether for employment or other reasons, risk losing their residency.

30. Palestinians from the West Bank and Gaza are required to obtain special permits to enter East Jerusalem and Israel, and can enter the city only through four established checkpoints.[34] The isolation of East Jerusalem, traditionally an important centre for Palestinian economic, cultural and social activity, has a serious impact on surrounding communities.

31. On 14 October 2015, following a series of attacks and clashes, the Israeli authorities imposed further movement restrictions on residents of neighbourhoods in East Jerusalem. As at 26 October 2015, there were 38 new obstacles, including 16 checkpoints, 20 roadblocks and one earth mound blocking the entry into and exit from the main Palestinian residential areas, curtailing the access of approximately 138,000 residents to work, school and medical treatment.[35] Some obstacles were being dismantled at the end of the reporting period.[36]

32. While the Government of Israel has a right to put in place necessary and proportionate security measures in response to specific security threats, systematically restricting the movement of thousands of Palestinians in the manner described above is prima facie disproportionate to the aim pursued.

[30] Society of St. Yves, *The Last Nail in Bethlehem's Coffin: the Annexation Wall in Cremisan*, August 2015.

[31] B'Tselem, "Barrier to separate Beit Jala residents from their lands, laying groundwork for annexing settlement", 12 November 2015.

[32] Ibid.

[33] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", September 2015, p. 6.

[34] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", July 2015, p. 6.

[35] Office for the Coordination of Humanitarian Affairs, protection of civilians weekly report for 20-26 October 2015. Available from www.ochaopt.org/poc20october-26october-2015.aspx

[36] Ibid., weekly update, 17-23 November 2015.

Checkpoints

33. During the reporting period, there were 85 fixed checkpoints in the West Bank. Nine of those checkpoints were on the Green Line, while all others were located within the West Bank.[37] In addition, hundreds of "flying" checkpoints were erected each month on roads throughout the West Bank. Together with roadblocks, trenches and earth mounds, the checkpoints severely impede Palestinians' movement, including between main Palestinian cities in the West Bank.

34. Access through checkpoints is often accompanied by rigorous security checks, including vehicle inspections and bag searches, resulting in long delays. At Qalandia checkpoint — the main crossing point for West Bank Palestinians into East Jerusalem — it takes pedestrians up to 90 minutes to cross during peak times.[38] Long waiting times, uncertainties at the checkpoints and frequent clashes disrupt many aspects of Palestinians' daily life.

3. Restrictions on movement affecting Gaza

35. The ongoing blockade and permit regime restricts access by Gazan residents to the West Bank and Israel. Within Gaza, movement is restricted in areas along the fence with Israel and at sea, with the Israeli security forces maintaining a buffer zone. For a detailed update on movement restrictions in Gaza, see the 2015 report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/70/421).

Restrictions on movement between Gaza and the West Bank

36. In accordance with the Oslo Accords, Israel opened a "safe passage" route in October 1999, allowing 12,000 residents of Gaza to travel to the West Bank each month. However, that route was closed in September 2000, following the outbreak of the second intifada. By March 2005, five months before the evacuation by Israel of the settlements in Gaza, travel to the West Bank from Gaza had declined by 98 per cent.[39] Movement of people was cited as "virtually impossible and expensive".[40]

37. After Hamas took over Gaza in 2007, a strict quota system was imposed. Obtaining permits became limited to specific categories of persons, such as individuals in need of emergency medical evacuations, medical referral patients, certain businessmen and humanitarian cases (see A/70/421, paras. 23-25).

38. During the reporting period, restrictions on movement in and out of Gaza remained in place. The easing of some measures (see para. 18 above) had a tangible effect, increasing the monthly average of exits of Palestinians to 13,800, up from a monthly average of 5,990 during 2014.[41] However, this represents only 2.8 per cent of the half a million exits recorded monthly prior to September 2000, before restrictions were tightened and when around 26,000 workers from Gaza were entering Israel on a daily basis.[42]

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[37] Ibid., *Humanitarian Atlas 2015*, p. 53.

[38] Ir Amim,*Displaced in Their Own City: the Impact of Israeli Policy in East Jerusalem on the Palestinian Neighbourhoods of the City Beyond the Separation Barrier*, June 2015, p. 48.

[39] B'Tselem and HaMoked, *One Big Prison*.

[40] Office for the Coordination of Humanitarian Affairs, "The agreement on movement and access: one year on", November 2006.

[41] Office for the Coordination of Humanitarian Affairs, "Erez crossing: movement of People into and out of Gaza", 2014-2015. See gaza.ochaopt.org.

[42] Gisha, "Separating land, separating people", June 2015, p. 12; and "Rafah crossing: who holds the

39. The effects of Israeli restrictions on freedom of movement have been exacerbated by the closure of Rafah crossing by the Egyptian authorities on 24 October 2014, following a suicide attack on Egyptian soldiers in the Sinai peninsula (see A/70/421, para. 29). During the reporting period, the crossing at Rafah remained closed except for on 37 partial opening days.[43] At the end of October 2015, an estimated 30,000 Palestinians registered as humanitarian cases were waiting to leave Gaza through Rafah.[44]

40. The blockade on Gaza remains a form of collective punishment and undermines civil, political economic, social and cultural rights (see A/70/421, para. 29).

Restrictions on movement within Gaza

41. Israeli authorities have continued to impose a buffer zone within Gaza on land and at sea, in the form of access-restricted areas. Restrictions are enforced through a range of mechanisms, including the use of live fire and the destruction, damage and confiscation of property, as well as arbitrary arrest and detention (see A/70/421, paras. 30-38).

42. During the reporting period,[45] according to the Global Protection Cluster three Palestinians, including one child, were shot dead and 82, including 17 children, were injured by Israeli security forces in land-based access-restricted areas. In addition, 54 fishermen, including four children, were detained and 20 were injured, including one child.

43. The enforcement measures used by the Israeli authorities against residents living and working in access-restricted areas significantly undermine the right of Palestinian fishermen and farmers to a livelihood, and have a devastating impact on the rights to life and to physical and mental health.

C. Impact of freedom of movement restrictions on other human rights

44. Restrictions on freedom of movement result in Palestinians' inability to enjoy a wide range of other human rights, particularly those related to economic, social and cultural rights.[46]

1. Right to education

45. Access to education has been most restricted among East Jerusalem communities beyond the wall, the H2 area of Hebron, the "seam zone" and in the vicinity of closed zones and settlements in Area C. A survey of 33 communities carried out in 2015 showed that almost one in five students in the West Bank must pass a checkpoint to reach school.[47] Body and bag searches are frequent, and schoolchildren and teachers are subject to regular harassment, including verbal intimidation, by Israeli soldiers.

keys?", March 2009.

[43] Office for the Coordination of Humanitarian Affairs, protection of civilians weekly report for 27 October-2 November 2015. Available from www.ochaopt.org/poc27october-2november-2015.aspx.

[44] Ibid., "Gaza crossings' operations status: monthly update — October 2015".

[45] This excludes the period starting 9 October 2015, when 14 demonstrators were killed and hundreds were injured.

[46] See the advisory opinion of the International Court of Justice, para. 134. Civil and political rights are also affected. During the reporting period, OHCHR continued to monitor the case of four elected members of the Palestinian Legislative Council representing East Jerusalem who have been banned from entering their constituency, in violation of political participation rights (see A/67/372, paras. 39-40).

[47] Office for the Coordination of Humanitarian Affairs, *2016 Humanitarian Needs Overview: Occupied Palestinian Territory*, annex 1, p. 27. See www.ochaopt.org/documents/hno_december29_final.pdf.

46. In remote parts of Area C, many schoolchildren must walk 7-10 km to reach school owing to restrictions on movement, displacement and demolitions.[48] Oftentimes, the difficulties of the commute to school are exacerbated by harassment and attacks by Israeli settlers and soldiers. During the reporting period, the United Nations Children's Fund documented 247 cases of attacks on education, including physical assault, detention and checkpoint harassment and delays, affecting 32,055 children. The majority of incidents were documented in Area C, East Jerusalem and H2, where children go to school in close proximity to Israeli settlements.

Box 1

Case study: movement restrictions on school children in H2

Qurtuba School is situated in the old city of Hebron, in the H2 area. The journey to school requires students to cross a military checkpoint and walk past a settlement. Harassment, intimidation and violence from settlers, delays, bag and body searches, and abuse by soldiers are regular occurrences. During the past several years, international organizations have been providing protective presence to schools located in the area. Their presence has reduced checkpoint delays and settler violence.

On 29 October 2015, pursuant to military orders, the whole of Tel Rumeida area and Shuhada Street were declared a closed military zone, with entry into the area limited to residents recorded on soldiers' checklist. In addition, individuals or entities providing a protective presence have since been barred from accompanying children to Qurtuba School. Since then, an increase in settler harassment against students has been reported, with some settlers pointing guns and driving past children at high speed. Delays and harassment by soldiers at the checkpoint have also reportedly increased.

The situation has reinforced a sense of fear among children and teachers in an already coercive and dangerous environment. The school's headmaster noted that since the denial of a protective presence, "even teachers do not feel comfortable coming to school, due to fear of both settlers and soldiers". More than one fifth of the students did not attend school during the last days of October. According to OHCHR, the incidents have affected the well-being of students, some of whom have reportedly suffered nightmares and bedwetting.

47. The negative effects of restrictions on access to education are compounded by the limitations imposed on access to Palestinian schools by the Ministry of Education of the State of Palestine. According to the Ministry, in the "seam zone", for example, the permit regime restricts access so that the Ministry cannot effectively deliver school textbooks and furniture. In Gaza, owing to restrictions on imports, educational institutions face difficulties in acquiring teaching and learning materials, particularly for subjects like chemistry and engineering, which require items included on the "dual-use items" list.[49] These various limitations affect the availability and quality of education.

48. Movement restrictions also affect higher education. In the West Bank, Palestinian students' access to universities is impeded by checkpoints and road closures, and students can face long daily commutes if they wish to study in a university outside their immediate residential area. Al-Quds University has reported that, during the past three years, at least 38 of its students have been forced to postpone their final exams after being delayed at checkpoints. Restrictions on higher education are even more pronounced in Gaza. In 1998,

[48] Ibid.

[49] United Nations Educational, Scientific and Cultural Organization, *Rapid Assessment of Higher Education Institutions in Gaza: Data Analysis Report*, January 2015.

approximately 1,000 Gazan students were studying in the West Bank.[50] Since the outbreak of the second intifada in 2000, sweeping bans on travel to the West Bank have been imposed on university students from Gaza, and all requests to travel for study purposes have since been rejected, even in the absence of security concerns.[51]

49. On 16 February 2015, COGAT announced that the Government of Israel would introduce measures to ease travel restrictions, including by granting exit permits to 50 Gazan students wishing to study in the West Bank. However, the authorities retracted the decision on 18 February 2015, citing a "clerical error".[52]

50. The impact of the ban is exacerbated by the obstacles that Gazan students face in accessing education outside the Occupied Palestinian Territory. In December 2014, Israel announced that it would allow up to 140 students from Gaza to study abroad, subject to a maximum quota of 30 per week.[53] During the reporting period, 161 students left through Erez crossing, but hundreds more remained unable to reach their academic institutions, risking losing their scholarships owing to delays and the denial of permits.

51. The inability of students to access higher education in other parts of the Occupied Palestinian Territory or abroad affects the free choice of a university course, with a commensurate impact on future careers and livelihoods. For example, in Gaza, many important programmes, including medical engineering and doctoral programmes in chemistry, are not available.[54]

2. Right to health

52. The availability, accessibility and quality of health services in the Occupied Palestinian Territory are impaired by the restricted movement of patients, doctors and other medical staff.

53. Owing to the limited capacity in hospitals run by the Ministry of Health of the State of Palestine, patients requiring specialized treatment or surgery are often referred for treatment outside of their usual area of residence. In Gaza, reliance on referrals for adequate medical care is particularly acute (see A/70/421, para. 24). There are only four oncologists to treat the 12,600 cancer patients in Gaza (cancer is the second leading cause of death in Palestine). In addition, the World Health Organization (WHO) notes that only two cardiac surgeons are available, as a result of which some 70-80 patients per month need to be treated outside Gaza.

54. Most Palestinians from the West Bank or Gaza requiring health care in East Jerusalem, Israel or abroad must apply for an Israeli-issued permit. While Israel imposes no age or quota restrictions on the process of obtaining a health permit,[55] 15-30 per cent of the applications are delayed or never approved, and the application process is reportedly slow and complicated.[56]

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[50] Gisha, "Student travel between Gaza and the West Bank 101", September 2012.

[51] The Israeli army considers people aged between 16 and 35, and students in this age group in particular, as posing a general threat because of their "risk profile". Gisha, "Legal framework: higher education — rights and obligations under international and Israeli law", May 2010.

[52] Gisha, "Israel will not permit students from Gaza to study in the West Bank", February 2015.

[53] ; 37 orphans stayed home", December 2014.

[54] Ibid., "The impact of the separation between the Gaza Strip and the West Bank on higher education", May 2010.

[55] COGAT, "Status of permits", p. 21.

[56] Physicians for Human Rights, *Divide and Conquer: Inequality and Health*, January 2015, p. 76.

55. According to the General Authority for Civil Affairs of the State of Palestine, of the 173,835 applications that were received through West Bank district offices by patients and patient-companions during the first 11 months of 2015, 18 per cent were reportedly either delayed or denied.

56. WHO estimates that at least 1,500 patients travel from Gaza to the West Bank and Israel each month to receive specialized medical treatment. The approval rates dropped significantly during the last months of the reporting period, from around 80 per cent in the first eight months down to 69.85 per cent in October 2015. This represented the lowest approval rate since October 2009, with the exception of the period of escalation in 2014. As at 8 October 2015, the Ministry of Health in Gaza reported that 1,180 patients had been waiting for medical treatment outside of Gaza since the beginning of 2015.

57. Over the past three years, the number of applications for patient permits by Palestinians from Gaza nearly doubled, from around 1,000 per month in early 2013 to around 2,000 between May and September 2015.[57] This increase occurred during a period in which patients' access to medical care in Egypt through the Rafah crossing became increasingly restricted.[58]

58. Patients whose applications for medical permits for urgent and specialized care are rejected or delayed have no choice but to repeat the lengthy application process, or to accept less specialized and inadequate care. This delay can place patients, particularly those in need of urgent care, at serious risk of further damage to their health or even death.

59. For those who receive a permit to cross, Israeli security forces can unpredictably deny access to patients, or can detain patients for interrogation or arrest on a charge.[59] Four patients and their companions were thus arrested by Israeli security forces at Erez during the reporting period.[60]

Box 2

Case study: movement restrictions on patients from Gaza

Medical patients in Gaza frequently experience denial or delay of care owing to the permit regime and the system of referrals.

OHCHR monitored the case of Haytham Mohamad Ghazi Shurrab, aged 22, who fell ill during the escalation of hostilities in Gaza in 2014. Following several visits to hospitals in Gaza, Mr. Shurrab was referred to a health facility in Cairo, where he was diagnosed with cancer and began treatment. Mr. Shurrab returned to Gaza in January 2015. By April, it became clear that the treatment was not working. He received a permit to attend a hospital in Tel Aviv for a scan, returning to Gaza after one day. Following the results of the scan, his treatment was adjusted but had to be stopped in June 2015 owing to swelling in his abdomen. Mr. Shurrab was referred to Al-Naja hospital in Nablus but after two weeks he received a rejection letter indicating that the type of treatment he needed was not available there.

[57] WHO, monthly report for September 2015. Available from www.emro.who.int.

[58] Ibid.

[59] WHO, "Report of a field assessment of health conditions in the Occupied Palestinian Territory", April 2015.

[60] WHO, monthly reports covering the period November 2014-September 2015.

Concerned about further delay in care, Mr. Shurrab's father appealed directly to the President of the State of Palestine, Mahmoud Abbas, asking that his son be referred to an Israeli hospital where the necessary treatment was available. Mr. Shurrab received a referral from the Ministry of Health in July 2015. He obtained an appointment for 5 August 2015 at a hospital in Tel Aviv and applied for a permit. On 4 August, he was informed that his exit permit was still under security review. He consequently missed his appointment and a new appointment was set for 9 September 2015. Mr. Shurrab died at the end of August 2015. His father was informed by the Civil Affairs Committee on 8 September that the permit had been granted.

60. Access to treatment is also impeded by physical restrictions on movement, including checkpoints. The checkpoints and roadblocks controlling entry to and movement within East Jerusalem since 14 October 2015 have restricted access to the six Palestinian hospitals located there, which provide a range of specialized treatment unavailable elsewhere in the West Bank and Gaza. The closures have prevented staff from getting to work and delayed and prevented patients' access to hospital treatment.[61] OHCHR monitored the case of a 65-year-old Palestinian woman with respiratory problems who died on the way to hospital on 19 October. Police had closed the road leading to the hospital, and further delays at a checkpoint hampered her access to life-saving medical care.

61. Movement restrictions compromise the quality of treatment available in health centres. Al-Quds University, in the Abu Dis district of East Jerusalem, hosts one of two medical schools in the West Bank. Clinical training for Al-Quds University students takes place primarily at Palestinian hospitals in East Jerusalem. The construction of the wall in Abu Dis separated the medical faculty from the rest of East Jerusalem. Every year, about 10 per cent of students from Al-Quds University are refused entry to East Jerusalem by the Israeli Civil Administration.[62] These restrictions limit training opportunities for medical students and staff and therefore affect the quality of medical care.

3. Right to work

62. Restrictions on movement adversely affect the right of Palestinians to work and to maintain an adequate standard of living.

63. In the West Bank, physical barriers and the permit regime particularly affect the agricultural sector, which has traditionally been the main source of employment and income for Palestinians in the West Bank. The restrictions imposed on Palestinians' access to their land in the "seam zone" and in the vicinity of settlements prevent farmers from regularly farming their lands, resulting in a drop in crop productivity and value. For example, the yield of olive trees in the zone is 40-60 per cent less than that of olive trees on the West Bank side of the wall.[63]

64. Restrictions on the movement of goods and people also affect Palestinian trade. All goods moving from the West Bank through, to and from Israel, must undergo physical inspection and commercial controls. According to the World Bank, in 2013 it took approximately 23 days to export goods from the West Bank and 38 days to import them. By

[61] Statement of Augusta Victoria Hospital on behalf of the East Jerusalem Hospital Network, 20 October 2015.

[62] Physicians for Human Rights, *Divide and Conquer*, p. 76.

[63] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin", February 2014, p. 9 .

way of comparison, imports and exports took on average 10 days for Israeli traders.[64] Such restrictions have a severe impact on the competitiveness of Palestinian firms, thus limiting employment in the Palestinian private sector.

65. Although still subject to severe restrictions, the situation in Gaza has improved. Since November 2014, Israel has begun allowing a limited quantity of goods to be sold to the West Bank and Israel, including agricultural produce, textiles, iron works and furniture.[65] This easing has allowed the entry of 908 truckloads during the first 10 months of 2015 compared to 228 in 2014.[66] However, the current rates remain at around 15 per cent of pre-blockade levels.[67] Moreover, restrictions on imports to Gaza of items classified as "dual-use" have weakened Palestinian productive sectors, especially in the metal,[68] engineering, agriculture, food and pharmaceutical industries.[69] In April 2015, wooden boards thicker than 5 cm and wider than 20-25 cm were added to the dual-use list, and their import to Gaza was restricted.[70] On 3 August 2015, wooden boards thicker than 1 cm were included.[71] These new restrictions on wood imports have affected Gazan furniture factories and businesses, which have been forced to cut the number of staff and working hours.[72]

Palestinian workers in Israel and in settlements

66. Palestinian workers from the Occupied Palestinian Territory have long sought work opportunities inside Israel. Before 1993, some 115,000 Palestinians — one third of the workforce — worked in Israel, and unemployment was at 5 per cent.[73] Restrictions on trade and the movement of people have had a long-lasting, damaging effect on the Palestinian economy, resulting in high unemployment and aid dependency. While unemployment in the reporting period saw a slight decline compared to 2014, one quarter of the Palestinian labour force remains unemployed. In Gaza, the unemployment rate was 42 per cent.[74] High unemployment rates and economic stagnation affect the standard of living. Poverty in the Occupied Palestinian Territory during 2014 reached 25 per cent, with rates in Gaza at 39 per cent.[75] This situation has increased dependency on work in Israel, despite restrictions.

67. By September 2015, 57,450 Palestinians from the West Bank held permits to work in Israel, which, according to COGAT, is the highest number since the permit system was

[64] World Bank, *West Bank and Gaza Investment Climate Assessment: Fragmentation and Uncertainty*, 2014, pp. 32-39.

[65] Gisha, "For the first time since the closure: a truckload of cucumbers left" (6 November 2014); and "Israel will allow marketing of ironworks, furniture and textile from Gaza in Israel", 21 September 2015.**Error! Hyperlink reference not valid.**

[66] Office for the Coordination of Humanitarian Affairs, online Gaza crossings database.

[67] World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 30 September 2015.

[68] According to the Palestinian Federation of Industries in Gaza, 90 per cent of metal materials are listed as dual-use and banned from entry into Israel, affecting 1,200 factories. See also *Al-Monitor*, "Gazans scavenge for food, recyclables", 13 May 2015.

[69] United Nations Conference on Trade and Development, *The 2013 World Trade Organization Agreement on Trade Facilitation: Israel's Obligations towards Palestinian Trade*, 2015, pp. 7-10.

[70] Gisha, "COGAT decision to restrict entrance of wood to Gaza" (13 April 2015).

[71] Israel, Ministry of Defense, instructions regarding the ban on bringing items into the Gaza Strip, 3 August 2015. See also http://gaza.ochaopt.org/2015/09/import-restrictions-impede-delivery-of-services-and-humanitarian-assistance.

[72] Gisha, "Marketing of furniture from Gaza in Israel permitted–, wood to make the furniture is not", 2 November 2015.

[73] See www.btselem.org/workers.

[74] World Bank, *Economic Monitoring Report*, p. 4.

[75] Ibid.

introduced in the early 1990s.[76] A further 25,957 permits were issued for work in settlements.[77]

68. Permits to enter and work in Israel can be suddenly and arbitrarily revoked. For example, in June 2015, Israeli authorities cancelled all entry permits to Israel for Palestinians from the West Bank village of Sa'ir, apparently in an act of collective punishment after a Palestinian man from the village attacked a border police officer in East Jerusalem.[78]

69. While restricting Palestinian workers' access to work in Israel is not in and of itself a violation of international standards, such restrictions must be viewed in the overall context of the occupation and the violations of international human rights and humanitarian law accompanying it. Disproportionate Israeli restrictions on movement and trade have significantly contributed to the grave economic hardship in the West Bank and Gaza, which has interfered with access to livelihoods and work in the Occupied Palestinian Territory.

4. Right to family life

70. Restrictions on freedom of movement impede Palestinians' enjoyment of the right to family life and to protection of the family unit. According to a poll conducted by Gisha in 2013, almost a third of all Palestinians in Gaza had relatives in the West Bank, including East Jerusalem, or Israel.[79] Yet, under the current closure and permit regime, only those needing to visit a gravely ill, first-degree relative or to attend the wedding or the funeral of first-degree relatives may obtain approval to travel between Gaza and the West Bank. Even when narrow permit criteria are satisfied, approval remains uncertain owing to quotas and lengthy procedures.[80]

71. While it is difficult to obtain approval for family-related visits to the West Bank, permission for family reunification is nearly impossible. Relocation to the West Bank is limited to applicants satisfying one of three narrowly defined categories: minors under the age of 16 who have lost a parent in Gaza, elderly people in need of nursing care who have no first-degree relative to care for them and chronically ill patients. Being married to someone from the West Bank or having children living there is not considered sufficient to allow relocation.[81]

72. Restrictions on movement also prevent Palestinians who are from the West Bank or Gaza and who are married to Israeli or East Jerusalem residents from realizing their right to family life. In June 2015, the Knesset extended for another year the Citizenship and Entry into Israel Law, issued as a temporary order in 2003.[82] The law prohibits Palestinians from the West Bank and Gaza from obtaining permanent or temporary resident status in East Jerusalem or Israel, even when they are married to citizens or residents of Israel.[83] In few

[76] COGAT, "Status of permits", p. 21.

[77] International Labour Office, *The Situation of Workers of the Occupied Arab Territories*, May 2015, para. 36.

[78] Natasha Roth, "Israel responds to lone attacks with collective punishment", *+972 Magazine*, 22 June 2015.

[79] Gisha, "Survey: 31 per cent of Gaza residents have relatives in Israel, East Jerusalem, West Bank" (19 December 2013).

[80] Gisha, "Distant relatives", July 2015. See http://features.gisha.org/distant_relatives.

[81] B'Tselem and HaMoked, *So Near and Yet So Far: Implications of Israeli-imposed Seclusion of Gaza Strip on Palestinians' Right to Family Life*, January 2014, pp. 12-15.

[82] HaMoked, "With no end in sight: for the sixteenth time, the Knesset has approved the prolongation of the Citizenship and Entry into Israel Law", 15 June 2015.

[83] HaMoked, *Temporary Order?: Life in East Jerusalem under the Shadow of the Citizenship and Entry*

cases, West Bank ID-holders have been granted permission to reside in Israel pursuant to renewable Israeli stay permits valid for one year at a time[84] — while family reunification with individuals from Gaza is completely prohibited pursuant to a 2008 Israeli military order.[85] Thus, the only option available for mixed families is to live in Gaza while maintaining ties to relatives in Israel — an option that Israel has facilitated since 1995 under the "split-family procedure". On 23 July 2015, following the disappearance of two Israelis who had entered Gaza without coordination or a permit, a decision was made to freeze the travel of Israelis and East Jerusalem residents to Gaza until further notice.[86] The ban creates an impossible situation for hundreds of split families living between Gaza and Israel.

73. The almost-total denial by Israel of family reunification for Palestinian or Palestinian-Israeli families and the lack of consideration for individual circumstances violate the right to family life and the prohibition of discrimination, since it makes an arbitrary distinction between mixed families involving Palestinians and other foreign nationals and carries undertones of ethnic prejudice.[87]

D. Impact of Palestinian disunity on human rights, including freedom of movement

74. Notwithstanding the obstacles imposed by the Israeli occupation, including movement restrictions, Palestinian duty bearers have, to the greatest extent possible, an obligation to respect, protect and fulfil the human rights of all people under their authority. This obligation has been underscored by the recent accession by the State of Palestine to seven international human rights treaties. It follows that the Government of the State of Palestine has both positive obligations to protect human rights in the Occupied Palestinian Territory and a duty to seek to mitigate the negative impact of the Israeli occupation to the extent that it can.[88]

75. In this context, the Secretary-General is particularly concerned about the negative impact of the eight-year intra-Palestinian political division between Hamas and Fatah. Palestinian disunity exacerbates the fragmentation of Palestinian territorial integrity in a way that is similar to the effect of Israeli restrictions on free movement, and thereby contributes to undermining a broad range of human rights (see A/HRC/28/45, para. 59).

76. OHCHR has received reports that the Ministry of the Interior of the State of Palestine, following instructions from the General Intelligence Service, has halted the

into Israel Law, September 2014.

[84] Pursuant to the 2005 amendment to the Citizenship and Entry into Israel Law, applicants must satisfy minimum age requirements: 25 years for women, 35 years for men. Entry can be prevented if the applicant or anyone in his or her family is considered a security threat (HaMoked, *Temporary Order?*, pp. 21-24).

[85] HaMoked, *Temporary Order?*, p. 29.

[86] Letter addressed to the Minister of Defense of Israel, Moshe Ya'alon regarding the ban on entry into Gaza by Israelis, 4 August 2015. Available from http://gisha.org/UserFiles/File/letters/letter_to_yaalon_COGAT_Israelis_11.8.15-eng.pdf.

[87] See CERD/C/ISR/CO/14-16, para. 18. See also CCPR/C/ISR/CO/3, para.15; CEDAW/C/ISR/CO/5, para. 25; and CRC/C/ISR/CO/2-4, para. 49. In 2012, in a Supreme Court ruling concluding that Israeli national security prevails over the right to family life, the then Chief Justice of Israel said: "human rights cannot be enacted at the price of national suicide". See https://www.opensocietyfoundations.org/litigation/adalah-v-israel.

[88] See, for example, Human Rights Committee general comment No. 31 (2004) on the nature of the legal obligation imposed on States parties to the Covenant, para. 2.

issuance and renewal of passports of Palestinians alleged to be affiliated with Hamas.[89] During the reporting period, the Palestinian Independent Commission for Human Rights received four complaints from Palestinians from Gaza whose passport applications were reportedly denied.

77. Also of concern are reports received during the reporting period that Gazan security services have banned Gaza residents from leaving through Erez without judicial orders. According to the Independent Commission for Human Rights, on three occasions members of the Fatah Central Committee and the Fatah Revolutionary Council were denied permission to travel outside of Gaza. On 28 December 2014, the Gazan authorities at the checkpoint reportedly prevented 37 children between 5 and 12 years of age, orphaned as a result of the 2014 escalation of hostilities, and five adult chaperones from exiting Gaza to visit Israel and the West Bank.[90] The authorities claimed that the children were denied travel to protect their culture and safeguard them from the normalization of ties with Israel.[91]

78. Palestinian political divisions have also had a broader negative impact on Palestinians' enjoyment of their civil and political rights. Among the acts of concern monitored by OHCHR during the reporting period are the excessive use of force, the arbitrary arrest and detention of political activists, the use of torture and other ill-treatment and restrictions on freedom of expression (A/HRC/31/40).

79. Political divisions further hinder the realization of economic, social and cultural rights. The continued non-payment of civil servants recruited by the authorities in Gaza is particularly problematic. At least 40,000 civil servants and security personnel have not received a salary, only occasional humanitarian payments, since April 2014.[92]

80. This has, in turn, negatively affected access to education, health and social welfare, among other aspects. In Gaza, the health sector recorded an absenteeism rate of approximately 50 per cent in January 2015, especially as staff could not afford transportation costs.[93] In December 2014, 750 cleaning personnel at the Ministry of Health in Gaza went on a 16-day strike because they had not been paid for six months. Consequently, cleaning services for 13 hospitals and 56 health centres were halted, and the Ministry of Health suspended some medical services, including obstetric and gynaecological services.[94]

IV. Recommendations

A. Recommendations to the Government of Israel

81. **Under international human rights and humanitarian law, the Israeli authorities have the obligation to facilitate the free movement of Palestinians within the Occupied Palestinian Territory, including East Jerusalem. Any exception must comply with international law, which means that restrictions are justified only for imperative reasons of security and only in response to a specific security threat. Israel should lift**

[89] See afa.ps/post/146208 (Arabic).
[90] Gisha, "Thirty-seven students travelled abroad".
[91] See http://alray.ps/ar/index.php?act=post&id=130062 (Arabic).
[92] Office for the Coordination of Humanitarian Affairs, "The monthly humanitarian bulletin" , January 2015, p. 1.
[93] Ibid., pp. 4-5.
[94] Ibid.

the blockade on Gaza in accordance with international human rights law and Security Council resolution 1860 (2009), and allow movement between Gaza and the West Bank. Israel should also remove physical restrictions on free movement throughout the West Bank, including East Jerusalem, and ensure that all relevant administrative rules and requirements are consistent with international human rights and humanitarian law.

82. **The right to education must be respected and protected, including by facilitating free, safe and unhindered access to schools. The blanket ban on students from Gaza to access education in the West Bank must be lifted.**

83. **Steps should be taken immediately to remove barriers to freedom of movement that prevent medical personnel from carrying out their duties. All unnecessary or disproportionate barriers hampering Palestinians' access to medical treatment must be lifted without delay, including in Israel and East Jerusalem.**

84. **Steps must be taken to ease the restrictions on economic development in the Occupied Palestinian Territory, including by immediately allowing greater freedom of movement of goods and people, and lifting restrictions that prevent Palestinians from accessing land and developing their economy.**

85. **Israeli authorities must recognize and respect the residency rights of Palestinians, including by immediately halting the practice of revoking residence permits, ending the freeze on changes to addresses, removing any quotas on family reunification requests, and processing backlogged requests and new requests expeditiously.**

B. Recommendations to the Palestinian authorities

86. **The Palestinian authorities must implement their obligations under international human rights treaties, including with regard to freedom of movement.**

87. **The Palestinian authorities should take steps to encourage national political parties to resolve the political disunity that obstructs the equal implementation of the human rights obligations of the Government of the State of Palestine throughout the Occupied Palestinian Territory.**

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, the United Nations High Commissioner for Human Rights highlights issues of concern in the Occupied Palestinian Territory, with a focus on the use of excessive force and unlawful killings, collective punishment, arbitrary and administrative detention, torture and ill-treatment, and impermissible restrictions on freedom of expression. The report ends with recommendations to all duty bearers, namely the Government of Israel, the Palestinian Authority and the authorities in Gaza.

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I. Introduction

1. The present report is the eighth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Occupied Palestinian Territory. It covers the period from 1 November 2014 to 31 October 2015.

2. The information contained herein primarily emanates from human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, within the framework of Human Rights Council resolutions S-9/1 and S-12/1. The report also reflects information from other United Nations entities and from non-governmental organizations (NGOs).

3. The report should be read in conjunction with recent reports of the Secretary-General (A/HRC/31/43, A/HRC/31/44, A/70/351 and A/70/421), which present additional relevant information for the reporting period. As requested in Council resolution 29/25, the status of implementation of the recommendations of the independent commission of inquiry on the 2014 Gaza conflict and of the 2009 United Nations Fact-Finding Mission on the Gaza Conflict is presented in an addendum to the present report (A/HRC/31/40/Add.1).

4. According to the Office for the Coordination of Humanitarian Affairs, the reporting period saw a dramatic rise in casualties in the Occupied Palestinian Territory, with 95 Palestinians killed (including 18 children) and 10,481 injured (including 1,489 children). Twenty Israelis were killed and 127 were injured in attacks by Palestinians. At least 74 Palestinians were killed[1] in the West Bank, including East Jerusalem — the highest number of fatalities since 2007.

5. In November 2014, tensions continued over the status quo at the Al-Aqsa mosque compound in East Jerusalem (see A/HRC/28/45, para. 57), with regular clashes occurring. Despite some relative calm in the first half of 2015, the situation remained fragile, with peace negotiations to end the long-standing occupation stalled.

6. On 31 July 2015, Israeli settlers set ablaze a Palestinian home in Duma village in Nablus governorate, killing a couple and their 18-month-old child (see A/HRC/31/43, para. 35). The Under-Secretary-General for Political Affairs emphasized that the attack had occurred in the context of a chronic lack of adequate law enforcement in the West Bank, adding that such violence was possible because of the environment created as a result of the decades-long policy of Israel of illegal settlement activities.[2]

7. From mid-September 2015, serious confrontations between Palestinians and Israeli security forces again erupted in connection with the Al-Aqsa mosque compound. These were fuelled by Palestinian concerns over access restrictions imposed on Palestinians seeking to enter the Old City of Jerusalem, and visits by groups belonging to the temple Mount and Land of Israel Faithful movement groups and senior Israeli officials. Although the Israeli authorities categorically denied plans to change the status quo, their decision to ban from the compound the Murabitat and Murabitin, the groups of activists who seek to protect it, and a raid by the Israeli security forces on the mosque itself on 13 September were seen by many Palestinians as provocations.

8. Unrest, including protests and clashes, spread rapidly throughout the Occupied Palestinian Territory. There was also a large number of stabbings and alleged attempted stabbings by young Palestinians, many of whom were children. October 2015 saw a peak

[1] Including four Palestinians (one child) killed by Israeli settlers.

[2] Briefing to the Security Council on the situation in the Middle East, 19 August 2015.

in violence. OHCHR documented the killing of 65 Palestinians and 9 Israelis in the West Bank.[3] Palestinian casualties in October were the highest in a single month since the Office for the Coordination of Humanitarian Affairs commenced recording casualties in 2005. The Deputy Secretary-General highlighted that this wave of violence would not have erupted "if the Palestinians did not still live under a stifling and humiliating occupation that has lasted almost half a century".[4]

II. Legal framework

9. International human rights law and international humanitarian law apply in the Occupied Palestinian Territory. Israel therefore remains bound by its obligations as the occupying Power, even though the State of Palestine has undertaken obligations by ratifying several international treaties (see A/HRC/28/80, para. 66). Despite the existence of a government of national consensus in the State of Palestine, authorities or groups exercise government-like functions and control over territory in Gaza and are therefore also bound by relevant human rights law in that territory (see A/HRC/8/17, para. 9).

III. Human rights violations by all duty bearers

A. Israeli authorities

1. Excessive use of force and unlawful killings, including possible extrajudicial executions

10. The reporting period saw a sharp increase in apparent incidents of excessive use of force, both in the context of clashes and in response to attacks or alleged attacks by Palestinians against Israelis. Some of these responses strongly suggest unlawful killings, including possible extrajudicial executions. As the High Commissioner has said, "in the context of suspected attacks, several Palestinians have been killed by Israeli security forces, sometimes allegedly acting with disproportionate force, to the extent that extrajudicial killings are strongly suspected".[5]

11. In one case monitored by OHCHR, 18-year-old Hadeel al-Hashlamoun was shot dead by Israeli soldiers on 22 September 2015 at a pedestrian checkpoint in Hebron's old city, close to a number of settlements. According to two witnesses, one of whom photographed the entire incident,[6] Ms. Al-Hashlamoun was trying to walk away from the checkpoint after a standoff with soldiers when one of them shot her left leg. She fell to the ground, dropping her bag and, according to one witness, a knife. Both witnesses say that after 10 or 15 seconds, the same soldier shot her in her right leg, then five to six times in the abdomen and chest. He then moved closer, until he was only a metre away, and reportedly fired a last bullet into the victim's chest, even though the other soldiers were shouting at him to stop, saying she was dead.

[3] An Israeli soldier was also killed in an attack in Beer Sheva, Israel. The Israeli Bedouin attacker and an Eritrean bystander were killed by security guards.

[4] Briefing to the Security Council on the situation in the Middle East, 22 October 2015.

[5] Statement by the High Commissioner at a special meeting of the Human Rights Council, 28 October 2015.

[6] See http://sanaud-voltaremos.blogspot.com.br/p/brazil-26th-september-2015.html?m=1.

12. According to the witnesses at the time of the first shot, Ms. Al-Hashlamoun was static and at least 3 metres away from the soldiers, separated by a 1-metre-high metal barrier. The witnesses stated that she did not make any aggressive movement and did not get close to the soldiers. Reports stating the victim was carrying a knife indicated it had fallen to the ground after the first shot, at which point she no longer posed an imminent threat to the soldiers. Thus, the repeated shots to her upper body, while she was lying wounded on the ground, seemed unnecessary and suggest an unlawful killing. Furthermore, the last single shot to her chest, fired from close range, may be indicative of an extrajudicial execution and a wilful killing.

13. The footage from the surveillance cameras at the checkpoint has not been released, but an Israel Defense Forces (IDF) inquiry is reported to have concluded that the death of Ms. Al-Hashlamoun was unnecessary and avoidable.[7] No criminal investigation had been opened in the case as of 26 November.[8]

14. A large proportion of attackers or alleged attackers have similarly been shot dead.[9] OHCHR monitored several cases suggesting excessive use of force leading to arbitrary deprivation of life.[10] For example, on 14 October 2015, in East Jerusalem, Israeli security forces personnel shot to death 19-year-old Basil Basim Sidir while he was running away from them. Witnesses interviewed by OHCHR and a publicly available video of the incident indicate that Mr. Sidir was shot repeatedly, at least 12 times, after the first shot had brought him to the ground. He was apparently armed with a knife, but no longer presented an imminent threat once shot. The killing of Fadi Alloun, in East Jerusalem, on 4 October, may also amount to an extrajudicial execution. At least three different videos of the incident show him walking, surrounded by a group of Israelis. Although some reports allege that he had just stabbed someone and was holding a knife, this is not apparent on video. After repeated goading from the crowd, a policeman shot him, although Mr. Alloun did not appear to be presenting any imminent threat. Mr. Alloun was shot seven times, despite having fallen to the ground after the first shot. OHCHR is unaware of investigations into either of these apparently unlawful killings.

15. Law enforcement officials, including members of the armed forces acting in that capacity, have the duty to protect the public and the right to protect themselves, but any force used must be necessary and proportionate. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials specify that firearms may be used only when strictly necessary to protect against the imminent threat to life or of serious injury and only when less extreme means are insufficient to protect against that imminent threat. Loss of life resulting from a failure to respect this principle amounts to a violation of the right to life. In addition, when unjustified and illegal use of firearms by law enforcement officials of the occupying Power is made against protected persons, this may, depending on the circumstances, amount to an act of wilful killing.

16. OHCHR is further concerned about reports of deaths attributable to a delay in the provision of medical assistance to wounded suspects, or owing to Israeli security forces' intentional blocking of ambulances and first responders. For example, witnesses informed OHCHR that an Israeli medic arrived 12 minutes after Hadeel al-Hashlamoun was shot, but

[7] Gili Cohen, "IDF inquiry: shooting of Palestinian girl in Hebron could have been avoided", *Haaretz*, 1 November 2015.

[8] Information from a Military Police letter sent to B'tselem, dated 26 November 2015.

[9] According to OHCHR documentation, 39 attackers or suspects were shot dead in October 2015 and 17 were arrested.

[10] See article 6 of the International Covenant on Civil and Political Rights. See also Steven Klein, "Why Israel's Unwritten 'Shoot to Kill' Policy Is So Dangerous", *Haaretz*, 20 October 2015.

that she was not given first aid. Local media reports said Palestinian medics present at the checkpoint were prevented from reaching Ms. Al-Hashlamoun, and she was left bleeding for about 30 minutes. Similarly, regarding Basil Basim Sidir, two witnesses interviewed by OHCHR stated that, although a medical team had reached the spot within a few minutes, the Israeli security forces did not allow them to attend to the victim for around 15 minutes. The Basic Principles require provision of assistance and medical report "at the earliest possible moment" (principle 5 (c)).

17. Concerns over unlawful killings are underscored by some statements of government officials at the time. For instance, the Minister of the Interior, Gilad Erdan, reportedly declared that "every terrorist should know that he will not survive the attack he is about to commit", while Jerusalem police chief Moshe Edri reportedly declared: "anyone who stabs Jews or hurts innocent people is due to be killed".[11] Knesset member and former minister Yair Lapid told Israeli citizens not to hesitate to "shoot to kill anyone who pulls out a knife or screwdriver".[12] Such statements may help explain why most recent attackers were shot to death, contrary to similar incidents between November 1993 and November 2014, when most knife-attackers were reported to have been apprehended.[13] The above-mentioned statements preceded a number of vigilante incidents, with persons (including Israelis) shot by mistake or on the basis of mere suspicion.

18. Concerns of the excessive use of force also arise in respect of the policing by Israeli security forces of protests. Most clashes during the reporting period involved Palestinians throwing stones, fireworks or Molotov cocktails at elements of the Israeli security forces. In response, the security forces extensively used tear gas, "skunk water", stun grenades and rubber-coated metal bullets. However, the frequent resort to firearms (including 0.22 calibre rifles) against demonstrators raises serious concern. OHCHR documented 18 Palestinians shot dead, and the Office for the Coordination of Humanitarian Affairs reported 825 injured with live ammunition in the context of clashes.

19. IDF states that the use of live ammunition is only permitted when there is "an actual and immediate threat to life, as the last option in the procedures for stopping a suspect, as well as in certain circumstances to contend with the threat to life posed during violent riots".[14] However, in many instances, people killed or injured by live ammunition did not appear to present any threat to life or of serious injury.

20. In one incident monitored by OHCHR, 20-year-old Ihab Jihad Yousef Hanani was shot dead by Israeli security forces on 16 October 2015, at Beit Furik village in Nablus governorate. He was hit in the upper chest with live ammunition while apparently helping to evacuate injured people during clashes. Six other protestors had also been wounded in their legs by live ammunition. While some protesters were throwing stones, there was no indication of any imminent threat to the soldiers who were standing over 100 metres away from the crowd. The use of live ammunition therefore appeared unwarranted and unlawful.

21. Live ammunition has been commonly used in the access-restricted areas in Gaza, particularly affecting farmers and fishermen (see A/70/421, para. 35, and A/HRC/31/44. During the reporting period, the United Nations Department of Safety and Security reported

[11] Ibid.

[12] See BBC, "Hard Talk" interview. Available from www.youtube.com/watch?v=k7WeqyMI_GU (at 4:05).

[13] Steven Klein, "Why Israel's Unwritten 'Shoot to Kill' Policy Is So Dangerous", referring to www.jewishvirtuallibrary.org/jsource/Terrorism/victims.html.

[14] Undated IDF spokesperson reply to B'tselem ("Crowd control: Israel's use of crowd control weapons in the West Bank", 2013, p. 55). IDF open-fire regulations are confidential documents.

508 incidents in which IDF used live ammunition at the Israel-Gaza fence, and 316 at sea, as well as 9 incidents of Palestinians shooting at Israelis.

22. As protests spread into Gaza in October 2015, there were several instances suggesting the unwarranted use of live ammunition against demonstrators near the Israel-Gaza fence, killing at least 13 people according to OHCHR. In addition, conservative estimates by NGOs and local health authorities indicate that at least 350 people were injured by live ammunition and rubber-coated metal bullets in October 2015 alone. Nine of the deaths and at least 60 gunshot injuries took place on 9 and 10 October when IDF fired at protestors in Al-Shuja'iya in eastern Gaza City and in the Al-Faraheen area in the eastern Khan Younis. Shots appeared to have been fired at the upper body and heads of protesters, although witnesses say that there was no imminent threat to life or serious injury to soldiers who were positioned in towers, armoured vehicles or behind dirt-mounds, on the other side of the fence.

23. An 18-year old was among those killed on 9 October. Witnesses told OHCHR that he and a small group of friends were peacefully protesting and chanting approximately 150 metres from the fence in the Khan Younis area. A video of the incident shows that some young men had burned a tyre when Israeli forces shot teargas canisters in their direction. According to the witnesses, the victim was hit shortly after that; medical documents show that he was killed by a single shot in the back, which lacerated his heart. The use of live ammunition in such circumstances was unwarranted, as neither he nor other nearby demonstrators posed any imminent threat.

24. Reportedly, IDF subsequently shifted its practice to use more tear gas, warning shots and shots to the legs.[15] Nonetheless, unwarranted use of live ammunition continued, including in at least five incidents documented by OHCHR where peaceful protesters carrying Palestinian flags were shot and wounded.

25. The extensive, often unwarranted, use of firearms by Israeli security forces in law enforcement operations in the Occupied Palestinian Territory, particularly since September 2015, raises serious questions as to whether the rules of engagement, which are confidential, are in compliance with international law and whether such rules are adhered to in practice. Documented instances of soldiers shooting at persons attempting to evacuate the wounded raise similar concerns.

26. Concerns also extend to instances of excessive force through the use of less lethal weapons, such as rubber-coated metal bullets, particularly when they appear to have been fired in contravention of the regulations of the Israeli security forces, which forbid their use at a range of less than 50 metres.[16] The regulations further restrict their use to firing at the legs of "inciters, key disrupters of order or individuals endangering the well-being of a soldier or another individual", and prohibit their use against women and children.[17] However, the inherent imprecision of rubber-coated metal bullets in use — fired as a pack of three cylinders or a canister of pellets — renders such safeguards largely meaningless and invariably causes ostensibly unintended casualties. According to the Office for the Coordination of Humanitarian Affairs, two Palestinians are reported to have been killed and 2,623 injured by rubber-coated metal bullets in the reporting period.[18]

[15] "Southern Command attempts to contain border clashes without use of live fire", *Jerusalem Post*, 13 October 2015.

[16] B'tselem, "Crowd Control Report", p. 22.

[17] Ibid., p. 23.

[18] This includes black sponge-tipped plastic bullets used instead of rubber-coated metal bullets in East Jerusalem.

27. The United Nations country team and the International Committee of the Red Cross raised concerns about excessive force and access to medical care after disruption of medical services following an Israeli security forces raid on Makassed Hospital in East Jerusalem on 29 October.[19] The Palestine Red Crescent Society has also reported large numbers of Israeli security forces assaults on its staff and ambulances.[20] Some of these incidents have been documented on video.[21]

28. The Government of Israel has an obligation to respect and protect the right to life and integrity of the person, and to act in accordance with relevant international standards. Concerns of the excessive use of force by Israeli security forces resulting in the deaths and injuries of Palestinians during the reporting period build on similar concerns raised over many years (see A/HRC/28/80/Add.1, para. 12). Accountability in such cases is very rare. Without rigorous regulation and effective accountability, the actions of the Israeli security forces are likely to continue to cause unlawful deaths and injuries.

2. Collective punishment, including punitive demolitions and closures

29. Punitive demolitions, targeting the family homes of alleged perpetrators of attacks on Israelis, resumed in mid-2014 (see A/HRC/28/80/Add.1, para. 8) and continued during the reporting period. According to the Office for the Coordination of Humanitarian Affairs, six punitive demolitions (including "sealing" houses to render them uninhabitable) were carried out in this period, displacing 46 Palestinians, of whom 26 were children.

30. OHCHR monitored the punitive demolition of the family home of Uday abu Jamal, in East Jerusalem. Mr. Abu-Jamal and his cousin were killed when they attacked a West Jerusalem synagogue in November 2014, killing six Israelis. His parents and four siblings were evicted from their family home by Israeli security forces on 1 July 2015. All entry-points to the house were welded shut and concrete was poured inside, virtually up to the ceiling in most rooms, rendering the house uninhabitable. The family subsequently lived in the backyard, in a tent donated by the International Committee of the Red Cross, which the Israeli security forces confiscated on 7 July.

31. By their very nature, the demolitions of family homes punish the relatives of attackers and alleged attackers, and therefore constitute a form of prohibited collective penalty.[22] The proposal by the Israeli Security Cabinet to revoke the residency rights of family members of alleged attackers raises similar concerns.[23]

32. Furthermore, some punitive demolitions have caused collateral damage to houses and property of neighbours, raising further concerns about the destruction of private property and the right to adequate housing.

33. Punitive demolitions also violate the general prohibition of destruction of private property contained in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention, art. 53) and, in certain circumstances, may

[19] See www.un.org/apps/news/story.asp?NewsID=52442#.VlwYv3YrKM8 and http://blogs.icrc.org/ilot/2015/10/30/access-to-healthcare-is-non-negotiable/.

[20] See www.palestinercs.org/en/details.php?nid=1080.

[21] See http://972mag.com/photos-israeli-border-police-assault-pepper-spray-palestinian-journalists/113402/.

[22] Article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: Rules, Cambride University Press, Cambridge, 2005 (ICRC Customary Law Study), rules 102-103.

[23] "PM to forward bill allowing state to revoke residency of terrorists", *Times of Israel*, 22 November 2014.

lead to forcible transfer (art. 49). Punitive demolitions also violate a range of human rights, including the right to adequate housing and prohibitions on forced evictions (art. 11 of the International Covenant on Economic, Social and Cultural Rights).

34. On 14 October 2015, following the escalation in violence, the Israeli Security Cabinet announced that, in addition to demolitions, the authorities would forbid any construction on the sites of demolished houses. Moreover, the Prime Minister authorized the police to "impose a closure on, or to surround, centres of friction and incitement in Jerusalem" as a means of preventing further attacks.[24] In the following days, virtually all Palestinian neighbourhoods were closed off with roadblocks, checkpoints and earth-mounds, affecting the daily life of over 300,000 Palestinians residents.[25] In Al-Isawiah, home to nearly 15,000 people, only one road was kept open, with a manned checkpoint, obstructing residents' access to work or school.

35. While Israel, as the occupying Power, can adopt security measures, these should be proportionate to the threat. Disproportionate and discriminatory restrictions are inconsistent with the obligations of Israel to ensure Palestinians enjoy the right to freedom of movement and ensure public life.

36. In Gaza, the unlawful Israeli blockade, which amounts to collective punishment, continued to affect the enjoyment of human rights, particularly economic, social and cultural rights. Despite some positive developments in 2015, including an acceleration of the entry of certain needed materials through the Gaza Reconstruction Mechanism, these remained insufficient to address the overwhelming needs. According to the Global Protection Cluster, as of November 2015, an estimated 95,000 persons remained internally displaced[26] since the 2014 hostilities; over 70 per cent of the population was aid dependent; and 73 per cent were food insecure.[27] The closure of Rafah crossing by Egypt since October 2014, which crossing had previously helped to alleviate the effects of the blockade, has exacerbated the humanitarian situation. Only the lifting of the blockade would enable improvement in the realization of human rights in Gaza (see A/HRC/28/45, paras. 34-42, and A/70/421, paras. 15-29).

3. Detention, including administrative detention

37. With hundreds of Israeli security forces search-and-arrest operations every month in the reporting period, Israel detains a large number of Palestinians. As of 31 October 2015, 5,683 Palestinians were "security prisoners".[28] Although there was a decrease in early 2015 after the spike in arrests in mid-2014, according to one NGO, the Palestinian Prisoners Club, 1,500 were arrested in the West Bank, including East Jerusalem in October 2015.

38. In particular, there was a sharp increase in the number of children in detention: from 163 on 30 October 2014 to 307 as of 30 October 2015.[29] This is the highest number of detained children since April 2010, and appears largely due to the significant number of

[24] Israel, Prime Minister's office, "Security Cabinet Approves Series of Additional Measures to Deal with the Wave of Terrorism", 14 October 2015.

[25] Office for the Coordination of Humanitarian Affairs, "New movement restrictions in East Jerusalem as of 5 November 2015". Available at www.ochaopt.org/documents/ej_2015oct21.pdf.

[26] Office for the Coordination of Humanitarian Affairs, "Israel removes restrictions on the import of aggregates", November 2015. Available at http://gaza.ochaopt.org/2015/11/reconstruction-of-over-one-quarter-of-totally-destroyed-homes-ongoing-or-about-to-start/.

[27] Office for the Coordination of Humanitarian Affairs, *Strategic Response Plan 2015*. Available from www.ochaopt.org/srp2015/.

[28] See www.btselem.org/statistics/detainees_and_prisoners (accessed on 31 October 2015).

[29] See www.btselem.org/statistics/minors_in_custody (accessed on 30 October 2015).

children arrested during the surge in violence in October 2015 — 177 according to the Palestinian NGO Addameer.[30]

39. This situation raises questions as to whether the detention of minors is being used only as a measure of last resort, as demanded by the Convention on the Rights of the Child. The Public Committee against Torture in Israel, an NGO, informed OHCHR that it has documented between 40 and 50 children from East Jerusalem, some as young as 12, sent to the Givon prison complex in Ramla, where conditions are reported to be poor.

40. During the reporting period, the number of Palestinian Legislative Council members in detention decreased (from 25 to 5). Yet, the case of Council Member Khalida Jarrar is emblematic of Israeli detention practices. She was arrested on 2 April 2015 and placed under administrative detention by the military commander in the West Bank. On 15 April, she was charged with a range of offences relating to membership of the Popular Front for the Liberation of Palestine and incitement to kidnapping Israeli soldiers. Her trial in the military court was monitored by diplomatic missions and human rights organizations, including OHCHR, and there are serious concerns as to its fairness. The prosecution's evidence appears to be largely based on statements by former and current Palestinian prisoners made after interrogation by the Israel Security Agency. Two witnesses retracted their statements at the first hearing, stating they were made after ill-treatment, threats and coercion. Nevertheless, the judge maintained the original statements as evidence. At a bail hearing on 21 May, the military prosecution told the judge that even if Ms. Jarrar were to be released on bail, she would be held under administrative detention. On 7 December, she was sentenced to 15 months in prison, after she accepted a prosecution plea-deal, reportedly because she did not believe she would be given a fair trial and was concerned that her detention would never end.

41. According to official Israeli statistics, there were 429 administrative detainees (all male) at the end of October 2015, compared with 462 a year before.[31] A reduction during most of 2015 was reversed by a sharp increase in detention orders in October 2015. For the first time since December 2011, administrative detention was applied to children, with three 17-year-old boys from East Jerusalem detained without charge in mid-October for allegedly stone-throwing.[32] A 16-year-old boy from Hebron was detained on 31 October 2015 on allegations of stabbing. In a rare move, three Jewish-Israeli men were also held in administrative detention following the suspected settler attack in Duma village on 31 July.

42. The use by Israel of administrative detention has been widely condemned, including by the Secretary-General and the Human Rights Committee, who called for its end (see A/HRC/28/80, para. 33).[33] This practice is inconsistent with the exceptional nature of detention permitted under article 78 of the Fourth Geneva Convention.

43. Most Palestinian detainees, including administrative detainees and many children, are held in Israel. The prohibition of forcible transfer also applies to detainees to the extent that they may not be deported outside the occupied territory (arts. 49 and 76). The actions of Israel therefore constitute a grave breach of the Fourth Geneva Convention (art. 147).

[30] Addameer, "Israeli occupation arrests 1,195 Palestinians and issues 128 administrative detention orders", 2 November 2015. Available at www.addameer.org/news/addameer-israeli-occupation-arrests-1195-palestinians-and-issues-128-administrative-detention.

[31] See www.btselem.org/administrative_detention/statistics.

[32] See www.dci-palestine.org/three_east_jerusalem_teens_held_in_administrative_detention.

[33] See also OHCHR spokesperson, press briefing, 10 April 2015.

4. Hunger strikers, torture and ill-treatment

44. During the reporting period, some Palestinian administrative detainees resorted to hunger strikes to protest against their unlawful indefinite detention without charge. For instance, lawyer Mohammad Allan, who had been detained since 11 November 2014, began a hunger strike on 16 June 2015. On 10 August, he was moved into intensive care at a hospital, chained to a bed despite his obvious weakness. On 14 August, he lapsed into a coma for four days, and was reportedly given minerals intravenously. On 20 August, he ended his hunger strike after 65 days, when the Israeli High Court suspended his administrative detention. The suspension was directed on the grounds that his MRI scan showed extensive brain damage and that he could not be a security risk. However, he was detained again on 16 September and resumed his hunger strike until his release, on 4 November, when the detention order expired.

45. Mohammad Allan was among the first detainees at risk of force-feeding after an amendment to the Israeli Prisons Act, passed by the Knesset on 30 July 2015, permitted a District Court President to authorize force-feeding of a detainee on hunger strike.[34] Although its stated aim was to save the life of the detainee, the legislation allows the Courts to factor into their decisions the State's security and public safety. In a further similarity with the administrative detention process — the root of many hunger strikes — the Court may make its decision in a closed session and on the basis of secret evidence, not accessible by the detainee's lawyer. The bill included an important safeguard, namely the requirement that a doctor certify that the patient would be in immediate, mortal danger were the hunger strike to continue. However, the final text referred to the Hebrew term *metapel* (instead of doctor),[35] which, in Israeli law, encompasses medical trainees, midwives, physiotherapists, occupational therapists, speech therapists and nutritionists (see Patients' Rights Act, 1996).

46. Various United Nations bodies and experts have raised concern about the enactment of this law, reiterating that force-feeding was tantamount to cruel, inhuman or degrading treatment, and a violation of the right to health.[36] The Israel Medical Association stated that force-feeding amounted to torture. In September 2015, several Israeli organizations challenged the law before the High Court. The petition is currently pending.

47. OHCHR has received reports of ill-treatment of detainees generally. The Public Committee against Torture in Israel submitted 23 complaints of torture to investigatory bodies relating to the current reporting period.[37] Most allegations refer either to assaults at the time of arrest or beating and threats during interrogation, particularly by the Israel Security Agency. Common means of ill-treatment include sleep deprivation, stress positions, sexual harassment and physical assaults. The United Nations Children's Fund (UNICEF) and partner organizations also documented 58 cases of West Bank children reporting ill-treatment by the Israeli security forces. Common complaints were physical violence, being blindfolded with hands painfully tied, and strip searches, while some reported being held in solitary confinement.

48. On 4 July 2015, the Knesset extended the temporary law exempting the interrogations of Palestinian "security suspects" from audiovisual recording for an additional year and a half; the latest in a series of continuous extensions since 2002. This

[34] The bill was introduced at the time of the mass hunger strikes, in June 2014 (see A/HRC/28/80, para. 34).

[35] Addameer, "Factsheet: Force-feeding under International Law and Medical Standards", 16 November 2015.

[36] Joint statement on new Israeli law on force-feeding of detainees, 8 August 2015; "UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention", 28 July 2015.

[37] Public Committee against Torture in Israel, "Update – November 1st, 2014 – October 31st, 2015".

removes a key safeguard against torture, ill-treatment and the extraction of "confessions" under duress (see CCPR/C/ISR/CO/4, para. 14).

5. Changes to laws affecting children's rights

49. On 20 July, the Knesset amended the criminal law to increase the maximum sentence for throwing stones or other objects at moving vehicles, to 20 years when the intent to harm the occupants of the vehicle can be established (irrespective of the harm caused), and 10 years when the intent cannot be proven. Throwing stones at a police vehicle can lead to a sentence of up to five years, irrespective of whether damage or injury was caused.

50. This was followed by a retrograde change in policy, in August 2015, by the State Prosecutor, requiring all prosecutors to seek detention of suspects charged with stone-throwing until the end of legal proceedings. This practice had already been used by the Jerusalem District Attorney's Office since July 2014, reportedly with the result that most arrested children remained in detention for at least two to three months before release. The prosecutorial directive is inconsistent with the presumption of release on bail under the International Covenant on Civil and Political Rights. The measures invariably target Palestinian children who tend to resort to such forms of protest, and therefore violate the requirement that the detention of children be a measure of last resort (art. 37 (b) of the Convention on the Rights of the Child).

51. On 2 November 2015, the Knesset passed an additional temporary order, valid for three years, amending the Youth Law and the National Insurance Law, thereby providing for the revocation of national insurance entitlements for children convicted of "security-related" offences (including stone-throwing), and imposing a fine of 10,000 shekels (approximately US$ 2,500) on parents of a child convicted of stone-throwing.

6. Human rights defenders and journalists

52. Physical attacks against, and harassment of, human rights defenders continued, especially against the backdrop of the upsurge of violence since September 2015. Protective presence organizations in Hebron faced repeated threats, assaults and arrests, by settlers and Israeli security forces. In October 2015, posters appeared in Hebron with photos of staff of these organizations, branding them as anti-Semitic "hostile anarchists" and calling for them "to be dealt with".

53. The Palestinian Centre for Development and Media Freedoms documented hundreds of instances of journalists subjected to harassment over the reporting period.[38] In a number of instances, journalists reporting on protests were physically assaulted by elements of the Israeli security forces, who also damaged or confiscated their equipment.[39] Journalists and human rights defenders have a vital role in society as they report on human rights violations and abuses and promote accountability. Their harassment has a chilling effect on freedom of expression.

7. Hostilities in Gaza

54. According to the Department of Safety and Security of the Secretariat, during the reporting period, Israel carried out 31 airstrikes in Gaza, reportedly in retaliation for 24 rockets fired into Israel by Palestinian armed groups (a further 66 fell short). In one incident

[38] See www.madacenter.org/reports.php?id=13&lang=1.

[39] See http://972mag.com/watch-israeli-soldiers-attack-cameras-belonging-to-palestinian-foreign-journalists/112049.

on 11 October 2015, an Israeli airstrike directly hit a Palestinian home in Zeitoun, west of Gaza City, killing a pregnant woman and her 2-year-old daughter. IDF claimed they had targeted a known "weapons production site".[40] However, OHCHR did not find any indications of such facilities in the vicinity of the attack, which only impacted the family's home, a civilian structure, which, under international law, should not be targeted.

55. IDF also reportedly conducted 46 incursions, up to 300 metres into Gaza, levelling the ground and compromising access of local farmers to their livelihoods.

B. Palestinian authorities

1. Arbitrary detention and administrative detention

56. During the reporting period, OHCHR documented cases of arbitrary arrests and detentions, mainly of persons affiliated with opposition groups. In particular, mass arrests of individuals with alleged links to Hamas and Islamic Jihad were carried out in early March and early July 2015 in the West Bank.

57. An emblematic case is that of two Hamas activists who were arrested by the General Intelligence Service (GIS) in early February 2015, in Hebron, on charges of money laundering. GIS failed to respect a court order on 18 February for their release on bail and the two men remained in detention on new grounds, namely for "inciting sectarian strife". The following day, the prosecution introduced an additional indictment for possession of an unlicensed weapon. On 22 February, the two men were granted bail by the court on all charges. Despite the rejection of the prosecution's appeal, they remained in detention until 3 March.

58. OHCHR inquiries into a number of similar cases revealed that, although the detainees were expecting to be released on bail, their continued detention was sanctioned by administrative orders issued by provincial governors (see A/HRC/28/80, para. 46). Administrative detention also appears to be regularly used to cover the initial days after the arrest, effectively sidestepping the important safeguard of being promptly brought before a judge (art. 9 (3) of the International Covenant on Civil and Political Rights). The Palestinian Independent Commission for Human Rights thus registered 75 complaints of administrative detention during the reporting period.[41] A majority of detainees interviewed by OHCHR also appear to have been held administratively at some stage, while international human rights law stresses the exceptional nature of such detention.

59. OHCHR is concerned about the practice by Palestinian security agencies of detaining people "for their own security". For instance, Islam Hamed was not released after the completion of a three-year sentence, despite an order from the Palestinian High Court, on 24 November 2014, that his continued detention was illegal. GIS informed OHCHR that the continued detention was for Mr. Hamed's own safety, as he was under threat from the Israeli security forces. He was eventually released on 21 July 2015, after a two-month hunger strike, when his family had signed a waiver absolving the Palestinian Authority of any liability for his safety. OHCHR has documented other cases where detentions are reported to have taken place "under the order of the Head of Agency", referring to GIS and the Preventive Security Service. The legal basis of such detentions is unclear.

[40] See www.idf.il/1133-22784-he/Dover.aspx (available in Hebrew only).

[41] Monthly reports on website.

2. Torture and ill-treatment

60. Torture and ill-treatment are prohibited under Palestinian law. OHCHR has enjoyed the cooperation of the Palestinian authorities in gaining unannounced and unrestricted access to Palestinian Preventive Security and GIS detention facilities (see A/HRC/25/40, para. 44). In some instances during the reporting period, the Office was refused access to detention centres run by GIS. In March 2015, the Independent Commission for Human Rights denounced the decision of the Palestinian police prohibiting its staff from visiting a detainee in the Ramallah Rehabilitation and Correction Centre.[42] Such restrictions are particularly concerning as OHCHR continued to receive reports of ill-treatment and the Independent Commission for Human Rights registered 194 complaints of torture and ill-treatment during the reporting period. In some instances documented by OHCHR, detainees reported ill-treatment but were unwilling to share details owing to threats and fear of reprisal by the authorities. In a few instances, detainees denied being ill-treated despite visible injuries.

61. Opposition activists, including students, appeared to be particularly targeted by Palestinian security agencies. Between 17 December 2014 and 26 February 2015, seven Hamas-affiliated students held a sit-in at Birzeit University, which they refused to leave for fear of arrest and ill-treatment as they had previously been detained and allegedly ill-treated on several occasions. OHCHR intervened with the authorities who repeatedly gave assurances that ill-treatment would not be condoned. On 28 February, one of the students was arrested by the Preventive Security Service and detained until 2 March. After his release, he informed OHCHR that he had been kept in *shabeh* (a stress position for an extended period of time) for nearly six hours: he had been made to stand face to the wall with arms lifted and had been told not to touch the wall. In the interrogation that followed, he was reportedly slapped on the face five times. He stated that, at the end of the session, his hands were tied to the top of a ladder with his own belt and he was left suspended. He told OHCHR that, when he cried out in pain, the officers told him they had high-level clearance to kill him. They reportedly later put him in *shabeh* again until the next morning, checking every half hour whether he was willing to talk.

62. In another case documented by OHCHR, the detainee had been transferred many times to different GIS detention centres and reportedly repeatedly tortured over many weeks. He reported being held in *shabeh* for hours at a time, blindfolded, with his hands tied behind his back and pulled up, and tied to a rope fixed to the ceiling, with toes barely touching the ground and the weight of his entire body on the shoulders. He testified in detail to being slapped, punched, kicked and beaten with a baton on his palms and the soles of his feet, and with an electric cable, on the lower part of his body. Medical reports examined by OHCHR, along with bruises on his body were consistent with his testimony.

3. Excessive use of force

63. OHCHR received allegations of unwarranted or excessive force, gratuitous violence and abuse of power by Palestinian security forces. For instance, on 2 December 2014, in Al-Yamon village, members of the Palestinian special police force reportedly used batons to beat dozens of unarmed people at a condolence meeting, after accusing them of shielding wanted individuals. On 2 January 2015, in Misliya village, the Palestinian Special Police Force and the Palestinian National Security Forces allegedly assaulted several people, largely bystanders, after family members of a detainee attacked a police car and released him from custody. Under the Basic Principles on the Use of Force and Firearms by Law

[42] Independent Commission for Human Rights, press statement, 4 March 2015.

Enforcement Officials, it is required that arbitrary or abusive use of force should be punishable as a criminal offence.

64. On 18 September 2015, near the Azza refugee camp, Bethlehem, the Palestinian National Security Forces used live ammunition, tear gas and stun grenades against demonstrators throwing stones. They reportedly assaulted some of the young men in their custody with batons.[43] The use of live ammunition in the absence of imminent threat to life or serious injury, and the violence against detainees are inconsistent with the international obligations of the State of Palestine, notably under the International Covenant on Civil and Political Rights. Although the Prime Minister and the Commander of the Palestinian National Security Forces promptly announced the establishment of two committees to investigate the Bethlehem incident, accountability for instances of excessive use of force generally remains rare.

65. On 23 May 2015, GIS officials in Jenin shot a man in the leg after having restrained him. His brother was severely beaten to the extent that his genitals were crushed and required partial surgical removal. The brothers filed a complaint with Military Intelligence, but OHCHR was informed that the victims were repeatedly pressured to withdraw their complaint because the main GIS official they accused is a senior Fatah leader. OHCHR is not aware of any investigation into the incident.

4. Freedom of expression

66. OHCHR has received reports of violations of the right to freedom of expression, particularly regarding people critical of the Palestinian Authority leadership. The case of Lama Khater, a writer known for supporting Hamas, is emblematic. She and her family have been subjected to repeated threats and harassment by the security forces for her writing and her organization of peaceful demonstrations. One instance monitored by OHCHR took place late at night on 22 March, when Ms. Khater's house in Hebron was raided by GIS. They did not show any arrest or search warrant. They allegedly used force against Ms. Khater's husband and detained him for one night.

67. Information received by OHCHR indicates that Palestinian security agencies appear to be monitoring Palestinians' social media activity. OHCHR documented some cases where journalists and civil society activists were threatened or arrested for comments made online criticizing the Palestinian leadership. Such harassment and unlawful restrictions have a general chilling effect on freedom of expression.

5. Death penalty

68. No executions were reported between 1 November 2014 and 31 October 2015, in accordance with the President's policy. However State prosecutors continued to seek death sentences and courts issued them in two cases. On 11 January 2015, the Permanent Military Court in southern West Bank condemned to death for treason a 27-year-old man from Jenin. On 16 September 2015, the Ramallah Court of Appeal sentenced a man to death for murdering his sister-in-law and her two children, after a successful appeal by the prosecution. As of November 2015, both cases were under appeal.

[43] See video published by Middle East Eye. Available at www.youtube.com/watch?v=-uOpsGV6isc&feature=youtu.be.

C. Authorities in Gaza

1. Due process violations, torture and ill-treatment

69. Arbitrary arrests and other due process violations, as well as torture and ill-treatment by security forces, remained issues of concern in Gaza. During the reporting period, the Independent Commission for Human Rights registered at least 708 complaints of arbitrary detention and violations of due process guarantees, and 462 allegations of torture or ill-treatment. The majority of allegations were against local police forces, but corrections officers and members of the internal security apparatus also stand accused.

70. Information collected by OHCHR indicates that security forces often arbitrarily summon and sometimes unlawfully detain citizens for prolonged periods of time, often incommunicado. Reported violations included excessive use of force upon arrest, denial of the right to remain silent, and to have legal representation and contact with family.

71. Reports of torture or ill-treatment described beatings with belts, water pipes and sticks, verbal abuse and intimidation, sensory deprivation, *shabeh*, waterboarding and prolonged solitary confinement. The level of violence employed during certain interrogations required detainees to be hospitalized, including owing to open wounds, internal bleeding and fractures. OHCHR suggests that particularly harsh interrogation techniques appear to be used against detainees suspected of treason or of belonging to Salafi groups. Relatives of detainees were also reportedly targeted for harassment and arrest by security officials.

72. Members and supporters of Fatah in particular have reported a consistent campaign by security forces, in particular the internal security apparatus, of summons and arrests and torture or ill-treatment. For example, a senior Fatah official and his colleagues were reportedly warned by senior security officials, on 31 December 2014, not to mark Fatah's fiftieth anniversary that week. On 4 January 2015, the official was summoned to Ansar police station and driven to an undisclosed location along with another Fatah member. He was allegedly forced to undress, was interrogated and was denied the opportunity to pray. He was also beaten, forced to endure *shabeh* and hung from the wall for almost an hour. No arrest warrant was produced and charges were never levelled against him. He claimed that he has been detained and interrogated over 40 times by local security officials owing to his affiliation with Fatah.

2. Rights to freedom of expression and peaceful assembly

73. Reportedly, Gaza authorities have increasingly sought to silence political opposition or critics, and failed to protect persons from third-party attacks due to their beliefs and opinions. Internal security forces (as well as unidentified armed individuals) have allegedly employed excessive use of force and gratuitous violence to disperse peaceful assemblies.

74. Among the rallies disrupted were those of political opponents, gatherings denouncing the deteriorating economic situation, failing public services or protesting actions by security forces. Several individuals were detained in connection with these gatherings and forced to sign "moral codes of conduct" or declarations that they would not disturb peace again.

75. On a few occasions, security forces stated they had intervened during demonstrations because prior authorization had not been sought. Nevertheless, under international human rights law and the Palestinian Public Meetings Law No. 12 of 1998, the prior consent of authorities is not required to hold peaceful assemblies.

76. Palestinian human rights organizations have noted a marked increase in attacks on freedom of the press, either by local authorities or unidentified armed individuals. The

Palestinian Centre for Development and Media Freedoms registered at least 45 such cases in the first six months of 2015, compared to 24 cases in 2014.[44]

77. OHCHR found several instances where journalists were prevented, often through force, from covering events deemed critical of Hamas. Others have been questioned at police stations about social media posts or articles critical of Gaza authorities.

78. On 29 April 2015, in Al-Shuja'iya neighbourhood, security officials and members of different Islamic factions in the Gaza Strip interrupted a student gathering calling for Palestinian unity. Participants were reportedly beaten with clubs and metal bars and shot at, including by plain-clothes security forces. The authorities claimed that they intervened when fighting broke out during the protest. Journalists who witnessed the scene stated that security officials tried to prevent them from covering the event, assaulted them and destroyed equipment.

3. Death penalty

79. No executions were carried out within the Gaza Strip during the reporting period. However, local courts issued two death sentences related to murder charges while the Permanent Military Court sentenced four individuals to death (one in absentia) for collaboration with Israel.

IV. Accession by the State of Palestine to international human rights treaties

80. During the period under review, the Government of the State of Palestine advanced in the preparation of the first round of reports under the seven human rights treaties to which it acceded in 2014. OHCHR was informed that the first drafts of reports under the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women are under internal review and will be submitted for national consultations. OHCHR worked with the Government to ensure that line ministries use the reporting process to establish baselines from which to monitor implementation of human rights in the context of national development programming. OHCHR has also been supporting the Independent Commission for Human Rights in assuming its important role as the bridge between the Government and civil society with regard to treaty implementation and monitoring.

V. Recommendations

A. Government of Israel

81. **The High Commissioner recommends that the Government of Israel:**

(a) **Carry out an independent review of the Israeli security forces rules of engagement and ensure that they are consistent with international human rights law and standards, along with the actual use of force and firearms in the context of law enforcement (including in the access restricted areas);**

[44] See www.madacenter.org/index.php?lang=1.

(b) **Ensure that all torture and ill-treatment is outlawed and swiftly ended, and remove exemptions for interrogations of Palestinian "security suspects" from the requirement to record interrogations;**

(c) **Conduct prompt, thorough, effective, independent and impartial investigations into all incidents of the use of force leading to death or injury, ensuring they are subject to public scrutiny;**

(d) **Hold to account all individuals responsible for human rights violations and provide victims with an effective remedy;**

(e) **End all forms of collective punishment, including the blockade on Gaza and punitive demolitions;**

(f) **Ensure that the Israeli Prisons Act is consistent with international human rights law; in particular, repeal provisions allowing force-feeding of detainees on hunger strike;**

(g) **End the system of administrative detention and ensure that all detainees are promptly charged or released;**

(h) **Respect international humanitarian law, particularly the principles of distinction, proportionality and precaution, and ensure accountability for all violations.**

B. Government of the State of Palestine

82. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Ensure that arbitrary arrests and detentions are not carried out — due process guarantees should be respected and no person should be held without legal basis or in a manner inconsistent with international human rights law;**

(b) **End the widespread practice of administrative detention through governors' orders in the West Bank — detainees should be promptly charged or released;**

(c) **Ensure that torture and ill-treatment are promptly ended and that rules of engagement and actual use of force and firearms by law enforcement officials are consistent with international human rights law and standards;**

(d) **Conduct and ensure prompt, thorough, effective, independent and impartial investigations into all incidents of use of force leading to death or injury, ensuring that they are subject to public scrutiny, bring perpetrators to justice and provide victims with an effective remedy;**

(e) **Respect the right to freedom of expression and peaceful assembly, including for journalists and those with perceived links to opposition groups, and ensure thorough and transparent investigations into allegations of attacks by third parties against journalists and activists;**

(f) **Announce a moratorium on the death penalty including the award of such sentences, as a step towards abolition.**

C. Authorities in Gaza and Palestinian armed groups

83. **The High Commissioner calls upon the authorities in Gaza:**

(a) **To take all measures necessary to ensure that the rights of persons deprived of liberty are respected, including by ensuring effective, independent, impartial, thorough and transparent investigations into allegations of torture and ill-treatment, and ensure that perpetrators are brought to justice and that victims have access to an effective remedy;**

(b) **End unlawful restrictions on freedoms of expression and peaceful assembly.**

84. **In Gaza, the authorities and Palestinian armed groups should respect international humanitarian law, particularly the principles of distinction, proportionality and precaution, and ensure accountability for all violations.**

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Thirty-first session
Agenda items 2 and 7
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Addendum- Implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict*

Report of the United Nations High Commissioner for Human Rights

Summary

The present report focuses on progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), and the independent commission of inquiry on the 2014 Gaza conflict (A/HRC/28/79). It reviews all recommendations made by the fact finding mission and the commission of inquiry, and provides detailed information on non-implementation of the recommendations.

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I. Introduction

1. In its resolution 29/25, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to present at its thirty-first session, as part of the reporting requested by the Human Rights Council in its resolutions S-9/1 and S-12/1, a report on the implementation of the resolution in question and of the recommendations contained in the reports of the independent commission of inquiry on the Gaza conflict 2014 (Commission) (A/HRC/28/79) and of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (Mission) (A/HRC/12/48).

2. The present report reflects information which OHCHR requested and received from States, organizations and other entities to which the Mission and the Commission addressed recommendations, as well as information gathered by the United Nations. The report should be read in conjunction with previous reports of the High Commissioner for Human Rights and the Secretary-General on the implementation of the Mission's recommendations, including A/HRC/13/55, A/HRC/15/51, A/HRC/15/52, A/HRC/18/49, A/HRC/21/33, A/HRC/22/35 and A/64/890. Some of the issues raised by the Mission and the Commission have been reported in more recent United Nations reports including A/HRC/28/45, A/HRC/28/80, A/HRC/28/80.Add1, A/70/354-S/2015/677, A/70/133, A/70/406, A/70/421, S/2015/286 and A/70/392. The report should also be read in conjunction with relevant reports presented at the thirty-first session of the Human Rights Council, including A/HRC/31/44 and A/HRC/31/40.

II. Progress in the implementation of the recommendations of the United Nations Fact-Finding Mission on the 2009 Gaza Conflict and the independent commission of inquiry on the 2014 Gaza conflict

3. On 12 October 2015, OHCHR sent a note verbale to all Permanent Missions of the United Nations in Geneva seeking inputs to the report. It also sent notes verbales to the International Committee of the Red Cross (ICRC), the United Nations Country Team in the Occupied Palestinian Territory (UNCT), the United Nations Environment Programme (UNEP), the United Nations Special Coordinator Office for the Middle East Peace Process (UNSCO), and the United Nations Relief Works Agency for Palestinian Refugees in the Near East (UNRWA). Inputs were also sought from civil society organisations. OHCHR received inputs from UNCT, UNEP, UNRWA, the State of Palestine and some Palestinian and Israeli civil society organizations. No response was received from the Government of Israel.

4. The High Commissioner highlights that recommendations 1968 (c), 1970, 1972 (h) and 1973 (b) of the Mission's report have either been fully implemented, as reflected in A/HRC/21/33, has no further updates or are not relevant anymore.

A. Human Rights Council

5. Paragraph 1968 (a) of the Mission's report (A/HRC/12/48) recommended that the Council endorse its recommendations, take appropriate action to implement them, and continue to review their implementation. In paragraph 3 of resolution S-12/1, the Human Rights Council endorsed the Mission's recommendations and called upon all concerned parties, including United Nations bodies, to ensure their implementation in accordance with

their respective mandates. This call was reiterated in resolutions 13/9, 15/6, 16/32, 19/18, 22/25[1] and 25/30.

6. Through resolution 13/9, the Human Rights Council established a committee of independent experts in international humanitarian and human rights laws to monitor and assess domestic legal or other proceedings undertaken by the Government of Israel and the Palestinian side. The assessment was to take into account the independence, effectiveness and genuineness of domestic investigations and proceedings, and their conformity with international standards. The experts presented their reports (A/HRC/15/50 and A/HRC/16/24) to the Human Rights Council, which called for the implementation of their conclusions in resolution 16/32. In its resolution 15/6, the Council welcomed that report and renewed and resumed the mandate of the committee. The committee presented its second report to the Council at its sixteenth session (A/HRC/16/24). In its resolution 16/32, the Council took note of the two reports submitted by the committee and called for the implementation of its conclusions.

7. Paragraph 1968 (b) of the Mission's report (A/HRC/12/48) recommended that, in view of the gravity of the violations of international human rights and international humanitarian law and possible war crimes and crimes against humanity that it had reported, the Human Rights Council request the Secretary-General to bring the report to the attention of the Security Council under Article 99 of the Charter of the United Nations for the Security Council to consider possible action, according to the Mission's relevant recommendations. At the time of drafting this report, the Human Rights Council had not addressed any request to the Secretary-General to bring the Mission's report to the attention of the Security Council under Article 99 of the Charter.

8. In line with the Mission's recommendation that the Human Rights Council submit the Mission's report to the General Assembly with a request that it should be considered (A/HRC/12/48, paragraph 1968 (d)), as mentioned in the report of the Secretary-General (A/HRC/18/49, paragraph 10) the Council recommended that the General Assembly consider the Mission's report and implement actions referred to in resolution S-12/1 B, 15/6 and 16/32.[2] In resolutions 19/18, 22/25, 25/30 and 29/25, the Council reiterated its recommendation that the General Assembly remain appraised of the matter. The High Commissioner notes that the Council remains seized of the matter.

9. Paragraph 1968 (e) of the Mission's report (A/HRC/12/48) recommended that the Council should bring its recommendations to the attention of relevant human rights treaty bodies for them to include, when possible, review of progress in their implementation in accordance with their mandate and procedures. The Mission also called upon the Council to review such progress in the context of the Universal Periodic Review (UPR). As stated in the Secretary-General's report (A/HRC/13/55 para. 14), on 10 December 2009, the Mission's report was transmitted to relevant United Nations treaty bodies. In addition, the recommendations made by states participating in the interactive dialogue during the review of Israel in the Working Group on the Universal Periodic Review in 2013 (A/HRC/25/15) substantively overlap with the recommendations of the Mission's report. Finally, the

[1] In this resolution, the Human Rights Council did not renew its call to continue specific reporting on the implementation of the recommendations of [the] Mission. In paragraph 1, it reiterated its recommendation that the General Assembly remain appraised with the matter until satisfied that the recommendations of the Mission's report were implemented.

[2] In paragraph 8 of resolution 16/32, the Human Rights Council recommended that the General Assembly should submit the report to the Security Council [for] its consideration and appropriate action, including consideration of referral of the situation in the Occupied Palestinian Territory to the Prosecutor of the International Criminal Court.

information compiled by OHCHR for the second cycle of Israel's UPR referred to the Mission's report (A/HRC/WG.6/15/ISR/2).

10. Following the presentation of the report of the Commission of Inquiry on Gaza (A/HRC/29/CRP.4), the Council passed resolution 29/25, recalling the report of the Fact-Finding Mission on the Gaza conflict of 2009, and recommending that the General Assembly remain apprised of the matter until it is satisfied that appropriate implementation of the Mission's recommendations had been undertaken at the domestic and international levels.

11. With regard to the Commission's recommendation that the Council ask for a comprehensive review of the implementation of the numerous recommendations addressed to the parties by its own mechanisms, in particular relevant commissions of inquiry and fact-finding missions, and explore mechanisms to ensure their implementation (A/HRC/29/CRP.4 para 685), the High Commissioner notes that this has only been partly implemented. Instead, the Council requested OHCHR to present a report on the implementation of resolution 29/25 and of the recommendations of the Mission and the Commission.

B. Security Council

12. Paragraph 1969 (a) of the Mission's report (A/HRC/12/48) recommended that the Security Council require the Government of Israel, under Article 40 of the Charter, (i) to take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention; and (ii) to inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government to inquire into, investigate and prosecute such serious violations.

13. To date, the Security Council has not required that the Government take all appropriate steps to launch appropriate investigations into the serious violations of international humanitarian and international human rights law reported by the Mission. The Security Council has not established a committee such as that detailed by the Mission (see A/HRC/12/48, para. 1969, subparas. (b) – (e)).

C. General Assembly

14. Paragraph 1971 (a) of the Mission's report (A/HRC/12/48) recommended that the General Assembly request the Security Council to report to it on measures taken to ensure accountability for serious violations of international humanitarian and international human rights law in relation to the facts in its report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the recommendations. To date, the General Assembly has not made such request to the Security Council. With regard to the adequate and effective implementation of the recommendation, the High Commissioner refers to paragraph 12.

15. The General Assembly has not established an escrow fund as recommended by the Mission (A/HRC/12/48, paragraph 1971 (b)) to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during

the December 2008 – January 2009 military operation and related actions.[3] As the right of victims to reparations, including compensation, is crucial to achieve justice and build peace, the High Commissioner recalls the importance of reparations and refers to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

16. Paragraph 1971 (c) of the Mission's report (A/HRC/12/48) recommended that the General Assembly request the Government of Switzerland to convene a conference of the High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1. The steps taken by the Assembly, and subsequently by Switzerland, to implement the recommendation were outlined in a previous progress report of the Secretary-General (A/HRC/21/33 para. 13). As noted by the Secretary-General (A/70/133, paragraph 25), on 22 July 2014, the Government of Switzerland notified the High Contracting Parties that consultations for a conference would resume. Between 28 July and 3 December 2014, a cross-regional critical mass of High Contracting Parties requested the reconvening of a Conference, which was held in Geneva on 17 December 2014, gathering 128 representatives of High Contracting Parties. The conference was concluded with the adoption by consensus of a ten-point-declaration.[4]

17. Paragraph 1971 (d) of the Mission's report A/HRC/12/48 recommends that the General Assembly promote an urgent discussion on the legality of the use of certain munitions referred to in its report, particularly white phosphorous, flechettes and heavy metal, such as tungsten, and that in such a discussion, the Assembly should draw on, *inter alia*, the expertise of the International Committee of the Red Cross (ICRC). The High Commissioner notes that the issue is currently included in the mandate of the First Committee of the General Assembly related to the "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects", and that this discussion is ongoing.

18. The recommendation also called on the Government of Israel to undertake a moratorium on the use of such weapons in the light of the human suffering and damage they had caused in the Gaza Strip. The Government of Israel has not adopted a moratorium on the use of the weapons listed by the Mission. However, in a report entitled "State of Israel, Gaza Operation Investigations: Second Update", which it published in July 2010, the Government of Israel announced that its policies related to the use of white phosphorous had been reviewed[5].

D. Government of Israel

19. Paragraph 1972 (a) of the Mission's report (A/HRC/12/48) recommended that Israeli authorities should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and the resumption of meaningful economic activity in the Gaza Strip. The High Commissioner reports that the Government of Israel has continued to impose the blockade of Gaza, preventing the full recovery and enjoyment of human rights,

[3] See A/HRC/21/33 para. 12 for more information

[4] Conference of the High Contracting Parties, Declaration, 17 December 2014

[5] Para to be read in conjunction with section D

including economic, social and cultural rights of Palestinians in Gaza. The Commission also called for the lift of the blockade on Gaza (paragraph 681 (d) of its report), "immediately and unconditionally".

20. The High Commissioner notes some improvement regarding movement of Palestinians in and out of Gaza, although the criteria for exit from Gaza through Erez remain very narrow and restricted to specific categories. The monthly average of crossings through Erez Crossing in 2015 doubled compared to 2014.[6] On 16 February 2015, Israel increased the quotas for permits to exit through Erez for patients requiring medical treatment in Israel - but not deemed a medical emergency - from 80 to 120 per day, and for traders from 400 to 800 per day (A/70/421, para 25). According to data published by OCHA, the weekly average of truckloads in and out of Gaza in 2015 increased compared to 2014[7]. However these numbers are still substantially lower than those registered prior to the imposition of the blockade.[8] The High Commissioner notes that the restrictions placed on entry and exit of people and goods have been eased and strengthened over time, depending on the situation.

21. According to UNRWA, on 11 October 2015, the Israeli Coordination of Government Activities in the Territories unit (COGAT) implemented the decision to remove, for the first time since the imposition of the blockade, aggregate, such as sand, gravel, crushed stone and crushed slag, from the "dual use" list of item banned from entry into Gaza.[9] The Gaza Reconstruction Mechanism[10] (GRM) has increased entry of construction material, but the pace of reconstruction remains inadequate (A/70/421, para 20). The reconstruction of the first totally destroyed home funded by UNRWA was completed in October 2015.[11] Progress in repairing damaged homes has been more significant, including the completion of nearly 12 per cent of severely damaged homes, allowing an estimated 5,000 displaced people to return home.[12] However, approximately 95,000 people whose homes were destroyed or severely damaged are still currently accommodated with host families, in rented apartments, prefabricated units, tents and makeshift shelters, or in the rubble of their previous homes.[13] Concerns regarding the lack of reconstruction and recovery in Gaza should be read against the backdrop of the findings of UNCTAD, which found that the military operations of summer 2014 resulted in the grave destruction of essential civilian infrastructure including of water and sewage network. This situation coupled with the high population density and overcrowding are among the factors led UNCTAD to conclude that Gaza will be unliveable by 2020.[14]

22. The High Commissioner notes that Israel, notwithstanding the above-mentioned positive steps, has yet to implement fully the recommendations of the Mission and the Commission. The most adequate and effective way to implement the recommendation would be to lift the blockade, in compliance with Security Council resolution 1860 (2009),

[6] UN Country Team inputs to OHCHR.
[7] See OCHA's Gaza Crossing Activities Database.
[8] UN OCHA, Protection of Civilians, 3-9 November 2015.
[9] UNRWA, Gaza Situation Report 115, 22 October 2015.
[10] A temporary agreement between the Government of Palestine and the Government of Israel brokered by the United Nations in September 2014 and launched on 20 October 2014, represents an attempt to ease the crisis and to begin reconstruction.
[11] UNRWA, After 70 Days, I Held The New Keys In My Hands, 21 October 2015.
[12] OCHA Humanitarian Bulletin, October 2015, page 5.
[13] OCHA, Humanitarian Bulletin, Monthly Report, October 2015, page 6.
[14] UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, TD/B/62/3, 6 July 2015, paragraph 29.

and prioritize the unrestricted import of key building materials, particularly aggregate, iron bars and cement.

23. Paragraph 1972 (b) of the report (A/HRC/12/48) recommended that Israel cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip, and allow such fishing activities within the 20 nautical miles – as provided for in the Oslo Accords – as well as the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel.

24. The High Commissioner notes that such restrictions continue to be imposed. As part of the ceasefire agreement of August 2014, Israel purportedly accepted to expand the fishing area from the previously existing limit of 3 NM to 6 NM from the shore in Gaza.[15] However, according to the Palestinian Centre for Human Rights, in 2015, at least 111 shooting incidents and at least 40 arrests by Israeli naval forces took place against Palestinian fishing boats some of which occurred within the 3 NM limit.[16] According to OCHA, farmers continue to indicate a high perceived risk from undertaking agricultural activities within several hundred metres of the fence separating Gaza and Israel since the hostilities in 2014. In 2015, Al Mezan documented 82 incidents in the access-restricted area along the border with Israel that resulted in the killing of one child and injury of 31 people, including nine children.[17] OHCHR is concerned by means used by Israel to enforce the access-restricted areas at sea and on land in Gaza, which raise serious concerns with regard to its obligations under international human rights and international humanitarian law (see GA/70/421 para 33-38). The High Commissioner notes that Israel has yet to implement fully the Mission's recommendations, and underscores that Israel should fulfil its commitments pursuant to the Oslo Accords and allow unimpeded resumption of fishing and agricultural activity inside the Gaza Strip, abiding with its international legal obligations and with due regard for its legitimate security concerns.

25. Paragraph 1972 (d) of the Mission's report (A/HRC/12/48) recommended that Israel should allow freedom of movement of Palestinians within the Occupied Palestinian Territory – within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world – in accordance with international human rights standards and international commitments of Israel and the representatives of the Palestinian people. The Mission also recommended that Israel should forthwith lift travel bans placed on Palestinians by reason of their human rights or political activities.

26. According to the non-governmental organization (NGO) B'Tselem, in April 2015, there were 96 Israeli permanent checkpoints in the West Bank over 60 km of roads forbidden to Palestinian use.[18] On 14 October 2015, following a series of attacks and clashes, the Israeli authorities imposed further movement restrictions on neighbourhoods within East Jerusalem. According to OCHA, as of 5 November 2015, 30 new obstacles to freedom of movement were put in place in East Jerusalem alone.[19] This is in retraction of steps taken earlier in 2015 whereby Israel eased movement in the West Bank, including by allowing entry into Israel of Palestinian men over 55 and women over 50.[20] However, by

[15] Gisha, The Gaza Cheat Sheet, last update 18 October 2015.

[16] Palestinian Centre for Human Rights, Israeli Attacks on Fishermen in the Gaza Sea, 8 October 2015.

[17] Al Mezan, Press Release Al Mezan Condemns Israeli Killings and Injury of Palestinian Children in Gaza's Access Restricted Areas, 07 September 2015.

[18] B'Tselem, Checkpoints, Physical Obstructions, and Forbidden Roads, 20 May 2015.

[19] OCHA, New Movement Restrictions in East Jerusalem, 05 November 2015.

[20] Secretary-General, Report Peaceful Settlement of the question of Palestine, A/70/354-S/2015/677, 1 September 2015, paragraph 36.

early December 2015, almost all these barriers were removed. With regard to movement between the West Bank and the Gaza Strip see para 20 to 24.[21]

27. Paragraph 1972 (c) of the Mission's report A/HRC/12/48 recommended that Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel with the assistance of the expertise of ICRC, OHCHR and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise, in order to ensure compliance with international humanitarian law and international human rights law.

28. Similarly, the Commission in paragraphs 679 and 680 of its report (A/HRC/29/CRP.4) called upon the Government of Israel to conduct a thorough, transparent, objective and credible review of policies governing military operations and of law enforcement activities in the context of the occupation, as defined by political and military decision-makers, to ensure compliance with international humanitarian law and international human rights law, specifically with regard to: (a) the use of explosive weapons with wide-area effects in densely populated areas, including in the vicinity of specifically protected objects; (b) the definition of military objectives; (c) the tactics of targeting residential buildings; (d) the effectiveness of precautionary measures; (e) the protection of civilians in the context of the application of the Hannibal directive; (f) ensuring that the principle of distinction is respected when active neighbourhoods are declared "sterile combat zones"; (g) the use of live ammunition in crowd control situations. The Commission noted that such review should also examine mechanisms for continuous review of respect for international humanitarian law and international human rights law during military operations and in the course of law enforcement activities in the context of the occupation.

29. Certain actions taken by the Government Israel to implement the recommendations of the Mission have been described in the report of the Committee of Independent Experts (A/HRC/15/50, paragraph 42). In adopting such actions, the Government of Israel has not sought, as suggested by the Mission, the technical assistance of OHCHR.[22] The High Commissioner encourages the Government of Israel to avail itself of the expertise of ICRC, OHCHR and other relevant bodies so that it fully complies with international humanitarian law and international human rights law.

30. In September 2014, in response to the Turkel Commission's recommendations[23], the Israel Defense Forces Chief of Staff ordered that a General Staff Mechanism for Fact-Finding Assessments should examine "exceptional incidents" that occurred during the 2014 hostilities.[24]

31. In May 2015, separately, the Government of Israel released a report entitled "The 2014 Gaza Conflict (7 July – 26 August 2014): Factual and Legal Aspects"[25], affirming that

[21] See also A/HRC/28/27 paragraph 7; A/70/392 paragraph 87 (a) and A/70/406, paragraph 88 (d).

[22] ICRC reports that confidential dialogue with the Israeli and Palestinian authorities on their obligations under IHL and other applicable norms are held. https://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-israel.pdf

[23] The Turkel Commission, established to investigate the May 2010 Gaza flotilla raid, was mandated to review Israel's mechanisms for investigating alleged violations of the laws of armed conflict, and made specific recommendations to strengthen those mechanisms.

[24] IDF MAG Corps, "Operation Protective Edge: Examinations and Investigation", 10 September 2014. See para 38 for more information on Turkel Commission.

[25] The report is a joint product of the Ministry of Justice, the Ministry Foreign Affairs, the Israeli Army's Judge Advocate General and other state bodies including the National Security Council.

its armed forces "employed a multi-faceted system of advanced warning, employed additional precautions" to avoid civilian casualties.[26] The report mentioned that the Military Advocate General (MAG), while examining the information collected by the General Staff "mechanism for fact-finding assessments" on the "exceptional incidents" that occurred during the 2014 offensive, could make recommendations to review and improve operational procedures.[27]

32. The investigations carried out by the Mechanism and reviewed by MAG are steps towards establishing accountability for alleged victims in Gaza. However, the High Commissioner has noted the limited scope of the "mechanism for fact-finding assessments" to "exceptional incidents", and the conflict of interest stemming from the dual role of the MAG office, in advising the military on planning and conducting military operations and investigating allegations of misconduct by Israeli soldiers.[28] He notes that international law requires investigations into alleged human rights violations to be carried out by authorities that are separate and in a separate chain of command than those involved in the original operations.

33. At the time of drafting of this report, no information was available on reviews of rules of engagement and operational policies stemming from MAG investigations into the 2014 incidents in Gaza or on the initiatives undertaken by MAG to regulate the use of live ammunition in law enforcement operations, as recommended by the Commission.

34. While the Israeli military's own regulations establish that live ammunition must be used "only under circumstances of real mortal danger", in September 2015 the Israeli Security Cabinet approved the decision that the police are allowed to use of lethal force "when they face danger to any lives"[29], effectively loosening the rules of engagement for the law enforcement forces. A statement released by the Security-Cabinet said that 'Until recently police would open fire only when their own lives were in danger. As of now, they will be permitted to open fire – and they will know that they have the right to open fire – when they face danger to any lives.[30]' Cases have been documented in which live fire was used by ISF against Palestinians when the lives of members of the Israeli security forces did not appear to be under threat, for instance in the enforcement of the access-restricted areas in Gaza (A/70/421, para. 32).[31]

35. The Commission, in paragraph 681 (a) of its report (A/HRC/29/CRP.4), called upon the Government of Israel to ensure that investigations comply with international human rights standards and that allegations of international crimes, where substantiated, lead to indictments, prosecutions and convictions, with sentences commensurate to the crime. It

http://mfa.gov.il/MFA/PressRoom/2015/Pages/Cabinet-Secretary-Mandelblit-presents-PM-Netanyahu-with-Israel's-Position-on-Operation-Protective-Edge-14-Jun-2015.aspx

[26] Government of Israel, The 2014 Gaza Conflict (7 July – 26 August 2014): Factual and Legal Aspects, May 2015, http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf The report was published by the MAG corps

[27] Military Advocate General's Corps, Protective Edge, available from http://www.law.idf.il/1007-en/Patzar.aspx

[28] See A/70/36136, para 52-58

[29] Government of Israel, Security Cabinet Statement, 24 September 2015, available from http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx.

[30] See http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx

[31] See also, Human Rights Watch, Human Rights Watch Investigator Shot, 11 October 2015, available from https://www.hrw.org/news/2015/10/11/israel/palestine-human-rights-watch-investigator-shot; and B'Tselem, Military steps up use of live 0.22 inch bullets against Palestinian stone-throwers, 18 January 2015, available from http://www.btselem.org/press_releases/20150118_use_of_live_ammunition_in_wb

urged the authorities to take all measures necessary to ensure that such investigations are not confined to individual soldiers, but also encompass members of the political and military establishment, including at the senior level, where appropriate.

36. In June 2010, the Government of Israel established the Turkel Commission, which was also mandated to assess the compliance of Israeli investigations with international legal standards[32]. In its report issued in February 2013, the Turkel Commission, among others, suggested the adoption of institutional changes and the appointment of an independent implementation team in charge of monitoring the operationalization of its recommendations. In January 2014, the Government of Israel established the Ciechanover Commission to review and implement the recommendations of the Turkel report. According to the Ministry of Foreign Affairs, several recommendations of the Turkel Commission, as reiterated in the final findings of the Ciechanover Commission, were in course of implementation as of September 2015.[33] As mentioned above, the "mechanism for fact-finding assessment", established by the Chief of Staff in September 2014, is one of the measures adopted in response to the recommendations of the Turkel Commission (para 32-34).

37. In Paragraph 681 (b) of its report (A/HRC/29/CRP.4) the Commission recommended that the Government of Israel implement all the recommendations contained in the second Turkel report, which dealt with the assessment of the compliance of Israeli investigations with international legal standards**,** particularly recommendation 2, calling for the enactment of provisions that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates, in line with the doctrine of command responsibility. The High Commissioner notes that no legislation has been adopted to that end. The Ciechanover Commission[34] did not issue instructions for the full implementation of the first two recommendations of the Turkel Commission with respect to legislation incorporating international norms and standards into domestic law, including regarding war crimes, and imposing responsibility on military commanders and civilian superiors for offenses committed by their subordinates.[35]

38. According to Al Mezan, as of July 2015, jointly with the Palestinian Centre for Human Rights, 354 criminal complaints were submitted to MAG and the mechanism for fact-finding assessment. As of 15 November 2015, the two organizations had not received any communication regarding criminal indictments.[36] MAG has not published any updates regarding the status of investigations since 11 June 2015. The latest updates stated that MAG had independently opened 15 criminal investigations and other seven out of the 190 exceptional incidents compiled by MAG and submitted to the mechanism for fact-finding

[32] Turkel Commission was established in the context of another incident, not directly in response to the Mission's recommendation, however, that its recommendations addressed issues covered by the Mission's recommendations.

[33] Israeli Ministry of Foreign Affairs, PM Netanyahu receives second report of Turkel Commission, 21 September 2015, available from http://mfa.gov.il/MFA/PressRoom/2015/Pages/PM-Netanyahu-receives-second-report-of-Turkel-Commission-21-Sep-2015.aspx

[34] Yesh Din, The Ciechanover Report – dodging the criminalization of war crimes and practical steps towards implementation, 1 October 2015, http://www.yesh-din.org/userfiles/Ciechanover%20Eng.pdf

[35] Supra 31, paragraph 23. [Report of the Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 Regarding Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law, August 2015, available from http://www.pmo.gov.il/Documents/ReportEng.pdf.]

[36] Al Mezan, Israel's investigations on criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014, Briefing Update 15 November 2015, available from http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf

assessment. As detailed in the Secretary-General report (A/70/421, paragraph 53), these investigations have resulted only in one criminal indictment issued for a case of looting. According to NGO Adalah, as of 15 November 2015, they had received no response from MAG regarding criminal indictments for any of the 22 cases they had submitted for independent criminal investigation. Similarly, no progress was recorded with regard to the 1,248 civil complaints submitted by Al Mezan and the Palestinian Centre for Human Rights to Compensation Officer at the Ministry of Defence.[37] During 2014, the Military Police Criminal Investigations Division opened 229 investigations of alleged criminal offenses committed by soldiers against Palestinians in the West Bank and the Gaza Strip, which resulted in only eight (3.5 per cent) indictments.[38]

39. In light of this information, the High Commissioner reiterates serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip (see A/68/502, paras. 30-34, A/69/347, paras. 52-69, A/HRC/25/40, paras. 50-56 and A/70/36136), paras 60).

40. Paragraph 1972 (e) of the Mission's report (A/HRC/12/48) recommended that Israel release Palestinians detained in Israeli prisons in connection with the occupation; release children as an utmost priority; cease the discriminatory treatment of Palestinian detainees; allow the resumption of family visits for prisoners from Gaza.

41. By the end of October 2015, 5,683 Palestinians were in Israeli prisons and detention centres, including 429 administrative detainees.[39] According to the NGO Palestinian Prisoners Club, in October 2015 alone, 1,500 Palestinians were arrested in the West Bank, including East Jerusalem. As of December 2015, 470 Palestinian children were held in Israeli prisons and detention centres.[40] The High Commissioner notes a number of concerns in relation to the arrest and detention of children, which include cases of night-time arrest; handcuffing; blindfolding; strip-searching; physical and verbal abuse; denial of access to a lawyer or to parents; solitary confinement and the fact that many children are forced to sign confession documents in Hebrew, a language they do not understand (A/HRC/27/78, paragraph 55).

42. Some legislative measures undertaken by the Government of Israel which contradict the Mission's recommendations are also concerning. For instance, on 30 July 2015, the Parliament adopted a law allowing for the force-feeding of prisoners and detainees on hunger strike (A/70/392, paragraph 70), which may amount to cruel, inhuman and degrading treatment.[41] The amendment to the Israeli Penal Code, introduced on 20 July 2015, that increases the maximum sentence for individuals convicted of throwing stones or other objects at vehicles from 10 years to 20 years if the intent to harm the occupants of the vehicle is proven, and up to 10 years when intent to harm the occupants of the vehicle cannot be established, is of deep concern, and punishments prescribed appear excessive or disproportionate to many instances of throwing stones. Of further concern is the approval,

[37] Ibid.

[38] Yesh Din, Law Enforcement on IDF Soldiers Suspected of Harming Palestinians, December 2015, available from http://www.yesh-din.org/userfiles/file/datasheets/Law%20enforcment_IDF_Decmber%202015_English.pdf

[39] Addameer, Statistics, available from http://www.addameer.org/statistics

[40] Addameer, Special Edition Monthly Newsletter: Events of October 2015, available from http://www.addameer.org/sites/default/files/publications/october_2015_newsletter.pdf

[41] UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention, 28 July 2015, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E#sthash.HQlqUIpH.dpuf

in November 2015, of a bill which, if passed by Knesset, would allow sentences to be imposed on Palestinian children as young as 12.[42] Furthermore, despite the issuance in late 2014 of new regulations on the exit from Gaza for certain Palestinians,[43] including family members of prisoners held in Israeli prisons, the right to family visits remained severely restricted (A/HRC/28/80, para. 37).

43. Paragraph 1972 (f) of the Mission's report (A/HRC/12/48) recommended that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory and, as a first step, release all members of the Palestinian Legislative Council in detention, and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning. This recommendation remains to be implemented. Between early June and mid-August 2014, at the height of the military offensive against Gaza, 27 members of the Palestinian Legislative Council were arrested (See A/HRC/28/80/Add.1, paragraph 14). At the end of October 2015, five Palestinian legislators were still detained in Israeli prisons.[44]Although movement of Council Members is restricted between the West Bank and Gaza, in some instances members of the Council have travelled into Gaza, for instance the recent visit of the Prime Minister of the Palestinian Authority[45].

44. The High Commissioner also notes that for the first quarter of 2015, in retaliation for the Palestinian accession to the International Criminal Court, Israel withheld Palestinian tax revenues,[46] which compounded already difficult economic conditions for Palestinian public employees caused by inter-factional divisions between Fatah and Hamas.[47] The action by Israel has been detrimental to delivery of public services and internal political stability.

45. Paragraph 1972 (g) of the Mission's report (A/HRC/12/48) recommended that the Government of Israel cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning its policies and conduct during the military operations in the Gaza Strip, and that it set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory. The Israeli authorities have not taken any steps to establish such independent inquiry.

46. Since 2009, the Government of Israel has proposed legislative measures to restrict the space for organisations to advocate against illegal policies and laws. In some instances, the Knesset has adopted such measures. In 2011, the Knesset passed the Prevention of Damage to the State of Israel through Boycott Law[48], which allows civil claims for

[42] International Center for Transitional Justice, Israel draft law allows jail for Palestinians aged 12, 22 November 2015, available from https://www.ictj.org/news/israel-draft-law-allows-jail-palestinians-aged-12; Children below the age of 14 would serve first part of the sentence in youth centers before being sent to prison at age 14.

[43] Gisha, One step at a time: Israel revises criteria for exiting Gaza, 26 October 2014, available from http://gisha.org/updates/3614.

[44] Addameer, Special Edition Monthly Newsletter: Events of October 2015, and ICHR, Annual Report 2014, page 15

[45] See Palestinian PM Hamadallah in gaza for Talks to resolve Rift with Hamas, 25 March 2015, Haaretz.

[46] Humanitarian Bulletin Monthly REPORT, January 2015.

[47] Mohammed Omer, Protesters lock ministers in building as Gaza salaries remain unpaid, Middle East Eye, 14 January 2015; see also Michael Schaeffer Omer-Man, Sending the Palestinians to bed without dinner, +972 Magazine, 21 April 2015, and OCHA, Humanitarian Bulletin, Monthly Report January 2015.

[48] A/HRC/20/17/Add.2, paragraph 32.

damages to call for a boycott against Israel and its products and those produced in the settlements in the West Bank. Parties filing lawsuits do not have to prove that a call to boycott has resulted in actual damages, as courts can order people or organizations calling for a boycott to pay compensation independently of the damages caused. In addition, the law allows the Minister of Finance to revoke the tax-exempt status of NGOs calling for a boycott. Furthermore, companies or organizations participating in a boycott may also be disqualified from applying for Government contracts. Another example of restrictive legislative measure is the "Foreign Government Funding Law" - Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity.[49] The law imposes discriminatory invasive reporting requirements on NGOs, requiring them to submit and publish quarterly reports on any funding received from foreign governments or publicly-funded foreign donors, but excludes Jewish and Zionist organisations.[50] In December 2015, the Israeli Government proposed an amendment to this legislation adding further restrictions on organizations receiving foreign funding, including having to wear special tags when addressing the parliament. However, after strong criticism from civil society organizations in Israel and European policy makers, this requirement was abandoned. The bill now includes excessive reporting obligations, raising concerns that the real motivation if to delegitimize and silence NGOs.[51]

47. Four other draft bills, which were not approved, not further promoted or were frozen at different stages of adoption, could have restricted the space for civil society: The Universal Jurisdiction Bill; the Bill on Income of Public Institutions Receiving Donations from Foreign State Entity (Legislative Amendments); the Bill on Preserving the Values of the State of Israel (NGO Loyalty to a Jewish and Democratic State Bill); and the Bill on Exceptions to the Registration of an Association. Many Israeli organizations have denounced the Government's support to such measures.[52] The High Commissioner reiterates concerns expressed by a group of Special Rapporteurs about continued reports of human rights defenders being subjected to physical attacks, harassment, arrest and detention, and death threats, particularly in Hebron in the Occupied Palestinian Territory.[53]

48. Paragraph 1972 (i) of the Mission's report (A/HRC/12/48) called on the Israeli authorities to reiterate their commitment to respecting the inviolability of United Nations premises and personnel and to take all appropriate measures to ensure that violations are not repeated. It further recommends that reparation to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider this matter. The United Nations has still not received any communication from the Government of Israel reiterating such a commitment, however, Israel is a signatory to the 1946 Convention on Privileges and Immunities of the United, Nations, and as such is bound to respect the inviolability of United Nations premises and personnel. Information on reparations was included in the first progress report of the Secretary-General on the status of implementation of the Mission's recommendations (A/HRC/13/55, para.49-53).[54] The

[49] Adalah, "Foreign Government Funding Law" - Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity, available from http://www.adalah.org/en/law/view/497.

[50] Ibid.

[51] European Lawmakers Urge Netanyahu to Rethink 'Transparency Bill', Haaretz, Wednesday, 17February 2016

[52] Association for Civil Rights in Israel, What kind of democracy is this?, 20 December 2015; Ha'aretz, Be'er Sheva Court Bars Talk by Left-wing NGO Breaking The Silence, 24 November 2015.

[53] Stop unacceptable harassment of human rights defenders in Occupied Palestinian Territory – UN experts, 18 December 2015.

[54] Also see: A/HRC/21733 para 23

High Commissioner is concerned that in 2014, during the escalations in Gaza, UN premises were again affected due to violations by Israel.

49. On 10 November 2014, the Secretary-General set up a Board of Inquiry involving United Nations premises[55] during the 2014 escalation in Gaza to review and investigate specific incidents in which death or injuries occurred at, and/or damage was done to United Nations premises. On 27 April 2015, he released a summary of the Board of Inquiry's confidential report (S/2015/286), which indicated Israel's responsibility in six out of the 10 incidents investigated.[56] The Government of Israel continued to engage closely with the United Nations' follow-up to the Board of Inquiry's recommendations. They investigated some of the incidents and have engaged with the United Nations on the ground with a view to improving systems of coordination and communication during hostilities.

50. Paragraph 681 (c) of the Commission's report (A/HRC/29/CRP.4) called upon the Government of Israel to grant access to Israel and the Occupied Palestinian Territory for, and to cooperate with, international human rights bodies and NGOs concerned with investigating alleged violations of international law by all duty-bearers and any mechanisms established by the Human Rights Council to follow up on the Commission's report. The Secretary-General stated that Israel's lack of cooperation with the Commission and other United Nations mechanisms remained of serious concern (A/70/421, paragraph 4). However, Israel has cooperated with other United Nations mechanisms such as the treaty body and Universal Periodic Review process. The resignation of the Special Rapporteur on the situation of human rights in the occupied Palestinian territories, in January 2016, highlighted the issue of non-cooperation by Israel with mechanisms established by Human Rights Council.[57] No mechanism has been established by the Human Rights Council as a follow-up to the Commission's report, but requested OHCHR to follow up on the implementation of recommendations of the Commission and Mission.

51. Paragraph 681 (d) of the Commission's report (A/HRC/29/CRP.4) called on the Government of Israel to address structural issues that fuel the conflict and have a negative impact on a wide range of human rights, including the right to self-determination, in particular: To lift, immediately and unconditionally, the blockade on Gaza; to cease all settlement-related activity, including the transfer of Israel's own population to the occupied territory; and to implement the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory.

52. The High Commissioner notes that this recommendation has not been implemented. In its latest report on Israeli settlements, the Secretary-General notes that Israeli settlement activities continued and remained at the core of many violations of human rights in the Occupied Palestinian Territory, representing also the most serious obstacle to a viable Palestinian state.[58] The Secretary-General also reported that the construction of the Wall in the West Bank, including East Jerusalem continued and that, despite pending legal proceedings, in August 2015, Israel's Ministry of Defense renewed construction work on

[55] 118 UNRWA installations (83 schools and ten hospitals) were directly or indirectly damaged as a result of the Israeli military operations. In three incidents involving UNRWA schools, at least 44 persons were killed and some 222 injured.

[56] The Board of Inquiry confirmed the presence of weaponry belonging to Palestinian armed groups at vacant United Nations premises in three incidents.

[57] OHCHR, Special Rapporteur on Occupied Palestinian Territory resigns due to continued lack of access to OPT, 4 January 2016.

[58] See A/HRC/31/43, para 65

the Wall near Beit Jala in the West Bank.[59] The status of the blockade is described in paragraph 12 of this report.

53. With regard to the Commission's call, under para 681 (e) of its report (A/HRC/29/CRP.4), upon the Government of Israel to accede to the Rome Statute, the High Commissioner notes that the Government of Israel has not acceded to the Statute of the International Criminal Court. However, on 9 July 2015, the Government of Israel announced that it had decided to open a dialogue with the Office of the Prosecutor over the preliminary examination.[60] This recommendation has not been implemented.

E. The Government of Israel, Palestinian Authorities and the authorities in Gaza

54. Paragraph 676 of the Commission's report called on all duty bearers for the implementation of the recommendations made by previous commission of inquiry, fact finding missions, United Nations treaty bodies, special procedures and other United Nations bodies. In essence this falls outside the scope of the current exercise of providing updates on the status of implementation of recommendations of the Mission and the Commission. However, the High Commissioner notes that commitment and political will of parties to engage in good faith is key in ensuring the implementation of all recommendation of various mechanisms.

55. In paragraph 677 of its report, the Commission called upon all parties to fully respect international humanitarian law and human rights law; to ensure the right of all victims to an effective remedy, including full reparations, without further delay; and to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened. In light of the current status of implementation of the recommendations of the Mission and the Commission as reflected in the report, and against the backdrop of violations of international human rights and international humanitarian law that continues to be committed by all parties, the High Commissioner expresses serious concerns about the lack of implementation of the recommendation. Furthermore, with reference to reparation, the limited progress in investigating alleged violations of international law by all parties and in the absence of establishing an escrow fund for victims, no progress has been made in establishing a reparation mechanism. However, Israel reportedly compensated its own citizens for damages caused directly or indirectly by military operations[61]. The High Commissioner calls on Israel, as the Occupying Power, to extend such compensation to Palestinian victims of Israeli attacks of the conflict as well.

56. With regard to cooperation with the International Criminal Court, the High Commissioner notes that on 16 January 2015, the Prosecutor of the International Criminal Court opened a new preliminary examination into the situation in Palestine.[62] At the time of

[59] See A/HRC/31/42, para 16

[60] Office of the Prosecutor, International Criminal Court, Report on Preliminary Examination Activities (2015), 12 November 2015, paragraph 75, available from https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf

[61] See the Gaza 2014 Gaza Conflict, 7 July-26 August 2014, para 222. These compensations were paid out of the Tax Authority Compensation Fund, founded in accordance with the Israeli law, under which the Minister of Finance has the discretion to compensate civilians for indirect damages.

[62] Report of the International Criminal Court on its activities in 2014/15, A/70/350 of 28 August 2015, paragraph 21

writing, the preliminary examination was in phase two.[63] The State of Palestine has made three submissions to the Prosecutor. On 23 November 2015, four Palestinian organisations delivered a confidential communication to the Prosecutor of the International Criminal Court[64]. The High Commissioner also notes that on 9 July 2015, the Government of Israel announced that it had decided to open a dialogue with the Office over the preliminary examination.[65]

57. In paragraph 678 of its report (A/HRC/29/CRP.4), the Commission called upon Israelis and Palestinians to demonstrate political leadership by refraining from and taking active steps to prevent statements that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence. In the last quarter of 2015, in the face of increased friction between Israeli and Palestinians, Israeli NGOs and media reported an alarming climate of incitement to violence against Palestinians and Israeli civil society organizations. According to Israeli organizations, politicians and senior police officers have failed to act to calm the public climate of incitement and openly called for the extrajudicial killing of suspects.[66] The situation has been further aggravated by Israeli policies of punitive house demolitions and of withholding the dead bodies of alleged attackers.[67] On the other hand, according to reports, some Palestinians used social media to praise and encourage attacks against Israeli civilians.[68] The High Commissioner urges all parties to take effective measures to end all forms of incitement, including by proactively reacting to incitement to violence and inflammatory statements.

F. Palestinian armed groups

58. Paragraph 1973 (a) of the Mission's report A/HRC/12/48 recommended that Palestinian armed groups undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities. A similar recommendation was made by the Commission, in paragraph 683 (a) of its report, urging Palestinian armed groups to respect the principles of distinction, proportionality and precaution, including by ending all attacks on Israeli civilians and civilian objects, and stopping all rocket attacks and other actions that may spread terror among the civilian population in Israel.

59. The High Commissioner notes with concern that rocket and mortar attacks against Israel continued to be launched by Palestinian armed groups from Gaza. According to the

[63] International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities (2015), 12 November 2015

[64] Al-Haq, Palestinian Human Rights Organisations Deliver Submission to the International Criminal Court on Alleged Israeli War Crimes and Crimes against Humanity during 2014 Gaza offensive, 23 November 2015

[65] Office of the Prosecutor, International Criminal Court, Report on Preliminary Examination Activities (2015), 12 November 2015, paragraph 75

[66] B'Tselem, Human Rights Organizations in Israel: Politicians' calls to police and soldiers to shoot rather than arrest endorse the killing of Palestinians, 14 October 2015; see also, Yesh Din, Israeli NGOs: shocked by assault against Rabbi Arik Ascherman and authorities' tolerance of incitement directed against Palestinians and human rights advocates, available from http://www.yesh-din.org/hottopview.asp?postid=35

[67] OHCHR, Press briefing note on Burundi, Israel / Occupied Palestinian Territory, Cuba and High Commissioner speeches, 16 December 2015

[68] New York Times, Palestinian Anger in Jerusalem and West Bank Gets a Violent Soundtrack, 22 October 2015, available from http://www.nytimes.com/2015/10/23/world/middleeast/palestinians-israel-stabbings-shootings.html

Israeli Ministry of Foreign Affairs, between September 2014 and 16 December 2015, 26 rockets had landed in Israel.[69] Rockets have been consistently fired and tested, with varying degree of intensity, since the Mission's recommendation.

60. With regard to measures intended to prevent harm to Palestinian civilians, during the summer of 2014, on three occasions, weapons components were placed in three vacant UNRWA schools in Gaza, in breach of the inviolability of United Nations premises.[70] Furthermore, some of these weapons used by Palestinian armed groups do not discriminate between civilian objects and military objectives and are therefore contrary to international humanitarian law.

61. The High Commissioner urges Palestinian armed groups to respect international humanitarian law obligations, including by renouncing attacks on Israeli civilians and civilian objects and take all feasible precautionary measures to avoid harm to civilians during hostilities, with a view to ensuring the most adequate and effective implementation of recommendations of the Mission and Commission.

G. The State of Palestine, Palestinian authorities and the authorities in Gaza

62. Paragraph 1974 (a) of the Mission's report (A/HRC/12/48) recommended that the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigations of all allegations of serious human rights violations by security forces under its control, and end the resort to military justice to deal with cases involving civilians.

63. The High Commissioner notes that in early 2010, the Palestinian Authority established a four-member Independent Investigation Commission by Presidential Decree to follow up on the implementation of the Mission's recommendations (A/HRC/15/50, para. 65). The Independent Investigation Commission presented its report in August 2010.[71] Subsequently, the Council of Ministers of the Palestinian Authority established a Ministerial Committee, which proposed short-term and long-term strategies, including regarding to the application of military jurisdiction to civilians[72] and the adoption of the Palestinian criminal code.[73] However, the High Commissioner is concerned that some of the violations committed during the 2009 conflict were repeated during the 2014 conflict.

64. Paragraph 682 (a) of the Commission's report called upon the State of Palestine to ensure that investigations into violations of international humanitarian law and international human rights law, including international crimes, by the Palestinian Authority, the

[69] Israeli Ministry of Foreign Affairs, Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead (Jan 2009), 16 December 2015.

[70] Based on UNRWA's inputs.

[71] As reported by the Committee of Independent experts (A/HRC/16/24, paragraph 49), the Palestinian Independent Investigation Commission could not effectively investigate rockets attacks from Gaza due to lack of access to evidence in Israel.

[72] On 17 January 2011, the Palestinian Authority reportedly announced that military courts would no longer try civilians. See Al-Haq, "Palestinian General Intelligence: civilians will be no longer tried in military courts", 17 January 2011. Available from www.alhaq.org/etemplate.php?id=566

[73] For more information see, Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, A/HRC/16/24, paragraphs 51 and 52. The adoption of the Palestinian Criminal Code is still pending.

authorities in Gaza and Palestinian armed groups, where substantiated, comply with international human rights standards, and that full accountability is achieved, including through criminal proceedings.

65. On 25 August 2015, the Palestinian Council of Ministers adopted Decision No. 05/65/17/M.O/R.H establishing an Independent National Commission to monitor the implementation of the recommendations of the report of the UN Commission of Inquiry of 2014 addressed to Palestinian authorities. On 6 January 2016, the "investigation" committee sent a letter to OHCHR-OPT and many other Civil Society Organisations in West Bank and Gaza in order to brief them on its establishment and goals. According to the letter, the committee was formed to investigate alleged violations in both West Bank and Gaza strip. The Independent National Commission is required to present its report to the Palestinian President and Cabinet in due course. The High Commissioner calls on the Government of the State of Palestine to expedite the implementation of the recommendation of the UN Commission of Inquiry of 2014. The High Commissioner is concerned about the lack of progress in ensuring accountability.

66. In its report A/70/421 (paragraph 62), the Secretary-General notes that the Gaza Ministry of Interior reportedly established an investigation into the circumstances of the summary executions of alleged collaborators in Gaza during the 2014 hostilities. In January 2015, a Ministry spokesperson said that the executions were carried out by Palestinian resistance factions. With respect to the detainees, he denied official involvement in the executions claiming that they had escaped from prison and were captured and executed by armed groups close to the fence after they engaged in hostilities. A Hamas statement on 27 May 2015 similarly denied any role in the executions and claimed that the Attorney-General's Office and the Ministry of Interior were continuing with the investigation and would publish the findings upon completion. The High Commissioner has no further updates on this matter. The High Commissioner expresses concerns about the lack of information and at the failure to ensure accountability.

67. Palestinian human rights organizations have referred two cases to the Attorney-General in Gaza of attacks of civilians by armed groups during the summer 2014 hostilities. In one case, the alleged victim sustained serious injuries resulting in the amputation of his legs. The Attorney-General had not responded to the complaints by the end of the reporting period, but had reportedly referred them to the Internal Security Agency.

68. Paragraph 1874 (b) the Mission's report (A/HRC/12/48) recommended that the Palestinian Authority and the Gaza authorities release without delay all political detainees in their power and refrain from further arrests on political grounds and in violation of international human rights law.

69. The High Commissioner reports that arbitrary detention based on political grounds has continued in the Occupied Palestinian Territory. Palestinian detainees are held without formal charges and denied proper procedures for detention. Detainees are often deprived of visits by their families or lawyers. Such practice affects Hamas affiliates in the West Bank and Fatah affiliates in the Gaza Strip.[74] A peak in arbitrary arrests by the Palestinian security forces in the West Bank, resulting in the detention of some 120 people, including some allegedly affiliated to Hamas, was registered by Al-Haq, in July 2015.[75] In September

[74] The Independent Commission for Human Rights, The Status of Human Rights in Palestine, Twentieth Annual Report, 14 May 2015, page 17.

[75] Al-Haq, Al-Haq Demands a Stop to the Campaign of Arrests and Warns Against a Continuing Deterioration of Rights and Freedoms, 06 July 2015; Al Jazeera, Hamas members arrested in West Bank crackdown, 04 July 2015.

2015, media reports stated that 40 people affiliated to Fatah had been arrested in Gaza.[76] The High Commissioner urges the Palestinian Authority and the authorities in Gaza to promptly release all political detainees and refrain from any such arrests.

70. Paragraph 1974 (c) of the Mission's report (A/HRC/12/48) recommended that the Palestinian Authority and the Gaza authorities continue to enable the free and independent operation of Palestinian NGOs, including human rights organizations, and of the Palestinian Independent Commission for Human Rights.

71. The High Commissioner notes that the repression of freedom of expression and attacks on civil society organizations have continued in the Occupied Palestinian Territory. In the first half of 2015, the Palestinian Centre for Development & Media Freedoms (MADA) recorded a 103 per cent increase in violations against journalists and media freedoms by Palestinian authorities. 65 incidents were reported in the West Bank and 45 in Gaza.[77] The High Commissioner also notes with concern the role of the NGO Affairs Committee, established in December 2012 by Presidential decree, and of a special committee set up in August 2014, under the Palestinian Authority Financial and Administrative Control Administration, to monitor and regulate the activities of civil society organizations and the compliance of their internal by-laws with the Palestinian Law on Charitable Societies.[78]

72. In paragraph 683 (b) of its report, the Commission also recommended that the authorities in Gaza and Palestinian armed groups take measures to prevent extrajudicial executions and eradicate torture, cruel, inhuman and degrading treatment; to cooperate with national investigations aimed to bring those responsible for violations of international law to justice; and to combat the stigma faced by families of alleged collaborators. The Palestinian Independent Commission for Human Rights, in its 2014 Annual Report, stated that it had received 1,274 complaints of alleged violations of the right to physical safety (287 complaints referred to cases in the West Bank and 996 to cases in the Gaza Strip)[79].

73. In paragraph 682 (b) of its report, the Commission called upon the State of Palestine to accelerate efforts to translate the declaration on Palestinian unity into tangible measures on grounds that would enable the Government of National Consensus to ensure the protection of human rights and achieve accountability for victims. The High Commissioner notes that the National Action Plan for Human Rights, drafted with the assistance of OHCHR, was approved by the Minister of Justice and the Minister of Planning. Its recommendations were incorporated into the final version of the Palestinian national development plan for 2014–16 despite the lack of political progress in achieving full political reconciliation since the establishment of the Government of National Consensus in June 2014. The High Commissioner also notes the reported progress of the Government, working with technical assistance and advice from OHCHR and various United Nations entities, in implementing its obligations under the seven international human rights treaties to protect and promote human rights in Palestine, starting with the drafting of a set of baseline reports for submission to the treaty bodies.

[76] Middle East Monitor, Fatah accuses Hamas of arresting its members in Gaza, 9 September 2015.

[77] Palestinian Center for Development & Media Freedoms (MADA), Media freedoms Violations in Palestine Semi-annual report 2015;

[78] High Representative of the European Union for Foreign Affairs and Security Policy, Implementation of the European Neighbourhood Policy in Palestine Progress in 2014 and recommendations for actions, 25 March 2015, page 5; Al-Haq, Unconstitutional Presidential Decrees Seek to Control Civil Society Organisations, 18 February 2013.

[79] The Independent Commission for Human Rights, The Status of Human Rights in Palestine, Twentieth Annual Report, 2014, page 17.

H. International community

74. The Mission recommended that the States parties to the Geneva Conventions relating to the protection of victims of international armed conflicts start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949, and where so warranted following investigations, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice (A/HRC/12/48, para 1975 (a)).

75. The High Commissioner notes that, in addition to cases mentioned in Secretary-General's report (A/HRC/15/51, paragraph 62), two separate cases were filed in the United Kingdom against Tzipi Livni[80] and Ehud Barak in 2009.[81] In October 2015, media reported on a case filed in the United States of America against Ehud Barak in relation to the incident of the Gaza Flotilla of 31 May 2010.[82] In relation to the same incident, in November 2015 a Spanish judge asked to be notified of the presence within its jurisdiction of seven Israeli officials.[83]

76. In paragraph 1975 (b) of its report (A/HRC/12/48), the Mission recommended that international aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population. According to the report of the Secretary-General on assistance to the Palestinian people (A/70/76–E/2015/57, paragraph 70), between May 2014 and March 2015, UNRWA supported individual psychosocial counselling for 18,292 Palestinian refugees in Gaza and 10,806 group counselling sessions. The Gaza Child Protection Working Group provides that 194,736 children and 60,461 adults with psychosocial distress and mental disorders were reached through structured psychosocial group activities and 29,128 children and 2,362 adults reached through individual counseling.

77. In paragraph 1975 (c) of its report (A/HRC/12/48), the Mission recommended that donor countries and assistance providers continue to support the work of Palestinian and Israeli human rights organizations. According to its submission to OHCHR for the purpose of this report, the European Union continued to support the work of human rights organisations through the European Instrument for Democracy and Human Rights. According to the NGO Development Centre, in 2014, their programmes on human rights and good governance funded by foreign donors provided Palestinian human rights organizations with over 760,000 USD.[84]

78. In paragraph 1975 (d) of its report (A/HRC/12/48), the Mission recommended that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives. In its

[80] BBC, Israel fury at UK attempt to arrest Tzipi Livni, 15 December 2009.

[81] The Guardian, Israeli minister Ehud Barak faces war crimes arrest threat during UK visit, 29 September 2009.

[82] The Guardian, Former Israeli prime minister sued in US for raid on Gaza flotilla, 21 October 2015, available from http://www.theguardian.com/world/2015/oct/21/former-israeli-prime-minister-sued-in-us-for-raid-on-gaza-flotilla

[83] The Independent, Spain 'issues arrest warrant' for Israeli PM Benjamin Netanyahu over 2010 Gaza flotilla attack, 18 November 2015, available from http://www.independent.co.uk/news/world/europe/spain-issues-arrest-warrant-for-israeli-prime-minister-benjamin-netanyahu-over-2010-gaza-flotilla-a6736436.html

[84] NGO Development Center, Annual Report 2014, page 29, available from http://www.ndc.ps/sites/default/files/NDC-AR2014-web-English.pdf

submission to OHCHR, the European Union reported that in its Foreign Affairs Council of July 2015, it reiterated that it considered compliance with international humanitarian and human rights law as a cornerstone for peace and security in the region. On 27 September 2013, the Quartet discussed the humanitarian needs of Gaza residents and emphasized the importance of increased access into Gaza through legal crossings. The High Commissioner encourages Sates to redouble their efforts to ensure that respect for the rule of law, international law and human rights are central in peace initiatives.

79. Paragraph 1975 (b) of the Mission's report (A/HRC/12/48) recommended that, in view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, a programme of environmental monitoring be implemented under the auspices of the United Nations, for as long as deemed necessary, and that the environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analyzed by one or more independent expert institutions.

80. The High Commissioner notes that in follow-up to the its study "*Environmental Assessment of the Gaza Strip following the escalation of hostilities in December 2008 – January 2009"*, UNEP highlighted the grave conditions of the sewage system and the need for desalination plants. According to information submitted to OHCHR by the UNCT, a programme of environmental monitoring has not taken place due to Israel's denying access to UNEP experts who were to investigate the pollution and other environmental aspects in Gaza. Moreover, the entry of metal detection machines purchased by UNDP to ensure the quality of the rubble before crushing it for reuse was delayed for nearly a year. UNEP confirmed[85] that the ongoing North Gaza Emergency Sewage Treatment Project funded by the World Bank was addressing the dire water and sanitation conditions in Gaza.[86] UNDP has also been involved in environmental activities in Gaza, including on debris and UXOs removal, and in a heavy metal survey for the coastal aquifer in cooperation with the Palestinian Water Authority and Coastal Municipal Water Unit.[87]

81. The High Commissioner urges Israel to fully cooperate with UNEP experts, including by providing them full access to assess environmental damage and removing all obstacles in transporting required machines into Gaza.

82. In paragraph 684 of its report, the Commission called upon the international community (a) to promote compliance with human rights obligations, and to respect and ensure respect for, international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with Article 1 common to the Geneva Conventions; (b) to use its influence to prevent and end violations, and to refrain from encouraging violations by other parties. As mentioned above the European Union Council of Foreign Ministers has taken some initiative in this regard.[88] States have made statements with regard to specific incidents, for example, in October 2015 the United States publicly expressed their concerns

[85] UNEP communication to OHCHR.

[86] World Bank, Northern Gaza Emergency Sewage Treatment (NGEST) Project (P074595), Implementation Status & Results Report, available from http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/MNA/2015/06/22/090224b082f772cd/1_0/Rendered/PDF/West0Bank0and00Report000Sequence024.pdf

[87] UNCT inputs to OHCHR.

[88] Supra, paragraph 78-79.

about the excessive use of force by Israel in response to Palestinian attacks against civilians.[89]

83. In paragraph 684 (c) of its report, the Commission called upon the international community to accelerate and intensify efforts to develop legal and policy standards that would limit the use of explosive weapons with wide-range effects in populated areas with a view to strengthening the protection of civilians during hostilities.

84. The issue has been discussed in a number of international expert level meetings. In September 2015, Austria and OCHA hosted a meeting in Vienna to highlight the humanitarian impact of the use of explosive weapons in populated areas and to begin discussions on political approaches to the matter[90]. The participating governments indicated support for developing a political commitment on this issue. Some 50 States and intergovernmental institutions[91] publicly acknowledged the harm caused by explosive weapons in populated areas in public statements, including during Security Council and General Assembly sessions.[92] As reported in the submission presented by the European Union to OHCHR, the European Union Action Plan on Enhancing the Security of Explosives contains prevention, detection and response measures, as well as the development of information-sharing and research mechanisms. The European Union has also adopted extensive legislation regarding the civil use of explosives.

85. In paragraph 684 (d) of its report, the Commission called upon the international community to actively support the work of the International Criminal Court in relation to the Occupied Palestinian Territory; to exercise universal jurisdiction to try international crimes in national courts; and to comply with the extradition requests pertaining to suspects of such crimes to countries where they would face a trial. The High Commissioner notes that while it is early stages of the proceeding before the International Criminal Court and information on prosecutions by national courts under the principle of universal jurisdiction are scarce, the international community should do everything possible to implement the recommendation fully.

I. International community and responsible Palestinian authorities.

86. In paragraph 1976 (a) of its report (A/HRC/29/CRP.4), the Mission recommended that the international community and responsible Palestinian authorities establish appropriate mechanisms to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip were smoothly and effectively disbursed, and urgently put to use for the benefit of the population of Gaza.

87. The UN Country Team reported that in September 2015, it established the UN Gaza Reconstruction and Recovery Coordination Group[93], tasked with (a) the coordinating and

[89] The Washington Post, Obama administration accuses Israel of terrorism, 'excessive force', 15 October 2015, available from http://www.washingtontimes.com/news/2015/oct/15/obama-admin-accuses-israel-terrorism-excessive-for/

[90] International Network on Explosive Weapons, States support the development of a political commitment on explosive weapons, 28 September 2015; see also Reaching Critical Will (RCW), Ending the use of explosive weapons in populated areas, available from http://www.reachingcriticalwill.org/news/latest-news/10180-ending-the-use-of-explosive-weapons-in-populated-areas

[91] International Network on Explosive Weapons, Acknowledging the Harm, available from http://www.inew.org/acknowledgements

[92] International Network on Explosive Weapons, News, available from http://www.inew.org/news

[93] The UN Recovery and Reconstruction Group is led by UNRWA, with UNDP as Vice-Chair.

tracking the progress of the Gaza reconstruction and recovery effort and (b) supporting the Prime Minister's Office and the Government-led National Office for Gaza Reconstruction (NORG) in its recovery and reconstruction coordination function. The Secretary-General regretted that the disbursement of funds pledged at the donor conference in Cairo in 2014 has been low (A/70/76, paragraph 16). In January 2015, the Government of Spain disbursed 1 million Euros to UNRWA to support the reconstruction and provision of essential services. According to the World Bank, as of 31 August 2015, only 35 per cent of the support pledged at the Cairo conference has been disbursed.[94] The High Commissioner reiterates the considerations expressed by the UN Secretary-General at the donor conference of 2014 where he expressed concerns at the regrettable cycle of building and destroying in Gaza, and stated that the successful reconstruction requires not only financial support but a strong political foundation.[95]

88. In paragraph 1976 (b) of its report (A/HRC/29/CRP.4), the Mission recommended that in view of the consequences of the military operations, responsible Palestinian authorities and international aid providers should pay special attention to the needs of people with disabilities and patients who had suffered amputations or been otherwise injured by munitions. The Mission also recommended that financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

89. On 3 May 2014, the State of Palestine became a State Party to the Convention on the Rights of Persons with Disabilities and, with support from OHCHR and other United Nations agencies, the Government is undertaking its baseline needs assessment for implementation in the form of its initial report for submission to the treaty body in Geneva. The Secretary-General (A/70/76, paragraph 54) noted that five United Nations agencies continued to implement a joint programme to strengthen respect for the human rights of people with disabilities and mainstream such rights in schools and employment services. However, the situation of the health sector remains one of grave concern. According to its input to OHCHR, the Government of Bahrain, in cooperation with Islamic Relief Worldwide, supported projects to build and fit prosthetics for 1,200 disabled people in the Gaza Strip, who were also rehabilitated and trained to work and ensure an income to their families. In April 2015, the Palestinian Ministry of Health faced a debt of over 250 million USD, which has prevented the purchased of essential equipment that is not available in Gaza, such as orthopaedic and plastics equipment to conduct secondary reconstructive surgery.

J. International community, Israel and Palestinian authorities

90. In paragraph 1977 (a) of its report (A/HRC/12/48), the Mission recommended that Israel and representatives of the Palestinian people, and international actors involved in the peace process, engage Israeli and Palestinian civil society in devising sustainable peace agreements based on respect for international law. It noted that the participation of women should be ensured, in accordance with Security Council resolution 1325 (2000). On 18 June 2015, as part of its work on enhancing Palestinian women's leadership and participation in decision-making processes, the Central Election Commission and UN Women signed an

[94] The World Bank, Reconstructing Gaza - Donor Pledges, 29 September 2015, http://www.worldbank.org/en/programs/rebuilding-gaza-donor-pledges

[95] Secretary-General, Statements, 14 October 2014, http://www.un.org/sg/statements/index.asp?nid=8099

agreement for a two-year joint project to empower women in local communities.[96] UN-Women also continued to support the Palestinian Independent Commission for Human Rights in monitoring women's access to justice in the Occupied Palestinian Territory (A/70/76, paragraph 89). The High Commissioner notes that in December 2015, a conference that offers a platform for civil society engagement with regards to the peace process was organised by the Geneva Initiative at the Israeli Knesset. On 14 December 2014, the Israeli Government announced the establishment of an inter-ministerial team to form and consolidate a national action plan for implementing Security-Council resolution 1325.[97]

91. In Paragraph 1977 (b), the Mission recommended that attention be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security. The State of Palestine acceded to the Convention on the Elimination of All Forms of Discrimination against Women on 3 May 2014, and is currently undertaking, with support of OHCHR, UN Women and other United Nations agencies, its baseline needs assessment for implementation in the form of its initial report to the CEDAW Committee in Geneva. UN Women is implementing a range of programmes aimed at improving Palestinian women's social and economic situation.[98] As reported by the Secretary-General, UN Women continued to support the Palestinian Independent Commission for Human Rights in monitoring women's access to justice in the Occupied Palestinian Territory (A/70/76, paragraph 89).

K. Secretary-General

92. Paragraph 1978 of the Mission's report (A/HRC/12/48) recommended that "the Secretary General develop a policy to integrate human rights into peace initiatives in which the United Nations is involved, especially the Quartet (paragraph 1978). It also requested the United Nations High Commissioner for Human Rights to provide expertise required to implement this recommendation".

93. This recommendation has been implemented in an ongoing manner as the Secretary-General consistently endeavours to integrate human rights into peace initiatives involving the United Nations, including the Quartet[99]. However, at the time of drafting of this report, peace negotiations between Israel and the State of Palestine were stalled.

L. Office of the United Nations High Commissioner for Human Rights

94. Paragraph 1979 (a) of the Mission's report (A/HRC/12/48) recommended that OHCHR monitor the situation of people who have cooperated with the United Nations Fact-Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate". This recommendation has been implemented through OHCHR presence in OPT and its staff's regular interaction with individuals who cooperated with the Mission. As part of its

[96] UN Women, the Central Election Commission and UN Women sign an agreement to enhance women's political participation, 18 June 2015, available from http://palestine.unwomen.org/en/news-and-events/stories/2015/06/cec-agreement#sthash.j7uMILgS.dpuf

[97] http://www.pmo.gov.il/secretary/GovDecisions/2014/Pages/des2331.aspx

[98] UN Women, Programmes, http://palestine.unwomen.org/en/what-we-do/economic-empowerment/programmes.

[99] For an assessment by the Secretary-General of the importance of human rights in the peace process, see A/HRC/28/45.

monitoring mandate, OHCHR continues to document human rights violations in the OPT, including reprisals against human rights defenders.

95. The Mission also recommended that OHCHR give attention to its recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council (paragraph 1979(B)). The most recent OHCHR report on the matter was presented at the twenty-eighth session of the Council (A/HRC/28/80 and A/HRC/28/80.Add1) and does reflect the situation in relation to some of the recommendations made by the Mission.

M. Conclusion

96. **The High Commissioner notes that while progress has been made on implementing some recommendations, a number of recommendations are yet to be fully implemented. On a range of issues, the situation continues to deteriorate and certain measures adopted only increase violations of human rights and humanitarian law. Piecemeal measures adopted on paper are not sufficient, but a holistic approach in implementing recommendations should be taken, bearing in mind that the effects of such changes should be reflected in improvements on the human rights situation of the people.**

97. **In light of the above, the High Commissioner urges all parties concerned to urgently implement all recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict.**

98. **The High Commissioner stresses the urgency of implementation of recommendations, particularly on accountability and the review of policies governing military operations, law enforcement activities in the context of occupation and respect international humanitarian and human rights laws in general, by all parties to the conflict. The High Commissioner underscores that the international community should continue to focus on issues related to the Occupied Palestinian Territory, and implement recommendations addressed to it.**

99. **The High Commissioner believes that such implementation would significantly improve the human rights situation in the Occupied Palestinian Territory and Israel.**

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1*

Report of the United Nations High Commissioner for Human Rights

Summary

The present ninth periodic report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council resolutions S-9/1 and S-12/1, including the human rights situation in the Occupied Palestinian Territory, covers the period from 1 November 2015 to 31 October 2016. It highlights issues of concern in the Occupied Palestinian Territory, including excessive use of force, unlawful killings, arbitrary detention and ill-treatment by Israeli authorities, children in detention, the use of collective punishment and the situation of human rights defenders. It also examines issues of concern in relation to the Palestinian authorities, including restrictions and violations of freedom of expression and peaceful assembly, violence against women and the death penalty. The report makes recommendations to the main duty bearers concerned, namely, the Government of Israel, the Government of the State of Palestine and the authorities in Gaza.

* The present report was submitted late to reflect most recent developments.

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I. Introduction

1. The present ninth periodic report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council resolutions S-9/1 and S-12/1, including the human rights situation in the Occupied Palestinian Territory, covers the period from 1 November 2015 to 31 October 2016.

2. The information contained in the report is drawn largely from human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. The report also reflects information from other United Nations entities and from non-governmental organizations, and should be read in conjunction with other reports of the Secretary-General (A/HRC/34/39; A/HRC/34/38, A/71/355 and A/71/364).

3. During the reporting period, the upsurge in violence that had begun in the West Bank in September 2015 continued. October 2015 had been a particularly bloody month, but attacks against Israelis and shootings by Israeli Security Forces continued at a high rate during the whole reporting period, particularly from November 2015 to February 2016. Despite relatively lower numbers of violent incidents thereafter, the reporting period witnessed high numbers of Palestinian casualties. According to the Office for the Coordination of Humanitarian Affairs, during the reporting period, 172 Palestinians, including 39 children, were killed and 9,279 injured, including 2,480 children. The highest death toll since the second intifada was recorded in the West Bank, including East Jerusalem, with 160 fatalities. Attacks by Palestinians during the reporting period resulted in 24 Israelis killed, including 1 child, and 255 injured, including 17 children.[1] Beyond those statistics, there remains an enduring climate of impunity for law enforcement officers and a general lack of accountability.

4. In Gaza, two years after the escalation of hostilities during the summer of 2014, less than 9 per cent of referred incidents of alleged violations of international humanitarian law and international human rights law, including allegations of war crimes, have led to a criminal investigation. Serious concerns persist regarding the lack of investigations and accountability by both Israeli and Palestinian authorities and the lack of civil remedies and compensation to victims.

5. Those developments occurred against a backdrop of continued occupation by Israel and a lack of unity within the Palestinian Government. As the occupation enters its fiftieth year, and the blockade of Gaza its tenth, there is no solution in sight. As the Secretary-General stated last year, “Palestinian frustration is growing under the weight of a half century of occupation and the paralysis of the peace process”.[2]

II. Legal framework

6. A detailed analysis of relevant international human rights law and international humanitarian law and the legal obligations of all duty bearers are contained in the report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory to the thirty-fourth session of the Human Rights Council.[3]

[1] Figures provided by the Office for the Coordination of Humanitarian Affairs.

[2] See www.un.org/undpa/en/speeches-statements/26012016/MiddleEast.

[3] A/HRC/34/38.

III. Human rights violations by all duty bearers

A. Israel

1. Excessive use of force and unlawful killings

7. The reporting period witnessed high numbers of deaths among Palestinians and Israelis, in many cases in circumstances that may amount to violations of international human rights law and standards. United Nations officials have consistently raised concerns over alleged excessive use of force and unlawful killings, including extrajudicial executions by Israeli Security Forces. The High Commissioner has noted the enduring climate of impunity for law enforcement officers. According to available information, one soldier is on trial for manslaughter allegedly committed in Hebron in March 2016, while other cases of killings have not led to a criminal investigation, let alone a trial.[4]

8. In a number of instances monitored by OHCHR, Palestinians were killed as a result of the use of force that appeared to be unnecessary and unwarranted.

9. In the early morning of 21 June 2016, 15-year-old Mahmoud Badran was killed and four other Palestinians, including three children, were injured when Israeli Defense Forces soldiers opened fire at their car as they were driving on an underpass road connecting two Palestinian villages. One of the injured boys told OHCHR that they had been shot without warning by two individuals standing next to a parked car on the Israeli-controlled route 443, above the road on which they had been driving. The shooting continued until the car hit the underpass wall. Initially, Israeli Defense Forces claimed that the boys had been involved in rioting, but a spokesperson for the Israeli Defense Forces later acknowledged that the car had been mistakenly targeted following a stone-throwing incident in the area. The manner of shooting "suspects" raises serious concern about the rules of engagement of Israeli Defense Forces, as the boys had not presented any threat.

10. On 21 September, security guards at a checkpoint near Qalqilya, northern West Bank, shot an unarmed 12-year-old Palestinian girl in the legs as she was approaching them. She was subsequently detained until the following day. Israeli media reports initially referred to the incident as an attempted stabbing by the victim, and the security guards claimed she had not obeyed their order to stop. The girl told OHCHR that she had been unable to understand the guards who were shouting in Hebrew, but had stopped before she was shot and hit twice in the legs at close range. Photographs of the incident corroborate her testimony. The girl had been unarmed and had not presented any threat at the time. The initial claim by Israeli Defense Forces that she had been attempting to attack the security guards was rejected by a military court, which ordered her release.

11. In Gaza, Israeli Security Forces use firearms almost on a daily basis along the Israeli designated "access restricted area" on land and sea. Most of the 420 injuries and 7 fatalities in Gaza caused by Israeli Security Forces during the reporting period were from the use of firearms, often in the context of demonstrations after Friday prayers along the Israel-Gaza fence. During such demonstrations, protesters wave flags and sing, but also throw stones. On occasion, Molotov cocktails are thrown. International human rights standards permit the use of firearms by law enforcement officers only when there is an imminent threat of death or serious injury. Since Israeli Defense Forces have defensive equipment, including bunkers and armoured vehicles, and given the significant distance between soldiers and protestors across the fence, it is not clear whether the threshold to use firearms had been reached in most cases. The practice of Israeli Security Forces along the Gaza fence is consistent with

[4] See A/71/355, paras. 38 and 45, and A/71/364, paras. 9 and 45.

other cases monitored by OHCHR and indicates that they often use firearms against Palestinians on mere suspicion or as a precautionary measure, in violation of international standards.[5]

12. The reporting period saw a significant increase in the use of firearms by Israeli Security Forces for crowd control in the West Bank, particularly in refugee camps. On 16 August 2016, one of the largest search-and-arrest raids, reportedly involving three Israeli Defense Forces battalions, took place in Al-Fawwar refugee camp resulting in clashes between Israeli Defense Forces and Palestinians. On that day, Mohammad Abu Hashash was killed and 32 other Palestinians wounded by gunshots by Israeli Security Forces. Mr. Abu Hashash, who had been unarmed, was shot in the back by a sniper. There was no indication that he had presented an imminent threat. A witness told OHCHR that the situation had been calm in the neighbourhood at the time, and that the street had been empty when Mr. Abu Hashash left his house and was immediately shot without warning.

13. In 2016, over half of all injuries suffered by Palestinians from live ammunition occurred in refugee camps.[6] Many such injuries have resulted in loss of limbs and other permanent disabilities, including blindness. Human rights groups have raised concerns over the use by Israeli Security Forces of 0.22 Ruger rifles as a means of crowd control, in violation of official regulations[7] and international standards, which allow the use of firearms only in the event of an imminent threat. Interviews conducted by OHCHR from Al-Fawwar, Ad-Duhiesha and other refugee camps suggest that this practice of using live ammunition is continuing. UNRWA has also expressed concerns with the Israeli authorities about the alarming use of live ammunition.[8] Such extensive use of firearms raises doubts as to whether the acts of Israeli Security Forces are consistent with their obligation to exercise restraint and minimize injury.[9]

14. The High Commissioner previously raised concerns about the inappropriate use of less lethal weapons.[10] Notwithstanding, the Office for the Coordination of Humanitarian Affairs recorded that 3 people were killed and 7,678 injured by such weapons. On 9 September 2016, for example, a 16-year-old boy was hit in the face and killed with a flare during a protest at the Israel-Gaza fence east of Al-Boureij. The flare cartridge was recovered and medical records showed that the cause of death was associated with a perforation above the boy's left eye. OHCHR monitoring indicated that he had been hit while trying to throw back a tear-gas canister fired by Israeli Security Forces some 20 metres away. A witness testified that a soldier may have fired the flare directly at the child.

15. The Secretary-General has specifically highlighted the dangers of black sponge bullets used by Israeli Security Forces in East Jerusalem.[11] Israeli police regulations state that sponge bullets should not be used against children and should not be aimed towards the upper part of the body. Nevertheless, on 19 July, 10-year-old Mohyi al-Tabakhi was killed after being shot in the chest by a black sponge bullet from a distance of 25-30 metres. According to two witnesses, Israeli Security Forces fired tear gas at older children who had been throwing stones towards them. One witness told OHCHR that a border guard shot a sponge-bullet directly at Mohyi. The bullet hit him in the chest and he collapsed after taking a few steps. A man who came to rescue the child was also shot in the arm with a sponge bullet.

[5] See www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx (Principle 9).
[6] See www.ochaopt.org/content/monthly-humanitarian-bulletin-september-2016.
[7] See www.btselem.org/firearms/20151102_october_west_bank_demonstrations.
[8] See www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-161-162.
[9] See www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx (Principle 5).
[10] See A/HRC/31/40, para. 26.
[11] See A/71/364, para. 16.

16. The Secretary-General has raised concerns over the arbitrary deprivation of life due to non-provision of medical assistance and to the Israeli practice of preventing Palestinian first responders from treating wounded attackers or suspects.[12] Such cases appear to be continuing in violation of international standards.[13]

17. On 30 September 2016, a Palestinian man was shot by Israeli Security Forces at Qalandiya checkpoint. Within a few minutes, a Palestinian Red Crescent Society ambulance reached the area but the gates at the checkpoint had been closed. One of the paramedics told OHCHR that he had approached the border guards at the gate but withdrew after one of them raised his rifle. Although he could see the wounded man on the ground for the 15 minutes that he was there, he was not allowed to provide medical assistance. A second Palestinian Red Crescent Society ambulance, which attempted to reach the man from the Jerusalem side of the checkpoint, was also prevented from approaching. The wounded man subsequently died. In another case, on 20 September 2016, a Palestinian Red Crescent Society paramedic said that he had been blocked by soldiers while trying to attend to a child who had been shot near Bani Na'im. The non-governmental organization Physicians for Human Rights-Israel has documented many attacks by Israeli Security Forces against Palestinian health-care teams.[14]

2. Detention and ill-treatment

18. According to the Palestinian non-governmental organization Addameer, the number of Palestinians held in Israeli detention increased from 6,300 in November 2015 to an estimated 7,000 by the end of October 2016,[15] including 387 boys, 51 women and 13 girls. That is reported to be the highest number of detainees at any one time since June 2010, due to frequent raids and search-arrest operations by Israeli Security Forces throughout the reporting period in the West Bank, including East Jerusalem. Most detainees continue to be held in Israel, in contravention of article 76 of the Fourth Geneva Convention.[16]

19. Of those detained, 350 individuals are reportedly from Gaza.[17] According to the Al-Mezan Centre for Human Rights, at least 155 fishermen, including 19 children, were arrested by the Israeli navy during the reporting period.[18] This is the highest number of fishermen arrested since at least 2009. Fishermen told OHCHR that, when arrested at sea, they were forced to undress, jump into the sea and swim towards the Israeli boat. Some were required to do this after being injured by gunfire or from the ramming of their fishing boats. They were also prohibited from contacting their families or a lawyer while in detention.

20. In addition, over 50 Gazans, including at least 14 children, were arrested while attempting to cross the Gaza-Israel fence or at the Erez crossing. In one case monitored by OHCHR, on 10 August 2016, a 43-year-old man was arrested at Erez as he was crossing to accompany his daughter for medical treatment in Israel. He was accused of being affiliated with Fatah's military wing and was only released by the Ashkelon Magistrate Court six days later. He told OHCHR that, during his detention, Israeli security officers threatened that his daughter would no longer be allowed access for medical treatment in Israel if he did not confess to their charges.

[12] Ibid., para. 11.
[13] See www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx (Principle 5c).
[14] See www.phr.org.il/en/israel-delays-investigations-attacks-healthcare-teams.
[15] See www.addameer.org/news/joint-report-estimates-554-palestinians-arrested-october-2016.
[16] See A/71/364, para. 33.
[17] See www.addameer.org/statistics.
[18] Figures provided by Al-Mezan.

21. On 15 June and 3 July respectively, the Head of the Gaza World Vision office and a United Nations Development Programme contractor were arrested at Erez on allegations of misusing their positions and diverting humanitarian funds to aid military efforts of the Al-Qassam Brigades. Their respective trials are ongoing. Both defendants experienced delayed access to their lawyers during interrogation and have alleged ill-treatment by Israeli officials during pretrial detention.

22. Almost 800 Palestinians were held in administrative detention between November 2015 and October 2016. That is higher than at any time since early 2008. On the eve of the second intifada (in mid-2000), Israel reportedly held 12 Palestinians in administrative detention.[19] Since then, it has become a widespread and systemic practice, with hundreds held without charge or trial every year in breach of article 9 of the International Covenant on Civil and Political Rights and the principle of the exceptional nature of administrative detention permissible by international law.[20]

23. On 13 June 2016, 35-year-old Bilal Kayed began a six-month period of administrative detention. Like almost all others, he was detained on unspecified security grounds on the basis of secret evidence. His case is particularly egregious as he was placed in administrative detention on the day he was due to be released from prison after serving his sentence of 14 years and 6 months. On 15 June, Mr. Kayed started a hunger strike, which he suspended 71 days later after reaching an agreement with the Israeli authorities. He was due to be released in December 2016. Other hunger strikers during the reporting period have included Malek al-Qadi (released on 22 September) and brothers Muhammad and Mahmoud Balbul (due to be released in December 2016). Nine Palestinians remained on hunger strike in Israeli prisons at the time of reporting, including three men who continued to protest against their administrative detention.

24. Instead of taking steps to end the practice of administrative detention, the Government of Israel is taking steps to amend laws to incorporate aspects of such detention and other administrative restrictions from the current emergency regime into regular law.[21] Administrative detention also appears to be increasing with respect to Israeli citizens, 20 of whom were held in the past year. Most were described as Palestinian "terrorists" by the Deputy Attorney General in a Knesset Committee hearing.[22]

3. Children in detention

25. The arrest of children significantly increased during the reporting period. According to The United Nations Children's Fund (UNICEF), 671 Palestinian children were arrested in East Jerusalem alone from November 2015 to September 2016.[23] According to Addameer, 400 children remained in detention at the end of October 2016.[24]

26. The practice of holding children in administrative detention also continued. The organization Defence for Children International reported that at least 15 children were held without charge during the reporting period, 6 of whom remained in administrative detention as at 31 October 2016. The detention since 3 December 2015 of 17-year-old Mohammad Hashlamoun from East Jerusalem is emblematic.[25] Accused of planning an attack on Israelis, he was reportedly detained in solitary confinement for 22 days, without access to a

[19] See www.addameer.org/Campaign/stop-administrative-detention.
[20] See www.btselem.org/administrative_detention/statistics.
[21] See www.haaretz.com/israel-news/.premium-1.749400.
[22] See www.haaretz.com/israel-news/.premium-1.750123.
[23] Figures provided by UNICEF.
[24] See www.addameer.org/statistics.
[25] See www.dci-palestine.org/israeli_authorities_detain_palestinian_teen_without_charge.

lawyer. When a judge ordered his release on bail, the authorities instead held him under administrative detention, using Israel's emergency laws. He was released six months later, having never been tried for any offence. Five other children were detained for posting comments on social media that were deemed to constitute incitement.[26]

27. In September 2016, the United Nations Working Group on Arbitrary Detention highlighted the flaws of the Israeli system of administrative detention and found that the detention of a 16-year-old from Ramallah had been arbitrary.[27] However, the boy remains in detention.

28. The High Commissioner has previously raised concern about changes in law and policy that have sought to increase the time that Palestinian children in East Jerusalem spend in prison — both during pretrial detention and after conviction.[28] In at least eight cases documented by OHCHR, children between the ages of 14 and 16 years received an average of more than two years in prison for throwing stones, with sentences ranging from 12 to 39 months. Prior to the changes in Israeli legislation and policy guidelines between 2014 and 2015, they would have been sentenced to between two and four months for the same offence.[29] The Association for Civil Rights in Israel, which examined such cases until December 2015, found a significant increase in the duration that Palestinian children in East Jerusalem spend in detention, leading also to questionable plea bargains based on confessions obtained under duress.[30]

29. In August 2016, Israel's Parliament approved amendments to the Israeli Youth Law, which allows for children between the ages of 12 and 14 to be sentenced to imprisonment for specific serious violent crimes, including murder, manslaughter and attempted murder. Under the amendments, the actual serving of the sentences would be deferred until the children found guilty of such crimes reach the age of 14. The High Commissioner is concerned that such steps ignore the importance of rehabilitation for children and noted the law is inconsistent with Israel's obligations under international law to explore alternatives to imprisonment, which should only be a last resort for children.

30. Although the Israeli authorities apply the law to children in Israel and in occupied East Jerusalem, statements by politicians that cast the law as a response to terrorism raise concerns that it will be used predominantly against Palestinian children in occupied East Jerusalem.[31] Military law applied by Israel in other parts of the West Bank already allows for Palestinians over the age of 12 to be imprisoned.

4. Collective punishment

31. The practice of collective punitive action, which is unlawful and prohibited by international law, increased during the reporting period. Israel continued to punitively demolish family homes of Palestinians who reportedly attacked Israelis and to withhold the bodies of alleged attackers who are killed to prevent families from conducting funeral rites. According to the Office for the Coordination of Humanitarian Affairs, in the reporting period, 41 homes were demolished or sealed, leading to the forcible eviction of 218 Palestinians, including 89 children. At the time of reporting, the bodies of 27 alleged attackers who had been killed were still being held by Israeli authorities.[32]

[26] See www.dci-palestine.org/facebook_posts_land_palestinian_teens_in_administrative_detention.
[27] See A/HRC/WGAD/2016/24.
[28] See A/HRC/31/40, para. 50.
[29] See www.dci-palestine.org/east_jerusalem_teens_hit_with_harsh_sentences_for_throwing_stones.
[30] See www.acri.org.il/en/wp-content/uploads/2016/02/Arrested-Childhood0216-en.pdf.
[31] See www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=12206.
[32] Figures provided by OCHA.

32. Collective punishment is not limited to the immediate families of alleged attackers. Following the gun attack in Tel Aviv on 8 June 2016 in which four Israelis were killed, the Israeli Prime Minister's Office announced the revocation of 204 work permits issued to the attackers' extended families and suspended all 83,000 permits granted to West Bank and Gaza residents to travel to Jerusalem and Israel during Ramadan.[33] The Government also announced the mass revocation of work permits for residents of Bani Na'im, the village from which some of the Palestinian attackers originated.[34]

33. The closure of entire villages and towns as a form of punishment continued to be implemented during the reporting period. For example, the three main entrances of the village of Bani Na'im were closed off between 30 June and 10 August 2016, after a Palestinian resident killed a child in a nearby Israeli settlement. The absence of vehicular access for 40 days to the village had a significant impact on the lives of the 27,000 residents and particularly affected the functioning of the 30 local stone-cutting factories. A crew from the Palestinian Red Crescent Society told OHCHR that the closure of the village had created lengthy delays in the provision of emergency health care, effectively forcing first responders to carry patients over large earth mounds to transfer them to ambulances outside the village.

34. After a shooting incident on a nearby highway on 1 July in which one Israeli was killed, the Israeli Prime Minister announced "aggressive measures" that included cordoning off the entire Hebron district of 700,000 people.[35] Severe restrictions imposed through most of July followed.[36] The strategic use of collective punishment measures appears to be part of the Israeli Defense Minister's "carrot and stick" policy announced on 17 August, by which villages from where Palestinian attackers originated would face increased punitive measures.[37] As the Secretary-General has pointed out, "closures — such as those in Hebron — as well as punitive demolitions and blanket revocations of permits penalize thousands of innocent Palestinians and amount to collective punishment".[38]

35. Israeli politicians have continued to call for measures of collective punishment. After a gun attack in Jerusalem on 9 October 2016, the Deputy Mayor of Jerusalem, who also chairs the planning and building board, announced the shelving of all construction plans for residents of East Jerusalem. He further suggested dividing Palestinian neighbourhoods of the city and the forcible transfer of family members of attackers to Gaza to change their "animal behaviour", adding "there are no carrots left, only sticks".[39] The Mayor of Jerusalem later denied that this view represented municipal policy. OHCHR is unaware of any action subsequently taken against the Deputy Mayor.

36. The ongoing Israeli blockade, which also constitutes a form of collective punishment, continued to restrict the enjoyment by Gazans of a range of human rights, including their right to freedom of movement and their economic and social rights.[40] The blockade remains a key driver of Gaza's humanitarian crisis, along with high

[33] See www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeCabinet090616.aspx.
[34] See www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeStart030716.aspx.
[35] Ibid.
[36] See www.ochaopt.org/content/hebron-governorate-movement-restrictions-5-july-2016.
[37] See www.jpost.com/Arab-Israeli-Conflict/Liberman-unveils-new-carrot-and-stick-policy-for-West-Bank-Palestinians-464360; www.haaretz.com/israel-news/1.724089, and www.ynetnews.com/articles/0,7340,L-4843007,00.html.
[38] See www.unsco.org/Documents/Statements/MSCB/2008/Security%20Council%20Briefing%20-%2012%20July%202016.pdf.
[39] See www.haaretz.com/israel-news/.premium-1.746987.
[40] See A/71/364, para. 28; and A/HRC/31/44, para. 40.

unemployment (41.7 per cent),[41] especially among young people as a whole (57.6 per cent)[42] and young women in particular (82 per cent).[43] Nearly 40 per cent of Gazans live below the poverty line, and 47 per cent of households are moderately to severely food insecure.[44]

37. While there has been some improvement in the levels of exports and imports since 2014, they remain much lower than the pre-blockade levels. Some 65,000 Palestinians, whose homes were destroyed or severely damaged during the 2014 hostilities, remain displaced as a result of continued restrictions on the entry of building materials and lack of international funding.[45]

38. During the reporting period, there was a significant deterioration in the movement of people from and to Gaza through Erez — the only crossing point for people to Israel, the West Bank and beyond. The situation was further exacerbated by the almost continuous closure by Egypt of the Rafah passenger crossing and by Jordan's increasing refusal to grant passage through the Allenby crossing to Palestinians from Gaza.

39. Exit from Gaza through Erez is only permitted for Palestinian nationals on the basis of a narrow set of criteria. Even as the total number of exit permits issued for travel from Gaza through Erez reportedly increased,[46] the actual number of people exiting Gaza through the crossing declined by 15 per cent in the first half of 2016. By the end of October, the monthly average exit rate reached its lowest level in almost two years.[47] Israeli authorities tend not to provide reasons to justify the refusals. In rare cases, applicants are informed that refusals were made on "security grounds".

40. For medical patients seeking treatment outside Gaza, only 70 per cent of applications for access through Erez were approved on average during 2016. This was the lowest approval rate since June 2009.[48] Between January and September 2016, Israeli authorities also revoked nearly half of the 3,500-3,700 permits previously granted to Palestinian merchants and traders.[49]

41. Palestinian authorities are also affected by these restrictions. In October 2016, Israeli authorities reportedly revoked the exit permits of 12 senior officials from the Palestinian General Authority of Civil Affairs, resulting in nearly all the employees of the institution being banned from travel despite their key role in coordinating movement through Israeli crossings.[50]

42. Human rights defenders have complained to OHCHR about restrictions imposed on their movement through Erez. Since March 2016, a 52-year-old woman human rights

[41] See www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_LFSQ22016E.pdf.

[42] See http://gisha.org/updates/5483.

[43] See www.worldbank.org/en/country/westbankandgaza/publication/economic-monitoring-report-to-the-ad-hoc-liaison-committee-september-2016.

[44] See www.ochaopt.org/content/gaza-two-years-2014-hostilities-august-2016.

[45] See www.ochaopt.org/content/gaza-crossings-operations-status-monthly-update-september-2016.

[46] Figures provided by the Palestinian General Authority of Civil Affairs, October 2016.

[47] See www.ochaopt.org/content/decline-number-palestinians-leaving-gaza-including-humanitarian-staff-and-patients, and Gaza Crossings database of the Office for the Coordination of Humanitarian Affairs.

[48] See World Health Organization monthly reports on referral of patients from the Gaza Strip for the period November 2015-October 2016, available from www.emro.who.int/pse/publications-who/monthly-referral-reports.html.

[49] See http://gisha.org/UserFiles/File/publications/Security_blocks/Security_blocks_factsheet_designed.pdf.

[50] See http://maannews.com/Content.aspx?id=773634.

defender has been denied access to continue her cancer treatment on "security grounds", despite the fact that she had until then been consistently allowed to leave for medical purposes.

43. Movement restrictions are also affecting the operations of humanitarian organizations, including the United Nations. At the end of the reporting period, the monthly denial rate of exit permit applications for United Nations staff from Gaza had reached 52 per cent, in contrast to the average denial rate of 3 per cent in 2015. In the first half of 2016, 32 Palestinian staff members of the United Nations and international non-governmental organizations had been denied the possibility of reapplying for new permits within a 12-month period by the Israeli Security Agency.[51]

5. Lack of accountability in the context of hostilities

44. Low-level hostilities between Palestinian armed groups and Israeli forces persisted during the reporting period. The High Commissioner continues to raise alarm over the firing by Palestinian armed groups of unguided rockets from populated areas towards civilian areas in Israel. At the same time, concerns remain over whether Israeli attacks are proportional or whether necessary precautions are taken to prevent civilian casualties.[52]

45. The lack of accountability for past violations of international human rights and international humanitarian law committed by the parties only serves to fuel the conflict. Two years after the escalation of hostilities in Gaza, justice remains elusive.[53] Less than 9 per cent of referred incidents of alleged violations of international humanitarian law and international human rights law, including allegations of war crimes, have led to a criminal investigation, and the lack of investigations and accountability by the Israeli authorities, as well as lack of civil remedies and compensation to victims, remain of serious concern.

46. In the latest update from the Military Advocate General of the Israeli Defense Forces on "Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'" (August 2016), the Military Advocate General decided to close, without opening a criminal investigation, approximately 80 additional incidents that had been examined by the Fact-Finding Assessment Mechanism,[54] which had determined that the actions of the Israeli Defense Forces involved did not give rise to reasonable grounds for suspicion of criminal behaviour.[55]

6. Human rights defenders

47. The reporting period witnessed continued harassment and intimidation of human rights defenders — both Palestinian and Israeli — by Israeli authorities. Palestinian human rights activists in particular continue to be arrested. On 26 October 2016, Israeli Security Forces raided the house of Mr. Salah Khawaja, coordinator of the Popular Campaign against the Wall, and arrested him, apparently in relation to his work as Secretary of the Boycott, Divestment and Sanctions National Committee. The allegations against him are not known and, since interrogations began in mid-November, he has not been allowed to meet with a lawyer or with family members. Other activists, including Issa Amro and Farid al-Atrash, in Hebron, face criminal charges for their human rights work, while Imad Abu

[51] See footnote 50.
[52] A/71/364.
[53] A/71/364.
[54] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Israel-Investigation-of-Alleged-Violations-of-Law-of-Armed-Conflict.aspx.
[55] See www.law.idf.il/163-7596-en/Patzar.aspx.

Shamsiyya, who documented an apparent extrajudicial execution in Hebron, continues to receive threats on the social media website Facebook.[56]

48. Organizations involved in international campaigning have also been targeted. Since September 2015, Al-Haq has been subject to regular harassment from anonymous sources. This includes spreading false information about the organization to the public and media and making allegations of financial misconduct. In February 2016, Al-Haq's Europe Director, who also focuses on advocacy with the International Criminal Court, received anonymous death threats. Al-Haq believes this is part of an "institutionalized, planned and very well-resourced" Israeli campaign.[57] Other Palestinian organizations, including Al-Mezan, have also been similarly threatened.[58]

49. Israeli human rights organizations have also been facing increasing pressure. In July, the Knesset passed the so-called "non-governmental organization transparency law". Despite the name, as the Secretary-General noted, the law "contributes to a climate in which the activities of human rights organizations are increasingly delegitimized".[59] The High Commissioner and several Special Rapporteurs had previously warned of the chilling effect of the law on the civil society space in Israel, the Occupied Palestinian Territory and beyond.[60]

50. Senior Israeli leaders and politicians have reinforced this chilling effect by making statements that publicly malign human rights organizations. In October 2016, the Israeli organization B'tselem faced vitriolic attacks after its Director had briefed the Security Council. Senior figures, including the Prime Minister and the Permanent Representative of Israel to the United Nations, publically condemned him. The Chairman of the ruling coalition called for his citizenship to be stripped.[61] B'tselem staff subsequently received threats. The High Commissioner is concerned that the rhetoric by public figures is contributing to an increasingly repressive environment in which human rights organizations and activists in Israel are seen as legitimate targets for threats and violence by nationalist elements.

B. Palestinian authorities

51. Relations between the Palestinian Authority and the authorities in Gaza remain strained,[62] and these divisions continue to undermine the respect and protection of human rights in the Occupied Palestinian Territory.[63]

52. In 2014, the Government of the State of Palestine acceded to seven human rights treaties. The process of drafting the initial reports to the respective treaty bodies is under way. The most advanced report, to the Committee on the Elimination of Discrimination against Women, has been inclusive of the views of civil society and the Independent Commission for Human Rights, based on a national consultation held in February 2016 and attended by civil society organizations from the Gaza Strip and the West Bank, including

[56] See www.btselem.org/press_releases/20160901_btselem_volunteer_life_threatened.
[57] See www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened.
[58] See www.mezan.org/en/post/21475/Al+Mezan+Condemns+Continued+Death+Threats+to+Staff+Members+and+Calls+on+the+International+Community+to+Intervene.
[59] See footnote 39.
[60] See www.un.org/apps/news/story.asp?NewsID=54319#.WCXEZS196M9.
[61] See www.haaretz.com/israel-news/1.748609.
[62] See www.ichr.ps/en/1/6/1941/ICHR-21st-Annual-Report.htm.
[63] See www.ochaopt.org/content/humanitarian-impact-divided-government.

East Jerusalem. The event was facilitated by the Commission, with support from the international community, including OHCHR. The High Commissioner encourages the Government to continue on this path of dialogue and consultations with all stakeholders.

1. West Bank

Excessive use of force and unlawful killings

53. OHCHR monitored a number of allegations of excessive use of force and extrajudicial killing by Palestinian security forces. On 18 August 2016, two Palestinian security officers were shot dead during an arrest campaign led by Palestinian security forces in the old city of Nablus. The next day, those forces carried out a raid and killed two alleged suspects in unclear circumstances. On 23 August, Palestinian security forces arrested a third suspect, a 50-year-old police officer, Ahmed Halawa. One of his family members told OHCHR that Mr. Halawa had been severely beaten during his arrest at his house. Mr. Halawa was taken to Jeneid prison in Nablus, where officers of the Palestinian security forces allegedly beat him to death. Senior officials, including the Governor of Nablus, have made admissions to that effect. Images of the victim's body circulated on social media reveal the extent of the beating. The Palestinian Authority immediately established a committee of inquiry into the apparent extrajudicial execution but, at the time of reporting, OHCHR had not been able to obtain information on the outcome.

54. On 7 June 2016, Palestinian security forces shot and killed Adel Jaradat, a 21-year-old man, in Silat al Harithiya village, northern West Bank. Mr. Jaradat was shot in the thigh while commuting to work when Palestinian security forces were firing live ammunition at a crowd that had begun throwing stones. He died, apparently owing to severe bleeding. The Governor of Jenin announced an investigation on the same day. Palestinian officials informed OHCHR that the investigation was still ongoing.

Arbitrary arrest and detention

55. During the reporting period, the Independent Commission for Human Rights received 264 complaints of arbitrary detention in the West Bank. OHCHR also continued to receive reports of arbitrary arrest and detention by Palestinian security forces; mainly of individuals affiliated with opposition groups or media professionals and bloggers critical of Palestinian authorities.[64]

56. The Independent Commission for Human Rights documented 71 complaints concerning cases of detention in which a court order to release the accused had not been implemented by Palestinian security forces. In many cases, the forces effectively circumvent the order by rearresting the same person on a new charge.[65]

57. One emblematic case monitored by OHCHR occurred on 18 August 2016 when a Palestinian man was arrested by the General Intelligence Service for "raising funds for an illegal society". He told OHCHR that, during the interrogation, officers repeatedly said they were not interested in his activities, but that he needed to convince his sister to stop her political activities at university. On 25 August, a court ordered his release, but he was rearrested as soon as he stepped outside the gates of the General Intelligence Service premises. He was not brought before the prosecutor or court until 1 September, despite the fact that article 34 of the Penal Procedure Law No. 3 of 2001 provides that detained individuals must be brought before a court within 24 hours. On 4 September, he was indicted for "unlawful possession of a weapon". Although the court ordered his release on 7

[64] Figures provided by ICHR.
[65] Ibid.

September, General Intelligence Service officials held him for another day, apparently while they awaited clearance from their Ramallah headquarters. On 8 September, he was released, but continued to face harassment for a further 10 days.

58. OHCHR continued to monitor cases in which Palestinians were arrested on the orders of Governors for charges relating to public order or national security, and where there is no intent to charge or prosecute.[66] During the reporting period, the Independent Commission for Human Rights documented 88 such cases, a slight increase compared with the previous year.[67] The High Commissioner previously highlighted the issue of Palestinian administrative detention, which can last for six months without any review by a judge. He is concerned that the practice is becoming a routine, targeting opposition activists.[68]

Freedom of expression and peaceful assembly

59. The Palestinian Basic Law of 2003 recognizes the rights to freedom of expression and peaceful assembly. Nonetheless, OHCHR continued to receive regular reports of media professionals, human rights defenders and political opponents in the West Bank being arrested, threatened, harassed and intimidated for questioning or challenging the Palestinian Authority. The Palestinian Centre for Development and Media Freedoms documented 90 such complaints by media professionals against Palestinian security forces during the reporting period, including raids of homes and confiscation of equipment, detention and summoning for interrogation.[69]

60. In one instance, on 23 August 2016, Advocate Wa'el al-Hazzam was invited for an interview by a television channel to discuss political tensions and the apparent extrajudicial execution of Ahmed Halawa, who had allegedly been killed by Palestinian security forces in Nablus. He told OHCHR that three officers of the Preventive Security Service had approached him at the television studio and threatened him with arrest if he conducted the interview. Later that day, two armed men fired more than 10 bullets at his house. On 1 September, OHCHR wrote to the Minister of the Interior expressing concerns about the incident. The Minister's reply indicated that an investigation was ongoing. As at mid-November 2016, no further information was available.

61. The Jordanian Penal Code that prevails in the State of Palestine provides overly broad provisions for defamation, humiliation or abasement of or insult to public officials and figures and has been used by the authorities to impose restrictions on freedom of expression. On 3 October 2016, a Palestinian who had been arrested in 2014 and subsequently released on bail for a comment posted to Facebook that allegedly mocked the Palestinian leadership was convicted of "defamation against public authority" by the Ramallah Magistrates' Court and sentenced to three months of imprisonment under article 191 of the Jordanian Penal Code.

62. The reaction of the Palestinian Authority to a teachers' strike in February 2016 illustrates the shrinking space to exercise the rights to freedom of expression and to peaceful assembly. On two occasions, on 23 February and 7 March 2016, not only were some teachers and their representatives arrested and held for interrogation overnight, but bus drivers and transportation companies were also prevented from transporting teachers to Ramallah in order to stymie their peaceful demonstration outside the Cabinet offices. OHCHR also documented instances in which Palestinian security forces had confiscated the identity cards of teachers and forced them off public transport to prevent their participation

[66] The Jordanian Crime Prevention Law 1954 is still applicable in the West Bank.
[67] Figures provided by ICHR.
[68] See A/HRC/31/40, paras. 56-59.
[69] See www.madacenter.org/reports.php?id=13&lang=1.

in demonstrations. OHCHR raised these concerns with the Prime Minister both in person and in writing but no response has been received to date.

Violence against women

63. Women in the Occupied Palestinian Territory face multiple layers of violence and discrimination. In September 2016, the Special Rapporteur on violence against women, following her country visit, highlighted the prevalence of deeply embedded forms of violence against women — including domestic violence, early marriage, sexual violence (including rape and incest) and "honour killings" — which, she noted, were "petrified in a context of prolonged occupation".[70]

64. There are no reliable statistics available on "honour killings" in the West Bank, but OHCHR is concerned that loopholes in the law remain for such killings to be effectively condoned. Although a presidential decree in May 2014 removed one specific provision to mitigate sentences for perpetrators of "honour crimes" in such cases (article 98 of the Penal Code), judges can still use the broad discretionary power to apply mitigating factors (article 99) in "honour killings".[71] In one case monitored by OHCHR, a 48-year-old man who had killed his wife to "defend his honour" was sentenced to only two years' imprisonment by a court in Nablus on 31 May 2016. The judge observed that the crime had been committed "in a fit of rage that was the result of an unlawful and dangerous act by the victim", and the convicted man received the benefit of mitigation under article 98 as the murder had taken place before the decree.

Death penalty

65. No executions were carried out in the West Bank during the reporting period. The President of the State of Palestine continued his practice of not ratifying death sentences, as required by the Basic Law for any execution to take place. Death sentences, however, continue to be administered. Thus, on 29 December 2015, the Criminal Court of Jericho sentenced a man to death for murder. The ruling is currently under appeal.

2. Gaza

Right to life

66. The reporting period saw a concerning resumption in executions in Gaza. On 31 May 2016, three men convicted of murder were executed. These executions were carried out without the approval of the President of the State of Palestine, thereby flouting Palestinian law and denying the right to be considered for pardon or commutation of the sentence (see article 6 (4) of the International Covenant on Civil and Political Rights).[72] On 7 February 2016, Al-Qassam Brigades (the military wing of Hamas) announced the execution of one of its members for "moral and behavioural misconduct". In addition to reports of ill-treatment and incommunicado detention for over a year, the execution appears to have been extrajudicial as the decision was taken by the internal military and sharia justice of Al-Qassam Brigades, which is not part of the formal judiciary in Gaza.[73]

67. Death sentences continue to be pronounced by Gaza courts. According to the Palestinian Centre for Human Rights, 19 individuals were sentenced to death during the

[70] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20584&LangID=E.
[71] See www.ohchr.org/Documents/Issues/Women/WRGS/Executive_summary_study_called_honour_killings_Palestine.pdf.
[72] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20037&LangID=E.
[73] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17035&LangID=E.

reporting period for offences including murder and collaboration with hostile parties. Ten of the sentences were handed down by military courts, in contravention of international law, which prohibits the trial of civilians by military courts. OHCHR has serious doubts as to whether civil and military trials in Gaza meet international standards on the right to a fair trial.

68. In one such case, on 5 October 2016, a court in Khan Younis sentenced a woman to death for murdering her husband. OHCHR monitoring of the case indicated that the woman had been given only limited access to legal counsel during her trial and the court had not considered mitigating factors, notably the woman's claim that she had been subjected to regular physical and verbal abuse by her husband.

69. On 17 February 2016, a 39-year-old Palestinian man from Al Zawaida died in Deir El Balah police station shortly after he had appeared for questioning. The police claimed that he had died owing to pre-existing health conditions, which his family denied. OHCHR is not aware of any investigation into the incident initiated by the authorities in Gaza.

Arbitrary detention, torture and ill-treatment

70. Security forces in Gaza continued to arbitrarily arrest and detain people, including without charge. OHCHR monitored the case of a 31-year-old man from Jabalia who was arrested by the police on 24 January 2016 for "misusing technology". After being detained for two days at the Arafat police compound, he was transferred to the correction and rehabilitation centre, where he remained for at least six months without being formally charged or presented to a court.

71. OHCHR also received reports of individuals held in incommunicado detention and instances of ill-treatment, including prolonged solitary confinement and verbal or physical abuse. In many cases, detainees are moved between detention facilities making them more susceptible to ill-treatment and arbitrary detention.

72. On 25 September 2016, the Internal Security Agency in Rafah arrested a General Intelligence Service officer and Fatah member for collaborating with the authorities in Ramallah. At the time of reporting, he remained in solitary confinement in the Internal Security Agency detention facility in Gaza. OHCHR was informed that the military prosecutor had ordered his detention for an additional 60 days and is concerned about reports that he had been beaten and subjected to *shabeh* (e.g. stress positions) during interrogation, in violation of the prohibition of torture and ill-treatment.

73. Arbitrary detention and ill-treatment are also carried out by armed groups that are connected to but not a part of the authorities in Gaza. OHCHR monitored the case of a 29-year-old man from Dier El Balah who had been arrested by the Al-Qassam Brigades on 18 June 2016 for the unlawful possession of a weapon. He was held in incommunicado detention at their camp for nearly two weeks and subjected to prolonged *shabeh* and beatings. He was subsequently transferred to the Internal Security Agency detention facility, where his detention was extended by the military prosecutor.

74. According to figures provided by the authorities in Gaza, as at 5 August 2016, some 2,000 prisoners and detainees were being held at the main correction and rehabilitation centre in Gaza city and at 18 temporary detention facilities (called *nazaraat*) run by the civil Police across the Gaza Strip. The limited capacity of the judiciary has led to lengthy periods of pretrial detention and overcrowding in the *nazaraat*, which also raises concerns about conditions of detention in these supposedly temporary detention facilities.

Rights to freedoms of expression, association and peaceful assembly

75. The Palestinian Centre for Development and Media Freedoms reported some improvement in 2016 with respect to freedom of expression compared with 2015.[74] It nonetheless documented at least 30 violations in Gaza from November 2015 to August 2016, mostly related to the summoning, arrest, detention, torture and ill-treatment of journalists. OHCHR monitored the case of a 29-year-old journalist who had been arrested by the Israel Security Agency on 1 September 2016 and detained for one day after the authorities claimed he had published confidential documents on social media. His laptop computer, mobile telephone and other personal belongings were reportedly confiscated during the arrest. He was eventually released without being charged with any criminal offence. He alleged that he had been subjected to ill-treatment in detention, including *shabeh* and beatings.

76. Palestinians in Gaza continued to be harassed for their political opinion and affiliation. On 29 August 2016, the coordinator of Fatah's electoral campaign in Bani Suhaila, east of Khan Younis, was abducted and subsequently assaulted by masked men reportedly affiliated with Hamas. On the same day, a female Fatah candidate for Bani Suhailia received several threatening telephone calls and text messages from a man also reportedly affiliated with Hamas. On 17 October 2016, senior officials at the Ministry of the Interior and the Israel Security Agency reportedly threatened a senior Fatah leader in connection with his perceived incitement against the authorities.

77. Moreover, Gaza security forces banned and forcibly dispersed several peaceful assemblies. In a case monitored by OHCHR, on 16 August 2016, the security forces dispersed a sit-in of Fatah-affiliated employees at Al-Aqsa University, inside the university campus. Several participants were assaulted by police and the university security guards.

IV. Conclusions and recommendations

78. **Over the past seven years, OHCHR has documented and reported repeated serious human rights violations by all duty bearers in the Occupied Palestinian Territory, particularly by Israeli authorities. OHCHR has consistently provided detailed information as to how impunity has driven human rights violations and how lack of accountability on both sides fuels new cycles of violence and conflict between Israelis and Palestinians.**[75] **Few efforts have been employed by the parties to establish accountability and provide redress to past and present violations of international humanitarian law and international human rights law, with the exception of one Israeli soldier charged with manslaughter in the West Bank. Even in that instance, senior officials and politicians in Israel have called for the trial to be ended or for the soldier to be pardoned if found guilty.**[76] **The Israeli authorities launched some investigations into the 2014 Gaza hostilities, but justice remains elusive with the exception of an indictment on looting. OHCHR has observed a deterioration of the human rights situation in the Occupied Palestinian Territory over the past few years.**

79. **Although the scale of violations is lower, impunity is also a major concern with regard to actions by Palestinian authorities both in Gaza and the West Bank. As the cases outlined in the present report indicate, there is little information about the outcome of investigations often announced by the Palestinian Authority. In Gaza,**

[74] See www.madacenter.org/reports.php?id=13&lang=1.

[75] See A/70/421, paras. 49-51.

[76] See www.timesofisrael.com/terrorists-must-be-killed-ex-deputy-idf-head-tells-hebron-shooter-trial/.

there is little information available about any investigation at all into violations of international law.

80. **There can be no rule of law when human rights violations are committed with impunity and duty bearers ignore their international obligations. There can be no justice when victims of violations have no remedies available. There can be no peace in the absence of justice and the rule of law.**

A. Government of Israel

81. **The High Commissioner recommends that the Government of Israel:**

(a) **Ensure that all incidents in which law enforcement officers kill or injure any Palestinian, including in the Gaza "access restricted area", are promptly subjected to thorough, independent, impartial and effective criminal investigations;**

(b) **Ensure that firearms may only be used where there is imminent threat of death or serious injury and not as a crowd-control measure and that all instances of unnecessary use of firearms and force lead to the accountability of the responsible law enforcement officers; and ensure also that security forces are adequately equipped and trained on the use of less-lethal weapons;**

(c) **Give security personnel clear instructions to provide first aid to individuals wounded by the use of force and not to prevent paramedics from tending to wounded persons;**

(d) **In the context of hostilities in Gaza, ensure respect for international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for all grave violations, including at the command level;**

(e) **Ensure that the rights of detainees are respected, particularly that they are not subject to torture or ill-treatment, and have access to their lawyers and family members;**

(f) **Promptly end the practice of administrative detention and either charge or release all individuals currently held under that regime;**

(g) **Ensure that all children under the age of 18 years are treated with due consideration for their age and detained only as a last resort and, if so, for the shortest possible time and for the purpose of rehabilitation;**

(h) **Ensure that all allegations of torture are promptly, thoroughly and effectively investigated by an independent and impartial body;**

(i) **Immediately end all practices of collective punishment, including the blockade of Gaza, punitive house demolitions, closures of towns and villages and the retention of bodies;**

(j) **Ensure that human rights defenders, in both Israel and the Occupied Palestinian Territory, are respected and protected and permitted to conduct their activities without harassment.**

B. Government of the State of Palestine

82. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Ensure that all use of force is consistent with international human rights standards;**

(b) **Ensure that allegations of human rights violations are investigated in line with international standards;**

(c) **End arbitrary detention, including the practices of repeated detention and administrative detention in lieu of charges, and either charge or release all individuals currently held in such a manner;**

(d) **Respect, protect and fulfil the rights to freedoms of expression and opinion and peaceful assembly and remove all unlawful restrictions from statutory law;**

(e) **Ensure that violence against women is not condoned, including by amending article 99 of the Penal Code to exclude mitigation on grounds of "honour killing";**

(f) **Announce a formal moratorium on executions as a first step towards the abolition of the death penalty and the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.**

C. Gaza authorities and Palestinian armed groups

83. **The High Commissioner recommends that authorities and armed groups in Gaza:**

(a) **Ensure, along with Palestinian armed groups in Gaza, respect for international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(b) **Announce a moratorium on executions; and ensure that all those being tried, particularly in capital cases, all receive a fair trial, consistent with international standards;**

(c) **Promptly investigate all incidents of deaths in custody of security forces and affiliated armed groups;**

(d) **Ensure that no one is arbitrarily detained, held in incommunicado detention or subjected to torture and ill-treatment;**

(e) **Respect, protect and fulfil the rights to freedoms of expression, association and peaceful assembly, including the right of media personnel and non-governmental organizations to conduct their activities without harassment.**

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 31/34 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It focuses on the recurrence and persistence of human rights violations and the underlying policies leading to such patterns.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted pursuant to resolution 31/34 of the Human Rights Council, in which the Council requested the Secretary-General to report on the implementation of that resolution, with a particular focus on the recurrence and persistence of human rights violations in the Occupied Palestinian Territory and the underlying policies leading to such patterns, including those involving forcible displacement. It covers the period from 1 November 2015 to 31 October 2016. Fifty years after the start of the occupation, the patterns and persistence of human rights violations in the Occupied Palestinian Territory can be seen clearly. The present report provides a non-exhaustive overview of the most pressing human rights violations in the Occupied Palestinian Territory, highlighting the connection with the Israeli occupation. The recommendations encourage all duty bearers to comply with their obligations under international law.

2. Recent reports of the Secretary-General and the United Nations High Commissioner for Human Rights provide a more in-depth analysis of the human rights situation in the Occupied Palestinian Territory.[1]

II. Legal background

3. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem.

4. Israel is a party to most of the core international human rights treaties[2] and ratified the four Geneva Conventions.[3] On 1 April 2014, the State of Palestine acceded to the same core human rights treaties as Israel, as well as to the four Geneva Conventions, their Additional Protocols and the Convention respecting the Laws and Customs of War on Land.[4]

A. International human rights law

5. As a party to most of the core international human rights conventions, the State of Palestine is responsible for implementing its human rights obligations within its jurisdiction. The authorities in Gaza also bear human rights obligations, given their exercise of government-like functions and territorial control.[5]

6. The human rights obligations of Israel within the Occupied Palestinian Territory stem from the jurisdiction and effective control exercised by Israel as the occupying power.

7. The scope of application of international human rights law does not only depend on a State's territorial limits, but also on the exercise of its jurisdiction or effective control, even outside of the State's sovereign territory.[6] Israel has rejected the applicability of its human rights obligations outside its national territory.[7] However, the applicability of its human rights obligations in the Occupied Palestinian Territory (i.e. the West Bank,

[1] See, e.g., A/71/364, A/71/355, A/HRC/34/36 and A/HRC/34/39.

[2] Israel has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights , the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

[3] Israel is not a party to the Convention respecting the Laws and Customs of War on Land nor to the 1977 Protocols Additional to the Geneva Conventions.

[4] See A/HRC/12/37, para. 7, and A/HRC/8/17, para. 8.

[5] See A/HRC/8/17, para. 9.

[6] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 134, para. 109.

[7] See, e.g., E/C.12/1/Add.27, para. 8. See also *Legal Consequences of the Construction of a Wall*, para. 112.

including East Jerusalem, and the Gaza Strip) has been continuously asserted in the relevant resolutions of the General Assembly,[8] in reports of the Secretary-General[9] and the United Nations High Commissioner for Human Rights[10] and by various human rights treaty bodies.[11]

8. As the International Court of Justice stated in 2004 that, because Israel exercises territorial jurisdiction over the Occupied Palestinian Territory as the occupying power, it is bound by human rights obligations in respect of the local population.[12] The International Court of Justice also observed that the obligations of Israel under the International Covenant on Economic, Social and Cultural Rights included "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[13] The accession of the State of Palestine to human rights treaties does not affect the obligations of Israel under human rights law within the Occupied Palestinian Territory.[14]

9. The applicability of human rights law in a situation of armed conflict or occupation concurrently with international humanitarian law has been widely affirmed. The International Court of Justice first addressed that issue in 1996 and then reiterated the concurrent application of international humanitarian law and human rights law in its advisory opinion on the wall, including in respect of the Occupied Palestinian Territory.[15] A situation of armed conflict or occupation does not release a State from its human rights obligations.[16]

B. International humanitarian law

10. The Occupied Palestinian Territory is a territory under belligerent occupation to which international humanitarian law applies. Israel is bound by the obligations of an occupying power set out in the Convention respecting the Laws and Customs of War on Land, the Fourth Geneva Convention and customary international law,[17] as confirmed by numerous international entities.[18] International humanitarian law applies to the entirety of the Occupied Palestinian Territory, in other words to Gaza and the West Bank, including East Jerusalem. East Jerusalem remains an integral part of the West Bank and the Security Council has repeatedly affirmed the continued application of the Fourth Geneva Convention to East Jerusalem.[19]

[8] See, e.g., General Assembly resolution 71/98.
[9] See A/69/348, para. 5, and A/HRC/28/44, para. 6.
[10] See, e.g., A/HRC/8/17, para. 7, and A/HRC/12/37, paras. 5-6.
[11] See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights, para. 10. See also E/C.12/1/Add.90, para. 31, CCPR/C/ISR/CO/4, para. 5, CRC/C/ISR/CO/2-4, para. 3, CAT/C/ISR/CO/4, para. 11, and CERD/C/ISR/CO/14-16, para. 10.
[12] See *Legal Consequences of the Construction of a Wall*, paras. 110-113.
[13] Ibid., para. 112.
[14] See A/HRC/28/44, para. 6.
[15] See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 25, and *Legal Consequences of the Construction of a Wall*, para. 106.
[16] See A/HRC/12/37, para. 6.
[17] Although Israel is not a party to the Convention respecting the Laws and Customs of War on Land, the rules contained therein are applicable as they are considered customary law. While Israel has disputed the de jure application of the law of occupation based on an interpretation of article 2 common to the Geneva Conventions (an interpretation that has been rejected by various international entities), it has nevertheless been applying selected provisions of the Fourth Geneva Convention.
[18] See *Legal Consequences of the Construction of a Wall*, para. 101. See also Security Council resolutions 1860 (2009) and 2334 (2016), among others; General Assembly resolutions 62/181 and 63/98, among others; Human Rights Council resolution 10/18, among others; reports of the Secretary-General A/HRC/12/37, para. 9, and A/HRC/8/17, para. 5, among others; and the declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention.
[19] See Security Council resolutions 478 (1980) and 476 (1980) and General Assembly resolutions 70/88 and 71/96.

11. Further norms of international humanitarian law, particularly those relating to the conduct of hostilities, must be respected by all parties to a conflict, including Palestinian armed groups.[20] In particular, all parties to a conflict have to respect the principles of distinction, proportionality and precaution.[21]

12. States parties to the Geneva Conventions have the duty not only to respect the Conventions but also to ensure respect for them.[22] The obligation to ensure respect implies an obligation to take measures to prompt States that have violated the Conventions to act in compliance with international humanitarian law.[23] It is on this obligation that the Security Council, the General Assembly and the majority of States parties to the Geneva Conventions have relied when calling upon third States to react to international humanitarian law violations by Israel.[24]

III. Recurrent violations of international law in the Occupied Palestinian Territory

13. The Palestinian population of the Occupied Palestinian Territory is specifically protected by international humanitarian law.[25] As the occupying power, Israel has the duty to protect the population of the Occupied Palestinian Territory and to uphold public order and safety.[26] That obligation is commonly understood as including an obligation to ensure the welfare and well-being of the local population.[27] Israel bears the obligation to meet the needs of the protected population[28] and to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.[29] It is also under an obligation to treat the protected population humanely, without any discrimination.[30] In all circumstances, it is obliged to respect the fundamental rights of protected persons, that is their right to physical, moral and intellectual integrity.[31] The obligation of Israel, as an occupying power, to protect the Palestinian population is in line with its obligation to respect, protect and fulfil the human rights of the Palestinian population without discrimination.

[20] Article 3 common to the Geneva Conventions.

[21] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law (Volume I: Rules)* (Cambridge University Press, 2005), rules 1-3.

[22] Article 1 common to the Geneva Conventions.

[23] See ICRC commentary to article 1 common to the Geneva Conventions, 2016, para. 154 (https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1); the declaration of 5 December 2001 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4; *Legal Consequences of the Construction of a Wall*, paras. 158-159; and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, para. 220.

[24] See, e.g., Security Council resolutions 2334 (2016) and 465 (1980); General Assembly resolution 70/89, paras. 9-10; and the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4.

[25] Fourth Geneva Convention, art. 4.

[26] Convention respecting the Laws and Customs of War on Land, arts. 43 and 46.

[27] David Kretzmer, "The law of belligerent occupation in the Supreme Court of Israel", *International Review of the Red Cross*, vol. 94, No. 885 (Spring 2012), pp. 216-217.

[28] Fourth Geneva Convention, art. 55 (1) regarding food and medical supplies; see also art. 56 regarding the duty to ensure and maintain medical services and art. 50 regarding the duty to facilitate the proper working of education institutions.

[29] Fourth Geneva Convention, art. 59, and ICRC, *Customary International Humanitarian Law*, rule 55. As consent of the occupying power remains necessary, it cannot be withheld on grounds other than those set out in article 59 of the Fourth Geneva Convention.

[30] Fourth Geneva Convention, art. 27.

[31] Ibid., and ICRC 1958 commentary to article 27 of the Fourth Geneva Convention, p. 201.

A. Violations of the obligations of the occupying power

14. In the Occupied Palestinian Territory, Israel disregards the law of occupation and its obligations as an occupying power. The law of occupation is guided by the principle that the *status quo ante* has to be preserved as far as possible within the occupied territory.[32]

15. A central violation of the law of occupation in the present context is the construction and expansion of Israeli settlements in the West Bank. The continued expansion of settlements not only undermines the possibility of a two-State solution, but is also at the core of many human rights violations in the West Bank.[33]

1. Settlement expansion in the West Bank

16. Since the early years of the occupation, Israel has pursued a policy of establishing illegal settlements in the Occupied Palestinian Territory.[34] With a current total settler population of at least 590,000 in the West Bank (around 386,000 in some 130 settlements in Area C and 208,000 in East Jerusalem), the population of settlements has more than doubled since the beginning of the Oslo process in 1993.[35] In addition, approximately 100 illegal outposts have been built without the formal approval of the Government of Israel in Area C and efforts under way in Israel to legalize some of them.[36]

17. Besides allocating land for the purposes of constructing settlement housing and infrastructure, Israel supports the maintenance and development of settlements through the delivery of public services and the encouragement of economic activities, including agriculture and industry. Population growth in Israeli settlements is stimulated by housing, education and tax benefits. Similar incentives are provided for settlement industries.[37] The development of archaeological sites, national parks and other tourist sites aimed at attracting Israelis further contributes to settlement growth and Israeli control of land in the West Bank, including East Jerusalem.[38]

18. Moreover, Israel supports outposts considered illegal under its domestic law and other unauthorized constructions through the provision of funds, infrastructure and security.[39] Settlement expansion is also compounded by the failure of Israel to maintain public order and ensure accountability for harassment and violence perpetrated by Israeli settlers.

19. Settlements amount to the transfer of a State's population to the territory it occupies, which is prohibited by international humanitarian law.[40] Any act that would facilitate population transfer is also prohibited under international humanitarian law.[41] Such transfer stands in violation of the Fourth Geneva Convention and is recognized as a war crime that may lead to individual criminal responsibility.[42] The illegality of settlements under international law has been confirmed by various international bodies, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.[43]

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[32] ICRC, "Contemporary challenges to IHL — Occupation: Overview", June 2012.
[33] See A/HRC/34/39 and A/71/355, para. 34.
[34] See S/13450 and Corr.1 and 2.
[35] Report of the Middle East Quartet of July 2016, p. 4. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.
[36] Ibid., p. 5. See also A/HRC/34/39, para. 33, and A/71/355, paras. 10-14.
[37] See A/68/513, para. 24, A/71/355, para. 4, and A/HRC/22/63, paras. 19, 22 and 97.
[38] See A/69/348, paras. 33-35, A/70/351, paras. 33-36, and A/71/355, para. 4.
[39] See A/68/513, paras. 15-16, and Talya Sason, "Summary of the opinion concerning unauthorized outposts" (10 March 2005).
[40] Fourth Geneva Convention, art. 49 (6).
[41] ICRC, 1958 commentary to article 49 (6) of the Fourth Geneva Convention, p. 283.
[42] Fourth Geneva Convention, art. 147, and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).
[43] See *Legal Consequences of the Construction of a Wall*, para. 120; Security Council resolutions 2334 (2016) and 465 (1980); General Assembly resolution 70/89 and Human Rights Council resolution

20. In addition, settlements and related activities have repercussions on human rights. The ongoing expansion of settlements severely impedes the exercise by the Palestinian people of their right to self-determination and seriously deprives them of natural resources.[44]

2. Unlawful seizure and destruction of property

21. As set out in the Fourth Geneva Convention, the occupying power must administer public property according to the rules of usufruct. The occupying power can thus use and enjoy public property as long as doing so does not alter its character.[45] Private property must be respected and cannot be confiscated;[46] the destruction of property by the occupying power is expressly prohibited by international humanitarian law.[47] The seizure of property, as well as the demolition of Palestinian houses, infrastructure and orchards, in order to establish, develop and maintain settlements and provide access to the latter are flagrant violations of the rules of usufruct.

22. Exceptions to the rules are only permitted if those rules specifically provide for them. In the absence of active hostilities in the West Bank, any exception to the rule prohibiting the alteration or destruction of private and public property appears difficult to invoke. [48]

3. Demolitions and forcible transfer of Palestinians in the West Bank

23. International humanitarian law not only prohibits the transfer of the population of the occupying State into the occupied territory, but also individual or mass forcible transfer or deportation of the population of an occupied territory regardless of the motive.[49] Such transfer amounts to a grave breach of the Geneva Conventions and is also considered a war crime.[50]

24. Over the years, the Secretary-General has reported on cases where the forcible transfer of Palestinians may have taken place within the West Bank and on the situation of individuals and communities at risk of forcible transfer, primarily Bedouins and other herder communities within Area C of the West Bank. Cases of forcible transfer are generally documented after the demolition of homes and infrastructure that leads to forced evictions,[51] in violation of international humanitarian law and international human rights law.[52]

25. Having destroyed or seized 986 structures between 1 January and 31 October 2016 (more than twice for the number compared with the same period in 2015), in 2016 the Israeli authorities demolished more Palestinian-owned structures in the West Bank, including East Jerusalem, than in any year since 2009, when the United Nations began to monitor the issue systematically. The majority of demolitions affected vulnerable Palestinian Bedouin and herding communities. Overall, 1,596 Palestinians were displaced in 2016, including 759 children, and 6,398 others were affected, including 2,007 children, by the demolition of residential and livelihood-related structures. According to the Office for the Coordination of Humanitarian Affairs of the Secretariat, official data released by the

31/36, and earlier resolutions; and the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 8.

[44] See *Legal Consequences of the Construction of a Wall*, para. 122; General Assembly resolution 71/247; and A/HRC/22/63, para. 38.

[45] Convention respecting the Laws and Customs of War on Land, art. 55, Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[46] Convention respecting the Laws and Customs of War on Land, arts. 46 and 56, Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[47] Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[48] ICRC, 1958 commentary to article 53 of the Fourth Geneva Convention, p. 302.

[49] See the Fourth Geneva Convention, art. 49 (2), for exceptions.

[50] Fourth Geneva Convention, art. 147, and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[51] See, e.g., A/HRC/25/40, paras. 18-21, A/69/347, para. 26, and A/67/372, paras. 36-37.

[52] Fourth Geneva Convention, art. 53; International Covenant on Economic, Social and Cultural Rights, art. 11; and International Covenant on Civil and Political Rights, art. 17.

Israeli authorities indicates that over 11,000 demolition orders in Area C were outstanding as of 2014, concerning an estimated 17,000 Palestinian-owned structures.[53]

26. Most structures have been demolished because of the absence of building permits issued by the Israeli authorities, which are almost impossible for Palestinians to obtain. In previous reports, it has been noted that the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law.[54] Provided that international humanitarian law is otherwise respected,[55] territorial planning has to be undertaken to enhance the life of the protected population, which is not the case in the present situation. The implementation of the zoning and planning regime cannot be invoked by Israel to justify any violation of international law.

27. The destruction of donor-funded humanitarian assistance to vulnerable communities spiked in 2016, when 292 donor-funded structures were demolished or seized by the Israeli authorities in Area C — a rate over 165 per cent higher than in 2015. Affected relief items included shelters and tents, water cisterns, animal barracks and other basic structures needed for survival and to gain a livelihood. Such actions are irreconcilable with the occupying power's obligations to allow and facilitate humanitarian access for civilians in need.[56]

28. Forcible transfer does not necessarily require the use of physical force by the authorities but may be triggered by specific circumstances that leave individuals or communities with no choice but to leave. The existence of such circumstances constitutes what is known as a coercive environment.[57] Any transfer that occurs without the genuine and fully informed consent of those affected is considered forcible. However, genuine consent to a transfer cannot be presumed in an environment marked by the use or threat of physical force, coercion, fear of violence or duress.[58]

29. Palestinians have been forced to move owing to the existence of a coercive environment within Area C of the West Bank[59] and the area of the city of Hebron under Israeli control (H2).[60] Coercive factors such as home seizures and demolitions leading to forced evictions, movement and access restrictions, instances of excessive use of force by Israeli security forces and settler violence have also been reported in East Jerusalem.[61] Forcible transfers have also been documented following the revocation of residency permits in East Jerusalem,[62] as well as the transfer of Palestinian detainees to Israeli prisons.[63] Human rights violations, for example of the rights to freedom of movement, privacy and

[53] Office for the Coordination of Humanitarian Affairs, official data on demolition orders in Area C. Available from http://data.ochaopt.org/demolitions.aspx.

[54] See A/HRC/31/43, para. 45, referring to A/HRC/25/38, paras. 11-20; see also A/68/513, paras. 30-34. The implementation of the Israeli planning and zoning regime is problematic with regard to the prohibition of discrimination enshrined in human rights law and the right to adequate housing (International Covenant on Economic, Social and Cultural Rights, art. 11), including the prohibition on forced evictions and on unlawful or arbitrary interference with privacy, family and home (Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions, para. 3).

[55] In particular, the Israeli planning and zoning regime may violate the obligation of the occupying power under international humanitarian law to ensure public order and safety while respecting the laws in force in the occupied territory (Convention respecting the Laws and Customs of War on Land, art. 43).

[56] Fourth Geneva Convention, art. 59; see also ICRC, *Customary International Humanitarian Law*, rule 55.

[57] See A/HRC/34/39, paras. 40-57.

[58] See A/67/372, para. 37, and A/HRC/24/30, para. 29.

[59] See A/HRC/31/43, para. 46, A/69/348, para. 16, and A/67/372, para. 37.

[60] See A/71/355, paras. 25-64.

[61] See A/70/351, paras. 25-51, and A/HRC/16/71, paras. 20-22.

[62] See A/67/372, para. 39, and A/HRC/16/71, paras. 23-24.

[63] Fourth Geneva Convention, art. 78. The transfer of prisoners into the territory of the occupying power is forbidden by article 76.

family life,[64] as well of a range of economic, social, and cultural rights,[65] may also be violated within the context of forcible transfers.

4. Collective punishment

30. In June 2007, following the takeover of Gaza by Hamas, and in the context of continued attacks emanating from Gaza against Israeli civilian targets, Israel significantly tightened restrictions on movement by land to and from the Gaza Strip, adding to the prohibition of any access by air or sea since 1967. Despite a gradual easing of some restrictions since 2010, Israel continues to maintain a tight closure policy,[66] leaving 1.9 million Palestinians locked in Gaza, largely unable to access the West Bank, including East Jerusalem, and the outside world. The impact of that blockade is exacerbated by the almost continuous closure by Egypt of the Rafah passenger crossing (despite some loosening of restrictions over the past year) and by the increasing refusal by Jordan to grant passage to Palestinians from Gaza through the Allenby crossing.[67]

31. The closures imposed on Gaza are contrary to international law and may amount to collective punishment, as it penalizes the entire population without regard to individual responsibility.[68] It has a serious impact on the right to freedom of movement and on economic, social and cultural rights.

32. Following an attack against Israelis, the Israeli authorities frequently employ measures that may amount to collective punishment that affect the members of the family or the community of the attackers or alleged attackers.[69] The use of such measures has increased during the past three years in a context of heightened violence. Among the measures used are the following: punitive demolitions, the cancellation of travel and work permits and other administrative actions, the withholding of bodies and the closure of Palestinian towns and villages.[70]

33. Collective punishment is expressly prohibited by international humanitarian law.[71] That prohibition does not apply only to criminal sanctions but also to harassment of any sort, including administrative measures, carried out by the police or the military.[72] Several human rights are negatively affected by such practices, including the right to a fair trial and other due process guarantees, including the principle of individual responsibility and the presumption of innocence.[73]

5. Settler harassment and violence, and impunity

34. Settler harassment and violence against Palestinians, and the failure of Israel to ensure that perpetrators are held accountable, has been an ongoing issue in the Occupied Palestinian Territory.[74] Such instances include verbal harassment, physical attacks causing

[64] International Covenant on Civil and Political Rights, arts. 12 and 17.
[65] See A/HRC/16/71, para. 24.
[66] The term "blockade" is used here to describe the imposition by Israel of prolonged closures and economic and movement restrictions in the Gaza Strip (see A/71/364, para. 5, A/HRC/24/30, paras. 21-23, A/69/347, paras. 30-34, and General Assembly resolution 69/93).
[67] See A/71/364, para. 28.
[68] See A/HRC/31/40, para. 36, and A/HRC/24/30, para. 22, with references.
[69] A/HRC/34/36 and A/HRC/31/40.
[70] See A/71/364, paras. 25-26, A/HRC/34/36, paras. 31-33, and A/HRC/31/40, paras. 29-33. See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20082&LangID=E.
[71] Convention respecting the Laws and Customs of War on Land, art. 50, and Fourth Geneva Convention, art. 33.
[72] ICRC, *Customary International Humanitarian Law*, commentary to rule 103.
[73] International Covenant on Civil and Political Rights, arts. 11-12, 14 and 17. See also the Fourth Geneva Convention, arts. 71-73.
[74] E.g., A/71/355 and A/HRC/31/43, among numerous previous reports. See also Talya Sason, "Summary of the opinion concerning unauthorized outposts".

casualties and damage to or destruction of Palestinian property, with Palestinian-owned trees (mainly olive trees) being specifically targeted.[75]

35. The phenomenon has been directly linked to the continued existence and expansion of illegal settlements throughout the West Bank. Documented cases of settler attacks, trespassing and forceful takeover of land suggest that violence is often carried out as part of an effort by settlers to push Palestinian farmers off their land.[76]

36. As the occupying power, Israel is obliged to uphold public order and safety within the Occupied Palestinian Territory and to protect its inhabitants, notably from all acts of violence, threats and insults.[77] Harassment and violence by settlers impedes the enjoyment of numerous human rights by the affected Palestinian population, including the right to life and physical integrity, the right to privacy, family and home and the right to an adequate standard of living.[78]

37. Under its duty to respect, protect and fulfil the human rights of all individuals within its jurisdiction, without any discrimination, Israel has the obligation to exercise due diligence to prevent, investigate, prosecute, punish and remedy any harm sustained by Palestinians, whether it is caused by officials or private persons.[79]

38. Moreover, Israel should do its utmost to ensure prompt and effective investigations into alleged violations and to prosecute suspected perpetrators.[80] However, it is very rare that police complaints filed by Palestinians in the West Bank lead to an investigation, let alone an indictment.[81] The Israeli authorities have recently made efforts to address the issue of settler violence, including through intensified law enforcement activity and the increased presence of elements of the Israel Defense Forces.[82] These measures have been linked to a steady decline in recorded incidents of settler violence over the past three years. That trend nevertheless is in contrast with the exceptional violence of some of the attacks committed in 2015.[83]

6. Application of Israeli law in the West Bank

39. In the West Bank, Israeli domestic law is applied extraterritorially to Israeli settlers, while Palestinians are subject to Israeli military law in addition to the Palestinian legal system. The resulting differentiation is particularly problematic as regards criminal matters.[84] While Israeli settlers are tried under Israeli penal law in civilian courts in Israel, Palestinians are prosecuted under Israeli military law for security offences and other crimes as defined by military orders. It is notable that Israeli domestic law provides more procedural guarantees to suspects and defendants than Israeli military law does for the same offence.[85]

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[75] Office for the Coordination of Humanitarian Affairs, "Israeli settler violence in the West Bank", November 2011.

[76] See A/69/348, para. 39. See also Yesh Din, *The Road to Dispossession: a Case Study — the Outpost of Adei Ad* (February 2013), and Kerem Navot, *Israeli Settler Agriculture as a Means of Land Takeover in the West Bank*, (August 2013).

[77] Fourth Geneva Convention, art. 27 (1), and Convention respecting the Laws and Customs of War on Land, art. 46.

[78] See, e.g., International Covenant on Civil and Political Rights, arts. 7 and 17, International Covenant on Economic, Social and Cultural Rights, art. 11, and International Convention on the Elimination of All Forms of Racial Discrimination, art. 5.

[79] See *Legal Consequences of the Construction of a Wall*, para. 110, CCPR/CO/78/ISR, para. 11, and Committee on Civil and Political Rights general comment No. 31, para. 8.

[80] See A/71/355, para. 19, and A/HRC/25/38, paras. 42-43.

[81] Yesh Din, "Law enforcement on Israeli civilians in the West Bank", data sheet, October 2015 (referred to in A/71/355, para. 19).

[82] See A/71/355, para. 20, and A/HRC/31/43, paras. 40-43.

[83] See A/HRC/34/39 and A/71/355, para. 18.

[84] See A/HRC/28/44, para. 53, and A/HRC/22/63, paras. 41 and 46.

[85] Differences notably pertain to the authority to arrest, the maximum period of detention before being brought before a judge, the right to meet with an attorney, protections for defendants during trial, maximum punishment and release before sentence completion. Israeli military law also provides for additional offences that are not part of Israeli criminal legislation, such as stone-throwing or

40. The application of two different legal systems in the same territory, on the sole basis of nationality or origin, is inherently discriminatory.[86] It also violates the principle of equality before the law, which is central to the right to a fair trial.[87] The application of Israeli domestic law to settlers and of Israeli military law to Palestinians in the West Bank also raises concerns regarding the obligation of the occupying power to respect the laws in force in the territory it occupies, unless it is absolutely prevented from doing so.[88]

B. Obligations of all parties related to the conduct of hostilities

41. Since 2007, there have been three major escalations in Gaza, which have resulted in 3,808 Palestinian fatalities, including 928 children.[89] During the most recent escalation of hostilities, in July and August 2014, 1,460 civilians, including 556 children, were killed, and 82 hospitals and 295 schools were either destroyed or damaged. In total, 90 Israelis, including 11 civilians, were killed.[90]

42. More than two years after the 2014 escalation of hostilities, serious concerns persist concerning the lack of accountability by the Israeli and Palestinian authorities with regard to alleged violations of international humanitarian law, including alleged war crimes, and violations and abuses of international human rights law. No meaningful investigation has been announced by the Palestinian authorities so far.[91] A high number of cases involving the Israel Defense Forces will not be subject to criminal investigation as they were closed by the Office of the Israeli Military Advocate General for lack of reasonable grounds for suspicion of criminal behaviour, despite serious allegations.[92] When investigations are opened, concerns remain as to whether they meet human rights standards, especially in view of the small number and the low rank of alleged perpetrators that are eventually brought to justice, facing mainly lenient indictments and sentences.[93] As for civil remedies, victims have no prospect for compensation either.[94] This overall lack of accountability contributes to fuelling the conflict.

C. Further recurrent human rights violations in the Occupied Palestinian Territory

Impunity as a driver of violations

43. Despite various measures taken by Israel to address impunity,[95] the failure to ensure accountability creates an environment of impunity where victims and families have little or no redress, which may encourage further abuses on all sides.

assaulting a soldier. See Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (November 2014) and B'Tselem, "Dual system of law", 1 January 2011.

86 International Covenant on Civil and Political Rights, art. 2.

87 Ibid., art. 14.

88 Convention respecting the Laws and Customs of War on Land, art. 43, and Fourth Geneva Convention, art. 64. The possible passage of a bill in the Knesset that would enable the retroactive legalization of outposts built on Palestinian-owned land is of additional concern, as it would be the first time that the Knesset enacts legislation to be specifically applied in the West Bank.

89 Figures from the Office for the Coordination of Humanitarian Affairs.

90 A Thai national was also killed.

91 The report of the Palestinian Independent National Committee established to follow up on the recommendations addressed to the Palestinian Authority by the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (see A/HRC/29/52) was reportedly handed over to the Palestinian President on 8 January 2017.

92 Israel Defense Forces, "Decisions regarding exceptional incidents that occurred during Operation Protective Edge". See A/71/364, paras. 38-41.

93 See A/71/364, para. 40.

94 Ibid., paras. 56-57.

95 See CAT/C/ISR/5 and A/71/364, paras. 61-63.

44. Ensuring accountability for violations committed by all parties would be key to breaking the cycle of violence.[96] Few Israeli security personnel are indicted for their actions. Incitement to violence remains an issue. Palestinians who commit attacks against Israelis are glorified by parts of the population and representatives of ruling parties.[97]

Excessive use of force by law enforcement officials

45. Since September 2015, there has been a new escalation of violence in the West Bank, with attacks committed by Palestinians against Israelis. In that context, there appears to have also been a sharp increase in incidents of excessive use of force, both in the context of clashes and in response to attacks or alleged attacks by Palestinians against Israelis.[98] In many instances, it appears that Israeli security forces do not make use of firearms against Palestinians only as a last resort, even where there is no imminent threat to life or of serious injury.[99] Similar concerns of unlawful killings arise in the context of the access-restricted areas in Gaza (where elements of the Israel Defense Forces routinely use firearms against bystanders and protestors), along the Israel-Gaza fence and at sea against small fishing vessels.[100]

46. Such use of firearms and the large number of resulting casualties raise serious questions as to whether the rules of engagement of the Israel Defense Forces comply with international law, whether they are properly implemented and respected and whether appropriate sanctions are imposed for non-compliance.

47. In law enforcement operations, the use of lethal force has to be limited to situations when it is strictly necessary and in accordance with the principle of proportionality. It should be restricted to situations of last resort, i.e. as a response to an imminent threat of death or serious injury.[101] Use of force that does not comply with those principles and results in the death of the suspect amounts to an arbitrary deprivation of life.[102] Under international humanitarian law, this may constitute an act of wilful killing.[103]

48. The Secretary-General has expressed serious concern regarding the excessive use of force and unlawful killings by the Israeli security forces, including apparent extrajudicial executions.[104] Concerns remain regarding accountability in law enforcement operations.[105] Since the escalation of violence in September 2015, only one case has led to an indictment and subsequent conviction, despite the fact that, as at 31 October 2016, 169 Palestinians were killed by Israeli security forces following an attack or alleged attack.[106]

Torture and ill-treatment in detention

49. Allegations of ill-treatment and torture of Palestinian detainees have been regularly reported over the years.[107] These occur largely during arrests, transfers and interrogations, particularly by the Israel Security Agency. Common forms of ill-treatment include sleep deprivation, placement in stress positions, sexual harassment and physical assault. In 2015, The Public Committee against Torture in Israel documented 38 complaints of torture in Israeli detention facilities.[108] The United Nations Children's Fund (UNICEF) and partner

[96] See A/71/364, para. 71.
[97] Report of the Middle East Quartet, p. 3.
[98] See A/HRC/31/40.
[99] See A/71/364, paras. 8-10, and A/71/355, paras. 38-43.
[100] See A/70/421, paras. 30-38, and A/71/364, paras. 13-15.
[101] Code of Conduct for Law Enforcement Officials, arts. 2-3, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 5, 9 and 13-14.
[102] International Covenant on Civil and Political Rights, art. 6.
[103] Fourth Geneva Convention, art. 147.
[104] See A/71/355, para. 43, A/71/364, paras. 8-9, and A/HRC/31/40, paras. 10-15.
[105] See A/71/364, paras. 42-50.
[106] See A/71/355, para. 45, and A/71/364, para. 45. Elor Azaria was convicted for manslaughter on 4 January 2017; as at the time of writing, it was not clear whether there will be an appeal to the judgment.
[107] A/HRC/28/80, A/HRC/31/40 and A/71/364.
[108] Update provided by the Public Committee against Torture in Israel.

organizations also documented 58 cases of West Bank children reporting ill-treatment by Israeli security forces in 2015.[109]

50. International human rights law prohibits torture or cruel, inhuman or degrading treatment or punishment.[110] That prohibition is absolute and there cannot be any derogation from it, not even in a situation of armed conflict.[111] The occupied population is also specifically protected by international humanitarian law.[112]

51. Israeli law does not specifically prohibit, define or criminalize torture.[113] Despite improvements, for instance with the creation of semi-independent accountability mechanisms, the "necessity defence" is commonly invoked to prevent any criminal investigations.[114] The number of complaints of torture or ill-treatment involving the Israel Security Agency has quadrupled since June 2013, but not a single complaint has led to a criminal investigation.[115] Israel views the presentation of such complaints as a method to burden and hinder its security agencies in their ongoing fight against terrorism.[116]

52. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has consistently received and documented reliable allegations of torture and ill-treatment of Palestinian detainees in the West Bank and in Gaza, including cases that have led to death.[117] In the West Bank, political opponents and activists, including students perceived to be linked to Hamas and the Palestinian Islamic Jihad, appear to be particularly targeted by the Palestinian Authority.[118] In Gaza, the ruling authorities and armed groups have reportedly resorted to such practices.[119] Credible investigations into allegations are rare.

Administrative and arbitrary detention

53. Since 2014, the number of Palestinians in detention has significantly increased; detainees have no prospect of charge or trial. As at 31 October 2016, it was reported that 720 Palestinians were being held in Israeli administrative detention,[120] after their number had peaked at 750 earlier in 2016, the highest number since early 2008.[121] Some administrative detainees have resorted to hunger strikes to protest their detention.[122] In July 2015, the Israeli prisons act was amended, allowing judges to authorize the forced feeding of a detainee on hunger strike.[123] Forced feeding has been qualified by human rights experts as being tantamount to cruel, inhuman or degrading treatment, and a violation of the right to health.[124]

54. OHCHR has also documented a growing use of administrative detention by Palestinian security forces, in some cases on the basis of orders issued by provincial governors, or simply to justify delays in bringing the accused before a judge.[125] In Gaza, the authorities have resorted to arbitrary detention against perceived political opponents,

[109] See A/HRC/31/40, para. 47.
[110] International Covenant on Civil and Political Rights, art. 7.
[111] Ibid., art. 4.
[112] Fourth Geneva Convention, arts. 27 and 32.
[113] See CAT/C/ISR/CO/5, paras. 12-13, and A/71/364, paras. 41 and 59.
[114] See A/71/364, para. 59 (with references).
[115] Ibid., para 60.
[116] See CAT/C/ISR/5, para. 11.
[117] See A/HRC/31/40, paras. 60-62, and A/HRC/34/36.
[118] See A/HRC/31/40, para. 61, and A/HRC/34/36.
[119] A/HRC/34/36.
[120] See www.addameer.org/statistics. Three Jewish-Israeli men were also held in administrative detention in 2015.
[121] See www.addameer.org/statistics/20160730 and www.btselem.org/administrative_detention/statistics.
[122] See A/HRC/31/40, para. 44, and A/HRC/34/36, paras. 21-22.
[123] See A/HRC/31/40, para. 45.
[124] Joint statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, available from www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E.
[125] See A/HRC/31/40, para. 58.

including members of Fatah and former personnel of the Palestinian Authority, with cases of incommunicado detention reported, including by armed groups.[126]

55. Human rights law guarantees to everyone the right to liberty and security. This implies that no one shall be subject to arbitrary arrest or detention, and that any deprivation of liberty should occur on the basis of legal grounds and follow strict procedures as established by law.[127] Detainees should be promptly charged or released. Administrative detention is only permitted in exceptional circumstances and should never be used as an alternative to criminal proceedings.[128] Stringent safeguards should be applied to prevent arbitrary detention, including basic procedural guarantees, such as the rights to be informed promptly and fully of the reasons for the detention, to take proceedings before a court, to challenge the legal basis of the detention and to be presumed innocent. Breaches should give rise to compensation.[129]

56. The way that Israel makes use of administrative detention often leads to indefinite detention without charge. Hearings for administrative detainees are often conducted in closed session, with detainees regularly held on the basis of secret evidence to which neither they nor their lawyers are given access. That practice has been widely condemned, including by the Secretary-General, the United Nations High Commissioner for Human Rights and the Human Rights Committee, all of whom have called for its end.[130] In addition, such practice is inconsistent with the exceptional nature of detention provided by international humanitarian law.[131] Most administrative detainees are held in Israel, in violation of the prohibition of forcible transfer.[132]

Arrest and detention of children

57. Each year hundreds of Palestinian children, some as young as 12 years of age, are arrested and prosecuted in the Israeli military court system. Charges usually involve stone-throwing and, more recently, incitement to violence based on social media posts.

58. The number of children in detention has more than doubled in the past year.[133] The peak figure of 440 children held in Israeli detention at the end of February 2016 was the highest number of detained children since January 2008.[134] Administrative detention of children resumed in October 2015, a practice not seen since December 2011.[135] There are concerns as to whether child detention is being used as a measure of last resort and for the shortest appropriate period, as required by human rights law.[136]

59. The fact that Israeli military law applicable in the West Bank permits the detention of Palestinian children from the age of 12 years is at odds with the specific protection granted to children as members of a particularly vulnerable group and the general rule that any decision affecting them must have their best interest as a primary consideration.[137]

60. A number of legal developments also appear to target children in East Jerusalem in contravention of international standards.[138] In August 2016, the Knesset approved amendments to the Israeli youth law that make it possible for prison sentences to be issued for children aged between 12 and 14 years for specific, serious crimes.[139]

[126] A/HRC/34/36.
[127] International Covenant on Civil and Political Rights, art. 9, and Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 15.
[128] Ibid.
[129] International Covenant on Civil and Political Rights, art. 9.
[130] See A/HRC/28/80, para. 33.
[131] Fourth Geneva Convention, art. 78.
[132] Fourth Geneva Convention, arts. 49 and 147. See A/HRC/31/40, para. 43.
[133] See A/HRC/34/36, para. 24.
[134] See A/71/364, para. 36.
[135] See A/HRC/31/40, para. 41, and A/71/364, para. 34.
[136] Convention on the Rights of the Child, art. 37 (b).
[137] Ibid., art. 3 (1).
[138] See A/HRC/31/40, paras. 49-51.
[139] See A/HRC/34/36, para. 29.

Death penalty

61. Under Palestinian law, the death penalty is permitted for a large number of offences and is mandatory for a smaller number of offences. The President is required to confirm the death sentence. Although there is no formal moratorium on executions, in the West Bank none have been carried out since an announcement by the Palestinian President in 2005 that he would not confirm any death sentences.[140] Both in the West Bank and in Gaza, however, courts continue to issue death sentences. In Gaza, executions resumed in 2010, and 22 of the 101 death sentences pronounced since 2008 have reportedly been carried out, despite not having been approved by the Palestinian President.

Freedom of movement and economic, social and cultural rights

62. Palestinians' freedom of movement within the Occupied Palestinian Territory is significantly restricted by a complex and multilayered system of administrative, bureaucratic and physical constraints, including permit requirements, checkpoints and physical obstacles affecting almost every aspect of daily life.[141]

63. Movement restrictions are particularly prevalent in the vicinity of settlements. East Jerusalem is isolated from the rest of the West Bank through the use of permit requirements, as are areas of the "seam zone", i.e. areas west of the wall in the West Bank. The wall[142] remains a key obstacle to freedom of movement. In Gaza, the continuing closures and the related permit regime impose strict limits on Gaza residents wishing to exit Gaza and, to a lesser extent, on West Bank residents wishing to enter Gaza.[143]

64. Freedom of movement is guaranteed under international human rights law.[144] As previously highlighted, restrictions on freedom of movement may also amount to collective punishment, in violation of international humanitarian law.[145] While that right may nevertheless be restricted to address legitimate security needs, any limitation has to be necessary and proportional to the end sought and must be applied consistently with protections afforded by human rights.[146]

65. Freedom of movement is a precondition for the exercise of several other human rights, including economic, social and cultural rights. Access restrictions have a negative impact on the rights to education, health, work and family life throughout the Occupied Palestinian Territory.[147]

66. Limitations on movement and other restrictions also prevent the development of the Palestinian economy. The agricultural sector has been particularly affected, as farmers have been denied access to agricultural areas, water resources and domestic and external markets.[148] Impediments to Palestinians' economic, social and cultural development also affect the exercise of the right to self-determination.[149]

67. The closures in Gaza, together with successive military campaigns by the Israel Defense Forces and the use of force in access-restricted areas, has exacerbated the humanitarian crisis in Gaza, severely undermining any effort at development and resulting

[140] Ibid., para. 57.
[141] See A/HRC/31/44, paras. 12-43.
[142] In 2002, Israel started to build a wall between Israel and the West Bank in order to prevent attacks from Palestinians within Israel. Some 85 per cent of the wall nevertheless runs into the West Bank. Once fully completed, the wall would isolate 9.4 per cent of the West Bank, including East Jerusalem.
[143] See A/HRC/31/44, paras. 12-20.
[144] International Covenant on Civil and Political Rights, art. 12 (1).
[145] Convention respecting the Laws and Customs of War on Land, art. 50, and Fourth Geneva Convention, art. 33.
[146] International Covenant on Civil and Political Rights, art. 12 (3), and Committee on Civil and Political Rights general comment No. 27 (1999) on freedom of movement, para. 14.
[147] International Covenant on Economic, Social and Cultural Rights, arts. 6 and 11-13. See A/HRC/31/44, paras. 44-73.
[148] See A/HRC/22/63, para. 89.
[149] International Covenant on Civil and Political Rights, art. 1, and International Covenant on Economic, Social and Cultural Rights, art. 1. See A/HRC/31/44, para. 11.

in recurrent violations of human rights. The closures have had a negative impact on basic human rights and economic prospects, as well as on the availability of essential services, exacerbating poverty and aid dependency.[150] Access to health, education and broader economic and social rights have been restricted. The situation has caused growing frustration and despair, with an ongoing breakdown in societal ties accompanied by an increase in diseases, crime rates, family disputes, domestic violence and cases of self-harm. The living conditions of people displaced by the conflict have also resulted in an increased risk of violence against women and children.[151]

68. According to the Office for the Coordination of Humanitarian Affairs, 1.3 million people in Gaza were in need of humanitarian assistance as of November 2016.[152] However, efforts by humanitarian actors to address the most pressing needs following the 2014 escalation of hostilities, such as housing, health, education, and water and sanitation services, have been hampered by restrictions on the import of goods considered by Israel as "dual-use" items. Those are civilian goods, such as construction materials or medical equipment, that Israel considers to also be of military use.[153] These restrictions constitute a violation of the obligation of Israel as an occupying power to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.[154]

Freedom of expression and peaceful assembly

69. Significant concerns remain regarding violations and abuses by all duty bearers of the rights to freedom of expression, peaceful assembly and association. Israeli and Palestinian authorities impose restrictions and subject both Israeli and Palestinian human rights defenders focusing on the Occupied Palestinian Territory to pressure and harassment.[155] Palestinian activists are regularly arrested, assaulted and harassed by Israeli security forces, in addition to facing physical attacks and harassment from settlers, particularly in Hebron.[156] Israeli human rights organizations advocating for Palestinians' human rights have come under attack from Israeli politicians, whose statements may amount to incitement to violence.[157] Of additional concern is the recent growing intimidation of non-governmental organizations that have been calling for the use of foreign jurisdictions and international justice mechanisms to ensure accountability for Israeli violations.[158]

70. In the Occupied Palestinian Territory, political tensions often lead to human rights abuses, with restrictions on freedom of expression and peaceful assembly, in addition to the targeting of political opponents through harassment, threats, arbitrary arrests, assaults, ill-treatment and torture. OHCHR regularly receives reports of human rights violations perpetrated by the Palestinian security forces and the authorities in Gaza, particularly against individuals and groups critical of the authorities.[159]

71. Throughout the Occupied Palestinian Territory, social media is monitored, and journalists and activists are harassed, arrested, detained and, in some cases, subjected to ill-treatment or torture.[160] Authorities in both the West Bank and Gaza have also imposed restrictions on peaceful assemblies. Such practices contribute to the creation of a repressive environment and promote self-censorship among the Palestinian population.

[150] See A/71/364, para. 5.
[151] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Office for the Coordination of Humanitarian Affairs, "Needs of women and girls in humanitarian action in Gaza: gender alert for the 2016 response plan", August 2015, p. 2.
[152] Office for the Coordination of Humanitarian Affairs, "The Gaza Strip: the humanitarian impact of the blockade", 14 November 2016.
[153] See http://gisha.org/publication/4860.
[154] Fourth Geneva Convention, art. 59, and ICRC, *Customary International Humanitarian Law*, rule 55.
[155] See A/HRC/34/36, paras. 39-42.
[156] See A/HRC/31/40, para. 52, and A/HRC/34/36, para. 39.
[157] See A/HRC/34/36, para. 42.
[158] See www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened and www.mezan.org/en/post/21475.
[159] See A/HRC/31/40, paras. 66-67, and A/HRC/34/36, paras. 51-53.
[160] See A/HRC/31/40, paras. 56-57, and A/HRC/34/36, para. 49.

72. International human rights law guarantees freedom of expression, association and peaceful assembly.[161] Although restrictions on the exercise of those rights are permitted, they must be provided by law and have to be necessary for the protection of the rights and freedoms of others and for the protection of national security and order.

IV. Conclusion

73. **Chronic violations of international human rights law and international humanitarian law by all parties persisted during the reporting period. Violations by Israel of the fundamental provisions of the law of occupation continued, particularly with the closures in Gaza and the consolidation and expansion of settlements, suggesting clear patterns and policies. The transfer of parts of the Israeli and the Palestinian populations, and the lack of respect for public and private property, have profoundly altered the status quo in the Occupied Palestinian Territory.**

74. **The absence of law enforcement and accountability against Israeli perpetrators further contravenes the obligation of Israel as an occupying power to ensure public order and safety and to protect the Palestinian population in all circumstances. Moreover, the application of Israeli national law to Israelis in the West Bank raises concerns under international law.**

75. **In 2013, experts denounced the "creeping annexation" of the West Bank, preventing the establishment of a contiguous and viable Palestinian State and undermining the right of the Palestinian people to self-determination.** [162] **The devastating impact of the Israeli occupation on the rights of the Palestinian population can only be reasserted.**

76. **International law violations by the Palestinian Authority, the authorities in Gaza and Palestinian armed groups are also of concern. The obligation of the Palestinian authorities to uphold human rights in the entirety of the Occupied Palestinian Territory has to be emphasized as an essential element of the governing role of the State of Palestine.**

V. Recommendations

77. **All violations and abuses of the human rights of the Palestinian people must immediately cease and be promptly, impartially and independently investigated and those responsible must be held accountable. All parties must respect international law and comply with their obligations and responsibilities under international human rights law.**

78. **All parties, including Palestinian armed groups, shall respect the applicable rules of international humanitarian law, including the principles of distinction, proportionality and precaution, and ensure accountability for all violations.**

79. **All previous recommendations of the United Nations human rights treaty bodies and other mechanisms of the Secretary-General and of the United Nations High Commissioner for Human Rights that remain valid, as well as the recommendations of commissions of inquiry and fact-finding missions, must be fully and promptly implemented.**

80. **All States parties to the Geneva Conventions should take measures to ensure the respect of the Conventions by all sides.**

81. **Israel must end and reverse all settlement activity in the West Bank, including East Jerusalem, and lift the situation of blockade in Gaza.**

[161] International Covenant on Civil and Political Rights, arts. 19 and 21-22.
[162] See A/HRC/22/63, para. 101.

82. **In ensuring its legitimate security needs, Israel must respect international humanitarian law and international human rights law.**

83. **The Palestinian authorities should take steps to encourage national political parties to resolve the political disunity that obstructs the equal implementation of the human rights obligations of the Government of the State of Palestine throughout the Occupied Palestinian Territory.**

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Human rights situation in Palestine and other occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009

Report of the United Nations High Commissioner for Human Rights*, **

Summary

The present report is submitted pursuant to Human Rights Council resolution 31/35, and details the status of implementation of the recommendations addressed to all parties since 2009 by the relevant Human Rights Council mechanisms, namely previous fact-finding missions, the commission of inquiry and special procedures, and by United Nations treaty bodies, the Office of the United Nations High Commissioner for Human Rights and the Secretary-General in their reports to the Human Rights Council. The report identifies patterns of cooperation, compliance and implementation, and proposes follow-up measures to ensure implementation.

* The report was submitted after the deadline in order to reflect the most recent developments.
** The annex to the report is being circulated as received.

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I. Introduction

1. The present report of the United Nations High Commissioner for Human Rights is submitted pursuant to resolution 31/35, adopted by the Human Rights Council on 24 March 2016. In operative paragraph 8, the Council requested the High Commissioner to conduct "a comprehensive review detailing the status of implementation of the recommendations addressed to all parties since 2009 by the relevant Human Rights Council mechanisms, namely previous fact-finding missions, the commission of inquiry and special procedures, and by United Nations treaty bodies, the Office of the High Commissioner and the Secretary-General in his reports to the Human Rights Council, and to identify patterns of non-compliance, non-implementation and non-cooperation, to propose follow-up measures to ensure implementation …"

2. During the thirty-fourth session of the Human Rights Council, the High Commissioner provided an oral update on the progress that had been made on the review. Since 2009, over 900 recommendations have been formulated to improve the human rights situation in the Occupied Palestinian Territory. Most of the recommendations have been addressed to Israel, but some have been addressed to the Government of the State of Palestine and other Palestinian duty bearers,[1] as well as to the United Nations, States members of the United Nations, businesses, civil society and the international community.

3. In accordance with Human Rights Council resolution 31/35, the present review attempts to illustrate the extent of implementation of these recommendations, including compliance with international law and cooperation with human rights mechanisms. The concluding sections identify patterns and propose measures to help implementation.

4. The presentation of the report coincides with the fiftieth year of Israeli occupation and the long-standing denial of the Palestinian people's right to self-determination. In its 2004 advisory opinion on the legal consequences on the construction of a wall in the Occupied Palestinian Territory, the International Court of Justice recalled that "the principle of self-determination of peoples has been enshrined in the United Nations Charter".[2] It referred to General Assembly resolution 2625 (XXV), in which it was noted that "every State has the duty to refrain from any forcible action which deprives peoples … of their right to self-determination".[3] The Court also referred to the article 1 that is common both to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights, which reaffirms the right of all peoples to self-determination.[4] The Court reiterated that "the right of peoples to self-determination is … *erga omnes*".[5]

II. Scope of the review and methodology used

5. The present report reviews recommendations made between 2009 and 2016 by human rights mechanisms and offices enumerated in resolution 31/35.[6] To fulfil the

[1] Includes the Palestinian National Authority and the Gaza authorities.

[2] See A/ES-10/273, para. 88.

[3] See General Assembly resolution 2625 (XXV), annex.

[4] In A/ES-10/273, para. 111, the Court confirms the applicability of the International Covenant on Civil and Political Rights in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.

[5] See A/ES-10/273, para. 88.

[6] See the annex to the present report for the full list of reports reviewed. The resolution did not encompass the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, nor the 2009 and 2014 boards of inquiry established by the Secretary-General.

requirement of a comprehensive review, requested in the resolution, the reports on the universal periodic reviews of Israel, issued in 2009 and 2013,[7] have been referenced.[8]

6. Most of the reports containing the recommendations under review have been presented before the Human Rights Council. However, where a body specified in paragraph 8 of resolution 31/35 also reports to the General Assembly,[9] these have also been included in the review. Similarly, as reports of the Secretary-General to the Human Rights Council typically stipulate that they are to be read in conjunction with reports to the General Assembly, these have also been reflected.

7. The individual assessment of the implementation of each recommendation is based on the most recent information[10] found in United Nations reports and from official domestic sources, civil society information and other credible sources.

8. On 20 December 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed notes verbales to the Permanent Mission of Israel, and to the Permanent Observer Mission of the State of Palestine. The State of Palestine responded through notes verbales on 21 December 2016 and 24 January 2017. To date, Israel has not officially responded.

9. The status of implementation of recommendations has been assessed in five categories: "implemented", "partially implemented", "unimplemented", "closed or no longer applicable" and "insufficient information".[11]

10. Most recommendations are addressed to Israeli and Palestinian authorities, some to the United Nations and the international community, and a relatively small number to other stakeholders such as civil society and businesses. To ensure comprehensiveness, the analysis covers recommendations to all parties, including those that relate to the duties of Member States and High Contracting Parties to the Fourth Geneva Convention and those that relate to *erga omnes* obligations.

11. The review is limited to recommendations applicable to the Occupied Palestinian Territory, grouped under seven thematic areas, ordered according to the total number of recommendations dedicated to each, as follows:

- Accountability and access to justice
- International engagement
- Arrest and detention
- Settlements

[7] See A/HRC/10/76 and A/HRC/25/15.

[8] The State of Palestine has not undergone the universal periodic review process as it holds non-member observer State status in the United Nations (see General Assembly resolution 67/19).

[9] For instance, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

[10] Up until 30 March 2017.

[11] Implemented: signifies that the necessary action has been taken to implement the recommendation and, where applicable, the violations or abuses have ceased.

Partially implemented: signifies that some relevant action aimed at implementing the recommendation has been taken or is ongoing, but that the recommendation has not been fully realized and, in some cases, the violations or abuses have not ceased.

Not implemented: signifies that no meaningful action or insufficient action has been taken to implement the recommendation, and may also refer to situations where measures were directly counterproductive to the implementation of the recommendations.

Closed or no longer applicable: refers to recommendations that are no longer relevant because the situation has changed.

Insufficient information: refers to the inability to make a determination due to inadequate or conflicting information available. It may also refer to recommendations that are so broadly stated as to render the question of their status of implementation open to interpretation and unsuitable for a firm and objective determination.

- Freedom of movement
- Other civil and political rights
- Economic, social and cultural rights

III. Recommendations by type of mechanism or office

12. Out of the 929 recommendations reviewed,[12] 773 fall within the mandated scope of the report and had their status of implementation appraised. Tables have been used throughout the report to provide an overview of the recommendations by report and by addressee and to illustrate their level of implementation. Where a certain category of implementation has not been applicable for the addressee (e.g. where none of the recommendations has been implemented or partially implemented), the corresponding column has been omitted from the table.

Table 1
Sources of recommendations

	Secretary-General	*High Commissioner*	*Fact-finding missions/ commissions of inquiry*	*Special procedures*	*Treaty bodies*	*Total*
Number of reports	22	8	3	21	10	64
Number of recommendations	143 (15%)	119 (13%)	65 (7%)	191 (21%)	411 (44%)	929

Table 2
Analysis of recommendations by party

	Secretary-General	*High Commissioner*	*Fact-finding missions/ commissions of inquiry*	*Special procedures*	*Treaty bodies*	*Total*
Israel	113	64	20	87	267	551
Palestinian authorities[13]	11	46	5	12	1	75
Palestinian armed groups	9	9	4	0	0	22
Parties to the conflict[14]	2	0	4	23	0	29
United Nations	4	0	20	32	0	56
International community	0	0	11	16	0	27
Civil society and businesses	2	0	1	10	0	13
Total	**141**	**119**	**65**	**180**	**268**	**773**

[12] Does not include universal periodic review recommendations.
[13] Includes the authorities in the West Bank and Gaza and the Government of the State of Palestine.
[14] Comprises recommendations addressed jointly to all parties to the conflict.

IV. Thematic areas

13. Just as human rights are indivisible, interdependent and interrelated, the recommendations that form the subject matter of the present review are interconnected. Additional analysis on each thematic area has been included in the forthcoming addendum to the present report, which includes key recommendations highlighting the method for assessing their implementation. Recommendations made to Israel in both rounds of the universal periodic review fall into the above-mentioned seven broad thematic areas.

A. Accountability and access to justice

14. Accountability and access to justice, representing 27 per cent of the recommendations (253), is the largest thematic area under review.

Table 3
Implementation of recommendations related to accountability and access to justice

	Israel				*Palestinian authorities*			*United Nations, international community, civil society*		
	Implemented	*Partially implemented*	*Not implemented No longer relevant or insufficient information*		*Partially implemented*	*Not implemented*	*No longer relevant*	*Implemented*	*Partially implemented*	*Not implemented*
Accountability and investigations for violations of IHL and IHRL	1	4 (1)[15]	99 (9)	1	9 (1)	35 (9)	0	1	3	2
Compliance with IHL and IHRL	1	4	66 (3)	6 (1)	1	15 (2)	1	0	3	1
Death penalty	0	0	0	0	0	4	0	0	0	0
Cooperation with international mechanisms	0	0	0	1	0	0	0	0	1	2
Other	0	0	3 (1)	2 (2)	0	3 (1)	2 (2)	0	0	0
Total	**2 (1%)**	**8 (4%)**	**168 (90%)**	**9 (5%)**	**9 (13%)**	**56 (82%)**	**3 (4%)**	**1 (8%)**	**7 (54%)**	**5 (38%)**

Abbreviations: IHL, international humanitarian law; IHRL, international human rights law.

15. Impunity for violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory has been a long-standing concern articulated by the United Nations and civil society.[16] The High Commissioner has expressed on several occasions "serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip".[17]

16. Over the years, successive reports have detailed serious failings of accountability at all levels, and by all duty bearers. The independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 stated that "impunity prevails across the board for violations allegedly committed by Israeli forces, both in Gaza and the West

[15] The numbers in parentheses indicate the number of recommendations addressed to all parties.

[16] See, for example, A/68/502, section II, D; A/69/347, section III, E and F; and A/HRC/25/40, paras. 50-60. See also, for example, www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf.

[17] See A/HRC/31/40/Add.1, para. 39.

Bank". It noted that "Israel must break with its lamentable track record in holding wrongdoers accountable" and that "accountability on the Palestinian side is also woefully inadequate".[18] Two years after the 2014 escalation, the Office for the Coordination of Humanitarian Affairs (OCHA) expressed serious concerns regarding the persistent "lack of investigations and accountability by both the Israeli and Palestinian authorities into alleged violations of international humanitarian law and international human rights law, including allegations of war crimes, as well as lack of civil remedies and compensation to victims".[19]

17. The Israeli investigation system for examining complaints and claims of violations of international humanitarian law includes civilian oversight of the military justice system, as well as reviews by public commissions of inquiry and fact-finding assessments. The public reports of the Turkel Commission and the Ciechanover review illustrate the efforts of Israel to strengthen its investigation system. The independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 recognized the above and referred to the safeguards in place to preserve the independence of the Military Advocate-General.

18. This accountability system remains limited for violations in the Occupied Palestinian Territory on account of two sets of shortcomings: "physical, financial, legal and procedural barriers that restrict the ability of Palestinians, particularly those living in Gaza, to gain access to justice",[20] and the failure to investigate all allegations. The Secretary-General underlined that "findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney General to open investigations in cases where there is prima facie evidence, including eyewitness testimony, medical reports and audiovisual materials indicating that actions by State agents were unlawful".[21] The dual role of the Military Advocate General, as both legal adviser to the Chief of General Staff and other military authorities and supervisor of disciplinary and criminal investigations, compromises the independence and impartiality of the investigative system, since the Military Advocate General is responsible for investigating violations carried out in operations for which he provided legal advice.

19. Israel has published information on its investigative structure and on selected investigations, including those related to allegations of violations by Israeli forces in the context of the 2014 Gaza conflict.[22] However, the noted failure to open investigations into all credible allegations and the lack of access to justice result in unimplemented recommendations related to investigations and to redress for victims. The shortcomings identified above compromise the ability of Israel to comply with international standards of independence, impartiality, promptness, thoroughness and effectiveness.

20. Lack of accountability by Israel is illustrated by the general absence of higher-level responsibility for violations of international humanitarian law in the 2008/09, 2012 and 2014 conflicts in Gaza, with only a handful of convictions, if any, issued for minor violations, such as theft and looting.[23] According to B'Tselem, the military law enforcement system is oriented towards soldiers and ignores the responsibility of high-level military commanders and policymakers.[24] Despite constructive recommendations by the Turkel Commission, mandated to examine the mechanisms used by Israel for investigating violations of the laws of armed conflict,[25] and follow-up by the Ciechanover Commission, the Secretary-General noted the lack of "significant improvements in accountability".[26] There is little available information, including in documents issued by the Government of

[18] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16119&LangID=E.
[19] See www.ochaopt.org/content/gaza-two-years-less-nine-cent-referred-incidents-have-led-criminal-investigation.
[20] See A/71/364, para. 40.
[21] Ibid.
[22] For example, update No. 5 of the Military Advocate General.
[23] See A/HRC/28/80/Add.1, para. 79; and A/HRC/34/36, para. 78.
[24] See www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf, p. 36.
[25] See A/68/502, para. 29; and A/HRC/25/40, para. 77.
[26] See A/71/364, paras. 61-69.

Israel about the 2014 Gaza hostilities,[27] about reviews undertaken in any of the areas mentioned by the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (e.g. the definition of military objectives, targeting residential buildings and the effectiveness of precautionary measures).[28]

21. Regarding allegations of acts perpetrated outside active hostilities, the 2017 conviction of Sergeant Elor Azaria to 18 months' imprisonment for the manslaughter of Abdelfattah al-Sharif, a Palestinian who was incapacitated after being shot for allegedly stabbing an Israeli soldier, has been highlighted as exceptional for even reaching trial[29] but referred to as excessively lenient.[30] The Military Advocate General had asked for a sentence of 30 months' to 5 years' imprisonment.[31] The period following October 2015 saw an alarming rise in allegations of excessive use of force and extrajudicial killings by Israeli security forces.[32] The Government has taken steps to address crimes by Israeli settlers against Palestinians, including through intensified law enforcement,[33] which resulted in a decrease in reported incidents of settler violence. The need to investigate cases of settler violence and prosecute perpetrators remains.[34]

22. In 2016 and 2017, the High Commissioner expressed concern about the lack of progress in Palestinian accountability for violations of international humanitarian law and international human rights law, [35] and called for the expedited implementation of recommendations made to Palestinian authorities by the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1.

23. The Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, established following the report of the United Nations Fact-Finding Mission on the Gaza Conflict, found that the Palestinian Independent Investigation Commission, mandated to follow up on the recommendations of the Mission, had "undertaken independent and impartial investigations in a comprehensive manner".[36] It noted obstacles to accountability stemming from the intra-Palestinian divide and from restricted access to Gaza. The Secretary-General reported the absence of meaningful investigations into alleged violations by Palestinian authorities regarding the hostilities in Gaza in 2014.[37]

24. In addition to lack of accountability for violations of international humanitarian law by Palestinian armed groups,[38] there are continuing concerns over accountability for alleged human rights violations by Palestinian authorities.[39] In 2015, the Government of the State of Palestine established the Independent National Committee of Investigation, mandated to evaluate investigations by Israeli and Palestinian authorities into allegations of serious violations of international humanitarian law and international human rights law. In January

[27] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx.

[28] See A/HRC/29/52, paras. 85-87.

[29] See A/71/364, para. 9; and A/HRC/34/36, para. 7.

[30] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21221&LangID=E.

[31] See www.i24news.tv/en/news/israel/139360-170306-israeli-army-prosecutors-may-seek-longer-sentence-for-hebron-shooter-report.

[32] "Cases of excessive use of force by Israeli forces against Palestinians, including some which appear to amount to summary executions, continue to be reported and some have been captured on video": see www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16759&LangID=E.

[33] See A/71/355, para. 20; and A/HRC/31/43, paras. 40-43.

[34] See A/71/355, para. 50.

[35] See A/HRC/31/40/Add.1, para. 65; A/HRC/34/36, para. 79; and www.ochaopt.org/sites/default/files/gaza_war_2_years_after_english.pdf.

[36] See A/HRC/16/24, para. 53.

[37] See A/HRC/34/38, para. 42.

[38] Briefings to the Security Council given on 29 August 2016 and 16 February 2017 by the Special Coordinator for the Middle East Peace Process.

[39] See A/HRC/34/38, para. 52.

2017, its first report was presented to the Government of the State of Palestine and shared with OHCHR.[40]

25. In 2016, the Secretary-General stated that "the lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law are exacerbated by the lack of accountability for previous violations. That feeds the cycle of violence and compromises chances for sustainable peace and security. Tackling impunity must be the highest priority".[41]

B. International engagement

26. A total of 141 recommendations (15 per cent) called for engagement with international human rights mechanisms and for general implementation and compliance with international law.

Table 4
Implementation of recommendations related to international engagement

	Israel			*Palestinian authorities*				*International community*			
	Partially implem.	*Not implem.*	*Insufficient information*	*Implem.*	*Partially implem.*	*Not implem.*	*No longer relevant/ insufficient information*	*Implem.*	*Partially implem.*	*Not implem.*	*Insufficient information*
General implementation of international standards and recommendations	2	26	2	0	2	0	1	8	8	10	6
Cooperation with international mechanisms	3	2	0	0	0	0	0	0	1	3	1
Actions conducive to peace	2	4	2	0	1	2	0	2	6	12	6
Other	0	13	8	1	1	0	1	0	2	1	2
Total	**7 (13%)**	**45 (80%)**	**4 (7%)**	**1 (11%)**	**4 (44%)**	**2 (22%)**	**2 (22%)**	**10 (15%)**	**17 (25%)**	**26 (38%)**	**15 (22%)**

27. While the United Nations, including OHCHR,[42] continues to systematically document the human rights situation in the Occupied Palestinian Territory and to promote implementation of its own resolutions, decisions and recommendations, "resolutions and communiqués alone are not enough. What is required is action. Action by the leaders themselves. Action by the international community and the region" — as noted by the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority (Special Coordinator for the Middle East Peace Process).[43]

28. Recommendations calling for the implementation of international human rights standards and previous recommendations made by the United Nations remain largely unimplemented by Israel and by Palestinian authorities. As noted by the Secretary-General,

[40] Note verbale from the State of Palestine, 21 December 2016.
[41] See A/71/364, para. 6.
[42] See, for example, A/71/364; A/71/355; A/HRC/34/36; and the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, available from www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Pages/ListReports.aspx.
[43] At the Ministerial Council of the League of Arab States on 7 March 2017 in Cairo.

"all previous recommendations of the United Nations human rights treaty bodies and other mechanisms … which remain valid, must be fully and promptly implemented".[44]

29. Several Member States have recommended to Israel in the universal periodic review process to respect the right of Palestinians to self-determination, end the occupation and desist from measures seeking to change the character or legal status of East Jerusalem.

C. Arrest and detention

30. The analysis includes 106 recommendations that concern arrest and detention — these constitute 11 per cent of the total.

Table 5
Implementation of recommendations related to conditions of detention

	Israel		*Palestinian authorities*		*Human Rights Council*
	Partially implemented	*Not implemented*	*Partially implemented*	*Not implemented*	*Not implemented*
Treatment of children	6	46	0	0	0
Treatment of adults	1	19	1	4	0
Administrative detention	0	13	0	1	1
Judicial guarantees	0	5	0	8	1
Total	**7 (8%)**	**83 (91%)**	**1 (1%)**	**13 (100%)**	**2 (100%)**

31. The recommendations call on Israel to bring its policies and practices relating to the treatment of children in line with international standards, including using detention as a last resort, conducting arrests during daylight hours only, providing legal counsel before interrogation and ending administrative detention. Since the establishment of juvenile military courts in 2009, Israel has adopted some relevant measures, such as increasing the age of majority from 16 to 18 years for the purposes of adjudication and providing other safeguards for minors.[45] In 2013, the United Nations Children's Fund (UNICEF) noted that "the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process".[46] In 2015, UNICEF indicated the need for "further actions to improve the protection of children in military detention, as reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased".[47]

32. As at August 2016, Israel held 319 Palestinian children as "security detainees and prisoners" — an 82 per cent increase compared to 2015.[48] Several organizations continue to document night arrests, lack of access to lawyers, lack of information about their rights and systematic violence.[49] In 2016, the Secretary-General stated that the number of children detained "raises concerns about meeting international law requirements that children be

[44] See A/HRC/34/38, para. 79.
[45] See www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf.
[46] See www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.
[47] See www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf.
[48] Official data provided to B'Tselem, available from www.btselem.org/statistics/minors_in_custody.
[49] See www.btselem.org/detainees_and_prisoners/minors_in_custody, www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf and www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2bO0pT3K.

arrested and detained only as a last resort"[50] and noted with concern the reinstating of administrative detention of children, unused since 2011.[51] Despite legal reforms undertaken by Israel, human rights treaty bodies have expressed concern that they have not been consistently applied, noting a gap between policy and practice.[52]

33. Other recommendations urge Israel to ensure that detainees are not subjected to force-feeding or forced medical treatment, otherwise subjected to ill-treatment or punished for engaging in hunger strikes. In September 2016, the Supreme Court of Israel ruled that the legislative amendment allowing such forced treatment meets the constitutionality test.[53]

34. Recommendations to Palestinian authorities in the West Bank and in Gaza have called for ending arbitrary arrests, administrative detention, torture and ill-treatment and for compliance with international standards to be ensured. In 2016, arbitrary arrests and detention by Palestinian security forces continued. In 2015, the Independent Commission for Human Rights[54] received 1,700 complaints (782 in the West Bank and 918 in Gaza) on violations of due process of law, including arbitrary detention on political grounds.[55] In March 2017, OHCHR documented ongoing allegations of torture and ill-treatment of Palestinian detainees in the West Bank and in Gaza.[56]

D. Settlements

35. Ninety-three recommendations, or 10 per cent of all recommendations, address the presence of Israeli settlements in the West Bank, including East Jerusalem, and their impact on human rights.

Table 6
Implementation of recommendations related to settlements

	Israel	*International community/ Member States*		*Civil society*		*Businesses*		*Human Rights Council*
	Not implemented	*Partially implemented*	*Not implemented*	*Partially implemented*	*Insufficient information*	*Not implemented*	*Insufficient information*	*Not implemented*
Settlement expansion	20	0	0	0	0	0	0	1
Zoning and building permits	18	0	0	0	0	0	0	0
Forced transfer	20	0	0	0	0	0	0	0

[50] See A/71/86-E/2016/13, para. 24, available from www.un.org/ga/search/view_doc.asp?symbol=A/71/86&Lang=E&Area=UNDOC.
[51] See A/70/836-S/2016/360, para. 75, available from www.un.org/ga/search/view_doc.asp?symbol=A/70/836&Lang=E&Area=UNDOC.
[52] See CCPR/C/ISR/CO/4, para. 19; and CAT/C/ISR/CO/5, para. 28.
[53] See www.loc.gov/law/foreign-news/article/israel-law-authorizing-force-feeding-of-prisoners-held-constitutional/.
[54] The national human rights institution.
[55] Independent Commission for Human Rights, *The Status of Human Rights in Palestine: Twenty-First Annual Report, 2015* (issued in 2016), pp. 186 and 187.
[56] See A/HRC/34/38, para. 70.

	Israel	*International community/ Member States*		*Civil society*		*Businesses*		*Human Rights Council*
	Not implemented	*Partially implemented*	*Not implemented*	*Partially implemented*	*Insufficient information*	*Not implemented*	*Insufficient information*	*Not implemented*
Demolitions and displacement	16	0	0	0	0	0	0	0
Businesses' engagement in settlements	3	2	1	1	1	4	2	0
Exploitation of natural resources	1	0	0	0	0	0	0	0
Human rights violations linked to settlements	3	0	0	0	0	0	0	0
Total	**81 (100%)**	**2 (67%)**	**1 (33%)**	**1 (50%)**	**1 (50%)**	**4 (67%)**	**2 (33%)**	**1 (100%)**

36. Despite recurring recommendations to Israel to cease maintaining and expanding settlements and to address their human rights impact, the construction of settlements continues: in March 2017, Israel approved the establishment of a new settlement and declared some 240 acres as "State land" inside the Occupied Palestinian Territory and issued tenders for approximately 2,000 housing units.[57] By the end of 2014, there were approximately 570,700 Israeli settlers, including 200,000 in East Jerusalem.[58]

37. The planning and zoning regime is the main strategy used by Israel to prevent Palestinians from building in the West Bank, including East Jerusalem. Several recommendations focus on discriminatory policies and practices that make it "almost impossible for Palestinians to obtain building permits in the vast majority of Area C and East Jerusalem".[59] In 2016, Israeli authorities demolished or seized 1,093 Palestinian-owned structures, displacing over 1,600 Palestinians and affecting the livelihoods of more than 7,000 others — the highest figures since OCHA started documenting them in 2009.[60] The United Nations has documented that hundreds of families remain at risk of forcible transfer, linked to demolitions and settlement expansion.[61]

38. Physically detached from the West Bank, East Jerusalem has ceased to be the economic and social centre for the Occupied Palestinian Territory due to the wall and the presence and expansion of 12 Israeli settlements.[62] Israeli settlers are appropriating properties in Palestinian neighbourhoods through ownership claims and the Absentees' Property Law,[63] restricting public space, residential growth and freedom of movement.[64]

[57] Briefing to the Security Council given on 20 April 2017 by the Special Coordinator for the Middle East Peace Process.

[58] See A/HRC/31/43, para. 9.

[59] See www.ochaopt.org/content/33-structures-demolished-past-three-days-multiple-incidents.

[60] See www.ochaopt.org/content/record-number-demolitions-and-displacements-west-bank-during-2016.

[61] See A/71/355.

[62] See A/71/554.

[63] See https://unispal.un.org/DPA/DPR/unispal.nsf/0/E0B719E95E3B494885256F9A005AB90A and www.nevo.co.il/law_html/Law01/313_001.htm.

[64] See www.ochaopt.org/content/east-jerusalem-palestinians-risk-eviction.

39. In December 2016, Security Council resolution 2334 (2016) explicitly condemned "measures aimed at altering the demographic composition, character and status of the Palestinian Territory … including … construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians" and stated that the "establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace". The Security Council stressed that "the cessation of all Israeli settlement activities is essential for salvaging the two-State solution".

40. Eleven recommendations concern businesses, civil society and Member States, and call for investigations of the activities of companies and financial institutions profiting from Israeli settlements, and for such practices to be ended and for reparation to be provided to Palestinians affected.

E. Freedom of movement

41. The reports contain 79 recommendations on freedom of movement, constituting 9 per cent of all the recommendations.

Table 7
Implementation of recommendations related to freedom of movement

	Israel			*Gaza authorities*	*Human Rights Council*
	Partially implemented	*Not implemented*	*Insufficient information*	*Not implemented*	*Not implemented*
Blockade	0	28	0	0	1
Wall	0	5	0	0	0
Freedom of movement between Gaza and West Bank	1	19	0	0	0
Restrictions impacting on humanitarian aid	0	14 (2)	0	2 (2)	0
Restrictions impacting on economic development	0	5	0	0	0
Enforcement of access restrictions	0	4	0	0	0
Residency rights	0	1	1	0	0
Total	**1 (1%)**	**76 (97%)**	**1 (1%)**	**2 (100%)**	**1 (100%)**

42. Israel has failed to dismantle the wall and has pursued construction in the Occupied Palestinian Territory in breach of its international law obligations.[65] Eighty-five per cent of the planned route of the wall of over 700 kilometres runs within the West Bank.[66] The International Court of Justice found that "the wall's sinuous route has been traced in such a

[65] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports (2004)*, p. 136; and www.ochaopt.org/content/2015-overview-movement-and-access-restrictions.

[66] See A/71/86-E/2016/13, para. 63, available from www.un.org/ga/search/view_doc.asp?symbol=A/71/86&Lang=E&Area=UNDOC.

way as to include within that area the great majority of … settlements"[67] and stated that "the wall … and its associated regime gravely infringe a number of rights of Palestinians … and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order".[68] According to the United Nations Conference on Trade and Development, "at least 10 per cent of the most fertile land in the West Bank has been lost due to construction of the Separation Barrier".[69]

43. Further restrictions in the form of checkpoints, where violence frequently erupts,[70] permit requirements, and settlement infrastructure, have continued to negatively affect Palestinians' daily lives in the West Bank, including access within and into East Jerusalem.[71] The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 described the situation as one where "the West Bank has been divided by Israel into an archipelago of small islands of densely populated areas disconnected from one another".[72]

44. Following the gaining of control in Gaza in 2007 by Hamas, Israel established a blockade[73] in breach of international humanitarian law.[74] This measure severely curtails freedom of movement of goods and people to and from Gaza,[75] and violates a broad spectrum of other human rights, including access to health, water and sanitation, work, housing, food and education.[76] While there are fluctuations in the extent of the restrictions, the blockade has remained firmly in place.[77] In his most recent report, the Secretary-General indicated that it may amount to collective punishment.[78] Massive needs for reconstruction of infrastructure, health facilities and housing stem from the destruction and injuries that have followed successive rounds of hostilities in Gaza, most recently in 2014.[79] While the 2016 report of the United Nations country team showed progress since 2014, it described long delays for approval of reconstruction materials due to Israel's dual-use list. The report also noted the negative impact of the Palestinian political divide on the humanitarian situation.

F. Other civil and political rights

45. Fifty-eight recommendations, 6 per cent of the total, address issues related to other civil and political rights.

[67] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 183.
[68] Ibid., p. 193.
[69] See TD/B/63/3, para. 42 (f).
[70] See, for example, A/70/836-S/2016/360, available from www.un.org/ga/search/view_doc.asp?symbol=A/70/836&Lang=E&Area=UNDOC, and www.unrwa.org/sites/default/files/content/resources/children_in_distress_briefing_note.pdf.
[71] See A/HRC/31/44, paras. 21 and 34.
[72] See A/71/554, paras. 41 and 49; and A/HRC/34/38, para. 29.
[73] See www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx.
[74] See A/HRC/34/38, paras. 31-33.
[75] See A/HRC/31/73 and A/HRC/31/40.
[76] See www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016.
[77] See www.ochaopt.org/sites/default/files/gaza_war_2_years_after_english.pdf, p. 11.
[78] See A/HRC/34/38, para. 31.
[79] See www.ochaopt.org/sites/default/files/gaza_war_2_years_after_english.pdf.

Table 8
Implementation of recommendations related to other civil and political rights

	Israel			*Palestinian authorities*		
	Partially implemented	*Not implemented*	*Insufficient information*	*Partially implemented*	*Not implemented*	*Insufficient information*
Freedom of expression, assembly and association	0	12	1	0	17	4
Freedom of thought, conscience and religion	2 (1)	8 (1)	0	1 (1)	1 (1)	0
Right to protection of family	0	10	2	0	0	0
Palestinian political unity	0	0	0	0	2	0
Total	**1 (3%)**	**29 (88%)**	**3 (9%)**	**1 (8%)**	**9 (69%)**	**3 (23%)**

46. Over 25 per cent of the recommendations urge Palestinian authorities to ensure that civil society organizations, human rights defenders and local and foreign journalists can perform their work in a safe and free environment, without intimidation, harassment or interference. The recommendations also call on Israel to cease actions that limit criticism by journalists, other individuals and civil society organizations, both Israeli and Palestinian. The latest report by OHCHR shows that "significant concerns remain regarding violations and abuses by all duty bearers of the rights to freedom of expression, peaceful assembly and association. Israeli and Palestinian authorities impose restrictions and subject both Israeli and Palestinian human rights defenders focusing on the Occupied Palestinian Territory to pressure and harassment."[80]

47. The recommendations related to the right to freedom of thought, conscience and religion refer to the right of Palestinians to participate in religious life without restrictions and call on Israel to facilitate access to places of worship and ensure their protection without discrimination. Israeli and Palestinian authorities are called upon to discontinue the indication of religious affiliation on identity cards. The Israeli and West Bank authorities have complied with this recommendation but the Gaza authorities have not. Some recommendations have also called on all parties to legally bind themselves to protect religious minorities, in the framework of a possible peace agreement. Limitations on access to religious sites, including the Al-Aqsa Mosque in East Jerusalem,[81] have remained of concern.[82]

G. Economic, social and cultural rights

48. The reports contain 63 recommendations (7 per cent of the total) related to economic, social and cultural rights.

[80] See A/HRC/34/38, para. 69.
[81] See also the United Nations Educational, Scientific and Cultural Organization (UNESCO) 200 EX/Decisions (200 EX/25), of 2016.
[82] See A/71/355, para. 29.

Table 9
Implementation of recommendations related to economic, social and cultural rights

	Israel			*Palestinian authorities*			*International community*		
	Partially implemented	*Not implemented*	*Insufficient information*	*Partially implemented*	*Not implemented*	*Insufficient information*	*Partially implemented*	*Not implemented*	*Insufficient information*
Right to health	0	11	2	0	1	0	1	1	0
Right to education	1	12	3	0	2	0	0	0	0
Right to water	1	5	0	1	0	0	0	0	0
Right to adequate standard of living, food, clothing, housing	(1)	6 (1)	2	2 (1)	1	0	0	0	0
Right to development	0	2	2	0	0	2	0	0	1
Total	**3 (6%)**	**37 (76%)**	**9 (18%)**	**4 (40%)**	**4 (40%)**	**2 (20%)**	**2 (67%)**	**1 (33%)**	**3 (33%)**

49. Almost one third of the recommendations address the right to health, including the physical and psychological recovery of persons affected by violence. Many recommendations call on Israel to promptly grant permissions for patients with medical referrals for treatment outside Gaza, and to ensure unimpeded access for medical personnel so that assistance is promptly provided to individuals wounded by Israeli security forces. The World Health Organization has noted that only 41.7 per cent of patients obtained permits in December 2016 — the lowest approval rate since 2009.[83] The Secretary-General has raised concern over reports of arbitrary deprivation of life as a result of Israel's practice of preventing Palestinian first responders from treating wounded Palestinians suspected of attacks,[84] which violates international standards prohibiting the obstruction of prompt medical assistance.

50. Another third of the recommendations address access to education, and call for the protection of children from harassment, intimidation and violence by Israeli settlers on the way to and from school, which are still ongoing.[85] Recommendations also urge parties to protect schools from attacks, and to ensure they are not used as military bases or as detention, storage or recruitment centres. Recommendations also call for more classrooms in East Jerusalem and Gaza.

51. The 2016 Humanitarian Response Plan indicated that access to education was impeded by checkpoints, the wall, military and armed group activities, settler-related incidents and lack of infrastructure.[86] The Secretary-General reported on attacks on schools and protected education personnel in the West Bank during military-led operations[87] and on the storage of weapons in three United Nations Relief and Works Agency for Palestine

[83] See www.emro.who.int/images/stories/palestine/WHO_monthly_Gaza_access_report-Dec_2016-Final.pdf?ua=1.
[84] See A/71/364, para. 11.
[85] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20565&LangID=E.
[86] See https://www.ochaopt.org/documents/2016_hrp_22_january%202016.pdf, p. 29.
[87] See A/70/836-S/2016/360, para. 76, available from www.un.org/ga/search/view_doc.asp?symbol=A/70/836&Lang=E&Area=UNDOC.

Refugees in the Near East (UNRWA) schools by Palestinian armed groups and the 21 instances of use of school premises by Israeli security forces.[88]

52. Some recommendations urge Israel to facilitate the entrance into Gaza of all material and equipment necessary for the construction and repair of water and sanitation facilities, and to ensure that all residents of the West Bank have equal access to water, in accordance with World Health Organization quality and quantity standards. In 2016, Israel designated over 70 per cent of the materials needed for water, sanitation and hygiene projects as dual-use items, placing at least 30 water and wastewater projects in Gaza at risk of cancellation.[89] Israel's discriminatory allocation of water also results in unequal water consumption in the West Bank: Palestinian consumption is limited to 40 litres per capita per day, while Israeli settlers use 183 litres.[90] The 2016 Humanitarian Response Plan indicated that 732,000 people lacked access to safe drinking water in the Occupied Palestinian Territory.

V. Patterns of cooperation, compliance and implementation

Cooperation

53. In March 2012, the Government of Israel suspended relations with the Human Rights Council and OHCHR. In October 2013, Israel renewed contacts with both bodies with a view to re-establishing full relations.[91] During the suspension, OHCHR continued working in the Occupied Palestinian Territory.

54. Two special rapporteurs with thematic mandates conducted official visits to Israel and the Occupied Palestinian Territory between 2009 and 2012.[92] Thereafter, no mission took place until the Special Rapporteur on violence against women, its causes and consequences visited in September 2016.[93] The Special Rapporteur remarked upon the "excellent cooperation" that she had received from Israel and the State of Palestine. The State of Palestine issued a standing invitation to all special procedure mandate holders in 2014. Israel has not issued a standing invitation.

55. In the past, Israel cooperated with the mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.[94] However since 2008, Israel has refused to cooperate with, and denied access to, three successive mandate holders, stating its objections to the Special Rapporteur's mandate[95] which it considers politically biased. The serving Special Rapporteur has unsuccessfully sought to meet with the Permanent Missions of Israel to the United Nations in Geneva and in New York. The Palestinian National Authority and, upon its establishment in 2012, the State of Palestine have continued to extend full cooperation to the mandate. Between 2006 and 2016, Israel responded to one third of the letters of allegation and urgent appeals sent by the Special Rapporteur.[96]

56. In his statement to the Human Rights Council in September 2016, the High Commissioner stressed that "human rights violations will not disappear if a government blocks access to international observers" and that "efforts to duck or refuse legitimate scrutiny" only raise obvious questions. Israel failed to cooperate with any of the fact-

[88] See A/69/926-S/2015/409, paras. 102 and 103, available from www.un.org/ga/search/view_doc.asp?symbol=A/69/926.

[89] See A/71/86-E/2016/13, para. 69, available from www.un.org/ga/search/view_doc.asp?symbol=A/71/86.

[90] Ibid., para. 71.

[91] See http://mfa.gov.il/MFA/InternatlOrgs/Speeches/Pages/Israel-UPR-UN-Human-Rights-Council-29-Oct-2013.aspx.

[92] See www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx.

[93] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20565&LangID=E; A/HRC/10/8/Add.2; A/HRC/20/17/Add.2; and A/HRC/22/46/Add.1.

[94] See A/69/301, section III.

[95] See Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1.

[96] See the special procedures database at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

finding missions or commissions of inquiry established by the Human Rights Council between 2009 and 2016. The Palestinian National Authority and, upon its establishment in 2012, the State of Palestine have cooperated fully with these mechanisms.

57. Israel regularly cooperates with human rights treaty bodies, providing reports and engaging in dialogue with the relevant committees. Israel does not include information related to the implementation of human rights treaties in the Occupied Palestinian Territory, claiming their non-applicability. In 2014, the State of Palestine acceded to seven core human rights treaties and one optional protocol,[97] and has requested technical assistance from OHCHR on reporting under those treaties. At the time of drafting, the State of Palestine had seven overdue reports, which were overdue by less than five years.[98] In 2016, OHCHR and the Independent Commission for Human Rights supported the organization of national consultations on the report to the Committee on the Elimination of Discrimination against Women, which was then submitted on 10 March 2017.

58. Thus, between 2009 and 2016, Israel only engaged selectively with the international human rights system. The Government of the State of Palestine has generally cooperated with the system, although it has reports outstanding to human rights treaty bodies.

Compliance and implementation

59. The International Court of Justice has ruled on the applicability of international humanitarian law and international human rights law in the Occupied Palestinian Territory.[99] Human rights treaty bodies consistently affirm that the human rights obligations of Israel extend to the Occupied Palestinian Territory,[100] and both the Secretary-General[101] and the High Commissioner[102] have regularly articulated the applicable legal framework.

60. The overall rate of "full implementation" by Israel is 0.4 per cent.[103] The lack of implementation correlates with Israel's continued rejection of the applicable legal framework and of its obligations in the Occupied Palestinian Territory. During its second universal periodic review, Israel provided an unofficial annex regarding recommendations pertaining to the West Bank[104] and Gaza, reiterating that it did not consider itself bound by human rights instruments beyond the borders of Israel. Formally, Israel did not support the majority of the recommendations referred to in the document.[105] While Israel denies the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) in the Occupied Palestinian Territory, it accepts its application de facto.[106]

61. The overall rate of "full implementation" by Palestinian duty bearers is 1.3 per cent.[107] By acceding to seven core human rights treaties, one protocol and the Geneva Conventions, all without reservations,[108] the State of Palestine has expressed its

[97] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14556&.

[98] See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx.

[99] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 136. Within the Advisory Opinion, see the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), at para. 101; of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (The Hague, 18 October 1907), at para. 124; and of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, at paras. 106 and 111-113.

[100] See, for example, CRC/C/ISR/CO/2-4, para. 3; and CAT/C/ISR/CO/5, para. 8.

[101] See, for example, A/69/347, paras. 3-6.

[102] See A/HRC/12/37, paras. 5-9.

[103] Two recommendations fully implemented and 20 partially implemented, out of 550.

[104] The document did not reference East Jerusalem.

[105] See www.ohchr.org/EN/HRBodies/UPR/Pages/ILIndex.aspx.

[106] See A/ES-10/248, annex 1, para. 3; and www.icrc.org/eng/assets/files/review/2013/irrc-888-maurer.pdf, p. 1506.

[107] One recommendation fully implemented and 12 partially implemented, out of 75.

[108] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=PS&nv=4.

commitment to protecting human rights. While the occupation and the intra-Palestinian political divide present challenges to the fulfilment of the obligations of the State of Palestine, greater efforts are required to increase implementation by all Palestinian duty bearers.

62. The overall rate of "full implementation" by the United Nations and the international community is 17.9 per cent.[109] Since 1967, the international community has repeatedly reminded parties to the conflict of their obligations under international law. United Nations bodies have consistently reported on the persistent violations in the Occupied Palestinian Territory and identified their long-term impact and risks for Palestinians, Israelis and the whole region. Despite these incessant calls and the support provided to Palestinian and Israeli authorities in their peace efforts, not enough has been done by the international community to that effect. It was stressed in Security Council resolution 2334 (2016) that "the status quo is not sustainable" and that "significant steps … are urgently needed in order to (i) stabilize the situation and to reverse negative trends on the ground, which are steadily eroding the two-State solution and entrenching a one-State reality, and (ii) to create the conditions … for advancing the two-State solution through … negotiations and on the ground".

VI. Follow-up measures

63. The recommendations by human rights mechanisms and by the Secretary-General and the High Commissioner show a general consensus on the measures that parties must take in order to further compliance with international humanitarian law and international human rights law: the ending of practices that continue to violate international law (such as the blockade, the construction of the wall and the expansion of settlements), and ensuring accountability for past violations, including war crimes.

64. Given the non-implementation of most recommendations on accountability, both sides are urged to intensify efforts to investigate all allegations of violations of international human rights law and international humanitarian law, in line with international standards.

A. Israel

65. Israel bears primary responsibility for the implementation of recommendations addressed to it and is bound by international human rights law and international humanitarian law obligations, including the Fourth Geneva Convention, in the Occupied Palestinian Territory.[110]

66. OHCHR has published *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*, on how a Government can enhance its institutions to better engage with international and regional human rights mechanisms. OHCHR continues to stand ready to support Israel to fulfil the recommendations addressed to it.

67. **The High Commissioner proposes that Israel make full use of OHCHR technical assistance to help with the implementation of the relevant recommendations, which includes the development of national mechanisms for reporting and following up on recommendations. The High Commissioner reminds Israel of its obligations under the international human rights instruments that it has ratified, and under the Geneva Conventions, to which it is a High Contracting Party, and calls on Israel to fully comply with them in the Occupied Palestinian Territory.**

68. The High Commissioner takes note of the preliminary examination launched by the Prosecutor of the International Criminal Court in January 2015 into the situation in Palestine to establish whether the Rome Statute criteria for opening an investigation are

[109] Ten recommendations fully implemented and 10 partially implemented, out of 56.

[110] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 101.

met.[111] The High Commissioner is encouraged by Israel's dialogue with the Office of the Prosecutor.[112]

69. **The High Commissioner notes the repeated failure to comply with the calls for accountability made by the entire human rights system and urges Israel to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes. Furthermore, the High Commissioner calls upon Israel to ensure that all victims have access to remedies and reparation.**

B. State of Palestine

70. The State of Palestine is bound by international human rights and international humanitarian law instruments and bears primary responsibility for the implementation of recommendations addressed to it. The cooperation of the State of Palestine with the Office of the Prosecutor of the International Criminal Court is encouraging.

71. **The High Commissioner notes the State of Palestine's non-compliance with the calls for accountability and urges the State of Palestine to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes. Furthermore, the High Commissioner calls upon the State of Palestine to ensure that all victims have access to remedies and reparation.**

72. The cooperation by the State of Palestine with the human rights system provides scope for enhanced engagement for the implementation of recommendations. The OHCHR practical guide on national mechanisms for reporting and follow-up provides concrete support on how to better engage with international and regional human rights mechanisms. OHCHR is encouraged that the State of Palestine is working towards the establishment of national mechanisms for reporting and follow-up and stands ready to support the State of Palestine to fulfil the recommendations addressed to it.

73. **The High Commissioner proposes that the State of Palestine make full use of the technical assistance available through OHCHR to help with the implementation of recommendations addressed to it, including the development of national mechanisms for reporting and following up on recommendations.**

C. The international community

74. In 2004, the International Court of Justice concluded that all States had the obligation "not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem"[113] and to ensure that any impediment to the right to self-determination of the Palestinian people was brought to an end. The Court also referred to the obligation of the High Contracting Parties to the Fourth Geneva Convention to ensure Israel's compliance with international humanitarian law. In 2009, several special procedure mandate holders[114] recalled the obligation of all States to cooperate "to bring to an end through lawful means" any serious breach of a peremptory norm of international law, and to ensure respect for international humanitarian law. In his 2017 report,[115] the Secretary-General recalls the illegality of

[111] This followed the lodging by the Government of the State of Palestine of a declaration under article 12 (3) of the Rome Statute accepting the jurisdiction of the International Criminal Court "over alleged crimes committed 'in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014'", and its accession to the Rome Statute in January 2015: see www.icc-cpi.int/palestine.

[112] See www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf. See also https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

[113] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 200.

[114] See A/HRC/10/22, para. 105.

[115] See A/HRC/34/38.

settlements and the wall in the Occupied Palestinian Territory, and that measures that may amount to collective punishment, such as the blockade on Gaza, are contrary to international humanitarian law.

75. **The High Commissioner suggests the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties can fulfil their obligations in implementing the recommendations reviewed in the present report.**

76. The role of States and businesses in addressing the human rights impact of businesses in the Occupied Palestinian Territory has been the subject of increasing attention.[116] Under the Guiding Principles on Business and Human Rights, "business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved" (principle 11). In 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises stated in the context of Israeli settlements that "where an enterprise cannot effectively prevent or mitigate an adverse human rights impact … it should consider whether its continued operation can be reconciled with its responsibility to respect human rights and act accordingly".[117] The Working Group also noted that: "States that are 'home State' of business enterprises operating in or connected with settlements in the OPT should engage with such enterprises at the earliest possible stage to provide advice and guidance, and should make clear the State's policy in regard to the settlements."[118]

77. **OHCHR stands ready to advise and support States, companies and relevant bodies of the United Nations on the implementation of the Guiding Principles on Business and Human Rights, including in the context of Human Rights Council resolution 31/36.**

78. In 2004, the International Court of Justice emphasized "the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion".[119] However, successive rounds of hostilities, and ongoing violence and violations, including those linked to Israeli settlement expansion, show that the occupation and the conflict are deepening.

79. The Human Rights Up Front initiative[120] and action plan are aimed at strengthening the ability of the United Nations to prevent and respond to serious human rights violations and complex crises. Human Rights Up Front cuts across the three indivisible pillars of the United Nations: peace and security, development, and human rights. For the sustainable success of any negotiated political endeavour, it is imperative to bring the parties together in mutual recognition that respect for international human rights law and international humanitarian law must be at the forefront of peace efforts.

80. **The High Commissioner reiterates the calls to all States and to relevant United Nations bodies to take all measures necessary to ensure full respect of and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including Security Council resolution 2334 (2016).**

81. All stakeholders must recognize that compliance with international law is a sine qua non condition for peace. Reports analysed in the present review indicate that the general patterns of human rights violations and non-implementation of recommendations are not just symptoms of the conflict but further fuel the cycle of violence. To break this cycle, the root causes must be addressed: these include bringing the occupation to an end and addressing the security concerns of Israel. Creating the space for peace demands the

[116] See A/HRC/22/63 and A/HRC/34/39.
[117] See www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf, p. 14.
[118] Ibid.
[119] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 200.
[120] See www.un.org/sg/en/content/ban-ki-moon/human-rights-front-initiative.

recognition that respect for human rights is the path out of the conflict. This requires the political will and commitment of all stakeholders.

Annex

List of reports included in the review[a]

Fact-finding missions and commissions of inquiry

Symbol	*Title of report*
A/HRC/12/48	Human rights situation in Palestine and other occupied Arab territories: report of the United Nations Fact-Finding Mission on the Gaza Conflict
A/HRC/22/63	Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem
A/HRC/29/52	Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1

Special procedure mandate holders

Symbol	*Title of report*
A/HRC/10/8/Add.2	Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir
	Addendum: mission to Israel and the occupied Palestinian territory
A/HRC/10/20	Human rights situation in Palestine and other occupied Arab territories: report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/HRC/10/21	Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: report of the Working Group on Arbitrary Detention
A/HRC/10/22	Human rights situation in Palestine and other occupied Arab territories: combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty

[a] List includes reports 2009-2016 from which recommendations have been drawn or which are reflected in the review.

Symbol	*Title of report*
A/64/328	Situation of human rights in the Palestinian territories occupied since 1967
A/HRC/13/53/Rev.1	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/65/331	Situation of human rights in the Palestinian territories occupied since 1967
A/HRC/16/72	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/66/358	Situation of human rights in the Palestinian territories occupied since 1967
A/HRC/20/17/Add.2	Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue
	Addendum: mission to Israel and the occupied Palestinian territory
A/HRC/20/32	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/67/379	Situation of human rights in the Palestinian territories occupied since 1967
A/HRC/23/21	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/HRC/25/67	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk
A/HRC/28/78	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono
A/70/392	Situation of human rights in the Palestinian territories occupied since 1967
A/HRC/31/73	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
A/71/554	Situation of human rights in the Palestinian territories occupied since 1967

Reports by the Secretary-General

Symbol	*Title of report*
A/64/516	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/64/517	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/65/366	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/66/356	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General

Symbol	*Title of report*
A/67/372	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/68/502	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/69/347	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/70/421	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/65/365	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/66/364	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/67/375	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/24/30	Human rights situation in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/68/513	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/25/38	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/69/348	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/70/351	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/28/44	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/28/45	Human rights situation in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General
A/71/355	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/31/43	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan: report of the Secretary-General
A/HRC/31/44	Human rights situation in the Occupied Palestinian Territory, including East Jerusalem: report by the Secretary-General

Symbol	*Title of report*
A/71/364	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: report of the Secretary-General

Reports by the United Nations High Commissioner for Human Rights

Symbol	*Title of report*
A/HRC/12/37	Human rights situation in Palestine and other occupied Arab territories: the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip: report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolution S-9/1
A/HRC/13/54	The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza strip: report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/16/71	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/19/20	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/22/35	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/22/46/Add.1	Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik
	Addendum: mission to Israel and the Occupied Palestinian Territory
A/HRC/25/40	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/28/80	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1
A/HRC/31/40	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Reports by human rights treaty bodies

Symbol	*Title of report*
CAT/C/ISR/CO/4	Consideration of reports submitted by States parties under article 19 of the Convention: concluding observations of the Committee against Torture
CRC/C/OPAC/ISR/CO/1	Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: concluding observations: Israel
CCPR/C/ISR/CO/3	Consideration of reports submitted by States parties under article 40 of the Covenant: concluding observations of the Human Rights Committee: Israel
CEDAW/C/ISR/CO/5	Concluding observations of the Committee on the Elimination of Discrimination against Women: Israel
E/C.12/ISR/CO/3	Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Israel
CERD/C/ISR/CO/14-16	Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination: Israel
CRC/C/ISR/CO/2-4	Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May-14 June 2013)
CCPR/C/ISR/CO/4	Concluding observations on the fourth periodic report of Israel
CRC/C/OPSC/ISR/CO/1	Concluding observations on the report submitted by Israel under article12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
CAT/C/ISR/CO/5	Concluding observations on the fifth periodic report of Israel

Universal periodic review

Symbol	*Title of report*
A/HRC/10/76	Report of the Working Group on the Universal Periodic Review: Israel
A/HRC/25/15	Report of the Working Group on the Universal Periodic Review: Israel

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Human rights situation in Palestine and other occupied Arab territories

Additional information pertaining to the comprehensive review on the status of recommendations addressed to all parties since 2009 with regard to the Occupied Palestinian Territory, including East Jerusalem* **

Summary

The present document is an addendum to the report of the United Nations High Commissioner for Human Rights on "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009", submitted pursuant to Human Rights Council resolution 31/35. It describes the methodology applied to assess the implementation of these recommendations through the analysis of some examples.

* The information contained in this document should be read in conjunction with the report of the United Nations High Commissioner for Human Rights on 'Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009' (A/HRC/35/19).

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I. Introduction

1. This addendum complements the report of the United Nations High Commissioner for Human Rights on "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009."[1] It includes recommendations made by the relevant bodies from 2009 up until the end of 2016.

2. As noted in the oral update of the High Commissioner to the Human Rights Council on 20 March 2017, this addendum aims to describe how the status of implementation of the recommendations was determined, through an analysis of selected key recommendations.

II. Assessment methodology

3. In line with the mandate provided by resolution 31/35, the assessment focused on the recommendations of the human rights mechanisms and Offices enumerated in paragraph eight of the report. Thus, technical and substantive reports by bodies not mentioned by the resolution (for instance the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories), or those not containing recommendations (such as the two Boards of Inquiry established by the United Nations Secretary-General following the escalation in hostilities in Gaza in 2009 and 2014) are not reflected in the review. They are nevertheless referenced as sources to determine the level of implementation of some recommendations.[2]

4. The recommendations under review mainly emanate from reports to the Human Rights Council. However, reports to the General Assembly by entities specified in paragraph eight of resolution 31/35 are included, such as the reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. Similarly, as reports of the Secretary-General to the Human Rights Council typically stipulate that they are to be read in conjunction with reports to the General Assembly, they were also taken into consideration in the review as appropriate. This approach meets the requirement of comprehensiveness of the review stipulated by resolution 31/35.

5. The assessment of the implementation of each recommendation is based on the most recent information available up until the first quarter of 2017, drawn from United Nations reports, official domestic sources, documentation and publications by civil society and other credible sources. Furthermore, the Office of the United Nations High Commissioner for Human Rights (OHCHR) requested inputs from the Governments of Israel and Palestine, and made an open call online for submissions on measures taken by relevant duty-bearers towards accountability.[3]

6. As indicated in the report, the status of implementation of recommendations has been classified in five categories: "implemented", "partially implemented", "unimplemented", "closed or no longer applicable", and "insufficient information".[4] The status of implementation of each recommendation has been assessed individually, taking into account the actions (legal or operational) and their impact on the fulfilment of the relevant right. Due consideration was given as to whether a recommendation seeks fulfilment of structural measures, process actions, a particular outcome or end objective, or several or all of those elements.[5]

7. This addendum is composed of a series of illustrative examples which show the analytical process that has led to the determination of the status of implementation for each

[1] A/HRC/35/19.
[2] See Annex of A/HRC/35/19 for a full list of reports included in the review.
[3] See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/CallforSubmissionsHRC3135.aspx.
[4] The meaning of each category is explained in detail in paragraph 9 of the main report.
[5] See www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf pp. 33-38.

recommendation. One to two recommendations in each thematic area have been selected as primary examples. Each example includes a detailed description of the information taken into account when assessing implementation, as well as the reasoning for determining whether the recommendation was implemented, not implemented, or partially implemented. Each of these examples demonstrates the process that was undertaken for the assessment of all of the 773 recommendations.

III. Thematic areas

8. The review covered 929 recommendations,[6] out of which 773 were found to fall within the mandated scope of the report,[7] and which were grouped under seven thematic areas:

- accountability and access to justice
- international engagement
- arrest and detention
- settlements
- freedom of movement
- other civil and political rights, and
- economic, social and cultural rights.

9. The tables below provide an overview of the implementation of recommendations along those themes. Some recommendations relate both to the Occupied Palestinian Territory and to the territory of Israel and, in some instances, to the occupied Syrian Golan. In such cases, the analysis has been limited to their implementation in the Occupied Palestinian Territory.

Table 1
Analysis of recommendations by thematic area and implementation

	Implemented	*Partially implemented*	*Not implemented*	*Insufficient information*	*No longer relevant*	*Total*
Accountability and access to justice	3 (1%)	23 (9%)	217 (85%)	8 (3%)	2 (1%)	253
International engagement	11 (8%)	25 (19%)	71 (54%)	19 (14%)	6 (5%)	132
Right to liberty and treatment in detention	0	7 (7%)	98 (92%)	1 (1%)	0	106
Settlements	0	3 (3%)	87 (94%)	3 (3%)	0	93
Freedom of movement	0	1 (1%)	77 (97%)	1 (1%)	0	79
Other civil and political rights	0	1 (2%)	48 (86%)	7 (13%)	0	56
Economic, social and cultural rights	0	5 (9%)	39 (72%)	10 (19%)	0	54
Excluded						156
Total						929

[6] Universal Periodic Review recommendations are not included.

[7] The review is limited to recommendations applicable to the Occupied Palestinian Territory; 156 recommendations were therefore excluded.

Table 2
Analysis of implementation by party

	Implemented	*Partially implemented*	*Not implemented*	*Insufficient information*	*No longer relevant*	*Total*
Israel	2 (0.4%)	20 (3.6%)	499 (90.7%)	28 (5.1%)	1 (0.2%)	550 (100%)
Palestinian authority	1 (1.3%)	12 (16.0%)	55 (73.3%)	7 (9.3%)	0 (0.0%)	75 (100%)
United Nations and the International Community	10 (12.0%)	25 (30.1%)	36 (43.4%)	6 (7.2%)	6 (7.2%)	83 (100%)

A. Accountability and access to justice

10. Twenty-seven per cent of the recommendations (253) cover accountability and access to justice, the thematic area with a higher volume of recommendations. Recurrent issues addressed to both parties relate to compliance with international standards of investigation in the context of alleged violations of international human rights law and international humanitarian law; respect for principles of international humanitarian law and international human rights law during and outside of active hostilities; and access to justice, fair trial, due process and remedy. This subject also includes recommendations to Israel on excessive use of force, punitive demolitions and settler violence, and recommendations to Palestinian duty-bearers on attacks, so-called "honour-killings" and the death penalty, issues typically raised in conjunction with calls for justice. Two recommendations assessed below exemplify how recommendations in this category were assessed, including the type of information considered and rationale for the conclusions that were drawn.

Table 3
Overview of recommendations related to accountability and access to justice

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Accountability and investigations for violations of international humanitarian law and international human right law	154	57.5%	16.6%
Compliance with international humanitarian law and international human right law	97	36.2%	10.4%
Death penalty	4	1.5%	0.4%
Cooperation with international mechanisms	4	1.5%	0.4%
Other	9	3.4%	1.0%
Total	268		

11. In his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General recommended that "The Government of Israel must take all necessary measures to ensure the accountability of its security forces. It should conduct investigations into all credible allegations of violations of international humanitarian law and human rights law. Investigations must be independent, transparent, impartial, thorough, prompt, and effective. Redress for victims must be ensured."[8] The various elements are analyzed below in sequence.

12. The recommendation requested Israel to take "all necessary measures to ensure the accountability". However, in August 2016, the Secretary-General noted how "Various independent committees of experts as well as international, Israeli and Palestinian human rights organizations have […] extensively documented the flaws in Israel's accountability mechanisms in addressing the killing, injury, torture and ill-treatment and the destruction of

[8] A/68/502 para. 48.

Palestinian property."[9] He specifically cited the main issues, indicating that "Shortcomings in the Israeli justice system […] include physical, financial, legal and procedural barriers that restrict the ability of Palestinians, particularly those living in Gaza, to access justice."[10]

13. Contrary to the request to conduct investigations into all credible allegations, the Secretary-General noted that "Significantly, findings suggest there to be a consistent failure by the Military Advocate-General […] and the Attorney General to open investigations in all cases where prima facie evidence, including eye-witness testimony, medical reports or audio-visual materials indicate that actions by State agents were unlawful."[11]

14. Concerning independence and impartiality, both the 2014 Gaza Commission of Inquiry[12] and the 2010-11 Committee of Experts[13] noted that "a central failing of the investigation system stems from the dual responsibilities of the MAG, both as the legal advisor to the Chief of General Staff and other military authorities and as the supervisor of disciplinary law and of criminal investigations in the military."[14] These bodies also recognized that the civilian judicial oversight by the Attorney General and the Supreme Court over decisions of the Military Advocate-General was a safeguard to preserve independence.[15] In practice, however, the Commission of Inquiry found that the High Court generally shied away from intervening in policies set by the Military Advocate-General and had "rarely overturned a decision by the Military Advocate-General."[16] In 2016, the Secretary-General similarly reported to the General Assembly that "*[...]* the oversight is limited and often fails to review the legality of the policies themselves or the orders issued at the highest levels."[17] The Committee of Experts found that the Military Advocate-General was not an appropriate mechanism for the review of policy decisions.

15. The following paragraphs provide examples of the assessments carried out to determine whether investigations are "independent, transparent, impartial, thorough, prompt, and effective" as requested by the recommendation

16. The judicial process and conviction by a military tribunal of Sergeant El-Or Azaria was subject to political pressure. He was convicted for the manslaughter of Abdel Fattah al-Sharif – a Palestinian who was incapacitated after being shot for allegedly stabbing an Israeli soldier. His killing was documented in a video circulated by B'Tselem. Media coverage, replete with high-level political figures commenting on the case, illustrated the pressure on the justice system. Prime Minister Benjamin Netanyahu, who reportedly indicated his support for the soldier to be pardoned, declared: "We have one army which is the foundation of our existence. The IDF soldiers are the sons and daughters of all of us, and they must remain above all disagreements."[18] Following the many high-level political statements supporting Sergeant Azaria, the Minister of Defence called "all ministers to show restraint", warning that "slogans" were "self-serving, and not for the benefit of Azaria."[19]

17. Regarding transparency, the five updates published about preliminary examinations by the Israeli Fact-finding Assessment Mechanism and investigations are encouraging but insufficient. As observed by the 2014 Gaza Commission of Inquiry: "Information currently made available is welcome, but is insufficient to allow for effective public and international scrutiny."[20] The The Commission further underscored the requirement of transparency,

[9] A/71/364 para. 39.
[10] A/71/364 para. 40.
[11] A/71/364 para. 40.
[12] A/HRC/RES/S-21/1.
[13] A/HRC/RES/13/9.
[14] A/HRC/29/CRP.4 para. 619.
[15] A/HRC/29/CRP.4 para. 622, A/HRC/16/14 para. 41.
[16] A/HRC/29/CRP.4 para. 623.
[17] A/71/364, para. 50.
[18] E.g. www.jpost.com/Israel-News/Politics-And-Diplomacy/Netanyahu-calls-to-pardon-Elor-Azaria-after-Hebron-manslaughter-conviction-477459, www.theguardian.com/world/2017/jan/04/israeli-soldier-guilty-manslaughter-shooting-palestinian-elor-azaria-abdel-fattah-al-sharif.
[19] See www.timesofisrael.com/liberman-ministers-should-keep-quiet-about-azaria-pardon/
[20] A/HRC/29/CRP.4, para. 629.

indicating that "while there may be limitations on publishing certain types of information, a minimum level of transparency is required from the point of view of assisting victims' quest for the truth and their right to effective remedies."[21]

18. With regard to promptness of investigations, in 2011 the Committee of Experts expressed serious concerns and noted that more than a third of the incidents reviewed relating to the 2008-2009 Gaza conflict remained unresolved or with an unclear status. In 2016, the situation had not improved: "Two years after the [2014] escalation of hostilities in Gaza, justice remains elusive. Less than nine per cent of referred incidents of alleged violations of international humanitarian law and international human rights law, including allegations of war crimes, have led to a criminal investigation…"[22]

19. As for thoroughness and effectiveness, Israel has outlined challenges in conducting investigations, particularly into acts committed by the IDF in the context of hostilities in Gaza. These include lack of ready access to the scene, destruction of evidence during hostilities, and lack of witness testimonies. According to Israel, "investigations can take significant time and even where an indication of criminal conduct exists, they can still fail to obtain evidence sufficient to warrant prosecution."[23]

20. The thoroughness and effectiveness of Israeli investigations of violations against Palestinians have been challenged by Israeli NGOs. Yesh Din found that "in practice soldiers enjoy near absolute impunity for offenses they commit against Palestinian residents of the West Bank."[24] B'Tselem made similar observations in 2016. The organization reviewed its work vis-à-vis the Military Advocate-General Corps and the Military Police Investigation Unit over the course of 25 years and decided to stop referring complaints to the military due to recurring failure to ensure accountability in cases in which soldiers had harmed Palestinians.[25] The Secretary-General observed that "a consistent failure by the Military Advocate-General… and the Attorney General to open investigations in all cases where prima facie evidence, including eye-witness testimony, medical reports or audiovisual materials indicate that actions by State agents were unlawful. When investigations are opened, they frequently fail to meet human rights standards, and only a small number of alleged perpetrators, mainly at the rank-and-file level, are brought to justice, facing mainly lenient indictments and sentence."[26]

21. Based on assessments like the examples provided above, the report concludes that not all necessary measures to ensure accountability for violations of international humanitarian and human rights law by Israeli security forces have been taken. On the whole, investigations have failed to meet international standards of independence, transparency, impartiality, thoroughness, promptness, and effectiveness. The analysis shows that investigations have not been opened in all cases of *prima facie* evidence of wrongdoing, and that redress is not ensured if access to justice by Palestinian victims is hampered. The recommendation is therefore assessed as "not implemented".

22. In his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General recommended to the Gaza authorities and Palestinian armed groups that "Accountability must be ensured for violations of international humanitarian law and human rights law, in particular the killing of civilians, the indiscriminate firing of rockets towards Israel and summary executions, committed by the de facto authorities and armed groups in Gaza. Investigations must be independent, transparent, impartial, thorough, prompt, and effective. Redress for victims must be ensured."[27]

[21] A/HRC/29/CRP.4, para. 217.
[22] A/HRC/34/36, para. 45.
[23] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, para. 59.
[24] Yesh Din, Investigation Policy, 11 April 2016
[25] See "*The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf
[26] A/68/502 para. 40.
[27] A/68/502 para. 52.

23. The recommendation specifically mentions the indiscriminate firing of rockets and summary executions as violations of international humanitarian law and international human rights law that should be investigated. Even though the recommendation requires accountability and redress for those violations and does not explicitly call for a halt to their occurrence, it is relevant to note that both types of violations have continued to take place: indiscriminate firing of rockets by armed groups continues to be reported, the latest (without casualties) in January and February 2017,[28] and instances of killing of suspected collaborators by Hamas were documented during the 2014 escalation of hostilities.

24. Regarding investigations into such violations, in his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General noted that "In respect of the de facto authorities in Gaza, it appears that more than seven months after the end of the escalation in hostilities, no measures have been taken to investigate credible allegations of violations of international law committed by the de facto authorities or armed groups in Gaza, or to provide an effective remedy to victims of the hostilities of November 2012."[29] This situation does not appear to have changed, as noted by the High Commissioner for Human Rights in his report to the Human Rights Council presented in March 2017: "impunity is […] a major concern with regard to actions by Palestinian authorities […] in Gaza. In Gaza, there is little information available about any investigation at all into violations of international law."[30]

25. In this regard, the Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 is pertinent. It noted the little information available regarding steps taken by the State of Palestine and the authorities in Gaza "to conduct investigations into alleged serious violations of international *humanitarian* and gross violations of international human rights law.[31] In July 2016, Amnesty International reported that "in May 2015, the Hamas authorities denied involvement in the summary killings of Palestinians documented by Amnesty International, but said the Attorney General and Ministry of Interior in Gaza were investigating and would publish their findings." Amnesty International also reported that the Gaza authorities "have not released further information and their investigations are not independent, as the judiciary and Ministry of Interior in Gaza are directed and staffed by Hamas members, some of them closely linked to Hamas' military wing. There are no indications that they are investigating the rocket and mortar attacks which killed Israeli and Palestinian civilians."[32]

26. Given the apparent absence of any investigations, the second element of the recommendation, requiring redress for victims, also remains unimplemented.

27. Based on the above, the recommendation is therefore assessed as "not implemented".

B. International engagement

28. The review identified 141 recommendations pertaining to international engagement (15 per cent of the total), some of which call for cooperation of all parties with international human rights mechanisms, and some for the implementation of and compliance with international law in general. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

[28] See www.haaretz.com/israel-news/1.769915.
[29] A/68/502 para. 33.
[30] A/HRC/34/36, para. 79.
[31] A/HRC/29/CRP.4 para. 653.
[32] See www.amnesty.org/en/documents/mde15/4199/2016/en/.

Table 4
Overview of recommendations related to international engagement

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
General implementation of international standards, recommendations	65	46.1%	7.0%
Cooperation with international mechanisms	10	7.1%	1.1%
Actions conductive to peace	37	26.2%	4.0%
Other	29	20.6%	3.1%
Total	141		

29. An illustrative example in this thematic area is the analysis of a recommendation addressed to the international community. In 2009, the report presented by multiple mandate holders to the Human Rights Council, submitted pursuant to resolution S-9/1 on the Occupied Palestinian Territory, recommended that: "The international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures. In this respect, the mandate-holders recall the obligation of States to cooperate to bring to an end through lawful means to any serious breach of an obligation arising from a peremptory norm of general international law. They also recall the obligation of all States to ensure respect for the provisions of international humanitarian law."[33]

30. Since 2009, several bodies of the United Nations system have regularly reminded, encouraged, and prompted all parties to cease violations and abide by their obligations under international human rights law and international humanitarian law. Notably, the Secretary-General, in his latest report on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, noted that "[c]hronic violations of international human rights law and international humanitarian law by all parties have persisted,"[34] and stated that "All parties must respect international law and comply with their obligations or responsibilities under international human rights law."[35] In December 2016, the Security Council reiterated the call on "both parties to act on the basis of international law, including international humanitarian law […]."[36]

31. Member States have actively engaged with Israel and the State of Palestine to promote the implementation of the recommendation and to seek a resolution to the conflict. The most recent efforts included the peace negotiations between Israel and Palestine, facilitated by the United States, which began in July 2013 and collapsed in April 2014, as well as the French-sponsored Conference for peace in the Middle East that took place in Paris on 15 January 2017.

32. The international community has actively promoted the implementation of decisions, resolutions and recommendations of the United Nations, and there have been attempts by states to cooperate. This has not had the effect of ending grave violations of international law by parties to the conflict. As a result, this particular recommendation has been assessed as "partially implemented".

33. A second illustrative analysis relates to a recommendation addressed to both Israel and the State of Palestine and is examined individually for each duty-bearer. In 2014, the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 called "upon Israelis and Palestinians to demonstrate political leadership by both refraining from and taking active steps to prevent statements

[33] A/HRC/10/22 105 para.105, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/135/43/PDF/G0913543.pdf?OpenElement
[34] A/HRC/34/38, para. 72.
[35] A/HRC/34/38, para. 76.
[36] S/RES/2334(2016).

that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence.[37] This recommendation requires demonstrated political leadership in two ways: a.) abstaining from making statements that incite to hate and dehumanize the other side; and b.) taking action that prevents such statements.

34. In relation to Israel, statements such as those described in the recommendation were made throughout the period covered by this review and increased during times of escalation of violence and hostilities. In November 2014, the Internal Security Minister, Yitzhak Aharonovitch, following an incident in which a Palestinian man rammed a vehicle into pedestrians at a light rail stop in Jerusalem, stated: "A terrorist who attacks civilians deserves to be killed."[38] Derogatory statements were made by Naftali Bennet, then Minister of Economy, and Ayelet Shaked, the current minister of Justice.[39] In line with the recommendation's requirement to take active steps to prevent dehumanization, in July 2015, Prime Minister Netanyahu condemned an arson attack in Douma, in which Israeli settlers killed three Palestinians and gravely injured a five-year-old boy, calling it a "horrific, heinous terrorist act."[40] However, in February 2016, when announcing the plan to surround Israel with fences, the Prime Minister said: "In our neighbourhood, we need to protect ourselves from wild beasts,"[41] which clearly dehumanized Palestinians and could incite hatred and violence. While the representatives of some organizations[42] and the authors of the book Torat Hamelech were arrested for incitement,[43] these actions did not result in any indictment. When assessing the above as a whole, despite some positive statements, the balance of the actions are not adequate to qualify as refraining from and taking active steps to prevent statements that dehumanize and incite violence. There is no evidence of systematic condemnation of statements made that would incite violence, and as well no indictments have followed the few arrests made on these grounds. This recommendation is considered "not implemented".

35. Several reports have documented the Palestinian authorities' persistent use of statements like those described in the recommendation. In its report of June 2016, the Middle East Quartet noted that "Palestinians who commit terrorist attacks are often glorified publicly as 'heroic martyrs."[44] It further noted that "Hamas and other radical factions […] use media outlets to glorify terrorism and openly call for violence against Jews, including instructing viewers on how to carry out stabbings.[45] For instance, in a statement issued in February 2017, Moshir El Masry, a member of the legislative committee of Hamas' bureau, urged all imprisoned Palestinians to "initiate a stabbing intifada behind bars targeting Israeli soldiers."[46] The Middle East Quartet also noted that "Some members of Fatah have publicly supported attacks and their perpetrators, as well as encouraged violent confrontation."[47] The Quarter also observed that although the Palestinian Authority leadership had "made statements expressing opposition to violence against civilians, […] regrettably, […] Palestinian leaders have not consistently and clearly condemned specific terrorist attacks."[48] No actions have been documented indicating efforts

[37] A/HRC/29/CRP.4, para. 678.
[38] See www.timesofisrael.com/internal-security-minister-calls-for-demolishing-terrorists-home/.
[39] See www.jpost.com/Diplomacy-and-Politics/Bennett-under-fire-for-comments-about-killing-Arabs-321467, www.telegraph.co.uk/news/worldnews/middleeast/israel/11599932/New-Israeli-justice-minister-notorious-for-anti-Palestinian-rhetoric-given-bodyguard-after-Nazi-death-threats.html.
[40] See www.timesofisrael.com/netanyahu-condemns-terrible-heinous-terror-attack-on-palestinians
[41] See www.theguardian.com/world/2016/feb/10/netanyahu-plans-fence-around-israel-to-protect-it-from-wild-beasts.
[42] See www.haaretz.com/israel-news/.premium-1.632270.
[43] See www.jpost.com/Israel-News/High-Court-No-basis-to-indict-Torat-Hamelech-authors-for-incitement-436795.
[44] See www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf .
[45] *Ibid.*
[46] See www.watania.net/news/101154-حماس-تدعو--لتفعيل-انتفاضة-الطعن-خلف-ال.
[47] *Ibid.*
[48] *Ibid.*

to prevent such statements. The recommendation is therefore considered as "not implemented".

36. In December 2016, the Security Council called on both parties to "refrain from provocative actions, incitement and inflammatory rhetoric, with the aim, inter alia, of de-escalating the situation on the ground, rebuilding trust and confidence, […] and creating the conditions necessary for promoting peace."[49] Based on this as well as the above paragraphs, the overall recommendation has therefore been assessed as "not implemented" by any of the parties.

C. Arrest and detention

37. The review identified 106 recommendations that concern arrest and detention (11 per cent of the total number of recommendations). Two recommendations have been selected as illustrative examples of recommendations in this category, discussed in detail below. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

Table 5
Overview of recommendations related to conditions of detention

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Treatment of children	52	49.1%	5.6%
Treatment of adults	25	23.6%	2.7%
Administrative detention	15	14.2%	1.6%
Judicial guarantees	14	13.2%	1.5%
Total	106		

38. In June 2016, following the review of the report submitted by Israel, the Committee against Torture, "Recalling its previous recommendation (CAT/C/ISR/CO/4, para. 28) […] call[ed] upon the State party to redouble its efforts with a view to: (a) Ensuring that the deprivation of liberty of minors, irrespective of the charges brought against them, is a last resort, limited to the shortest possible period, and that it is reviewed daily with a view to eliminating it."[50]

39. Regarding the first part of the recommendation, the Secretary-General noted in May 2016 that the large number of arrests of Palestinian children by Israel seemed incompatible with its use as a last resort.[51] According to official data provided to Israeli NGOs by the Israeli Prison Service, at the end of August 2016, 319 Palestinian minors were being held in Israeli prisons, 10 of whom were in administrative detention. Out of the 319 minors, 168 were being held in pre-trial detention until the conclusion of the judicial proceedings. Israel has since stopped providing such data to civil society organizations despite requests sent based on the 1998 Freedom of Information Law.[52] According to UNICEF data, the arrest of Palestinian children has continued to increase,[53] as has the use of administrative detention.[54]

40. As Israeli authorities have continued to detain children as a regular practice, this element of the recommendation is assessed as "not implemented".

41. The second part of the recommendation requires that Israel ensure that child detention undergoes judicial review on a daily basis with a view to eliminating it. Military Order 1711 (which came into force in April 2013 and reduced the maximum period of

[49] S/RES/2334(2016).
[50] CAT/C/ISR/CO/5.
[51] A/71/86, para. 24.
[52] See www.militarycourtwatch.org/page.php?id=J5V0bQevz8a19020AWwFbv7lxv2.
[53] A/HRC/34/36, para. 25.
[54] A/HRC/34/36, para. 26.

detention without judicial review for children between 12 and 15 years old but did not modify the period for children aged between 16 and 17 years old) still allows for the detention of Palestinian children for several days before their presentation to a military court judge: 24 hours for children aged 12-13 (plus additional 24 hours for urgent investigations), 48 hours for children aged 14 -15 (plus an additional 48 hours for urgent investigations) and 96 hours for children aged 16-17 years old (as for adults).[55] Therefore, this part of the recommendation, and taken together with the above information – the recommendation as a whole – is assessed as "not implemented".

42. In March 2015, the High Commissioner recommended that authorities in Gaza "take all the necessary measures to ensure that the rights of persons deprived of liberty are respected, including by ensuring effective, independent, impartial, thorough and transparent investigations into allegations of torture and ill-treatment, and to ensure that perpetrators are brought to justice and that victims have access to an effective remedy."[56]

43. Civil society organizations and the United Nations have continued to document cases of torture by Gaza authorities.[57] In January 2016, the High Commissioner, based on information collected by OHCHR in Gaza, noted violations of due process, as well as torture and ill-treatment during interrogation, and arbitrary arrests, mostly by local police forces, but also corrections officers and members of the internal security apparatus. Some arbitrary arrests have led to prolonged incommunicado detention. OHCHR also received allegations of excessive use of force upon arrest, denial of the right to remain silent, and to have legal representation and contact with family. Political opponents of Hamas, journalists and human rights defenders are often among the victims.[58]

44. Authorities in Gaza have failed to implement the recommendation of the High Commissioner to conduct "effective, independent, impartial, thorough and transparent investigations" of allegations of torture and ill-treatment. In 2012, Human Rights Watch raised concerns of Hamas' failure to "investigate and prosecute abusive security officials" suspected of torture.[59] It documented the case of Mr. Mahmoud Eshtewi, a member of the military wing of Hamas, who was allegedly killed in custody in 2016 after being repeatedly subjected to torture during interrogations. Authorities refused to provide any information on the case to Human Rights Watch, and the family's request for an autopsy was rejected.[60]

45. The 2016-2017 report of Amnesty International on the human rights situation in the State of Palestine[61] stated that "[t]orture and other ill-treatment of detainees remained common and was committed with impunity by Palestinian police and other security forces in the West Bank, and Hamas police and other security forces in Gaza". According to the report, authorities in the West Bank and in Gaza failed to investigate torture allegations and to hold perpetrators accountable. The recommendation is therefore assessed as "not implemented".

D. Settlements

46. The review identified 93 recommendations related to Israeli settlements in the West Bank, including East Jerusalem. Most (81) were addressed to Israel, none of which has been implemented. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

[55] See www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf, p.1.
[56] A/HRC/28/80, para. 72.b.
[57] See www.hrw.org/news/2016/02/15/palestine-torture-death-hamas-detainee.
[58] A/HRC/31/40, paras. 69-78.
[59] See www.hrw.org/news/2012/10/03/gaza-arbitrary-arrests-torture-unfair-trials.
[60] See www.hrw.org/news/2016/02/15/palestine-torture-death-hamas-detainee.
[61] See www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/.

Table 6
Overview of recommendations related to settlements

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Settlement expansion	20	21.5%	2.2%
Zoning and building permits	18	19.4%	1.9%
Forced transfer	20	21.5%	2.2%
Demolitions, displacement	16	17.2%	1.7%
Businesses engagement in settlements	15	16.1%	1.6%
National resources exploitation	1	1.1%	0.1%
Human rights violations linked to settlements	3	3.2%	0.3%
Total	93		

47. In January 2016, the Secretary-General made a recommendation that encompasses and combines multiple aspects related to the presence of settlements in the Occupied Palestinian Territory: "The Israeli authorities must halt and reverse the creation and expansion of settlements in the Occupied Palestinian Territory and in the occupied Syrian Golan.[62] In addition, Israel must immediately cease using land control mechanisms aimed at expanding the area effectively occupied by settlements, such as the designation of firing zones, archaeological parks and agricultural land. Israel must also immediately cease the exploitation of natural resources from these territories." [63] A range of evidence was considered when assessing the implementation of this broad recommendation. The below is illustrative of the information taken into account when assessing recommendations related to settlements more generally.

48. In January 2017, the Government of Israel announced the construction of over 6,000 housing units in existing settlements. On 6 February 2017, the Knesset passed the "Settlement Regularization Bill", retroactively legalizing Israeli settlements built on private Palestinian land. Furthermore, in March 2017, the Government announced the establishment of a new settlement in the West Bank - the first in over 20 years.

49. The recommendation calls for the cessation of land control mechanisms aimed at expanding the area occupied by settlements, including "firing zones", archaeological parks and agricultural land. In March 2016, Israel declared "state lands" over 200 hectares of land south of Jericho.[64] This process is a crucial part of Israel's strategy aimed at expanding the land under the control of settlers, including for agricultural use.[65] On 15 February 2017, the Israeli army demolished 43 Palestinian structures in Ein Ar Rashash, Ramallah governorate, located in an area designated by the Israeli military as a "firing zone".[66]

50. Finally, the recommendation includes the cessation of the exploitation of natural resources in the Occupied Palestinian Territory. A United Nations Conference on Trade and Development report of September 2016 noted that Israel was extracting water above the level determined in the Oslo II Accord, and had confiscated 82% of the groundwater in the Occupied Palestinian Territory for its use in Israel and in settlements, while Palestinians needed to import over half of the water they use.[67]

[62] The review of the implementation regarding the Occupied Syrian Golan is outside the scope of this report.
[63] A/HRC/31/43, para. 67.
[64] A/HRC/34/39, para. 17.
[65] A/HRC/31/43, para. 3.
[66] See www.ochaopt.org/content/palestinian-bedouin-community-almost-totally-demolished
[67] UNCTAD/APP/2016/1*, para. 34.

51. Twenty of the 93 settlement-related recommendations call on Israel to cease the forced transfer and evictions in the Occupied Palestinian Territory, as well as actions that can lead to such situations. In November 2014 the United Nations Human Rights Committee recommended that Israel: "Desist from any actions that may facilitate or result in forcible transfer and forced evictions, particularly of the Bedouin communities in the central West Bank, including the eastern Jerusalem periphery, and forced displacement and dispossession of Bedouins residing in the Negev".[68]

52. In January 2016, the Secretary-General expressed concern that Israel continued planning the relocation of entire communities and demolitions of homes of Palestinian Bedouins and herder populations.[69] Israel has continued implementing policies resulting in the displacement of Palestinians, including Bedouin communities, in East Jerusalem. As documented by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), during the first two months of 2017, in East Jerusalem, Israel demolished 24 structures in 18 Bedouin communities in the area designated for the E1 settlement plan and the expansion of the Ma'ale Adumim settlement, causing the displacement of 133 people, half of whom were children.[70] Between 1 January and 6 April 2017, OCHA documented that Israeli authorities had demolished a biweekly average of 29 Palestinian-owned structures, causing the displacement of a biweekly average of 58 Palestinians.[71] Considering all of the above information next to the elements of the recommendation, the recommendation of the Secretary-General referred to above has been assessed as "not implemented".

E. Freedom of movement

53. Among the 79 recommendations related to the right to freedom of movement, 76 are addressed to Israel, two to all parties to the conflict and one to the Human Rights Council. Twenty-eight recommendations call for the blockade of Gaza to be lifted, to allow the free movement of people and goods in and out of Gaza, to facilitate reconstruction, and to address the humanitarian and human rights impact of blockade. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

Table 7
Implementation of recommendations related to freedom of movement

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Blockade	29	36.7%	3.1%
Wall	5	6.3%	0.5%
Freedom of movement between Gaza and West Bank	20	25.3%	2.2%
Restrictions impacting humanitarian aid	14	17.7%	1.5%
Restrictions impacting economic development	5	6.3%	0.5%
Enforcement of access restrictions	4	5.1%	0.4%
Residency rights	2	2.5%	0.2%
Total	79		

[68] CCPR/C/ISR/CO/4, para. 9. The review of the implementation regarding the Negev desert falls outside the territorial scope of this report and will not be assessed.
[69] A/HRC/31/43, para. 44.
[70] See www.ochaopt.org/content/tightening-coercive-environment-bedouin-communities-around-ma-ale-adumim-settlement.
[71] See www.ochaopt.org/content/protection-civilians-report-21-march-3-april-2017.

54. A 2013 recommendation from the Committee on the Rights of the Child demonstrates the process and information used in considering implementation of recommendations in this category. The Committee recommended that Israel: "Cease the construction of the Wall in the Occupied Palestinian Territory and fully lift the Gaza blockade, and urgently allow entry of all construction materials necessary for Palestinian families to rebuild homes and civilian infrastructures so as to ensure respect for children's right to housing, education, health, water and sanitation as recommended notably by the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/14-16, para. 26) and in line with Israel's Manual on the Laws of War (1998) which prohibits the conduct of a scorched earth policy "with a view to inflicting starvation or suffering on the civilian population."[72]

55. In July 2014, OCHA reported that 62 per cent of the planned wall had been constructed, including 200 additional kilometres since the Advisory Opinion had been issued.[73] In August 2015, the construction of the wall resumed in Bethlehem after the High Court of Justice, in April 2015, requested the State of Israel to consider alternative routes to ensure access of Palestinians between Bethlehem, Beit Jala and a Cremisan monastery and convent.[74]

56. Regarding the recommendation to fully lift the blockade, OCHA has continued to document[75] how the blockade undermines Gaza's economy, resulting in high levels of unemployment, food insecurity and aid dependency. The blockade has continued to negatively impact the quality of health, education, and water and sanitation services available in Gaza. One third of the applications for exit permits for medical treatment outside Gaza submitted in 2016 were rejected or delayed. The volume of imports allowed into Gaza falls short of current needs due to population growth and the devastation from recurrent hostilities. The limited access to construction materials delays the construction, repair and upgrade of homes and infrastructure, and prolongs the displacement of those who have lost their homes. Also, the production of food inside Gaza is affected by the prohibition of access to areas within 300 metres of the perimeter fence (making access to a wide area contiguous to those 300 metres unsafe), which prevents and discourages agricultural activities. Moreover, fishermen are allowed to access less than a third of the fishing areas allocated under the Oslo Accords. Consequently, by mid-2016, the unemployment rate was almost 42 per cent, and stood at 60 per cent among youth and 65 per cent among women; 47 per cent of households in Gaza suffered from moderate or severe food insecurity; and over 70 per cent of the population was receiving some form of international aid, mainly food assistance.

57. The third element of the recommendation demands that Israel urgently allow the entry of all construction materials necessary for private homes and civilian infrastructures. According to OCHA, the partial easing of some of the restrictions since the establishment of the Gaza Reconstruction Mechanism in 2014 has facilitated the entry of some restricted items, but recent import reductions have put a strain on the GRM's effectiveness and hampered reconstruction efforts. For example, between 3 April and 22 May 2016, Israel did not allow the import of cement to Gaza by the private sector due to allegations that this material was being used to build a tunnel to Israel. While the import of cement has since resumed, the number of trucks has been limited to 90 per day – compared to 120 before April 2016. This generated a backlog demand of 577,000 tons of cement in December 2016, and OCHA calculated it could take nine years for the supply to catch up with the increasing demand. Only four per cent of the cement needed in December 2016 to construct and repair houses for the 33,000 families who were authorized to purchase cement through the Gaza Reconstruction Mechanism was available. Consequently, 10,248 families (about 53,300 people) remained displaced.[76]

[72] CRC/C/ISR/CO/2-4, para. 26.c.
[73] See www.ochaopt.org/content/spotlight-10-years-international-court-justice-icj-advisory-opinion
[74] See www.ochaopt.org/content/barrier-construction-bethlehem-resumes.
[75] See www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016.
[76] See www.ochaopt.org/content/intensified-restrictions-entry-building-materials-delay-completion-housing-projects-gaza.

58. Due to the insufficient easing of the import restrictions and its limited impact, the scale of the ongoing humanitarian crisis and the failure to lift the blockade, the recommendation is assessed as "not implemented".

59. In 2009, multiple special procedures mandate-holders asked all parties to "Enable the import of reconstruction materials needed to build or repair vital infrastructure and housing, and facilitate the full reintegration in dignity and security of the recently displaced (without prejudice to the right of return of Palestinian refugees)."[77] The recommendation addresses all parties; its implementation by the Israeli and Gaza authorities is separately assessed.

60. Israel's failure to comply with the recommendations and enable the import of sufficient reconstruction materials and its humanitarian impact has been illustrated in previous paragraphs. OCHA has documented how the blockade continues to hinder reconstruction and recovery efforts in Gaza: "[l]ongstanding access restrictions imposed by Israel have undermined Gaza's economy […] Restrictions on the import of goods treated by Israel as "dual use" items have impacted on the quality of basic services and impede efforts to address housing needs."[78]

61. OCHA documented that, beginning on 26 March 2017, Gaza authorities imposed access restrictions which have exacerbated the humanitarian concerns and delayed reconstruction efforts. Restrictions to the entry and exit of persons were established at the Arba Arba checkpoint, which controls access to the Erez Crossing between Gaza and Israel, further reducing the number of Palestinians in Gaza permitted to leave through Erez due to restrictions by Israel, and delaying the implementation of large infrastructure projects due to cancellation of visits by international consultants.[79]

62. As a result of the difficulties affecting reconstruction, 75,000 persons displaced by the 2014 escalation remain in this situation,[80] preventing their "full reintegration in dignity and security". As the above information indicates that none of the parties has complied with the recommendation, it has been determined as "not implemented".

F. Civil and political rights

63. Fifty-eight recommendations (six per cent of the total) are related to other civil and political rights, including 29 that refer to the freedoms of expression, assembly and association. Among those 29, 17 are addressed to Palestinian authorities and 12 to Israel. The following table provides an overview of the distribution of the issues covered by these recommendations and the relevant percentages.

Table 8
Overview of recommendations related to other civil and political rights

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Freedom of expression, assembly and association	34	58.6%	3.7%
Freedom of thought, conscience and religion	10	17.2%	1.1%
Right to protection of family	12	20.7%	1.3%
Palestinian political unity	2	3.4%	0.2%
Total	58		

[77] A/HRC/10/22 105 para. 103(f).
[78] See www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016.
[79] See www.ochaopt.org/content/continuing-access-restrictions-de-facto-authorities-gaza-add-humanitarian-concerns.
[80] See http://gaza.ochaopt.org/2016/04/gaza-internally-displaced-persons-april-2016/.

64. Eight of the recommendations mention religious rights, both in terms of access to religious sites and addressing the right to bury relatives in accordance with religious customs. In June 2016, the Committee against Torture recommended that Israel "take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs, and to avoid that similar situations are repeated in the future."[81] The paragraphs that follow illustrate the process that led to assessments of implementation or non-implementation in this category of recommendations.

65. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories expressed concern, in August 2016, that although "many of the bodies" had been returned to the families, many continued to be held by Israel "in poor and inhumane conditions", and were consequently often "disfigured, sometimes beyond recognition."[82] The Secretary-General expressed concern about extensive delays to return the bodies "with punitive intent against the families of the deceased", despite a commitment from the Government of Israel to release them "within a short space of time."[83]

66. Moreover, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories expressed its concern that the then newly appointed Defence Minister, Avigdor Lieberman, had reaffirmed the practice of keeping the bodies of Palestinians killed while conducting attacks against Israelis and burying them in a special cemetery in Israel.[84] According to Israeli media, in December 2016, the Government of Israel agreed to withhold the bodies of Palestinians killed while carrying out attacks if the deceased belonged to Hamas and return them to their families if no links with Hamas were suspected.[85] On 1 January 2017, the Israeli Prime Minister's Office issued a statement saying that the cabinet had "discussed a permanent policy" and decided that the bodies of "Hamas terrorists killed during attacks" would not be returned to their families but "buried".[86]

67. Therefore, although the bodies of some Palestinians deceased in Israel while carrying out attacks were returned to their families (which could arguably be seen as partially implementing the first element of the recommendation), this occurred after unjustified delays with a punitive intention, contrary to the requirement of a speedy return made in the recommendation ("as soon as possible"). Regarding the second part of the recommendation (avoiding the reoccurrence of the unjustified withholding of the bodies), the publicly-stated "permanent policy" to selectively keep the bodies of persons with links to Hamas shows the intent to continue disregarding its content. The recommendation is therefore assessed as "not implemented".

68. In 2011, the High Commissioner recommended that the Palestinian Authority should "[e]nsure that civil society organizations, human rights defenders and journalists can carry out their work in an open, safe and secure operating environment, especially in relation to the rights to freedom of association and expression, as well as other applicable international standards."[87] In August 2016, Human Rights Watch documented multiple cases where authorities in the West Bank and in Gaza "arrest[ed], abus[ed], and criminally charg[ed] journalists and activists" who were critical of authorities. Human rights violations included torture, and, according to Human Rights Watch, were part of a long-standing pattern of violations of the right to freedom of speech.[88]

[81] CAT/C/ISR/CO/5, para. 43

[82] A/71/352, para. 46-47.

[83] See the case of Ewisat v. The Israel Police et al. (High Court of Justice 2882/16) on 5 May 2016, A/71/364, para.25.

[84] A/71/352, para.48, www.timesofisrael.com/liberman-orders-moratorium-on-returning-attackers-bodies/, and www.jpost.com/Israel-News/Politics-And-Diplomacy/Liberman-halts-the-return-of-terrorist-bodies-456369.

[85] See www.haaretz.com/israel-news/.premium-1.757959, www.israelnationalnews.com/News/News.aspx/221496.

[86] See www.pmo.gov.il/MediaCenter/Spokesman/Pages/spokeCabinet010117.aspx.

[87] A/HRC/16/71, para.60(b).

[88] See www.hrw.org/news/2016/08/29/palestine-crackdown-journalists-activists

69. In March 2017, the Secretary-General also expressed his concern that "Throughout the Occupied Palestinian Territory, social media is monitored, and journalists and activists are harassed, arrested, detained and, in some cases, subjected to ill-treatment or torture. Authorities in both the West Bank and Gaza have also restricted peaceful assemblies. These practices denote the rise of a repressive environment and promote self-censorship among the Palestinian population." [89] The recommendation has thus been assessed as "not implemented".

G. Economic, social and cultural rights

70. Seven per cent of the recommendations (63) are dedicated to economic, social and cultural rights: 18 to the right to education, 16 to the right to health, seven to the right to water and sanitation, 14 to the right to an adequate standard of living, and two to the right to development. Most recommendations were addressed to Israel (49), 10 to Palestinian authorities and four to the international community. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review. Two recommendations have been selected to illustrate the methodology followed to assess their implementation.

Table 9
Overview of recommendations related to economic, social and cultural rights

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Right to health	16	25.4%	1.7%
Right to education	18	28.6%	1.9%
Right to water	7	11.1%	0.8%
Adequate standard of living, food, clothing, housing	14	22.2%	1.5%
Development	8	12.7%	0.9%
Total	63		

71. The report of the High Commissioner of March 2013 on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 recommended that "Israel must ensure that all wounded persons receive the required medical attention with the least possible delay. To this effect, IDF should issue clear instructions that the wounded must receive immediate attention, without discrimination, and staff must refrain from obstructing the work of medical personnel, including Palestinian ambulance crews."[90]

72. Throughout 2016, OHCHR documented and raised concerns that Palestinians wounded by Israeli security forces were not provided with medical assistance, or that such assistance was significantly delayed, including by blocking Palestinian ambulances and first responders. For example, "witnesses informed OHCHR that an Israeli medic arrived 12 minutes after Hadeel al-Hashlamoun was shot, but that she was not given first aid. Local media reports said Palestinian medics present at the checkpoint were prevented from reaching Ms. Al-Hashlamoun, and she was left bleeding for about 30 minutes."[91] In another example, "regarding Basil Basim Sidir, two witnesses interviewed by OHCHR stated that, although a medical team had reached the spot within a few minutes, the Israeli security forces did not allow them to attend to the victim for around 15 minutes."[92]

73. No information is available indicating that instructions have been issued by the Israeli security forces to its personnel to allow prompt medical attention to wounded

[89] A/HRC/34/38, para. 70.
[90] A/HRC/22/35 para. 71.
[91] A/HRC/31/40 para. 16.
[92] Ibid.

Palestinians. Cases documented between October 2015 and January 2017 by Physicians for Human Rights include instances of Palestinian medical personnel blocked from treating wounded persons accused of conducting an attack. Incidents of tear gas, tear gas canisters and rubber bullets thrown or shot at ambulances were also reported.[93] Eight of these cases documented by Physicians for Human Rights were submitted to the investigative authorities for addressing complaints regarding delays in the evacuation of the wounded. At the time of writing, these complaints were closed or no answer had been received.

74. The main indicator to assess the implementation of this recommendation is the continued reoccurrence of documented cases of Palestinian ambulances and first responders delayed and, in some instances, blocked entirely. The lack of clear instructions issued to the Israeli security forces to facilitate prompt medical assistance, and the closure or lack of timely response to the complaints filed constitutes an additional indicator that the recommendation was "not implemented".

75. In 2009, the report by multiple mandate holders[94] on the Human Rights situation in Palestine Other Occupied Arab Territories recommended that parties to the conflict "Enable the immediate resumption of regular educational activities, make schools zones of peace and ensure that schools are protected from military attacks and from seizure or use as centres for recruitment."[95]

76. The recommendation is addressed to both parties to the conflict in the 2009 escalation of hostilities in Gaza: Israel and Hamas. Following the ceasefire of 18 January 2009, and the resumption of education activities, the first part of the recommendation calling for the resumption of educational activities could arguably be considered as "fully implemented". However, for the purpose of this analysis, it is necessary to note that after 2009, two additional escalations of hostilities took place between Israel and Hamas in 2012 and 2014. During the last escalation, between 8 July and 26 August 2014, "at least 262 schools were damaged in Israeli air strikes. Three public schools were completely destroyed and at least 23 were severely damaged. In addition, 274 kindergartens were damaged."[96] Furthermore, "of the 83 school buildings of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) that were damaged owing to Israeli airstrikes and shelling nearby, 7 being used as shelters were hit either directly or by air strikes or shelling, resulting in the death of at least 42 persons, including 16 children, and in the injury of about 230 persons."[97] It appears that schools were not considered as zones of peace, and were not protected from attacks by the Israeli security forces.

77. In relation to Hamas, the Secretary-General noted that "during its routine inspections, UNRWA discovered that weapons or weapons components had been placed by Palestinian armed elements in three vacant UNRWA schools in Gaza."[98] On 10 November 2014, the Secretary-General decided to establish a United Nations Headquarters Board of Inquiry into 10 incidents which caused death or injury and damage, or during which weaponry was found at United Nations facilities during the conflict. On 27 April 2015, the Secretary-General released a summary of the Board's findings in a letter to the Security Council. He deplored that at least 44 Palestinians were killed and at least 227 injured as a result of Israeli attacks at United Nations premises that were being used as emergency shelters. The Board concluded that the three schools at which weaponry belonging to Palestinian armed groups was found were empty at the time, not being used as shelters.[99]

[93] See www.phr.org.il/en/complaints-concerning-delay-evacuation-wounded-pales, http://cdn2.phr.org.il/wp-content/uploads/2016/12/PHRI-Submission.SR-OPT-7-November-2016-UPDATED.pdf.

[94] A/HRC/10/22 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/135/43/PDF/G0913543.pdf?OpenElement

[95] A/HRC/10/22 para 103.(b).

[96] S/2015/409 para. 98.

[97] S/2015/409 para. 99.

[98] A/69/926 S/2015/409 para. 102.

[99] Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council, S/2015/286.

78. Given the documented level of destruction of education infrastructure during the 2014 escalation of hostilities and the verified use of schools to store weapons, it is considered that this recommendation is "not implemented" by any of the parties to the conflict.

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Human rights situation in Palestine and other occupied Arab territories

Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights

Summary

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has prepared the present report, pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, on producing a database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63) ("listed activities"). It describes the state of progress made towards the consolidation of the database, including the methodology adopted by OHCHR, recalls the normative framework used, and makes a preliminary analysis of the most common explanations given by companies for their involvement in the listed activities, and makes recommendations.

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I. Introduction

A. Background

1. The present report of the United Nations High Commissioner for Human Rights is submitted to the Human Rights Council pursuant to resolution 31/36, on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, adopted by the Council on 24 March 2016. In paragraph 17 of resolution 31/36, the Council requested the United Nations High Commissioner for Human Rights to produce a database of all business enterprises engaged in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory, in consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, and to transmit the data therein in the form of a report to the Council at its thirty-fourth session. The Council also requested that the database be updated annually.

2. On 13 February 2017, the Human Rights Council, pursuant to the recommendation of the High Commissioner, decided to defer consideration of the report to allow for additional time to consider the inputs received in the context of an open call for submissions, and to ensure a fair process for concerned stakeholders (see A/HRC/34/77).

B. Mandate

3. Human Rights Council resolution 31/36 establishing the database follows up the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63). In its report, the fact-finding mission found that business enterprises had directly and indirectly enabled, facilitated and profited from the construction and growth of the settlements; in paragraph 96 of the report, it provided a list of activities that raised particular human rights violations concerns ("listed activities"). In resolution 31/36, the Council defined the parameters of activities to be reflected in the database by reference to the list compiled by the mission in its report, which comprised:

(a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures;

(b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;

(c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;

(d) The supply of security services, equipment and materials to enterprises operating in settlements;

(e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;

(f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;

(g) The use of natural resources, in particular water and land, for business purposes;

(h) Pollution, and the dumping of waste in or its transfer to Palestinian villages;

(i) Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements;

(j) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints.

4. OHCHR notes that six of the 10 listed activities – (a), (b), (d), (e), (f) and (i) – refer to activities that are explicitly linked to the settlements, while the remaining four – (c), (g), (h) and (j) – refer to activities that may not be geographically connected to settlements, but form part of the processes that "enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line". [1] For example, OHCHR notes that a company that is operating a quarry on Israeli-confiscated land in the West Bank will be considered to fall under category (g) regardless of whether it is located in or connected to a defined settlement community. Its presence in the Occupied Palestinian Territory and the use of its natural resources for business purposes is sufficient to fall within the scope of the database, as required by resolution 31/36.

5. The parameters of the database encompass local and international companies, whether domiciled in Israel, the Occupied Palestinian Territory or abroad, carrying out listed activities in relation to the Occupied Palestinian Territory. Companies engaged in activities related to the occupied Syrian Golan do not fall within the mandate.[2]

6. The mandate for producing the database established by resolution 31/36 is strictly confined to the 10 activities listed in paragraph 3 above. The database does not cover all corporate activity related to settlements, nor does it extend to all corporate activity in the Occupied Palestinian Territory that may raise human rights concerns.[3] In addition, while there may be other types of entities engaged in significant corporate activity related to the settlements, only those entities established as business enterprises are considered; non-governmental organizations, charities, sports associations or federations, and other entities are therefore excluded from consideration.

C. Methods of work

7. As with all other mandates, in performing the present mandate assigned to it by the Human Rights Council in resolution 31/36, OHCHR was guided by the principles of independence, impartiality, objectivity, credibility and professionalism. OHCHR formulated its methodology in accordance with these principles, based on best practices, the advice and guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises, and consultations with stakeholders (see paras. 23-25 below).

8. The work conducted by OHCHR in producing the database is in full compliance with resolution 31/36 and does not purport to constitute a judicial process of any kind. OHCHR is mandated to make factual determinations of whether businesses enterprises are engaged in the listed activities.

9. It is the view of OHCHR that the work performed in consolidating and also in communicating the information in the database to the Human Rights Council can assist both Member States and business enterprises in complying with their respective legal obligations and responsibilities under international law, including through constructive engagement and dialogue and by serving as a source of information to promote transparency.

[1] The fact-finding mission defined Israeli settlements as encompassing "all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory" (see A/HRC/22/63, para. 4).

[2] While resolution 31/36 refers to the occupied Syrian Golan, paragraph 17 establishing the mandate to produce a database and the report of the fact-finding mission to which it refers pertain to the Occupied Palestinian Territory only.

[3] For instance, the mandate for the database does not extend to companies involved in supplying the Israel Defense Forces with weapons or other equipment used during military operations, nor does it encompass companies involved in controlling access to and from Gaza.

1. Standard of proof

10. OHCHR has determined that where there are reasonable grounds to believe based on the totality of the information reviewed by it that a business enterprise is engaged in one or more of the listed activities, such business enterprise will be included in the database. This standard is consistent with the practice of United Nations fact-finding bodies and is lower than a criminal standard. There are "reasonable grounds to believe" that a business enterprise is engaged in one or more of the listed activities where OHCHR has reviewed a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that the business enterprise is involved in such activities.

11. The same standard will be used to make determinations as to whether business enterprises are no longer engaged in one or more of the listed activities; thus, if subsequently, based on the totality of information reviewed by OHCHR, there are reasonable grounds to believe that a business enterprise is no longer engaged in the listed activities, the business enterprise will be removed from the database.

2. Information-gathering process

(a) Initial steps taken to collect information

12. OHCHR examined information relevant to the mandate that was available to it, initially gathered through the following methods:

- A desk review of publicly-available information, including reports by the United Nations, civil society organizations (Israeli, Palestinian and international), media reports, academic writings
- Information received in response to notes verbales sent on 11 October 2016 to all Member States inviting them to provide inputs relevant to the implementation of resolution 31/36
- Information received in response to an open invitation to all interested persons, entities and organizations to submit relevant information and documentation

(b) Screening exercise

13. OHCHR reviewed information pertaining to 307 companies that were named in the notes verbales or in the responses received through the open call for submissions. OHCHR excluded those that met the following criteria:

(a) Business enterprises that were not, on the face of the submissions, covered by the mandate; these included companies that were alleged to have engaged in human rights abuses or supported the occupation through their corporate activity, but were not alleged to have engaged in any of the listed activities;

(b) Business enterprises about which there were insufficient facts in the submissions or in the public domain to support allegations of involvement in the listed activities;

(c) Business enterprises that were no longer engaged in the alleged activities because of corporate restructuring (for example, if a part of the business had been sold), dissolution or other corporate action;

(d) Business enterprises with a minimal or remote connection to the listed activities.

14. Of the 307 companies reviewed, 115 companies were excluded on the basis of the criteria set out in paragraph 13 above. The 192 remaining companies formed the initial group of "screened" companies that were subject to further research and consideration. The majority of these 192 companies are domiciled in Israel or the settlements, followed by the United States of America, Germany, the Netherlands and France.

(c) Further communications

15. OHCHR sent notes verbales on 11 July 2017 to the 21 Member States in which the initial 192 screened companies were domiciled, identifying companies domiciled in that Member State. The purpose was to inform those Member States that information had been received alleging that business enterprises domiciled in their territories and/or under their jurisdiction were engaged in one or more listed activities, and to invite any comments or observations concerning measures taken to ensure implementation of resolution 31/36. Fifteen of the 21 Member States responded by the deadline of 1 September 2017. Five of these Member States expressed a position in the notes verbales or in confidential meetings that supported OHCHR being in direct contact with companies. Six of the 15 Member States did not comment on this point, while four Member States expressed a position in the notes verbales or in confidential meetings that did not support direct contact between OHCHR and companies.[4]

16. In reviewing past practices, consulting with the Working Group on the issue of human rights and transnational corporations and other business enterprises, after having duly considered the responses and positions of Member States, considering the complexity of business relationships involved in each situation concerning listed activities, which often encompassed business enterprises domiciled in multiple States, and to offer a procedural safeguard designed to provide fairness, consistency, reasonableness and absence of arbitrariness of potential decisions that may affect the interests of business enterprises, OHCHR decided to communicate with the initial list of all 192 screened companies – not just those domiciled in the States that indicated they were in favour of such an approach – to provide them with an opportunity to respond to the information presented.

17. Of the 192 screened companies, OHCHR first contacted the companies concerning which the strongest allegations of a clear connection to listed activities had been received. To supplement information received in notes verbales from Member States and through the open call for submissions from interested stakeholders, OHCHR conducted further research into this subset of companies. This stage of the research included analysing public annual financial reports, official websites from companies in English and Hebrew, financial websites and media in English and Hebrew, the Israeli and other stock exchange markets, the websites of Israeli government offices[5] and websites of settlement industrial zones and settlement councils.

18. When contacting companies, OHCHR included in the communications, wherever possible, all relevant entities with respect to that particular situation of concern, including parent companies and their subsidiaries, franchisors and franchisees, local distributors of international companies, partners and other entities in relevant business relationships. In some of these cases, further research by OHCHR revealed relevant business entities, such as parent companies or subsidiaries, that were not initially named in the submissions received in notes verbales from Member States or through the open call for submissions from interested stakeholders. This necessitated adding 14 companies to the initial list of 192 screened companies, resulting in a total of 206 companies reviewed at the time of writing (see table below paragraph 22).

19. OHCHR was given limited resources to carry out the mandate within the anticipated time frame, which required it to calibrate its research and engagement with companies accordingly. Not all companies about which OHCHR had received information could be contacted by the time of submission of the present report. At the time of writing, OHCHR

[4] Notably, one Member State acknowledged awareness of the alleged activity of a company domiciled in its territory, and informed OHCHR that the Government had decided in August 2017 to conduct a baseline study to assess the degree of implementation of the Guiding Principles on Business and Human Rights in domestic legislation. OHCHR looks forward to the results of that study.

[5] These included the Israeli Companies Registrar (http://havarot.justice.gov.il), the Bank of Israel (www.boi.org.il/heb/Pages/HomePage.aspx), the Knesset Research and Information Centre (www.knesset.gov.il/mmm/heb/index.asp), the Ministry of Environmental Protection (www.sviva.gov.il) and the Ministry of National Infrastructures, Energy and Water Resources (http://energy.gov.il/).

had contacted 64 of the 206 companies involved in 33 different situations concerning the listed activities.[6]

20. In the letters addressed to the companies concerned, OHCHR informed them of the listed activities that they appeared to be engaged in (based on the totality of information reviewed by OHCHR), and set out the basic facts of the companies' involvement in the listed activity or activities. Companies were requested to respond in writing within 60 days for an initial response, providing any clarification or update of the information. Companies were informed that they could request that the substance of their written responses be kept confidential; a number of companies made such a request.

21. OHCHR was also contacted by a number of companies that had not received letters from the Office, but had either seen news of the database in the media or had been informed by their governmental authorities of their inclusion in the notes verbales addressed to Member States on 11 July 2017.

22. Responses from companies included those that (a) objected to the mandate of OHCHR and declined to provide a substantive response to the information presented; (b) rejected the information presented and objected to being included in the database; (c) confirmed the information presented concerning their involvement in one or more of the listed activities, and provided explanations; (d) provided updated information that indicated they were no longer engaged in one or more of the listed activities; and (e) provided additional information and clarifications that will require further discussion and analysis before a determination can be made. OHCHR is considering the responses received to date, and offers preliminary observations to the most common explanations put forth by companies for their involvement in the listed activities (see paras. 50-60 below). Where companies declined to provide a substantive response or failed to respond entirely, this will not prevent a determination as to their involvement in listed activities from being made.

[6] Not all parent companies or other ownership structures were contacted. For instance, if a company was acquired by a hedge fund or private investment firm, these were not included for reasons of practicality, given the lack of publicly available information concerning their portfolios.

Summary of screening exercise and communication with companies at the time of submission[a]

State concerned	Total number of companies reviewed	Number of companies screened from initial list	Number of companies excluded	Number of additional companies screened	Total number of screened companies[b]	Number of companies contacted to date	Number of companies not yet contacted
Israel or Israeli settlements	186	131	43	12	143	45	98
United States of America	54	20	32	2	22	7	15
Germany	21	7	14	--	7	1	6
Netherlands	7	5	2	--	5	3	2
France	8	4	4	--	4	2	2
Republic of Korea	3	3	0	--	3	1	2
Italy	3	3	0	--	3	0	3
United Kingdom of Great Britain and Northern Ireland	6	3	3	--	3	1	2
Canada	2	2	0	--	2	0	2
Japan	3	2	1	--	2	1	1
Switzerland	12	2	10	--	2	0	2
Ireland	2	1	1	--	1	0	1
Mexico	1	1	0	--	1	1	0
Denmark	1	1	0	--	1	0	1
Russian Federation	1	1	0	--	1	0	1
Singapore	1	1	0	--	1	0	1
Turkey	1	1	0	--	1	0	1
Sweden	2	1	1	--	1	1	0
Spain	2	1	1	--	1	0	1
Belgium	1	1	0	--	1	1	0
South Africa	1	1	0	--	1	0	1
Others	3	0	3	--	0	0	0
Total	**321**	**192**	**115**	**14**	**206**	**64**	**142**

(d) Consultations

23. Throughout the process, as mandated by Human Rights Council resolution 31/36 and in preparation for the report, OHCHR carried out five in-person consultations with the Working Group on the issue of human rights and transnational corporations and other business enterprises and exchanged additional written correspondence. The feedback, guidance and advice from the Working Group were critical to the development of the methodology used to implement the mandate.

24. In addition, OHCHR held extensive discussions with Member States and was in regular contact with Israeli, Palestinian and international civil society, think tanks, academics, employer organizations, and other interested parties.

[a] Does not include companies that contacted OHCHR proactively (see para. 21 above).

[b] Reflects the number of companies screened from the initial list plus the number of additional companies screened after further research (see para. 18 above).

25. A number of Member States, civil society organizations and other entities have repeatedly voiced strong opposition, both publicly and privately, against Council resolution 31/36 mandating the High Commissioner to produce a database. Other Member States have expressed support, along with Israeli, Palestinian and international civil society, academics and think tanks. This includes a petition signed by over 400 members of Israeli civil society, including a former attorney general and former members of the Knesset, retired diplomats, and other prominent individuals;[7] a joint statement by 56 non-governmental organizations;[8] and a letter signed by almost 60 Member States addressed to the High Commissioner.[9]

(e) Next steps

26. More resources are required for OHCHR to continue its dialogue with and issue communications to relevant business enterprises, adding information to the database and updating existing information in the database as required by resolution 31/36. Once OHCHR has been in contact with all 206 companies, and subject to determinations of their responses and non-responses, OHCHR expects to provide the names of the companies engaged in listed activities in a future update. Before the determinations on the companies are made public, OHCHR will notify the companies concerned.

II. Normative framework

A. The obligations of Israel as the occupying Power

27. As stated above, the creation of the database is not a judicial process. In this respect, the work of OHCHR is guided by Council resolution 31/36, in which paragraph 17 sets out the tasks given to OHCHR. The preamble to resolution 31/36 reflects the normative framework with regard to Israel as the occupying Power.[10]

28. Since the adoption by the Human Rights Council of resolution 31/36, the Security Council, on 23 December 2016, in its resolution 2334 (2016), reaffirmed its position that the establishment by Israel of settlements in the Occupied Palestinian Territory, including East Jerusalem, had no legal validity, and constituted a flagrant violation under international law. As recognized in numerous reports of the High Commissioner and the Secretary-General, continued expansion of settlements not only undermines the possibility of a two-State solution, but is also at the core of many human rights violations in the West Bank (see for example A/HRC/28/80, A/HRC/31/42, A/HRC/31/43 and A/HRC/34/39).

Human rights situation

29. The extensive human rights impact of settlements on the human rights of Palestinians has been well documented in successive reports of the High Commissioner, the

[7] See "Hundreds of Israelis urge publication of UN settlement database", Middle East Monitor, 4 December 2017.

[8] "Joint NGO Statement in Support of the UN Human Rights Database on Business Activities related to Settlements in the Occupied Palestinian Territory", Worldwide Movement for Human Rights, 30 November 2017.

[9] On file with OHCHR.

[10] In the preamble to resolution 31/36, the Human Rights Council recalls, inter alia, relevant reports of the Secretary-General, OHCHR and the fact-finding mission; relevant resolutions of the Commission on Human Rights, the General Assembly, the Human Rights Council and the Security Council reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem; the advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory rendered on 9 July 2004 by the International Court of Justice, which concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law; the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party; relevant provisions of the Fourth Geneva Convention and customary law; and the Guiding Principles on Business and Human Rights.

Secretary-General and the fact-finding mission (see for example A/HRC/22/63, A/HRC/25/38, A/HRC/28/44, A/HRC/31/42 and A/HRC/34/39). The reports detailed how the settlements are extensively altering the demographic composition of the Occupied Palestinian Territory and fundamentally threatening the Palestinians' right to self-determination. The violations of human rights associated with the settlements are pervasive and devastating, reaching every facet of Palestinian life. Owing to settlement development and infrastructure, Palestinians suffer from restrictions on freedom of religion, movement and education; their rights to land and water; access to livelihoods and their right to an adequate standard of living; their rights to family life; and many other fundamental human rights.

B. Obligations of States for business and human rights in the Occupied Palestinian Territory

30. The Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by all States Members of the Human Rights Council in its resolution 17/4, set out the international human rights law obligations of States concerning business enterprises. They do not create new legal obligations, but rather clarify the implications of relevant existing international human rights standards, and provide practical guidance on how they can be operationalized.[11] These include the State duty to protect against human rights abuses by third parties, which includes business enterprises. States may be held responsible for abuse by business enterprises where the conduct can be attributed to them (for example, in the case of a State-owned enterprise) or where States fail to take appropriate steps to prevent, investigate, punish and redress abuse.[12]

31. The Guiding Principles specifically address the issue of business operations in conflict-affected areas, which includes situations of occupation. In conflict-affected areas, the Guiding Principles recognize that the "host State"[13] may not be able to adequately protect human rights because of a lack of effective control or involvement in abuses itself.[14] In these situations, the Working Group on the issue of human rights and transnational corporations and other business enterprises acknowledges that "home States"[15] of transnational corporations have a crucial role to play. In the context of the Israeli settlements, Israel as the occupying Power is considered to have obligations equivalent to those of a "host State".[16] Given the direct involvement of Israel in establishing, maintaining and expanding the settlements, OHCHR considers that the role of homes States of transnational corporations is essential in assisting both corporations and Israel to ensure that businesses are not involved in human rights abuses.[17]

32. States' obligations specifically concerning business operations connected to Israeli settlements have been the subject of a number of United Nations reports and resolutions (for example, A/HRC/22/63, para. 117 and A/HRC/34/39, paras. 34-39, and Human Rights Council resolutions 28/26 and 34/31, para. 13 (*b*)). In its resolution 2334 (2016), the Security Council called upon all States to distinguish between the territory of Israel and the

[11] See *Frequently Asked Questions about the Guiding Principles on Business and Human Rights* (OHCHR, New York and Geneva, 2014), p. 8.

[12] Guiding Principle 1.

[13] A "host State" is defined as the country in which a business operates. See *Frequently Asked Questions about the Guiding Principles* (see footnote 11), p. 23.

[14] See Working Group on the issue of human rights and transnational corporations and other business enterprises, statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, 6 June 2014, p. 3.

[15] A "home State" is defined as a State where a company is incorporated or has its headquarters or primary seat. See *Frequently Asked Questions about the Guiding Principles* (see footnote 11), p. 23.

[16] The Working Group recognized that the term "host State" is ambiguous in situations of occupation, and that it would be more accurate to refer to the State that exercises effective control over an occupied territory as having obligations equivalent to those of a "host State". See statement of the Working Group (see footnote 14), pp. 6-8.

[17] In accordance with the statement of the Working Group, ibid., pp. 3-4 and 7.

territories occupied since 1967. With regard to the role of home States, the fact-finding mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations (A/HRC/22/63, para. 117).

33. Some States have taken steps towards fulfilling their obligations towards businesses operating in settlements. In November 2015, the European Union issued guidelines on the labelling of products made in Israeli settlements.[18] As at December 2017, 18 States members of the European Union had issued advisories warning businesses of the financial, legal and reputational risks incurred by becoming involved in settlement activities.[19]

34. Some States have argued that they do not have an obligation to regulate extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. While States are not generally required under international human rights law to do so, according to the Guiding Principles on Business and Human Rights, there are "strong policy reasons" for homes States to clearly set out expectations that businesses respect human rights abroad. States also have additional obligations as economic actors in their own right when it comes to State-owned enterprises. In its report submitted to the Council at its thirty-second session, the Working Group on the issue of human rights and transnational corporations and other business enterprises stated that there were compelling reasons for "greater action on the part of States with regard to State-owned enterprises" so that they lead by example (A/HRC/32/45).

C. Responsibilities of businesses

35. While States remain the primary duty bearers for the protection and promotion of human rights, international law has increasingly evolved to recognize that non-State actors – including business enterprises – also have responsibilities. The Guiding Principles on Business and Human Rights set out a "protect, respect and remedy" framework for business and human rights, which recognizes that while States have a duty to protect the rights of all against violations by third parties, there is an independent and complementary corporate responsibility to respect all internationally recognized human rights standards. In addition to human rights, humanitarian law standards also apply to business enterprises in situations of armed conflict.[20]

36. Under the Guiding Principles, all companies, regardless of size, industry, location, ownership or legal structure, have a responsibility to conduct due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts (principle 14). In its statement on the implications of the Guiding Principles in the context of Israeli settlements in the Occupied Palestinian Territory of 6 June 2014, the Working Group declared that businesses have a responsibility:

(a) To avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) To seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

37. The Guiding Principles recognize that businesses operating in conflict-affected areas – which include areas under occupation – face heightened risks of involvement in human rights abuses, including gross human rights abuses committed by other actors (Principle 7).

[18] European Commission, Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967 (11 November 2015).

[19] For excerpts of each State's advisory, see www.ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements.

[20] International Committee of the Red Cross, *Business and International Humanitarian Law: an Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law*, ICRC, Geneva, 2006).

In such situations, the Working Group clarified in the above-mentioned statement that where businesses have an increased risk, "enhanced" due diligence (namely, the "heightened care" with which due diligence processes should be executed) is required. The Working Group also highlighted a number of actions that enhanced due diligence may require, including formally integrating human rights principles into relevant contracts; exercising extreme caution in all business activities and relationships involving the acquisition of assets in conflict zones; and seeking advice from international organizations and mechanisms.

38. As part of the due diligence process, particularly in relation to a complex operating environment like the Occupied Palestinian Territory, businesses enterprises may need to consider whether it is possible to engage in such an environment in a manner that respects human rights. To do so, businesses would have to be able to show that they (in the words of the Working Group in its statement) do not "support the continuation of an international illegality nor are complicit in human rights abuses", and that they can effectively prevent or mitigate the risks to the human rights of Palestinians. This includes ensuring that businesses are not acquiring resources and property without the "freely given consent of the owner".[21]

39. In its report, the fact-finding mission emphasized that companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles (A/HRC/22/63, para. 117).[22]

40. The scale, scope and immitigability of the human rights impacts caused by settlements must be taken into consideration as part of businesses' enhanced due diligence exercises.[23] The Guiding Principles do not explicitly require companies to terminate operations where they are involved in human rights abuses; they do stipulate, however, that such companies should be prepared to "accept any consequences – reputational, financial or legal – of the continuing connection."[24]

41. OHCHR notes that, considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law. This view was reinforced in Human Rights Council resolution 34/31 on the Israeli settlements, in which the Council referred to the immitigable nature of the adverse impact of businesses' activities on human rights.

III. Involvement of business in settlements

A. Overview

42. Businesses play a central role in furthering the establishment, maintenance and expansion of Israeli settlements. They are involved in constructing and financing settlement homes and supporting infrastructure, providing services to the settlements, and operating out of them. In doing so, they are contributing to Israel's confiscation of land, facilitate the transfer of its population into the Occupied Palestinian Territory, and are involved in the exploitation of Palestine's natural resources (see A/HRC/34/39, para. 11).

[21] Ibid., p. 22.

[22] See also the statement of the Working Group (see footnote 14) and Guiding Principles 17 to 19.

[23] The commentary to Guiding Principle 14 provides that the severity of impact is judged by its scale, scope and irremediable character. See also Guiding Principle 17 on human rights due diligence.

[24] Commentary to Guiding Principle 19.

B. How Israeli authorities encourage settlement businesses

43. The Government of Israel actively encourages economic development of and for the settlements through the Israeli and international private sector by creating an attractive financial business market, by providing key financial incentives to companies to operate in the settlements. Ninety settlements have been designated as "national priority areas", which allows businesses operating within them to benefit from reductions in the price of land, grants for the development of infrastructure, and preferential tax treatment (A/HRC/34/39, para. 24). Businesses in settlements can also take advantage of functional immunity from labour law with respect to the treatment of Palestinian workers.[25] According to the fact-finding mission, business owners are able to cut their costs by paying lower rates to Palestinian workers than their Israeli counterparts, with substandard work conditions. This is largely due to a lack of supervision or regulation of employers in the settlements by Israeli officials (A/HRC/22/63, paras. 94-95).

44. Furthermore, Israeli authorities use their permit and licensing regime to encourage international and Israeli business engagement with the settlements. Permits and licenses are readily provided to businesses operating in or servicing settlements, but are rarely granted to companies engaged in providing similar services to Palestinians.[26] Israeli and international companies are regularly given quarrying licenses in Israeli-controlled territory in the West Bank, whereas, according to the Palestinian Union of Stone and Marble, no new permits have been issued to Palestinian businesses to open quarries in Area C[27] since 1994.[28]

45. Domestic laws and regulations in Israel also play a role in inducing businesses to serve individuals in the settlements. The Consumer Protection Law (1981) was amended in 2017 in response to alleged discrimination against consumers living in settlements. The revised law makes it mandatory for businesses to state clearly before any transaction is finalized whether they are not willing or able to provide services to settlements. The Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000), was amended at the same time to include customers' "place of residence" to the list of prohibited grounds for discrimination. It applies to any business that provides public services, even if it is privately owned, such as transportation services, communications services, entertainment, tourism or financial services intended for public use.[29] While these laws do not compel businesses to provide services to individuals in the settlements, they make it more difficult not to do so.

C. How businesses contribute to and benefit from the establishment, maintenance and growth of settlements

46. OHCHR notes that businesses play a key role in facilitating the overall settlement enterprise, contributing to Israel's confiscation of land and the transfer of its population through commercial development. Some are directly involved in the confiscation of land by carrying out demolitions that make way for settlement residential communities or associated infrastructure, or by financing or executing settlement construction itself. Others provide services that ensure the sustainability of residential settlement communities, such

[25] Human Rights Watch, "Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights", 19 January 2016.

[26] Ibid.

[27] Under the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) of 1995, the West Bank, excluding East Jerusalem, was divided into three temporary administrative zones, referred to as Areas A, B and C. Israel retains almost exclusive control over Area C, including control over law enforcement, building and planning (see www.ochaopt.org/location/area-c).

[28] World Bank, "West Bank and Gaza: Area C and the Future of the Palestinian Economy", Washington, D.C., 2013, para. 30.

[29] According to articles 1 to 3 of the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000), "financial services" include banking services and the provision of credit and insurance.

as transport services that connect the settlements to Israel proper, tourism activities that contribute to the profitability of the settlements, and telecommunication services. Those that are located in the settlements help to perpetuate their existence through the payment of taxes to settlement regional councils and Israeli authorities and the provision of jobs to settlers, and by occupying confiscated land.

47. The involvement of businesses in the settlements extends across all main industries and sectors, including:

- The banking industry, which helps to finance construction and infrastructure projects in settlements, provide loans and financial services to settlement councils, and provide mortgage loans to home buyers[30]
- The tourism industry, including tour companies, online accommodation and travel booking sites, and rental car companies, all of which help to make the settlements profitable and sustainable[31]
- The private security industry, which includes companies involved in providing security for companies or residences in settlements, as well as those involved in the checkpoints throughout the West Bank, including East Jerusalem[32]
- The technology industry, which provides surveillance and identification equipment for use in the settlements, the wall and checkpoints
- The construction and demolition industries, including heavy machinery suppliers, which help to facilitate and entrench Israel's confiscation of Palestinian land for settlements and associated infrastructure[33]
- The real estate industry, including companies involved in marketing, renting and selling properties in settlements, which helps settlements to function as viable housing markets, enabling the transfer of Israel's population[34]
- The extractive industry, including mining and quarrying, which contribute financially to the sustainability of settlements through the payment of fees to settlement municipalities and the Israeli Civil Administration[35]
- The telecommunications industry, which includes mobile networks and Internet providers servicing settlements
- The agricultural industry, which includes companies involved in crop and livestock production, the wine industry and export companies
- The transportation industry
- The manufacturing industry, which includes companies that use raw materials from occupied territory
- Others

[30] See Who Profits, "Financing Land Grab: The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise", February 2017, and A/HRC/22/63, para. 97. Owing to the involvement of the banking industry in servicing and supporting the settlements, a number of pension funds in different countries have reportedly withdrawn their investments in Israeli banks; see for example PGGM, "Statement regarding exclusion of Israeli banks", 8 January 2014; Linda Bloom, "Israeli banks on ineligible list for pension agency", United Methodist Church, 13 January 2016; and Middle East Monitor, "Danish pension fund excludes four companies for role in Israeli occupation", 11 October 2017.

[31] Who Profits, "Touring Israeli settlements: business and pleasure for the economy of occupation", flash report, September 2017.

[32] Who Profits, *Private Security Companies and the Israeli Occupation*, Tel Aviv, January 2016.

[33] Who Profits, Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation, Tel Aviv, July 2014.

[34] Human Rights Watch, "Occupation, Inc." (see footnote 27).

[35] Ibid.

48. In addition to the financial benefits provided by the Israeli authorities for operating in the settlements, businesses engaged in certain sectors are able to take advantage of captive Palestinian markets for Israeli goods. According to the United Nations Conference on Trade and Development (UNCTAD), the Occupied Palestinian Territory operates as a captive market for Israeli exports due to the imbalanced customs arrangements enshrined in the Paris Protocol on Economic Relations and restrictions on movement and other obstacles to trade.[36] With regard to the economic consequences of situations of occupation, UNCTAD had noted that they always involved the exploitation, impoverishment, marginalization, displacement and appropriation of resources of the occupied indigenous people. Such acts often deprived the people under colonial rule of the internationally recognized human right to development by confiscating their national resources, preventing them from accessing and utilizing those resources, depriving them of the ability to produce and thus forcing them to consume products produced by the occupier.[37]

49. An example of how Israeli companies are benefiting from a captive Palestinian market can be seen, for example, in the telecommunications industry. Palestinian mobile and landline companies are prevented from operating fully and effectively in the West Bank, including East Jerusalem, owing to restrictions on the import of necessary equipment, which is often identified by Israeli authorities as "dual use"; restrictions on the movement of goods and people; the inability to have independent access to international networks; restrictions on the building of the necessary infrastructure in Area C following the rejection of permit requests; and the provision of limited frequencies by the Israeli authorities.[38] Palestinian mobile providers are reportedly prohibited from operating inside Israel and annexed areas, including East Jerusalem, which forces users to rely on Israeli mobile providers.[39] Israeli telecommunications operators are authorized under the Oslo Agreement to provide services to settlements and settlement roads, but their infrastructure now covers large areas of the West Bank. According to World Bank estimates, between 10 and 20 per cent of the mobile market share in the West Bank has been captured by unauthorized Israeli operators, largely due to the fact that Palestinian companies do not have access to more than 60 per cent of Area C. In 2014, the Office of the Quartet Representative estimated that the quota captured by Israeli operators was even higher, between 20 and 40 per cent of total market share.[40]

IV. Preliminary observations of responses of business enterprises

50. In communicating with companies and reviewing publicly available information, OHCHR encountered a number of companies that acknowledged some connection to the settlements and provided explanations of their involvement on a number of grounds. A summary of the most common explanations are set out below. OHCHR offers the following observations in response in the interest of continuing the dialogue with companies.

51. A major argument used by companies to explain their involvement in listed activities is that they provide jobs to Palestinian families and help to support the Palestinian economy.

52. OHCHR observes that this argument does not recognize that the presence of the settlements in the Occupied Palestinian Territory, which is unlawful, serves to depress the

[36] Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory (UNCTAD/APP/2016/1), para. 20.

[37] *Official Records of the General Assembly, Seventieth Session, Supplement No. 35* (A/70/35), annex, para. 6.

[38] World Bank Group, *The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development* (World Bank, Washington, D.C., 2016); see also World Bank, West Bank and Gaza: Area C and the Future of the Palestinian Economy, Washington, D.C., 2014, paras. 52-62.

[39] "Israeli mobile companies banned from PA cities", Ma'an News Agency, 1 April 2010.

[40] Office of the Quartet Representative, Initiative for the Palestinian Economy: Summary Overview, March 2014 (available at www.quartetrep.org/files/image/initiative.pdf).

Palestinian economy and to reduce opportunities for Palestinian businesses to thrive. As pointed out by the fact-finding mission, the agricultural sector, which lies at the heart of the Palestinian economy, has been in a continuous decline since 1967 owing to the dispossession of land and the denial of access of Palestinian farmers to agricultural areas, water resources and trade markets (A/HRC/22/63, para. 89). According to the Office for the Coordination of Humanitarian Affairs, 70 per cent of Area C is "off limits for Palestinian use and development", as it falls within the boundaries of regional settlement councils. Palestinian construction is heavily restricted in 29 per cent of Area C, and only the remaining 1 per cent has been planned for Palestinian development.[41] The World Bank has acknowledged that the land allocated for settlement activity in Area C has "significantly reduced land available for use by the Palestinian private sector".[42] In East Jerusalem the situation is similar, as 35 per cent of land has been allocated to settlements and only 13 per cent is zoned for Palestinian construction.[43]

53. The depressed Palestinian economy has had a direct effect on the job market in the Occupied Palestinian Territory. According to UNCTAD, Israel's full control over Area C, which accounts for over 60 per cent of the area of the West Bank, has contributed to a "permanent unemployment crisis" in the Occupied Palestinian Territory that forces thousands of unemployed Palestinians to seek employment in Israel and in settlements in low-skill, low-wage manual activities (TD/B/63/3, para. 6). In 2017, the International Labour Organization reported that the "stagnating labour market in the West Bank pushes Palestinians to take up work wherever it is to be found."[44]

54. OHCHR notes that the employment of Palestinians, even on favourable terms, does not exempt businesses of their responsibilities under the Guiding Principles concerning their overall engagement in or with the settlements. The Guiding Principles make clear that, while business enterprises may undertake certain commitments or activities to support and promote human rights, these "do not offset a failure to respect human rights throughout their operations."[45]

55. Another argument used by some business enterprises to explain their involvement in listed activities was that they did not take a political position in the conflict between Israel and the Occupied Palestinian Territory, nor did they actively support Israel's occupation of Palestine. OHCHR recalls, however, that the political position of business enterprises is not a relevant consideration in determining whether their actions are consistent with the Guiding Principles or whether their business activities fall within the ambit of Human Rights Council resolution 31/36.

56. Some companies that acknowledged operating in or with the settlements highlighted the fact that they were acting in compliance with Israeli national laws and in accordance with all required permits and authorizations.

57. According to the commentary to Guiding Principle 11, the corporate responsibility to respect human rights "exists over and above compliance with national laws and regulations protecting human rights".[46] Compliance with the national laws and regulations of a State does not necessarily equate to compliance with the Guiding Principles or international law. In the case of Israel, its national laws and regulations that allow for the establishment, maintenance and existence of the settlements are in direct conflict with

[41] Office for the Coordination of Humanitarian Affairs, Area C of the West Bank: Key Humanitarian Concerns, update August 2014.

[42] World Bank Group, *Prospects for Growth and Jobs in the Palestinian Economy: A General Equilibrium Analysis*, November 2017.

[43] Office for the Coordination of Humanitarian Affairs, East Jerusalem: Key Humanitarian Concerns, update August 2014.

[44] International Labour Office, The situation of workers of the occupied Arab territories, report of the Director-General, International Labour Conference, 106th session, 2017, para. 21.

[45] Commentary to Guiding Principle 11.

[46] See also Working Group on the issue of human rights and transnational corporations and other business enterprises, statement (see footnote 14), pp. 11-12.

international law, as settlements are widely recognized by the United Nations and the international community as being illegal.

58. Some companies indicated that they had no knowledge or control over the actions of other entities with which they had business relationships, such as distributors, partners or other entities in their value chains, and therefore they should not be held responsible for any harm caused by those entities.

59. According to the Guiding Principles, the responsibility of businesses to respect human rights extends to their business relationships. Guiding Principle 13 states that businesses are responsible for preventing or mitigating adverse human rights impacts directly linked to their operations, products or services through their business relationships, even if they have not contributed to them; this includes impacts caused by both actions and omissions.[47] The responsibility to conduct due diligence – and in the occupied territory this involves enhanced due diligence (see para. 37 above) – entails taking active steps to identify and assess any actual or potential adverse human rights impacts made as a result of business relationships.

60. Furthermore, in its report, the fact-finding mission stated that business enterprises conduct their activities in the settlements with "the full knowledge of the current situation and the related liability risks" and "contribute to their maintenance, development and consolidation" (A/HRC/22/63, para. 97).

V. Recommendations

61. **The United Nations High Commissioner for Human Rights urges all businesses with which OHCHR has been or may be in contact in carrying out its mandate under Human Rights Council resolution 31/36 to cooperate with OHCHR with a view to engaging in constructive dialogue.**

62. **The High Commissioner acknowledges with appreciation the extension granted by the Human Rights Council for OHCHR to implement the mandate under resolution 31/36. Recognizing that this was the first time OHCHR has been tasked with such a mandate, the High Commissioner is satisfied that significant progress has been made. However, while the dialogue with concerned business enterprises is continuing, the work remains ongoing. For the High Commissioner to update the database as required by resolution 31/36, more resources are required.**

[47] Commentary to Guiding Principle 13.

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem

Report of the High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 34/30 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It focuses on the practice of arbitrary detention by Israeli and Palestinian authorities. It covers the period from 1 November 2016 to 31 October 2017.

* The present report was submitted after the deadline in order to reflect recent developments.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 34/30, in which the Council requested the United Nations High Commissioner for Human Rights to report on the implementation of that resolution, with a particular focus on the factors perpetuating the arbitrary detention of Palestinian prisoners and detainees in Israeli jails, in consultation with the Working Group on Arbitrary Detention. The High Commissioner also examines the practice of arbitrary detention by the Palestinian authorities in the West Bank and Gaza. The report is aimed at providing an accurate picture of the various forms of arbitrary deprivation of liberty to which Palestinians are exposed in the Occupied Palestinian Territory. In his recommendations, the High Commissioner encourages all duty bearers to comply with related obligations under international law.

2. The report covers the period from 1 November 2016 to 31 October 2017. It is mainly based on cases monitored by the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as on information obtained by other United Nations entities operating in the Occupied Palestinian Territory and by Israeli and Palestinian non-governmental organizations (NGOs). As per Human Rights Council resolution 34/30, the report was prepared in consultation with the Working Group on Arbitrary Detention.

3. While the present report focuses on arbitrary detention, other reports of the Secretary-General and of the High Commissioner provide a more comprehensive analysis of the human rights situation in the Occupied Palestinian Territory, including as regards conditions of detention.[1]

II. Legal background

4. International humanitarian law and international human rights law apply in the Occupied Palestinian Territory, namely in Gaza and the West Bank, including East Jerusalem. The Occupied Palestinian Territory is a territory under belligerent occupation, to which the provisions governing occupation notably apply.[2] The jurisdiction and effective control exercised by Israel as the occupying Power are the basis for its human rights obligations within the Occupied Palestinian Territory. Those obligations are in line with the obligation of Israel, under the law of occupation, to protect the Palestinian population of the Occupied Palestinian Territory. Concurrently, the State of Palestine is bound by its human rights obligations regarding the entirety of the Occupied Palestinian Territory. The authorities in Gaza also bear human rights obligations given their exercise of government-like functions and territorial control.[3]

5. Arbitrary detention is prohibited by international human rights law and humanitarian law. Article 9 of the International Covenant on Civil and Political Rights guarantees the right to liberty and security of person and provides that no one shall be subjected to arbitrary arrest or detention.[4] Considered as arbitrary are deprivations of liberty that are contrary to international law provisions, mostly those relating to the right to a fair trial or other procedural guarantees,[5] as also provided by the law of occupation.[6] Unlawful confinement and wilfully depriving a protected person of the rights to a fair and regular trial

[1] See A/HRC/34/38, A/HRC/37/38 and A/HRC/37/43.

[2] As provided by the 1907 Hague Regulations, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and customary international law; see A/HRC/34/38, para. 10.

[3] See A/HRC/34/38, paras. 3–11, for more details on the applicable legal framework.

[4] See also Universal Declaration of Human Rights, art. 9.

[5] International Covenant on Civil and Political Rights, arts. 9 and 14; see also Human Rights Committee general comment No. 35 (2014) on liberty and security of person; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173).

[6] Fourth Geneva Convention, arts. 66–75.

amount to grave breaches of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), hence to war crimes.[7] In addition, protected persons shall only be detained only in the Occupied Palestinian Territory and the non-respect of this rule violates the prohibition of forcible transfer; another grave breach of the Fourth Geneva Convention and a war crime. [8]

III. Arbitrary detention in the Occupied Palestinian Territory

A. Introduction

6. The Working Group has identified five legal categories relating to arbitrary detention: (a) when there is no legal basis for the deprivation of liberty (category 1), (b) when the deprivation of liberty results from the exercise of fundamental freedoms, (c) when the violations of norms relating to the right to a fair trial are of such gravity as to give the deprivation of liberty an arbitrary character, (d) when migrants are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy, and (e) when the deprivation of liberty reflects discrimination, notably based on birth, national, ethnic or social origin, language, religion and political or other opinion.[9]

7. Based on those categories, and in view of the cases monitored by OHCHR during the reporting period, the present report is divided into two parts describing two sets of factors perpetuating arbitrary detention in the Occupied Palestinian Territory. In the first part, the High Commissioner examines cases of detention without apparent or legitimate grounds, or where the right to a fair trial is not guaranteed (categories 1 and 3). In the second part, the High Commissioner examines cases where individuals have been detained for exercising their fundamental freedoms (category 2).

8. Although of particular relevance to the present context, arbitrary detention on discriminatory grounds (category 5) is not addressed separately in this report, as it is likely to apply to most cases described therein. The Working Group has notably invoked detention on discriminatory grounds in its conclusions pertaining to several cases of detention of Palestinians by Israel.[10] The Secretary-General has also noted how the application of two different legal systems in the same territory, on the sole basis of nationality or origin, is inherently discriminatory and undermines the right to a fair trial.[11]

B. Detention without grounds or fair trial guarantees

9. This section focuses on cases of detention that are likely to be arbitrary due to the absence of any legal basis justifying the detention, or where there are no prospects for a fair trial. Given the frequent invocation of vague security grounds and the use of secret evidence in the Occupied Palestinian Territory, it is often impossible to determine whether the detention is based on a legitimate ground. The practice of administrative detention is also addressed in this section.

1. Detention without legitimate grounds or legal basis

10. To be in conformity with international human rights law, any deprivation of liberty must have a legal basis. Where no reasonable ground is invoked, the detention is considered as arbitrary. Arbitrary detention is practised by Israel, the State of Palestine and the authorities in Gaza.

[7] Ibid., art. 147; Rome Statute of the International Criminal Court, art. 8 (2) (a) (vi).
[8] Fourth Geneva Convention, arts. 49 (1), 76 and 147; Rome Statute, art. 8 (2) (a) (vii).
[9] Methods of work of the Working Group on Arbitrary Detention (A/HRC/36/38).
[10] See opinions No. 31/2017, No. 15/2016 and No. 13/2016.
[11] See A/HRC/34/38, para. 40.

11. During the reporting period, OHCHR monitored cases where residents of Gaza appear to have been arrested and detained by the Israeli authorities without legal basis. The arrest of fishermen off the coast of Gaza remains of particular concern.[12] During the reporting period, 42 fishermen, including 3 children, were reportedly arrested by the Israeli navy (apparently within the Israeli-authorized fishing zone). The circumstances of the arrests, the focus of the interrogations and the fact that most of the fishermen were eventually released without charge strongly suggest that such arrests have no legal basis and are used to collect information about Palestinian groups in Gaza, as exemplified in the cases described below.

12. On 4 December 2016, the Israeli navy arrested two fishermen at sea, reportedly posing no threat to the Israeli navy at the time. One of the men remained in Israeli detention without being officially charged for more than two weeks, while his brother was immediately released. The former was reportedly accused of affiliation to an armed group and subjected to ill-treatment during his interrogation. He had access to legal counsel only 10 days after his arrest. The court ordered his release on 22 December 2016, without any charge. Once back in Gaza, he was summoned by the internal security agency, detained for three days and interrogated regarding his arrest and detention by the Israeli authorities.

13. OHCHR monitored the arrest of nine other fishermen between 21 February and 18 September 2017. All nine were arrested at sea by members of the Israeli navy, who opened fire on them and forced them to undress and jump into the water after intercepting their boats, which were eventually confiscated. Two fishermen sustained injuries during their arrest.[13] The fishermen were all taken to Ashdod before being transferred to Beit Hanoun/Erez crossing point, where the majority reported being interrogated, notably about Hamas and other groups, including armed groups. None was indicted and all were released on the same day. They all reported that, upon return to Gaza, they were detained and interrogated by the internal security agency for periods varying from a few hours to two days.

14. Most fishermen summoned and detained by the internal security agency following arrest by the Israeli navy reported having been ill-treated. OHCHR monitored another case of possible arbitrary detention for interrogation by the internal security agency during the reporting period, based on political affiliation (see para. 59 below).

15. In the West Bank, detention without legal basis has been reported in cases where Palestinian security forces refused — in violation of the Basic Law for the Palestinian Interim Self-Government Authority — to implement court orders to release detainees.[14] Such orders are often bypassed by rearresting a person on new charges, usually invoking gubernatorial powers under Jordanian law (see para. 25 below). This practice continues to be of concern, as confirmed by the Independent Commission for Human Rights, which reported having received 75 complaints relating to cases of continued detention by the Palestinian authorities despite the issuance of release orders during the reporting period.[15]

16. A troubling case of continued detention notwithstanding release orders is the detention, since 25 May 2017, of Shadi Nammoura, from Hebron. He was first detained by the General Intelligence Service in Hebron and then later in Jericho, on the order of the Governor of Nablus. The court ordered his release three times (on 30 May, 13 June and 3 August 2017) and each time, his continued detention — in conditions that gave cause for concern — was requested by the Governor, on the third occasion based on the need to protect the detainee from the Israeli Security Forces. Mr. Nammoura was released on 7 December 2017 and arrested by the Israeli Security Forces 11 days later. The practice of detaining individuals for their own protection, against their will, remains a concern,[16] as also shown by the case of Abuhlayyel Ammar Tawfiq, who was eventually released on 6 February 2017. He had been detained by the Preventive Security Services in Ramallah

[12] See A/HRC/34/36, para. 19; and A/71/364, para. 37.
[13] See A/HRC/37/38.
[14] See A/HRC/19/20, para. 42.
[15] Independent Commission for Human Rights, monthly reports. Available from http://ichr.ps/en/1/5.
[16] See A/HRC/31/40, para. 59; and A/HRC/28/80, para. 47.

since 6 November 2015 to protect him from the Israeli Security Forces after a friend of his reportedly committed an attack against Israelis in the West Bank. Mr. Tawfiq requested to be released on his own responsibility and, along with relatives, signed a waiver in July 2016. He was held against his will for a total of 15 months. Two months after being released by the Preventive Security Service, Mr. Tawfiq was arrested by the Israeli Security Forces.

2. Unlawful administrative detention practices

17. Administrative detention refers to the deprivation of liberty outside the context of criminal proceedings. It is usually based on an order issued by State executive authorities, generally without charges, indictment or trial before a criminal court. While not prohibited as such under international law, administrative detention is permitted only in exceptional circumstances and subject to stringent safeguards to prevent arbitrariness.[17] The Human Rights Committee considers that administrative detention presents severe risks of arbitrary deprivation of liberty.[18] Indeed, the practice may undermine most fundamental fair trial guarantees. Moreover, the uncertainty that such measures imply for the detainee in the absence of any charges, known evidence or trial, as well as of any foreseeable detention period, may amount to ill-treatment. Acknowledging the exceptional character of such measures, the law of occupation provides that a civilian may only be detained for imperative reasons of security.[19] The practice of administrative detention by both the Israeli and the Palestinian authorities is a major factor perpetuating arbitrary detention in the Occupied Palestinian Territory.[20]

Use of administrative detention by Israel

18. Concerns have repeatedly been voiced about the Israeli policy of administrative detention.[21] In 1998, the Human Rights Committee called on Israel to ensure that administrative detention be brought within the strict requirements of the International Covenant on Civil and Political Rights.[22] With no improvement evident by 2010, it called on Israel to refrain from using administrative detention, particularly for children.[23] In 2014, the Committee called on Israel to end the practice of administrative detention.[24] The Committee against Torture has also repeatedly concluded that the use by Israel of administrative detention, particularly for inordinately lengthy periods, violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[25] and called upon Israel to urgently end this practice.[26]

19. On 31 October 2017, Israel was reportedly holding 453 Palestinians in administrative detention, including at least 18 individuals detained on the basis of orders that were extended by 18 to 24 months.[27]

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[17] International Covenant on Civil and Political Rights, art. 9; and Fourth Geneva Convention, art. 78.

[18] Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 15.

[19] Fourth Geneva Convention, art. 78; see also the International Committee of the Red Cross commentary thereto, p. 367.

[20] Provisions of article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial are applicable where sanctions, because of their purpose, character or severity, must be regarded as penal, even if, under national law, the detention is qualified as administrative (opinion No. 31/2017, para. 30).

[21] See A/HRC/34/38, paras. 53 and 56; A/HRC/34/36, paras. 22–24; A/71/355, para. 20; A/71/364, paras. 34–35; A/HRC/31/40, paras. 37–43; A/HRC/31/43, paras. 42–43; A/69/347, paras. 28–29; A/HRC/28/45, paras. 49–50; and A/HRC/28/80, paras. 32–33. See also the position of Israel on its practice of administrative detention. Available from www.law.idf.il/602-5089-en/Patzar.aspx.

[22] See CCPR/C/79/Add.93, para. 21.

[23] See CCPR/C/ISR/CO/3, para. 7 (b).

[24] See CCPR/C/ISR/CO/4, para. 10 (b).

[25] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 16.

[26] See CAT/C/ISR/CO/4, para. 17; and CAT/C/ISR/CO/5, paras. 22–23.

[27] See www.hamoked.org/Prisoners.aspx; see also www.btselem.org/administrative_detention/statistics; and joint reporting by Palestinian Prisoners Commission, Addameer Prisoners Support and Human Rights Association, Al Mezan Center for Human Rights and Palestinian Prisoners Club.

20. The main legal basis for administrative detention by Israel in the Occupied Palestinian Territory is Military Order 1651,[28] which empowers military commanders to detain a person for a period of time not exceeding six months, if they have reasonable grounds to believe that detention is required for reasons related to regional or public security.[29] Detention orders may be extended for additional periods of up to six months, with no legal limit on the number of renewals, hence allowing for the indefinite detention of a person.[30] The legal basis for administrative detention can be found in two other Israeli laws: the Emergency Powers (Detention) Law of 1979[31] and the Incarceration of Unlawful Combatants Law of 2002.[32] While the former is the only one pertaining to East Jerusalem, the latter is generally used to detain Palestinians from Gaza. Both laws grant broad discretionary power to issue detention orders that can be indefinitely renewed.

21. These laws do not conform with international human rights law. Detention should not last longer than absolutely necessary and the overall length of possible detention should be limited.[33] International human rights law also provides that grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.[34] The vague and undefined reasons provided by Israeli laws to justify administrative detention effectively allow the Israeli authorities to use administrative detention as an alternative to criminal proceedings, mainly when there is not sufficient evidence to charge an individual, or when the authorities do not reveal the available evidence.[35]

22. Administrative detention is also used to keep individuals incarcerated following the completion of their sentence, as exemplified by the case of Bilal Kayed. Convicted in March 2003, he was completing a prison sentence of 14 and a half years when a 6-month administrative detention order was issued against him, 6 days before his expected release on 7 June 2016, on the ground that his membership of the Popular Front for the Liberation of Palestine would endanger security. He was eventually released on 13 December 2016, after a 71-day hunger strike.[36] As described in previous reports, numerous detainees have resorted to hunger strikes to protest against and raise attention regarding their indeterminate detention without formal charges.[37]

23. Although Israeli legislation provides for judicial review and guarantees the right to legal counsel, the opportunity to challenge detention is usually undermined by the fact that, in the vast majority of cases, evidence remains classified on grounds of State security.[38] Hence, neither the detainee nor the lawyer is informed of the allegations and detention grounds, undermining any effective right to challenge the detention. Human rights law prescribes that the detainee should at least have access to the essence of the evidence on which decisions are taken.[39] The High Commissioner remains deeply concerned by the policy of administrative detention by Israel on vague or undisclosed security grounds, in lengthy processes where individuals are deprived of core due process guarantees. In

[28] See Military Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651). Available from http://nolegalfrontiers.org/en/military-orders/mil01/67-security-provisions-chapter9-271-315 (English translation).

[29] Ibid., sect. 285 (A).

[30] Ibid., sect. 285 (B).

[31] See www.btselem.org/sites/default/files/1979_emergency_powers_law_detention_0.pdf.

[32] See www.hamoked.org/files/2011/240_eng.pdf.

[33] See Human Rights Committee general comment No. 35 (2014), para. 15.

[34] Ibid., para. 22.

[35] See www.btselem.org/administrative_detention/occupied_territories.

[36] See A/HRC/34/36, para. 23.

[37] See A/HRC/34/38, para. 53; A/71/364, para. 35; and A/69/347, para. 28.

[38] See Military Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651). Available from http://nolegalfrontiers.org/en/military-orders/mil01/67-security-provisions-chapter9-271-315 (English translation), sects. 290–291; see also Emergency Powers (Detention) Law of 1979, arts. 6 and 8. Available from www.btselem.org/sites/default/files/1979_emergency_powers_law_detention_0.pdf.

[39] See Human Rights Committee general comment No. 35, para. 15.

addition, the detention of Palestinians in Israel is in violation of the prohibition of forcible transfer of protected persons outside the Occupied Palestinian Territory.[40]

Authority of Palestinian governors to order detention in the West Bank

24. The Secretary-General and the High Commissioner have previously expressed concerns about administrative detention practices by the Palestinian authorities that amount to arbitrary detention.[41] While there is no record of the total number of administrative detainees in the West Bank, the Independent Commission for Human Rights recorded 97 cases of administrative detention during the reporting period.

25. According to Palestinian law, individuals cannot be deprived of their liberty, except on the basis of an order issued by a competent judicial body, as provided by the law.[42] However, reports of arrests and detentions upon the order of a provincial governor are of continuous concern.[43] Indeed, according to the Jordanian Prevention of Crimes Act of 1954, governors have the authority to arrest and detain individuals on the very general basis of maintaining public law and order.[44] As shown by cases monitored by OHCHR, the authorities have no apparent intention to charge or prosecute those arrested on such basis and may detain them for up to six months without the detention being reviewed by a judge or any other officer authorized by law to exercise judicial power.[45]

26. The routine practice of detention on a governor's authority is inconsistent with international law[46] and raises concerns of arbitrary detention, not least as governors have apparently been using such power mainly to detain political opponents.[47]

3. Violations of due process guarantees in criminal proceedings

27. Another factor perpetuating arbitrary detention is the violation of the right to a fair trial in criminal proceedings, when it is of such gravity as to give an arbitrary character to the deprivation of liberty. Through trial monitoring, OHCHR has identified several concerns about violations of fair trial rights in the Israeli justice system concerning Palestinians, as illustrated by the case of Mohammad el Halabi.

28. As previously reported,[48] the Head of the Gaza World Vision office, Mohammad el Halabi, was arrested at Beit Hanoun/Erez crossing point on 15 June 2016 on allegations of diverting humanitarian funds to support armed groups in Gaza. On 3 July 2016, a United Nations Development Programme contractor was also arrested at Beit Hanoun/Erez crossing point on similar grounds. Mr. El Halabi was denied access to a lawyer for almost a month while the United Nations Development Programme contractor's access to a lawyer was reportedly also delayed. Indeed, Israeli law allows investigation authorities to deny an individual arrested on suspicion of committing a security offence the right to meet with a lawyer for up to 21 days.[49] This provision is applicable to any investigation of security offences, as broadly defined in the law.

29. Delayed access to a lawyer often suggests that the detainee has been held incommunicado. In addition, Israeli law allows for detainees accused of a security offence to be banned from attending hearings.[50] Hence, they may be held incommunicado for weeks

[40] Fourth Geneva Convention, art. 49.

[41] See A/HRC/34/38, para. 54; A/HRC/34/36, paras. 55–58 and 70–74; A/HRC/31/44, para. 78; and A/HRC/31/40, paras. 56–58 and 69–70.

[42] See Amended Basic Law of 2003, art. 11; and Penal Procedures Law of 2001, art. 29.

[43] See A/HRC/34/38, para. 54; A/HRC/34/36, para. 58; and A/HRC/31/40, paras. 56–58.

[44] Prevention of Crimes Act of 1954, art. 4; Administrative Divisions Regulation No. 1 of 1966.

[45] See A/HRC/34/36, para. 58.

[46] In 2014, a petition was submitted to the Palestinian High Court, challenging the constitutionality of the Jordanian law in question, and was reportedly dismissed on procedural grounds.

[47] See A/HRC/34/36, para. 58.

[48] Ibid., para. 21.

[49] Criminal Procedure Law (Powers of Enforcement — Arrest), 1996, art. 35 (b).

[50] Decisions made in ex parte hearings can also be concealed (Counter-Terrorism Law of 2016, arts. 48–51).

without seeing a judge, lawyer or family member and at the mercy of interrogators. Not only can incommunicado detention in itself amount to torture[51] but it also increases the risk of torture and ill-treatment due to isolation.[52]

30. During his interrogation, Mr. El Halabi was allegedly exposed to ill-treatment that may amount to torture. He was also reportedly exposed to threats by undercover informers acting as inmates and inducing detainees to confess. Acquisition of evidence under pressure or duress is of concern, as it notably undermines the fairness of the trial. OHCHR further observed how some detainees from Gaza testifying as witnesses in Mr. El Halabi's trial asserted that they had at some point confessed to allegations in similar circumstances. Although Israeli law provides for the audio and video recording of interrogations of detainees suspected of serious offences, the police and security agencies have been exempted from this requirement as regards Palestinians suspected of security offences since 2002, an exemption made permanent in 2017. The exemption has removed a key safeguard against the use of torture and ill-treatment to obtain confessions. According to international human rights law, any information obtained as a result of torture or other cruel, inhuman or degrading treatment shall not be invoked as evidence in proceedings.[53]

31. Mr. El Halabi's first hearing took place on 30 August 2016. The trial initially took place behind closed doors and the case was initially subject to a gagging order that also precluded the lawyer from sharing any information. The ongoing trial is public, except for the cross-examination of certain witnesses for alleged security reasons. In addition, an important part of the evidence is being kept secret by the prosecution. The use of privileged evidence, to which not even the detainee's lawyer has access, is of great concern in trials involving Palestinians. In view of the right of defence under international law, the detaining authority should provide all relevant information to the judge and the defence, including exculpatory information.[54] Mr. El Halabi's lawyers challenged the use of secret evidence in front of the Supreme Court, which — on 12 January 2017 — ordered part of the non-disclosed evidence to be shared with the defence. However, almost one and a half years after the arrest of Mr. El Halabi, the defence lawyer has still not managed to see all of the unprivileged evidence against his client, raising serious concerns as to his right to defence and to a fair trial.[55]

32. Since the beginning of Mr. El Halabi's trial, several additional charges have been brought against him as a part of the same case, following unsuccessful offers of plea bargains by the prosecution. The deals pertain to a few years of imprisonment, on the condition that the accused gives his agreement in that regard before the court starts examining classified evidence. The pressure exercised on suspects to agree to plea bargains — that imply pleading guilty to certain charges in return for what is usually a more lenient sentence — is extremely high.[56] In view of the minimal rate of acquittals of Palestinians before Israeli courts, lawyers encourage their clients to accept such deals, in order to get a lower sentence and avoid custody during lengthy trials.[57] Defendants who have continuously pleaded not guilty eventually concede to charges through a plea bargain, as

[51] See www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf.

[52] A/HRC/6/17/Add.4, para. 24; See also http://stoptorture.org.il/wp-content/uploads/2015/10/When-the-Exception-Becomes-the-Rule-2010.pdf.

[53] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, guideline 12.

[54] The disclosure of information may be restricted to protect national security but has to be necessary and proportional to the end sought. See United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, guideline 13.

[55] According to the Working Group on Arbitrary Detention, the use of secret evidence might affect the right to a fair trial to such extent as to render the detention arbitrary. Communication provided by the Working Group to OHCHR, dated 5 January 2018.

[56] According to the Israeli State Attorney's 2016 report, 77 per cent of convictions were based on a plea bargain. Available from www.justice.gov.il/Units/StateAttorney/Documents/Annual-Report-2016.pdf (in Hebrew).

[57] See www.btselem.org/download/201506_presumed_guilty_eng.pdf.

was the case with Waheed al Bursh, who was released on 12 January 2017,[58] and Khalida Jarrar in 2016 (see para. 55 below).

4. Arbitrary detention of children

33. The detention of Palestinian children is of particular concern. As of 30 June 2017, 318 Palestinian children were in Israeli detention.[59] Between 1 November 2016 and 30 September 2017, the United Nations Children's Fund (UNICEF) documented 135 cases of detained children, including three under administrative detention.[60] After falling into disuse for almost four years, the Israeli practice of administrative detention of children resumed in October 2015.[61]

34. Previous reports on the arrest and detention of Palestinian children reflected concerns relating to the lack of adherence to international standards by Israel.[62] The military justice system appears particularly problematic regarding respect of procedural guarantees. Interrogations of children are conducted in the absence of parents, close relatives or a lawyer, and are not audio-visually recorded.[63] Children detained under military orders are usually not promptly informed, in a language that they understand, of the charges against them, and they may be detained for up to four days before being brought before a military judge.[64] According to UNICEF, in almost 10 per cent of the cases of detention of children monitored between 1 November 2016 and 31 September 2017, the children reported having been held in solitary confinement for periods ranging from 6 to 20 days. In over 65 per cent of the cases monitored by the NGO Defence for Children International — 66.2 per cent in the West Bank and 88.5 per cent in East Jerusalem — children were shown, or made to sign, documentation written in Hebrew, a language that they usually do not understand.

35. During the reporting period, OHCHR continued to monitor cases where it appears that Palestinian children were arrested and detained in violation of the Convention on the Rights of the Child.[65] According to the Convention, the detention of children should be used only as a measure of last resort and for the shortest appropriate period of time, and the best interest of the child should be a primary consideration.[66] The Secretary-General previously noted that the large number of Palestinian children in Israeli detention seemed incompatible with its use as a measure of last resort.[67]

36. On 19 March 2017, Sofyan, an 8-year-old boy from the Old City of Hebron, was arrested by Israeli soldiers as he was walking in the street near the settlement of Kiryat Arba to retrieve a toy he had dropped on his way to visit his grandparents. He was reportedly approached and grabbed from behind by an Israeli soldier, who then forcibly took him from house to house insisting that he identify alleged stone-throwers.[68] He was released after an hour.

37. On 7 April 2017, 17-year-old Musa Hammad was arrested at night by the Israeli Security Forces and brought to Ofer Prison, where he was interrogated about a car ramming

[58] See A/HRC/34/36, para. 21; and www.ps.undp.org/content/papp/en/home/presscenter/pressreleases/2017/01/04/undp-statement-attributable-to-a-undp-spokesperson-on-waheed-al-bursh-case.html.

[59] Data provided to the United Nations Children's Fund (UNICEF) by the Israel Prison Service.

[60] According to statistics compiled by B'tselem, there were two children in administrative detention at the end of June 2017. Available from www.btselem.org/administrative_detention/statistics.

[61] See A/HRC/31/40, para. 41; A/71/364, para. 34.

[62] See A/HRC/34/38, paras. 56–57; A/HRC/34/36, para. 19–20 and 25–30; A/HRC/31/40, paras. 38–43; A/71/364, paras. 33–37; and A/70/351, para. 48.

[63] See CRC/C/ISR/CO/2-4, paras. 35 and 74.

[64] Ibid., paras. 73–74; and www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.

[65] Convention on the Rights of the Child, art. 37 (b); see A/HRC/34/38, para. 58.

[66] Convention of the Rights of the Child, arts. 3 (1) and 37 (b).

[67] See A/71/86, para. 24.

[68] See Gili Cohen, "Palestinian mother says Israeli soldiers forced 8-year-old son to help nab stone throwers", *Haaretz*, 23 March 2017. Available from www.haaretz.com/israel-news/1.779173.

attack that his brother had allegedly conducted. Musa, who denied any knowledge of the attack, reported having been ill-treated during his arrest and detention. He was held for two months in administrative detention and consequently missed his high-school exams.

38. During the reporting period, the Working Group issued an opinion concerning the detention of a 12-year-old Palestinian boy from East Jerusalem, concluding that the non-observance of procedural guarantees was of such gravity as to give the deprivation of liberty an arbitrary character.[69] It is not the first time that the Working Group has qualified as arbitrary instances of Palestinian children detained by Israel.[70] Child detention by Israel might also be considered as arbitrary as it does not appear to be used as a measure of last resort, as required by the Convention on the Rights of the Child.

39. Between 1 January and 31 October 2017, the Palestinian authorities in the West Bank reportedly arrested and detained 335 children.[71] This high figure raises concerns as to whether child detention is being used as a measure of last resort in the West Bank.

C. Detention for exercise of guaranteed fundamental freedoms

40. The second legal category identified by the Working Group appears to be particularly relevant in the present context. All duty bearers have indeed continued to resort to arbitrary detention during the reporting period, mainly in order to curtail political dissent or the expression thereof and to impede the work of journalists and human rights defenders. Fundamental freedoms, such as the freedoms of expression, peaceful assembly and association, may be restricted, but only as provided by the law and necessary for the protection of the rights and freedoms of others, as well as for the protection of national security, public safety, order, health or morals.[72]

1. Freedom of expression on social media

41. During the reporting period, numerous Palestinians were arrested and charged by the Israeli authorities for incitement on Facebook.[73] Situations underlying these charges range from the posting of a picture of a Palestinian killed by the Israeli Security Forces during clashes, to the use of language that could be classified as hate speech. Based on files examined by OHCHR, it is questionable in a number of cases whether the effective incitement potential and the suspect's criminal intent are sufficiently evident to justify criminal liability. It is not unusual that — shortly before the completion of a sentence for incitement, often based on a plea bargain — a military order is issued to prolong the detention based on security arguments. While some cases may seem justified, it appears that there is a real risk for Palestinians of arrest on grounds of alleged incitement while legitimately exercising their right to freedom of expression on social media.

42. On 24 June 2017, the so-called Palestinian cybercrime law was adopted by Presidential Decree No. 16 of 2017. While it might be a necessary step to regulate the commission of crimes via the Internet, the law raises strong concerns about its potential to curtail free speech. It notably criminalizes the publication of data — and the creation of websites intended to publish such data — that violates public morality and public order, endangers community safety, or insults holy sites, religions and beliefs and family values. Those overly broad terms have the potential to be interpreted to excessively undermine freedom of expression. The law was adopted within a general context of restrictions on

[69] See opinion No. 3/2017, para. 41.

[70] See opinions No. 13/2016 and No. 24/2016.

[71] Data provided to OHCHR by the Palestinian police.

[72] International Covenant on Civil and Political Rights, arts. 19, 21 and 22; see also Human Rights Committee general comment No. 34, paras. 21–36.

[73] According to the Palestinian Prisoners Commission, Addameer Prisoners Support and Human Rights Association, Al Mezan Center for Human Rights and Palestinian Prisoners Club, 470 indictments based on Facebook posts were issued from 1 October 2015 to 31 October 2017 (including 220 in 2017).

freedom of expression[74] and civil society was not consulted regarding its drafting.[75] This law served as the basis for the arrest and detention of journalists and human rights defenders (see paras. 51–52 below). During the reporting period, 77 cases of arrests in violation of guaranteed freedoms were referred to the Independent Commission for Human Rights.

43. In Gaza, OHCHR monitored cases of individuals arrested and detained for posting opinions on social media that could be considered to be critical of the Gaza authorities. In all these cases, the individuals were released without charge after a few days or weeks, upon signing commitments to, notably, uphold the law and refrain from public criticism. Most of these cases monitored by OHCHR included allegations of ill-treatment during interrogation.

44. On 30 May 2017, a teacher was arrested by the internal security agency for a post on social media expressing disapproval of an official for stating that Gaza was a prosperous place. He was released after four days. On 4 July 2017, another Palestinian man from Gaza — well known for his critical stance against the authorities in Gaza — was arrested by the internal security agency on accusations of incitement after having called on social media for a protest against the electricity crisis. He was released after 12 days. OHCHR also monitored the case of an individual detained for having allegedly participated in the popular protests against the electricity crisis in January 2017. In another case, on 19 April 2017, Mahmoud Sulieman Mohammad al Ziq, the Secretary-General of the National Work Committee in Gaza, known for his critical position against the authorities in Gaza, was assaulted and kidnapped by unidentified men. He was advised to refrain from talking about politics, including in relation to the electricity crisis, before being released on the same day.

45. On 27 April 2017, a social media activist and member of the Popular Front for the Liberation of Palestine was arrested by the internal security agency, reportedly for having posted an excerpt from a novel by a Palestinian writer about the plight of Palestinian refugees. He was detained for two days. His access to a lawyer and contact with his family were delayed and he was reportedly subjected to ill-treatment.

2. Journalists and human rights defenders

46. All duty bearers have been resorting to the arrest and detention of journalists and human rights defenders. These cases may amount to arbitrary detention as the practice was most likely motivated by the exercise of the individuals' rights to freedom of expression and assembly.

47. Omar Nazzal, a Palestinian journalist and member of the Palestinian Journalists Syndicate, was arrested by the Israeli Security Forces on 23 April 2016, as he was about to cross the Al-Karameh/Allenby/King Hussein Bridge to represent the Syndicate at a meeting in Sarajevo.[76] The initial administrative detention order was for four months and was extended three times, up to a total of 10 months. Mr. Nazzal was eventually released on 20 February 2017. His detention was based on his alleged affiliation to the Popular Front for the Liberation of Palestine as a threat to the security of Israel. However, he was not only interrogated about his political affiliation, but also about his work as a journalist and his membership of the Syndicate. In a decision issued on 24 May 2016, the military judge approved the administrative detention, based on the fact that the detainee could not be tried under criminal procedure because of the confidential nature of the evidence. This may suggest that administrative detention is used as an alternative to criminal proceedings, in contradiction of international law.[77]

[74] Twenty-seven websites — mainly linked to Hamas or opposition leader Mohammad Dahlan — were closed by the Attorney General in June 2017 and remain offline at the time of writing (see A/HRC/37/38).

[75] Following strong criticism by civil society, the Palestinian Authority agreed to revise the law. This process was ongoing at the time of writing.

[76] See opinion No. 31/2017.

[77] Fourth Geneva Convention, art. 68; and 1958 ICRC Commentary thereto.

48. Hasan Safadi, a Palestinian journalist and media coordinator with the NGO Addameer Prisoners Support and Human Rights Association, remained in administrative detention during the reporting period. His arrest by the Israeli Security Forces, on 1 May 2016, at the Al-Karameh/Allenby/King Hussein Bridge border crossing on his way back from an Arab youth conference in Tunisia, was related to his visit to Lebanon 15 months earlier. As he was set to be released on bail on 10 June 2016, a six-month administrative detention order was issued against him, which was renewed twice during the reporting period even though he had been sentenced to three months' imprisonment on 27 October 2016. Mr. Safadi was finally released on 7 December, having spent more than a year and a half in administrative detention.[78]

49. Another Palestinian human rights defender who remained in Israeli administrative detention during the reporting period is Hassan Karajah, youth coordinator for the Stop the Wall movement. Released in 2014 after serving a 22-month sentence for having visited Lebanon, he was rearrested on 12 July 2016 for alleged affiliation to the Popular Front for the Liberation of Palestine and to Al-Hirak al-Shababi, a Palestinian youth movement outlawed by Israel on 11 July 2016 for alleged involvement in terrorist activities against Israel. Mr. Karajah was released on 9 November 2017. Under the cover of legality, it appears that administrative detention is used by Israel to detain Palestinians in order to sanction the exercise of guaranteed freedoms, on the ground that it might prejudice the security of Israel.

50. As stated by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the situation of human rights defenders on 7 July 2017,[79] the situation of Issa Amro, a Palestinian human rights defender who runs the Youth Against Settlements organization in Hebron, remains of concern. A well-known advocate for non-violence, Mr. Amro has been subjected to regular harassment and arrests by the Israeli Security Forces, most recently on 29 February 2016.[80] His first hearing at Ofer Military Court took place on 23 November 2016. His indictment includes 18 charges, some of them going back to 2010. Mainly repetitive, the charges include alleged obstruction, insult and assault of soldiers, incitement and participation in assemblies without a permit. The reported facts behind the charges appear ludicrous within the context of peaceful demonstrations and the heavy military presence in Hebron. On 19 February 2017, the court dismissed the defence's claim that prosecuting Mr. Amro on such old charges constituted an abuse of justice designed to halt his activity as a human rights defender. Trial monitoring by OHCHR reveals that the Israeli Security Forces and the military prosecutors do not distinguish between violent and non-violent protest, incitement and the legitimate exercise of freedom of expression and that free speech and peaceful demonstrations are considered as acts disturbing the peace or harming public order.[81]

51. On 4 September 2017, while on trial before the Israeli military court — a process which was ongoing at the time of writing — Mr. Amro was arrested under the newly promulgated cybercrime law by the Preventive Security Service. His arrest resulted from his calling into question, on social media, the arrest of the director of Al-Hurriya radio station, Ayman Al-Qawmeh, by the Palestinian Authority. Mr. Amro believes that his arrest might be linked to his exposure of a number of Palestinian officials concerning corruption issues, as well as to his candidacy for the latest Palestinian municipal elections. He was released on bail on 10 September 2017 and — at the time of writing — was awaiting a final court decision. Mr. Amro's case is emblematic insofar as it illustrates the risks that human rights defenders face regarding arrest and prosecution by both the Israeli and the Palestinian authorities.

52. On 9 August 2017, six journalists were arrested by the General Intelligence Service under the cybercrime law in Hebron, Bethlehem and Nablus. They were released six days

[78] Hassan Safadi was released on 7 December 2017.

[79] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21855&LangID=E.

[80] See A/71/355, para. 33; and A/HRC/34/36, para. 47.

[81] Military orders limit freedoms of expression and assembly (Military Order 1651, sect. 251 (b), and Order No. 101 Regarding the Prohibition of Acts of Incitement and Hostile Propaganda.

later, as a result of pressure brought to bear by the Palestinian Journalists Syndicate. They were reportedly interrogated about the publication of information that fell under the broad scope of the cybercrime law and that could affect the security of the Palestinian Authority. However, no indictment was issued against them. Interviewed by OHCHR, the journalists believe their arrest was linked to the political divide between the West Bank and Gaza and to the arrest of a journalist in Gaza as described in the next paragraph.[82]

53. A Palestinian television reporter was arrested by the internal security agency in Gaza on 16 June, on allegations of collaboration with the Palestinian Authority. His detention for almost two months, as extended by the military prosecuting authority, was not based on any judicial order. He was denied access to a legal representative within the detention facility and first met his lawyer in court one month after his arrest. He was eventually released on $200 bail on 13 August 2017. There were also concerns that he had been subjected to ill-treatment during his detention.

54. After the Gaza authorities announced, on 24 April 2017, that they would take measures against individuals and institutions circulating rumours, a journalist from Gaza City was arrested on 25 April and detained until the next day for allegedly circulating fake information and rumours in the Palestinian media. He was released after undertaking in writing not to undermine law and order by spreading rumours. He also published a corrigendum and apologized to his readers.

3. Political affiliation

55. Palestinian civil society leaders Khalida Jarrar and Khitam Saafin were arrested by the Israeli Security Forces on 2 July 2017, during night raids on their homes, for their alleged membership of the Popular Front for the Liberation of Palestine, a claim that both women deny. Ms. Saafin is the president of the union of Palestinian women's committees, an organization that works for the community-based economic and social development of women in the West Bank and Gaza. Ms. Jarrar is a member of the Palestinian Legislative Council and an outspoken critic of the Israeli occupation. She is also a member of the board of directors of the Addameer Prisoners Support and Human Rights Association and of a national Palestinian committee for the follow-up with the International Criminal Court. Neither the detainees, nor their lawyers, have had access to the material against them, which is being held secret by the court. Ms. Saafin was released on 2 October 2017, after completing a three-month administrative detention order, Ms. Jarrar's six-month detention order expires on 1 January 2018.[83]

56. On 9 March 2017, Samira Halayqa, another Palestinian Legislative Council member, was arrested by the Israeli Security Forces during a night raid. Transferred to Ofer Prison, she was reportedly interrogated regarding her alleged affiliation to Hamas during the 2006 election and her political opinions as expressed on social media. She was charged with incitement and participation in activities organized by Hamas. She rejected those charges, which, according to her, were related to her involvement in legitimate activities, such as participation in peaceful gatherings calling for the respect of Palestinians' rights. The court ordered her release twice for lack of evidence. It was only after a third order that she was eventually released on bail on 9 May 2017. At the time of writing, hearings relating to Ms. Halayqa's case were ongoing. There are concerns that she was ill-treated during her arrest and detention and denied proper medication.

57. In the West Bank, there are concerns about the Palestinian authorities arresting individuals who oppose their policies. On 31 August 2017, Wahid Abu Mariya, known for his opposition to the Palestinian Authority, was arrested by the joint Palestinian security forces — on the orders of the Preventive Security Services — at his home in the Hebron

[82] See A/HRC/37/38, para. 60, for summary of another case of possible arbitrary detention of a journalist.

[83] Ms. Jarrar was detained for 14 months between 2015 and 2016, as she was facing trial for alleged membership of the Popular Front for the Liberation of Palestine. The decision of the military court to release her on bail was reversed following an appeal by the prosecution. She was released in June 2016 after accepting a plea bargain; see also Working Group opinion No. 15/2016.

Governorate. He was detained by the General Intelligence Service, military intelligence and the Preventive Security Services in Jericho, until his release on 21 September 2017, four days after the court ordered his release, without indictment. His arrest and incommunicado detention for four days raise concerns as to ill-treatment, including torture during interrogation.

58. In Hebron, several people were arrested while participating in peaceful demonstrations, mainly for alleged affiliation to the group Hizb ut-Tahrir, an Islamist organization critical of the Palestinian Authority. On 11 February 2017, the Preventive Security Services arrested approximately 50 persons in the context of a demonstration. While forcibly dispersing the crowd, they reportedly assaulted and arrested dozens of participants and passers-by, who were all released within 24 hours. The same day, leading figures of Hizb ut-Tahrir were also arrested at checkpoints while entering the city. They were held by the General Intelligence Service in Hebron and later transferred to Jericho, where they were detained for between 7 and 15 days without being indicted. A similar operation involving the arrest of individuals allegedly affiliated to Hizb ut-Tahrir took place on 24 February 2017, with two individuals reportedly being detained by the General Intelligence Service for over a month.

59. In Gaza, the internal security agency has also been detaining individuals on the basis of their political affiliation. On 13 April 2017, a woman was arrested by the internal security agency and detained for 10 days, during which period she was reportedly interrogated on her political affiliation to Fatah. She was released without being officially charged. The arrest and detention of members of Salafist groups, whose strict version of political Islam is perceived as a threat by the Hamas regime, continued during the reporting period.[84] In December 2016, the security forces in Gaza launched a campaign and arrested dozens of members of Salafist groups. Other members were arrested during a second campaign launched after a suicide bomb attack on 17 August 2017. Many of them, including children, are currently being held by the internal security agency and some have, to date, not been charged.

60. OHCHR documented the following two cases of arrest based on allegations of affiliation with Salafist groups. On 19 December 2016, a man from Rafah was arrested during a joint operation of the internal security agency and the Izz al-Din al-Qassam Brigades. He appeared before the military court on 12 February 2017, where the prosecutor was not in a position to provide any evidence against him. He was eventually released on 26 April 2017 without being officially charged. He reported having been subjected to ill-treatment during his interrogation. Another man from Gaza City was reportedly arrested on 11 December 2016 by masked men belonging to the internal security agency. Although the military court ordered his release on bail on 20 February 2017, the internal security agency refused to implement the order until 12 April 2017, following the intervention of the Director of the Security Forces. At the time of writing, five hearings had taken place and a decision was pending.

IV. Conclusion and recommendations

61. **The present report outlines the high risk that Palestinians face of being arbitrarily deprived of their liberty, both by the Israeli Security Forces and the Preventive Security Services. This is especially the case for Palestinians openly opposing the Israeli occupation, or the policies of their government in the West Bank or in Gaza. Journalists and human rights defenders have been particularly targeted within this context. Cases monitored by OHCHR show how Palestinians risk being arrested for having participated in peaceful protests, questioned acts of their own government — including on social media — or for alleged political affiliation.**

62. **While Israeli legislation allows for indefinite administrative detention, Palestinian safeguards against the arbitrary deprivation of liberty are bypassed**

[84] See A/HRC/28/80, para. 53.

through the use of executive powers. Administrative detention is used by both the Israeli and the Palestinian authorities to circumvent the national criminal justice system in order to detain individuals for vague or undisclosed security reasons, against whom evidence is insufficient, or who are due to be released. Cases monitored by OHCHR reveal how all duty bearers blatantly disregard the principle of fair trial and due process guarantees, particularly when an individual is deemed to endanger national security, public order or political cohesion, or has information of interest to the authorities.

63. **Palestinians, including children, are subjected to arbitrary arrest and detention. Detainees' lack of knowledge of the grounds for detention and its length further violates rights inherent to human dignity, in addition to the obligations of Israel — as the occupying Power — to treat the Palestinian population humanely at all times. It is of serious concern that, in most cases, detention appears to be motivated by discriminatory grounds, including religion, national origin, birth or other status and political or other opinion.**

64. **Human rights law prescribes that anyone who has been the victim of unlawful arrest or detention should have an enforceable right to compensation.**[85] **However, there is no realistic way for Palestinian victims of arbitrary detention to seek redress, as their detention is usually covered by the seal of legality of a court ruling or a decision of the executive.**

Recommendations to all duty bearers

65. **All violations and abuses of the human rights of Palestinians must immediately cease and be promptly, impartially and independently investigated; those responsible must be held accountable and the victims provided with effective redress. All duty bearers and parties must respect international law and comply with their obligations and responsibilities under international human rights law and international humanitarian law.**

66. **All duty bearers must end their practices amounting to arbitrary detention, in particular they should:**

(a) End the practice of administrative detention and ensure that all administrative detainees are promptly charged or released;

(b) Ensure that the rights of detainees are respected, including all rights inherent to a fair trial, including the right to defence and not to be tortured or ill-treated;

(c) Ensure that all children are treated with due consideration for their age and detained only as a last resort and, if so, for the shortest possible time, and for the purpose of rehabilitation;

(d) Respect, protect and fulfil the rights to freedom of expression, opinion and peaceful assembly and remove all unlawful restrictions to these rights from statutory law;

(e) Ensure that the rights of journalists and human rights defenders in the Occupied Palestinian Territory are respected and protected and that they can conduct their activities without harassment or being subjected to legal proceedings in violation of international human rights law;

(f) Ensure that victims of arbitrary detention are provided with appropriate compensation.

[85] International Covenant on Civil and Political Rights, art. 9 (5).

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Implementation of Human Rights Council resolutions S-9/1 and S-12/1

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

The present periodic report, the tenth submitted by the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council resolutions S-9/1 and S-12/1 covers the period from 1 November 2016 to 31 October 2017. It provides an overview of human rights issues in the Occupied Palestinian Territory, in particular, excessive use of force, arbitrary detention, torture and ill-treatment, restrictions on the freedoms of movement, expression, peaceful assembly and association and the pervasive lack of accountability for violations of international human rights law and international humanitarian law. The report makes recommendations to the main duty bearers concerned, namely, the Government of Israel, the Government of the State of Palestine and the authorities in Gaza.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present periodic report, the tenth submitted by the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 provides an overview of the human rights situation in the Occupied Palestinian Territory, covering the period from 1 November 2016 to 31 October 2017. It should be read in conjunction with the latest reports of the Secretary-General to the General Assembly on Israeli Practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/72/565) and on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/72/564) and with the reports of the High Commissioner for Human Rights to the thirty-seventh session of the Human Rights Council submitted pursuant to its resolutions 34/30 and 34/31.

2. The information contained in this report is largely drawn from human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. The report also reflects information obtained from government sources, other United Nations entities and non-governmental organizations (NGOs).

3. The reporting period coincided with the fiftieth year of the Israeli occupation of the Occupied Palestinian Territory and the tenth year of the blockade of Gaza. It was marked by an increase in settlement activity and related violations of international humanitarian law and international human rights law, particularly in Area C of the West Bank, East Jerusalem and the H2 zone of Hebron. Israeli military order No. 1789, issued on 31 August 2017, consolidated the settlements in the H2 zone by upgrading their legal status and was accompanied by a visible increase in the presence of the Israeli security forces, settler violence and movement restrictions that had a negative impact on the enjoyment of economic and social rights.

4. The Israeli blockade of Gaza, which amounts to the collective punishment of the population of Gaza,[1] entered its eleventh year, with continuing violations by Israel of its obligations as the occupying Power, including with regard to human rights. Freedom of movement and access to basic services remained severely compromised, as did the availability of potable water, electricity, fuel, medical supplies and materials needed to reconstruct buildings and homes damaged or destroyed during previous military escalations. Over the spring and summer of 2017, the Palestinian Authority introduced various restrictive measures that exacerbated the difficulties experienced by the population of Gaza. These included reducing payments to Israel for electricity, limiting the number of medical referrals for patients from Gaza to Israel and to the West Bank, including East Jerusalem, cutting the salaries of Gaza's public sector workers and placing many on early retirement. On 12 October 2017, Hamas and Fatah signed a reconciliation agreement in Cairo, which was aimed at ending the 10-year divide between the two organizations and paving the way for a government of national consensus. The indiscriminate firing of rockets by Palestinian armed groups towards Israel remained a concern.

5. Excessive use of force in the context of law enforcement, including possible instances of unlawful killings, remained of serious concern. Attempts by Israel to impose controls over access to the Al-Aqsa Mosque in July 2017, following an attack by Palestinian citizens of Israel, sparked a wave of protests across the Occupied Palestinian Territory that resulted in six fatalities and a large number of injuries among Palestinians due to the response of the Israeli security forces.[2] The number of incidents of arbitrary detention remained high and OHCHR closely monitored developments around the hunger

[1] See A/HRC/34/36, para. 36 and A/HRC/24/30, para. 22.

[2] See www.ochaopt.org/content/protection-civilians-report-18-31-july-2017.

strike undertaken by a large number of Palestinian prisoners in Israeli prisons for over 40 days, from April to May 2017.[3]

6. There was a marked restriction of civic space, with limitations on and violations of the rights to the freedoms of opinion and expression, association and peaceful assembly. All three duty bearers, the Government of Israel, the Palestinian Authority and the authorities in Gaza, took legal and practical measures to restrict the functioning of independent media outlets and NGOs. Human rights defenders faced harassment, arrest and travel restrictions.

7. A climate of almost-total impunity for past and ongoing human rights violations continued to prevail. A dedicated report reviewing the status of recommendations addressed to all parties since 2009 related to ensuring accountability and justice for violations of international law in the Occupied Palestinian Territory, including East Jerusalem, was presented to the Human Rights Council in June 2017. It highlighted that, of the 253 recommendations on access to justice and accountability presented to the duty bearers since 2009, only 19 had been fully or partially implemented.[4] There were no positive developments in that regard during the reporting period.

II. Legal framework

8. International human rights law and international humanitarian law are applicable in the entirety of the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. A detailed analysis of the legal obligations of the three duty bearers is contained in a report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, of 13 April 2017, and remained applicable for the duration of the reporting period.[5]

III. Violations of international human rights law and international humanitarian law in the Occupied Palestinian Territory by all duty bearers

A. Israel

1. Obligations of the occupying Power under international humanitarian law

9. The situation in the Occupied Palestinian Territory is characterized by the systematic disregard by Israel of the law of occupation and its obligations as an occupying Power, including the guiding principle whereby the status quo ante should be preserved as far as possible.[6] Violations by Israel of the fundamental provisions of the law of occupation continued during the reporting period.

10. Settlement expansion activity accelerated during the reporting period, with almost 10,000 housing units advanced by means of land designation or allocation, planning and zoning, the issuance of tenders and permits, or actual construction starts.[7] These measures were accompanied by the proposal or advancement of several draft laws in the Knesset aimed at retroactively legalizing the existing outposts, changing the status of Jerusalem, and, through political statements at the highest levels, promising the allocation of resources to consolidate settlements. These developments are described in detail in the report of the High Commissioner submitted pursuant to Human Rights Council resolution 34/31.[8] Settlements amount to the transfer of the population of Israel into the territory it occupies. The transfer of parts of an occupying Power's own civilian population into a territory it

[3] Reported in detail in A/72/565, paras. 38–40.
[4] See A/HRC/35/19, para. 14, table 3.
[5] See A/HRC/34/38, paras. 3–12.
[6] See A/HRC/34/38, paras. 13–14.
[7] See A/HRC/37/43, paras. 5–8.
[8] See A/HRC/37/43.

occupies is a serious violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and is considered a war crime.[9] In addition, settlement expansion is connected to a number of other violations of international humanitarian law and has severe repercussions on human rights, as examined below.

11. During the reporting period, 488 structures were demolished or seized in the West Bank, including East Jerusalem, displacing 684 persons, including 383 children.[10] After record high numbers registered in 2016 and during the first quarter of 2017, there was a significant decrease in demolitions and seizures during the latter half of the reporting period. Most of the demolitions were carried out due to the lack of required building permits from the Israeli authorities. In that regard, it is recalled that the Secretary-General has previously noted that the zoning and planning regime in the West Bank, as well as in East Jerusalem, is restrictive, discriminatory and incompatible with requirements under international law,[11] making it virtually impossible for Palestinians to obtain building permits. The structures demolished during the reporting period included 125 donor-funded structures provided as humanitarian assistance to vulnerable communities, including three schools demolished at the beginning of the school year, in August 2017.

12. Practices that, in many cases, constitute collective punishment continued. The blockade of Gaza, which amounts to collective punishment of the population of the Gaza Strip,[12] entered its eleventh year. In the occupied West Bank, including East Jerusalem, measures amounting to collective punishment of family members, neighbourhoods and villages of attackers (or alleged attackers) included the withholding of the bodies of attackers or alleged attackers killed in attacks, punitive demolitions and sealing of houses, punitive revocation of work permits or of East Jerusalem residency status, and punitive confiscation of property. Many of these measures were reported in detail by the Secretary-General in October 2017.[13]

13. In an illustrative case monitored by OHCHR, the Israeli authorities took a series of collective punishment measures following the killing of an Israeli Border Police officer, on 16 June 2017, in Jerusalem, by three Palestinians from the village of Deir Abu Mash'al. The attackers were killed by the Israeli security forces, who retained their bodies,[14] blocked all movement into and out of Deir Abu Mash'al for a week and the movement of boys and men aged between 15 and 25 years for a further week, conducted violent raids on houses in the village and confiscated about 60 cars. Moreover, the work permits of approximately 150 relatives of the attackers were revoked, as was a permit allowing the mother of one of the attackers to visit her other son, held in Israeli detention. On 10 and 17 August 2017, the Israeli security forces demolished three houses belonging to the families of two of the attackers, leaving 14 persons, including 5 children, homeless. Punishing family members of attackers and entire communities for acts they did not commit amounts to collective punishment and is expressly prohibited by international humanitarian law.[15] It also violates several human rights, including due process guarantees such as the principle of individual responsibility and the presumption of innocence.[16]

[9] Fourth Geneva Convention, arts. 49 (6) and 147; Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[10] Office for the Coordination of Humanitarian Affairs (OCHA) data, communication to OHCHR.

[11] See A/HRC/34/38, para. 26, with references.

[12] See A/HRC/34/36, para. 36 and A/HRC/24/30, para. 22.

[13] See A/72/565, paras. 18–27).

[14] The bodies remained held by Israel as of 31 October 2017.

[15] Regulations respecting the Laws and Customs of War on Land, art. 50; and Fourth Geneva Convention, art. 33.

[16] International Covenant on Civil and Political Rights, arts. 12, 14 and 17; see also Fourth Geneva Convention, arts. 71–73.

14. As of the end of the reporting period, Israel continued to withhold the bodies of 15 Palestinians,[17] despite a ruling issued by the Supreme Court of Israel on 25 July 2017, declaring that the Israeli authorities have no authority to hold bodies.[18]

15. Demolitions, collective punishment and other measures, such as forced evictions and restrictions on freedom of movement and the failure to provide protection from attacks by settlers, constitute violations of international law and contribute to the creation of a coercive environment, which may lead to the forcible transfer of the protected population. During the reporting period, such coercive environment factors increased, particularly in the periphery of Jerusalem and in Hebron's H2 zone, heightening the risk of forcible transfer of several communities and individuals.[19]

2. Recurring human rights violations

Violations of the rights to life and security of person

16. Excessive use of force, including unlawful killings by the Israeli security forces, remained a serious concern in the Occupied Palestinian Territory. As in previous reporting periods, in several instances, it appeared that the use of firearms was not limited to a measure of last resort in situations posing imminent threat to life or serious injury, as required by international law.[20] The recurrence of such cases, as well as the consistent failure to investigate and prosecute those responsible, suggests a permissive policy towards such practices. An additional concern in such cases was reported delays or even denial of medical assistance to those injured which, in some instances, led to the death of victims who might have otherwise survived.

17. In Gaza, the Israeli security forces continued to use live ammunition to enforce restrictions within the Israeli-designated "access restricted areas", on land and at sea. During the reporting period, 5 Palestinians, including 2 children, were killed, and 67 Palestinians, including 16 children, were injured on land by live ammunition. At sea, 1 fisherman was killed and 6 were injured by live ammunition.[21]

18. On 28 July 2017, a 16-year-old, Abed El Rahman Husein Abu Hamisaa, was shot in the chest during a protest at Al-Boureij camp, approximately 50 m from the fence separating Israel and Gaza. He died on his way to hospital. Two of his friends were shot at with live ammunition while attempting to rescue him and both sustained leg wounds. There was no indication that the boys posed any imminent threat to the members of the Israeli security forces stationed at the fence when they were shot.[22] In another case, on 9 June 2017, a 19-year-old man was killed, approximately 150 m from the fence east of Jabalia. He was watching the protests taking place at the fence when, without warning, he was shot in the head by an Israel Defence Forces soldier and died instantly.[23]

19. On 15 May 2017, a 25-year-old man, Muhammad Majid Fadil Bakr, was killed while working on his fishing boat, approximately three nautical miles off the coast of Gaza. Reportedly, the Israeli navy used a loudspeaker to issue warnings instructing Mr. Bakr to stop the boat, while opening fire. The boat continued moving until a bullet hit the engine. The Israeli navy continued to fire, shooting Mr. Bakr in the back as he was trying to protect the engine. The Israeli security forces immediately took him to the Barzilai medical centre in Ashqelon, where he was pronounced dead.

20. In the occupied West Bank, including East Jerusalem, 50 Palestinians, including 12 children, were killed by the Israeli security forces in the context of law enforcement during the reporting period. Of those persons, 28 were killed while carrying out, or allegedly

[17] OHCHR monitoring and Jerusalem Legal Aid and Human Rights Centre, communication to OHCHR.
[18] See www.adalah.org/en/content/view/9167.
[19] See A/HRC/37/43, in particular paras. 12–14 and 24–25.
[20] Code of Conduct for Law Enforcement Officials, arts. 2–3 and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 5, 9 and 13–14.
[21] OHCHR monitoring.
[22] OHCHR monitoring.
[23] OHCHR monitoring.

carrying out, attacks against Israelis, mostly members of the Israeli security forces. Moreover, 4 Palestinians were killed by Israeli settlers and 1 Palestinian was killed by the Israeli security forces in Israel in response to a stabbing attack.[24]

21. There was a peak in casualties in the context of the large-scale protests against the announcement by Israel of restrictions on access to the Al-Aqsa Mosque, in July 2017. The restrictions followed the killing of two Israeli police officers by three Palestinian citizens of Israel in the mosque's compound, on 14 July 2017. While mainly peaceful, some of the protests turned into clashes. The response by the Israeli security forces raises concerns as to the use of excessive force in law-enforcement operations.

22. For example, on 21 July 2017, Palestinian protesters and Israeli Border Police officers clashed in Abu Dis. While most of the protesters fled, a small group of young men and boys clashed with the Border Police officers, throwing stones at them. The officers first responded with stun grenades and rubber bullets and then started firing live ammunition. Seventeen-year-old Mohammed Khalaf Mahmoud Khalaf Lafi, the last protestor to flee the scene, was shot in the back. Footage captured by a surveillance camera shows him running away and being shot at a distance of approximately 50 m from the Border Police, apparently posing no threat to the security forces. The boy was taken to hospital, but died of his wounds.[25]

23. The Israeli security forces raid on Al-Maqased Hospital in East Jerusalem, on 21 July 2017, is particularly concerning. The Israeli security forces stormed the hospital in an attempt to arrest Muhammad Abu Ghanam, a 20-year-old Palestinian previously wounded by live ammunition fired by members of the Israeli security forces in the context of clashes in the Al-Tur neighbourhood. Numerous Israeli soldiers entered the hospital compound using stun grenades and sponge-tipped bullets to overcome hospital guards and youth in the courtyard. Inside the hospital, medical staff were in the process of transferring Mr. Abu Ghanam to emergency surgery when members of the Israeli security forces entered the corridor and violently struggled with the medical staff during an attempt to seize Mr. Abu Ghanam, physically assaulting a doctor, a paramedic, an administrative employee of the hospital and several bystanders. Medical staff managed to move Mr. Abu Ghanam to an adjacent room and attempted to save his life, before declaring him dead.[26] Fearing that the body would be seized by the Israeli security forces, the family reportedly immediately removed it from the hospital over a back fence. The case raises strong concerns as to the excessive use of force in law enforcement operations and interference in medical care that might endanger the life or lead to the death of seriously injured patients, in violation of the right to life and physical integrity.

24. Instances of excessive use of force during the reporting period were not limited to incidents in the context of protests. For instance, on 28 July 2017, at a roundabout near Gush Etzion, 26-year-old Abdallah Taqatqa was shot in the back by the Israeli Defence Forces from a range of approximately 25 m. According to eyewitnesses interviewed by OHCHR staff, as he was lying on the ground injured, a soldier turned him over and shot him in the chest from close range, killing him. The Israeli Defence Forces claimed that the victim had been neutralized during a stabbing attempt. However, two eyewitnesses reported that the victim was walking away from a group of seven or eight Israeli Defence Forces soldiers when first shot and that the soldiers surrounded him before the second shot. They also reported that nothing was found in the hands or in the vicinity of the victim to suggest that he was attempting to stab the soldiers or posed any imminent threat.

25. In a number of cases of settler violence, Israel failed to uphold public order and safety and to protect Palestinians in accordance with its obligations as an occupying

[24] OCHA, communication with OHCHR, 15 December 2017.

[25] OHCHR monitoring; also see www.dci-palestine.org/israeli_forces_kill_17_year_old_amid_clashes_over_access_to_holy_site.

[26] OHCHR monitoring; see also www.btselem.org/press_releases/20170810_police_raid_east_jerusalem_hospital.

Power.[27] During the reporting period, there were 147 incidents of settler violence resulting in casualties among Palestinians or damage to their property: 3 Palestinians were killed and 75 injured, including 19 children, in such incidents.[28] Although often present at the time of such incidents, the Israeli security forces frequently failed to provide protection. Moreover, in many of the cases, either no investigation was carried out, or investigative proceedings were closed due to apparent shortcomings in their conduct.[29] Cases demonstrating the type of violence and the failure by the occupying Power to provide safety and security for the Palestinian population have been described in detail in the report of the High Commissioner submitted pursuant to Human Rights Council resolution 34/31.

Arbitrary detention, torture or other cruel, inhuman or degrading treatment

26. Arbitrary detention of Palestinians by the Israeli authorities, including the practice of administrative detention, including of children, continued to be a major concern during the reporting period. According to official data provided by the Israel Prison Service, as of 30 June 2017, 5,916 Palestinians, including 318 children, were in Israeli detention. This included 444 individuals in administrative detention, among them 2 children. Official numbers as of 31 October 2017 were not available, but according to joint reports of Palestinian human rights organizations, an estimated 6,300 Palestinians, including at least 250 children, were in Israeli detention at the end of the reporting period, including about 450 in administrative detention.[30]

27. Concerns related to arbitrary detention are examined in further detail in the report of the High Commissioner to the Human Rights Council on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem (A/HRC/37/42).

28. Reported incidents of ill-treatment of Palestinians in Israeli detention remained of concern. While no official statistics are available, the Public Committee Against Torture in Israel, an Israeli NGO, processed 107 allegations of ill-treatment during the reporting period.[31] In one case documented by OHCHR, on 6 November 2016, the Israeli security forces carried out a raid on the house of a 52-year-old man with disabilities at the Aida refugee camp, near Bethlehem, allegedly in order to put pressure on his son, who was being detained and interrogated by the Israeli security forces at that time. Although the man suffered from paralysis in his limbs and, according to eyewitnesses, did not resist arrest, he was subjected to violent and humiliating treatment, blindfolded and handcuffed. He was questioned about his son and eventually released with the explanation that it was a case of a mistaken identity.[32]

29. Frequent night raids and house searches by the Israeli security forces across the West Bank, including East Jerusalem, continued during the reporting period, in particular in communities located near settlements or settler roads and in the villages of alleged attackers or of individuals known for holding demonstrations. In some cases, the raids, typically carried out between 2 and 4 a.m., were conducted with the purpose of making arrests, including of children, often on allegations of stone-throwing. In many other cases, members of the Israeli security forces raided private homes in full combat gear, armed and with their faces covered, without a clear reason, causing panic and terror among the families affected. In addition to raising concerns about the excessive use of force and possible violations of the right not to be subjected to arbitrary or unlawful interference with one's privacy, family

[27] Fourth Geneva Convention, art. 27 (1) and (2); Regulations respecting the Laws and Customs of War on Land, art. 46; see also A/HRC/34/38, para. 36.

[28] OCHA data shared with OHCHR.

[29] See www.yesh-din.org/en/data-sheet-december-2017-law-enforcement-israeli-civilians-west-bank/.

[30] Joint reporting by the Prisoner Support and Human Rights Association, Al Mezan Center for Human Rights and the Palestinian Prisoners Club, communication to OHCHR, 5 December 2017.

[31] Communication between the Public Committee Against Torture in Israel and OHCHR, 5 December 2017. The number includes Palestinians from Gaza and the West Bank, including East Jerusalem, and excludes Palestinian citizens of Israel.

[32] OHCHR monitoring.

and home,[33] this practice may also be in contravention of the obligation to treat the protected population humanely.[34]

Lack of access to justice and accountability

30. In a number of instances of apparent excessive use of force documented in the present and previous reports, the Israeli security forces reportedly launched investigations. However, little information is available on such investigations. OHCHR is not aware of any charges being brought or of any indictments issued related to excessive use of force during the reporting period. With regard to the only recent indictment and sentence for excessive use of force by an Israeli security forces soldier, on 27 September 2017, the Chief of Staff of the Israel Defence Forces announced his decision to reduce by 4 months the 18-month sentence handed down in the case of Sergeant Elor Azaria in January 2017. Sergeant Azaria's sentence for the unlawful killing of a wounded Palestinian, which may amount to an extrajudicial execution, was already excessively lenient given the gravity of the offence.[35] Furthermore, it was inconsistent with sentences imposed on Palestinian offenders for comparable offences in recent years. The decision to reduce Sergeant Azaria's sentence further undermines Palestinians' confidence in the Israeli military justice system and reinforces the culture of impunity.[36]

31. Access to justice and accountability for Gazan victims of international human rights law and international humanitarian law violations remained limited due to restrictive Israeli legislation on State liability and the statute of limitations, the required payment of considerable court guarantees and the ban on the entry of Gazans into Israel in order to attend legal proceedings.[37]

32. There were no official updates on the status of criminal complaints related to the escalation of hostilities in Gaza in 2014.[38] Appeals submitted by Palestinian human rights organizations regarding cases in which criminal investigations were either closed or not opened at all, are still pending before the Israeli courts.[39] These include cases of violations that may amount to war crimes, such as the shelling of a location near a United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) school serving as a shelter for civilians in Rafah, which caused the death of 15 persons, including 7 children,[40] and the case of 4 children killed by a shell while playing on a beach.[41]

Restrictions on the rights to the freedoms of expression, association and peaceful assembly

33. Israel pursued legislative and policy measures that negatively affected the rights to the freedoms of expression, association and peaceful assembly of those working to defend human rights in the Occupied Palestinian Territory. In March 2017, the Knesset approved an amendment to the Entry Into Israel Law, prohibiting the entry into Israel of any foreigner who publicly calls for a boycott of Israel or any area under its control.[42] For

[33] International Covenant on Civil and Political Rights, art. 17.

[34] Fourth Geneva Convention art. 27; A/HRC/34/38, para. 13.

[35] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21221&LangID=E.

[36] See A/HRC/35/19, paras. 17–18.

[37] See ibid., para. 18; CERD/C/ISR/CO/14-16, para. 27; and A/71/364, para. 40.

[38] See A/72/565, para. 56.

[39] Decisions remain pending on 19 cases submitted by the Palestinian Centre for Human Rights and 3 by the Al Mezan Center for Human Rights and the Legal Centre for Arab Minority Rights in Israel.

[40] Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, para. 440; see also the appeal presented before the Attorney-General of Israel in October 2016 by the Legal Centre for Arab Minority Rights in Israel and the Al Mezan Center for Human Rights. Available from www.adalah.org/uploads/uploads/UNRWA_Rafah_Appeal_Final.pdf (in Hebrew).

[41] See A/HRC/28/80/Add. 1, para. 36; and Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, paras. 630–633.

[42] Amendment No. 27 to the Entry into Israel Law (No. 5712-1952).

example, in October 2017, the amended law was reportedly used to block the entry into the Occupied Palestinian Territory of an employee of Amnesty International USA.[43] While each country has the right to control entry into its territory, the amended law raises concerns with regard to restrictions on the freedoms of thought, opinion and expression.

34. The Knesset also continued to promote measures hampering the financing and functioning of NGOs, including conditioning the receipt of volunteers on a minister's approval and denying tax benefits to organizations that "act against the interests of Israel".[44]

35. Arrests, intimidation and harassment of human rights defenders continued. Several Palestinians were detained by the Israeli authorities and, in some cases, subjected to legal proceedings related to peaceful activities, including with regard to peaceful protests denouncing or opposing human rights violations, the occupation, or the settlement enterprise.[45] Several Israeli and Palestinian human rights organizations reported to OHCHR that they continued to experience severe harassment, including through social media, aimed at discrediting and delegitimizing their work and the character of those working for them. Pressure has been particularly severe on organizations working to bring about international criminal accountability for violations of human rights and humanitarian law.[46]

36. Media outlets also came under pressure, including through what appears to have been an instance of excessive use of force. On 16 August 2017, the Israeli security forces shot and wounded a 33-year-old Palestinian journalist working for Palestine TV. He was hit in the face by a rubber-coated bullet fired from approximately 50 m away while filming an Israeli security forces raid on the village of Kubar.[47] Consistent with information gathered through OHCHR monitoring, video footage of the incident shows the soldier pointing his gun at the journalist, despite the latter wearing a vest clearly identifying him as a member of the press and the situation surrounding the shooting being calm. No elements justifying the use of such force were apparent.[48]

Restrictions on the freedom of movement and on the enjoyment of economic, social and cultural rights

37. Palestinians' freedom of movement continued to be significantly restricted by a complex and multilayered system of administrative, bureaucratic and physical constraints, including permit requirements, checkpoints and physical obstacles, affecting all aspects of everyday life. Existing restrictions and practices affecting freedom of movement, including the 10-year blockade of Gaza, are described in previous reports of the High Commissioner and the Secretary-General.[49]

38. The approval rate of applications for Israeli exit permits from Gaza decreased from 72 per cent during the previous reporting period to 32.8 per cent during the reporting period, with a larger number of outstanding applications pending security review than previously.[50] Restrictions on movement in and out of Gaza on the grounds of undefined "security reasons" also severely affected United Nations and humanitarian personnel.

39. In May 2017, new movement restrictions were implemented in the Israeli-controlled H2 zone of Hebron, reportedly following the attempted stabbing of an Israeli security

[43] See www.amnesty.org/en/latest/news/2017/10/israel-denies-entry-to-amnesty-international-staff-member/.

[44] National service law, enacted in March 2017, and the proposed income tax ordinance (Institution acting for the benefit of the State of Israel) before the Knesset as at 31 October 2017.

[45] OHCHR monitoring.

[46] See A/HRC/36/31, paras. 38–39.

[47] The Secretary-General previously raised concerns about the frequent and often unwarranted use of rubber-coated metal bullets, including at short-range, and directed at the upper body. See A/71/364, para. 16 and A/HRC/31/40, para. 26.

[48] OHCHR monitoring.

[49] See A/HRC/31/44, paras. 12–31 and A/HRC/34/38, paras. 62–68.

[50] Palestinian General Authority for Civil Affairs communications to OHCHR, 16 and 18 October 2016 and 26 November 2017.

forces soldier by a Palestinian. Two checkpoints were reinforced and a new fence was installed around the Palestinian neighbourhoods of As-Salaymeh and Gheith. The fence further separates up to 1,800 Palestinians from the rest of the city, forces residents to take long alternative routes that are inaccessible to elderly persons and persons with disabilities and severely limits residents' access to services. The gate is operated irregularly and had become a flashpoint for settler harassment and violence in the last few months of the reporting period, increasing tension and friction in the area.[51]

40. The failure of Israel to protect Palestinians in accordance with its obligation, as the occupying Power, to uphold public life order and safety,[52] and the numerous restrictions on freedom of movement have had a severe impact on the enjoyment of economic, social and cultural rights and of the right to family life in the Occupied Palestinian Territory.

41. The blockade and closures continued to be the main drivers of Gaza's humanitarian crisis and severely undermined the realization of nearly all economic and social rights. This situation was exacerbated by Palestinian measures described in paragraphs 62–64 below. With regard to the right to an adequate standard of living and the right to work, Gazan exports and imports remained well below the pre-blockade levels, estimated as of late October 2017 at nearly 32 per cent and 92 per cent respectively.[53] Restrictions on Gazan imports and exports continued to stifle economic recovery and employment opportunities, with unemployment reaching 46.6 per cent between July and September 2017.[54] At the end of the reporting period, nearly 80 per cent of the population were reportedly relying on aid provided by humanitarian organizations to survive.[55] Although notable progress in reconstruction efforts was made, some 24,600 individuals who had been displaced as a result of the destruction of, or severe damage inflicted upon, their homes during the hostilities of 2014, remained displaced at the end of the reporting period.[56]

42. Standard of living, economic growth and employment prospects in the West Bank continued to be directly undermined by the restrictions on movement and limitations on access to land, natural resources and construction. Restrictions on Palestinians' access to agricultural land and to critical natural resources in Area C remained in place and markets in occupied East Jerusalem remained out of reach, severely curbing livelihood opportunities.[57] The unemployment rate in the West Bank stood at 19 per cent in the third quarter of 2017, in comparison to 4.2 per cent in Israel as of October 2017.[58]

43. The realization of the right to education remained severely compromised due to violence and armed search operations in schools, harassment, intimidation and violence towards students and teachers on the way to and from school, a severe shortage of classrooms and demolition or stop work orders on school buildings. In Gaza, about two thirds of schools (including UNRWA schools) were forced to operate double shifts, with large numbers of children studying in darkened classrooms due to the prevailing electricity crisis.[59]

44. The right to health also remained undermined, as primary health-care clinics and hospitals across the Occupied Palestinian Territory struggled to function and provide services due to prolonged electricity cuts and chronic shortages of stocks of vital medicines, equipment and supplies, including fuel.

[51] See www.ochaopt.org/content/further-restrictions-palestinian-movement-israeli-controlled-h2-area-hebron-city; and OHCHR monitoring.

[52] Regulations respecting the Laws and Customs of War on Land, arts. 43 and 46.

[53] See www.ochaopt.org/content/gaza-crossings-operations-status-monthly-update-october-2017.

[54] See www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=2904.

[55] See www.worldbank.org/en/country/westbankandgaza/overview.

[56] See www.sheltercluster.org/sites/default/files/docs/one_page_factsheet_october_2017.pdf.

[57] See www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_554441.pdf.

[58] See www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=2904 and https://tradingeconomics.com/israel/unemployment-rate.

[59] See, for example, www.unicef.org/oPt/media_12204.html.

45. Moreover, restrictions on movement severely affected access to health care. Out of the 26,986 applications for permits to exit Gaza submitted on behalf of patients during the reporting period, 867 (3.2 per cent) were denied and 12,075 (44.7 per cent) were delayed.[60] The World Health Organization reported that dozens of patients died while waiting for their applications to be granted or after their applications had been denied.[61]

46. For example, on 17 April 2017, a 5year-old girl with hydrocephalus died while her permit application was still pending under security review, following two previous unsuccessful exit applications. In another case, a 45-year-old woman suffering with breast cancer since 2011 missed five medical appointments in the West Bank between February and June 2017, as her permit applications remained under security review, even though she had been granted exit permits on previous occasions. She died on 8 June 2017.

47. Reports of pressure exercised on patients to obtain security information as a precondition for the granting of access to health care also gave cause for concern. In February 2017, a 36-year-old woman suffering from cancer was denied permission to exit Gaza and missed her appointment in an East Jerusalem hospital. She had been granted an exit permit but refused to provide the members of the Israeli security forces manning the Beit Hanoun/Erez border crossing point with information on a relative allegedly affiliated with an armed group.[62]

48. In the West Bank, Israeli restrictions on movement, especially in areas affected by the Wall and checkpoints, and delays in related coordination continued to place severe limits on access to health services. Across the Occupied Palestinian Territory, Palestinian ambulances and medics were, on several occasions, prevented from carrying out their work or were directly attacked. The Palestine Red Crescent Society reported that, during the reporting period, their ambulances were delayed on 16 occasions, prevented from reaching their destination in 3 instances and from providing first aid to injured Palestinians on 14 occasions and directly attacked 9 times. The Israeli security forces wounded six Palestine Red Crescent Society medics and volunteers.[63]

B. Palestinian authorities

Violations of the rights to life and security of person

49. The Palestinian security forces appeared to use excessive force to disperse peaceful assemblies and detained participants on several occasions.[64] In one of the cases monitored by OHCHR, on 12 March 2017, in Al-Bireh, the Palestinian security forces violently assaulted both protesters and journalists and broke equipment used by reporters covering a peaceful protest. A commission of inquiry established by the Palestinian Authority found that the use of force by the Palestinian security forces had been unjustified. It recommended several legal and policy measures to bring the regulations governing the use of force by the Palestinian security forces into line with international standards. It also recommended disciplinary action against the Chief of Police and the commander of the police unit responsible. The implementation of the recommendations was ongoing as of 31 October 2017.

50. Concerns regarding excessive use of force by the Gaza security forces were reported, including in the context of protests. On 12 January 2017, the Gaza security forces forcibly dispersed a protest over the electricity crisis in Jabalia. The protest was organized in response to calls made on social media and escalated into stone-throwing at the premises of the Gaza Electricity Distribution Corporation. The riot police fired live ammunition into the air to disperse protesters and assaulted some with batons. Seven people, including two

[60] See www.emro.who.int/pse/publications-who/monthly-referral-reports.html.
[61] Ibid.
[62] OHCHR monitoring.
[63] Information provided by the Palestine Red Crescent Society to OHCHR, 13 December 2017.
[64] OHCHR monitoring.

journalists, were referred to hospitals for medical treatment due to injuries. An undetermined number of protesters were also briefly detained by the Gaza security forces.[65]

51. In another incident documented by OHCHR, a 24-year-old photojournalist was shot and wounded by the Gaza security forces, on 4 April 2017, while covering a police raid on a protest tent in Beit Lahiya. The victim was seriously wounded in the leg, having been shot at close range in circumstances that did not appear to constitute a threat to the lives of the security officers concerned.[66]

Death penalty

52. Six individuals were executed by the Gaza authorities during the reporting period, three on 6 April 2017 and three on 24 May 2017. The latter three were sentenced to death by a special field military court, on 15 May 2017, for involvement in the killing of Hamas leader Mazen al-Faqhaa. The executions raise serious concerns about the extent to which the trials conducted by this court in particular, and by military courts in general, met the minimum international fair trial standards. The three defendants were reportedly denied access to legal representation, subjected to ill-treatment and torture and signed confessions under duress. Furthermore, they were convicted of treason, which does not meet the threshold for "most serious crimes".[67] Their executions may amount to extrajudicial killings and, consequently, the arbitrary deprivation of life.[68]

53. During the reporting period, Gaza courts, including military courts, upheld 14 sentences on appeal and handed down 18 new sentences, including those mentioned above.[69]

54. All six executions were carried out without the approval of the Palestinian President, in violation of Palestinian law, and denying the defendants the right to be considered for pardon or commutation of sentence, as foreseen by international human rights law.

Arbitrary detention, torture or other cruel, inhuman or degrading treatment

55. Arbitrary arrests and detention by the Palestinian security forces and the authorities in Gaza remained a major concern and the issue is examined in detail in the report of the High Commissioner to the Human Rights Council on the Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem (A/HRC/37/42).

56. During the reporting period, the Palestinian Independent Commission for Human Rights registered 511 complaints alleging torture or ill-treatment in Palestinian detention facilities, 263 in the West Bank and 248 in Gaza. While this number refers to complaints and not to verified incidents, OHCHR monitored and documented allegations of ill-treatment and torture both in the West Bank and in Gaza, which are of grave concern and are consistent with the practices reported in the complaints lodged with the Palestinian Independent Commission for Human Rights.

57. For instance, in February 2017, in Tulkarm, a 38-year-old news editor was arrested by the General Intelligence Service and accused of inciting sectarianism. He was initially released on bail by the first instance court but was immediately rearrested without a further arrest warrant. He was transferred to the Jericho central interrogation detention centre of the General Intelligence Service, where he was allegedly subjected to physical and psychological torture that was aimed at forcing him to confess. He claims that he was forced to stand blindfolded and shackled, with his arms tied behind his back, suspended

[65] OHCHR monitoring.

[66] OHCHR monitoring.

[67] International Covenant on Civil and Political Rights, art. 6 (2) and the safeguards guaranteeing protection of the rights of those facing the death penalty, as approved by the Economic and Social Council in its resolution 1984/50, which provide that the scope of "most serious crimes" should not go beyond intentional crimes with lethal or other extremely grave consequences.

[68] International Covenant on Civil and Political Rights, art. 6 (1).

[69] Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 22.

from the ceiling by his wrists, beaten with a plastic hose on the soles of the feet and pressured with threats to disclose harmful information about his family. He was not allowed to see a lawyer for a period of 14 days and was denied access to adequate health care. He was eventually released following a plea bargain agreed on by his lawyer with the prosecutor, pleading guilty to the charges. He was sentenced to three and a half months' imprisonment, which was commuted to a fine.[70]

Restrictions on the rights to freedoms of expression, association and peaceful assembly

58. The reporting period was marked by the shrinking of civic space in the West Bank and Gaza, with restrictions being placed on the rights to freedoms of expression, association and peaceful assembly.

59. On 15 June 2017, through direct orders to Internet service providers, the Palestinian Attorney-General closed 27 websites hosting content seen as critical of the Palestinian Authority.[71] As of 31 October 2017, these websites remained offline.

60. On 24 June 2017, President Mahmoud Abbas issued a decree on cybercrimes, containing several provisions severely restricting freedom of expression and the right to privacy, as well as overly broad provisions.[72] The decree was prepared without prior consultations with key stakeholders and despite the Government's promise to review it following an outcry from civil society, including the Palestinian Journalists Syndicate. It immediately entered into force following its publication in the Official Gazette, on 9 July 2017, despite a the Palestinian Authority simultaneously agreeing to review the decree with the participation of civil society and the Independent Commission for Human Rights and with technical advice from OHCHR. As at the end of the reporting period, the decree was under review but remained in force.

61. Several journalists, activists and human rights defenders were summoned by the Palestinian security forces or detained for exercising their right to freedom of expression, including on the basis of the presidential decree on cybercrimes, raising concerns about arbitrary detention.

62. For instance, on 6 July 2017, a 28-year-old journalist was arrested by the Palestinian security forces at an Israeli checkpoint while photographing a Palestinian minister's convoy as it passed. The journalist was accused of suspicious behaviour and released after three days without charge.[73] On 8 August 2017, six journalists were arrested across the West Bank under the new decree, allegedly accused of leaking sensitive information to enemy parties. They were all eventually released without charge.[74] There are strong indications that they were arbitrarily arrested and detained.[75] Another case of concern was the arrest and detention of a well-known human rights defender, Issa Amro, on 4 September 2017.[76]

63. Despite a slight decline in reported incidents related to freedom of expression,[77] the Gaza security forces continued to harass journalists and social media activists expressing critical views of the authorities in Gaza. Several journalists and social media activists were arrested by the Gaza security forces, briefly detained, abused in detention and then released without being officially charged.[78] On 4 June 2017, a journalist was sentenced, in absentia, and without legal representation, to six months' imprisonment and fined 1,000 new shekels

[70] OHCHR monitoring.

[71] The websites allegedly belonged to supporters of Mohammad Dahlan, a Fatah-faction leader in Gaza, Hamas or Islamic State in Iraq and the Levant. OHCHR monitoring.

[72] Presidential Decree No. 16 of 2017.

[73] OHCHR monitoring.

[74] OHCHR monitoring.

[75] See A/HRC/37/42, para. 52.

[76] See A/HRC/37/42, para. 51.

[77] The Palestinian Centre for Development & Media Freedoms noted a decrease in the number of violations of the right to freedom of expression, from 46 during the previous reporting period to 30 during the reporting period. See www.madacenter.org/reports.php?s=0&p=13&id=13&lang=1&year=.

[78] A/HRC/37/42, paras. 43–45 and 53–54.

for impersonation, defamation, lack of objectivity and circulating fabricated news. The charges were based on an article she had published in 2016 exposing corruption in the medical referral system in Gaza.[79]

Restrictions on freedom of movement and the enjoyment of economic and social rights

64. From March 2017, adding to the already dire situation caused by the blockade of Gaza, the Palestinian Authority adopted several measure that placed pressure on the authorities in Gaza against the backdrop of a widening political division. These measures included the reduction of salaries and the placement of thousands of employees of the Palestinian Authority in Gaza on early retirement, thereby weakening already financially vulnerable households. The reduction of payments to Israel for electricity provided to Gaza led to a drastic drop in the electricity supply from the already inadequate levels caused by the Israeli blockade. Over the summer months, Gaza was receiving two to no more than six hours of electricity a day. The power shortage left critical installations, such as wastewater treatment plants and hospitals, reliant on backup generators and fuel provided through humanitarian assistance.

65. The Palestinian Authority also reduced the budget allocated to the health sector in Gaza and the percentage of items on the essential drug list that were at zero stock levels increased from 33 per cent in March to 45 per cent in October 2017.[80] A steady decrease in the number of medical referrals for patients from Gaza approved by the Palestinian Authority was reported, from 2,190 in March to 447 in June 2017. The situation improved somewhat towards the end of the reporting period, with the number of medical referrals approved by the Palestinian Authority reaching 1,297 and 1,077 in August and September respectively. However, it remained well below the previous monthly average of over 2,000 referrals.[81]

66. As part of the reconciliation agreement signed on 12 October 2017 between the main Palestinian factions, Hamas and Fatah, the Palestinian Authority committed to lifting the above-mentioned restrictions. The agreement also envisaged that the Palestinian Authority would take control of Gaza's crossings on 1 November 2017, reassuming full security and civil control over Gaza by 1 December 2017, and would integrate Hamas civil servants into Palestinian Authority institutions by no later than February 2018.[82] However, the restrictions remained in place and the population of Gaza continued to struggle to cope with around four hours of electricity per day and depleted basic services during the reporting period. The restrictions exacerbated the profound sense of isolation and hopelessness among Gazans.

IV. Conclusions and recommendations

67. **The present report documents violations of international humanitarian law by the duty bearers, and violations of international human rights law in the Occupied Palestinian Territory by the Government of Israel, the Palestinian Authority and the authorities in Gaza. It confirms patterns of violations previously reported by the Secretary-General and the High Commissioner. In addition to the grave nature of these violations, the persistent lack of accountability and the shrinking space for media and human rights defenders are of particular concern.**

68. **All previous recommendations made by the Secretary-General, the High Commissioner for Human Rights and the United Nations human rights treaty bodies remain pertinent. In particular, the High Commissioner makes the recommendations set out below.**

69. **The High Commissioner recommends that the Government of Israel:**

[79] OHCHR monitoring.

[80] See www.ochaopt.org/content/gaza-crisis-early-warning-indicators-november-2017.

[81] See www.emro.who.int/pse/publications-who/monthly-referral-reports.html.

[82] Those officials recruited by Hamas after 14 June 2007.

(a) **Ensure that all incidents in which security personnel, including members of the Israel Defence Forces, kill or wound any Palestinian, including in Gaza's "access restricted areas", be promptly subjected to thorough, independent, impartial and effective criminal investigations;**

(b) **Immediately end all practices of collective punishment, in particular, immediately lift the blockade of Gaza and allow free movement of Palestinians across the Occupied Palestinian Territory, ensure that any restrictions on the transfer of goods to and from Gaza are consistent with international law, with due regard to legitimate security needs, and respect international humanitarian law and international human rights law;**

(c) **Conduct prompt, thorough, independent and impartial investigations into allegations of violations related to past escalations of hostilities, hold those responsible accountable and ensure redress for victims;**

(d) **Ensure that the rules of engagement of the Israeli security forces and their application are in line with international standards;**

(e) **Ensure that firearms are only used in cases of imminent risk of death or serious injury and never as a crowd-control measure, take all necessary measures to prevent incidents of excessive use of force, in particular, regulating the use of live ammunition and adopting appropriate disciplinary and corrective sanctions for security force members who do not respect such regulations, and ensure that security force members are adequately equipped with and trained in the use of non-lethal weapons;**

(f) **Ensure that assistance and medical aid are provided to any injured or affected persons at the earliest possible moment.**

(g) **End the practice of administrative detention and ensure that all administrative detainees are promptly charged, if relevant, or released, and that the rights of all those deprived of their liberty are respected, particularly all rights inherent to a fair trial, including the right to defence;**

(h) **Ensure that conditions of detention are in accordance with international human rights law, that detainees are not subjected to torture or ill-treatment and that any allegations of torture or other ill-treatment are promptly, thoroughly and effectively investigated by an independent and impartial body;**

(i) **Ensure that all children under the age of 18 years are treated with due consideration for their age and that they are detained only as a last resort and, if so, for the shortest possible time and with a view to their rehabilitation;**

(j) **Ensure that human rights defenders and journalists are respected, protected and permitted to conduct their activities safely, freely and without harassment.**

70. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Ensure that it fully discharges its human rights obligations towards Palestinians in Gaza and immediately lifts any measures that compound the impact of the Israeli blockade on residents of the Gaza Strip;**

(b) **Ensure that the reconciliation process is continuously accompanied by, and anchored in, respect for international law and that all institutional and legal reform are guided by the human rights obligations of the State of Palestine;**

(c) **Announce a formal moratorium on executions;**

(d) **Ensure that the code of conduct regulating the use of force in the context of law enforcement operations and its application are consistent with international human rights standards;**

(e) **Ensure that allegations of human rights violations are promptly subjected to thorough, independent, impartial and effective criminal investigation;**

(f) **End arbitrary detention, including the practices of repeated detention and administrative detention in lieu of criminal charges and either charge or release all individuals currently held in such a manner and immediately end all practices that may amount to ill-treatment or torture;**

(g) **Respect, protect and fulfil the rights to freedoms of expression and peaceful assembly and remove all unlawful restrictions on freedom of expression from statutory law.**

71. **The High Commissioner recommends that the authorities in Gaza:**

(a) **Ensure, along with the Palestinian armed groups in Gaza, respect for international humanitarian law, particularly the principles of distinction, proportionality and precaution, and ensure accountability for grave violations through appropriate investigations and hold perpetrators accountable;**

(b) **Announce and implement an immediate moratorium on the use of the death penalty and cease the practice of trying civilians before military courts;**

(c) **End the arbitrary arrest and detention of individuals and immediately end all practices that may amount to torture or ill-treatment;**

(d) **Ensure that all allegations of torture, ill-treatment and death in custody are promptly, impartially and independently investigated, and that those responsible are brought to justice;**

(e) **Respect and protect the rights to freedoms of expression, association and peaceful assembly, including the right of NGOs and media personnel to conduct their activities safely, freely and without harassment.**

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Human rights situation in Palestine and other occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 34/28, the United Nations High Commissioner for Human Rights provides an overview of the implementation of the resolution, with specific reference to the recommendations of the United Nations international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report of the United Nations High Commissioner for Human Rights is submitted pursuant to Human Rights Council resolution 34/28, in which the Council requested the High Commissioner to report on the implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict (A/HRC/29/52 and A/HRC/29/CRP.4), the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), and the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48).

2. In his report the High Commissioner provides an overview of the most recent developments in relation to the implementation of the recommendations included in the aforementioned reports. He addresses issues related to accountability for alleged violations and abuses of international human rights law and violations of international humanitarian law in connection with the 2014 escalation of hostilities in Gaza, including accountability for the excessive use of force within the scope of law enforcement operations within the Occupied Palestinian Territory. In addition, pursuant to paragraph 7 of the resolution, highlighting concerns about human rights defenders and civil society actors advocating for accountability, he examines the situation of human rights defenders, including legislation and actions that have restricted their work during the reporting period. Finally, he examines the responsibility of third States to ensure respect for international human rights and humanitarian law.

3. The present report should be read in conjunction with the detailed report of the High Commissioner entitled "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009" (A/HRC/35/19). The review revealed that although most of the more than 900 recommendations formulated by international human rights mechanisms between 2009 and March 2017 were addressed to Israel, some were addressed to the Government of the State of Palestine and other Palestinian duty bearers, as well as to the United Nations, States Members of the United Nations, businesses, civil society and the international community (para. 2). The High Commissioner concluded that the overall rate for full implementation of the recommendations by the parties was extremely low: 0.4 per cent for Israel and 1.3 per cent for Palestinian duty bearers (paras. 60−61); the overall rate of full implementation by the international community and the United Nations stood at 17.9 per cent.

4. In the report, the High Commissioner proposed that Israel make full use of the technical assistance available from the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to help with the implementation of the relevant recommendations, which includes the development of national mechanisms for reporting and following up on recommendations". He also urged Israel to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes (paras. 67 and 69).

5. Similarly, the High Commissioner urged the State of Palestine to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes, and to make full use of OHCHR technical assistance to help with the implementation of recommendations addressed to it (paras. 70−73).

6. The High Commissioner has previously taken note of the preliminary examination launched by the Prosecutor of the International Criminal Court in January 2015 into the situation in Palestine to establish whether the Rome Statute criteria for opening an investigation have been met, and further notes the latest update by the Office of the Prosecutor on the progress of the preliminary examination (para. 68).[1]

7. With respect to the international community, the High Commissioner suggested that the Human Rights Council consider recommending to the General Assembly that it make use

[1] See www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties could fulfil their obligations in implementing the recommendations reviewed in his report (para. 75).

8. In the present report the High Commissioner builds on the comprehensive review provided by his previous report and focuses on the specific issues indicated in resolution 34/28.

II. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza

9. In its resolution the Human Rights Council called upon all duty bearers to pursue the implementation of the recommendations of the independent commission of inquiry on the 2014 Gaza conflict. Since the publication of the report of the commission of inquiry, the Secretary-General has provided regular updates on the progress, or lack thereof, by the parties to the conflict with respect to its recommendations.[2]

10. Alleged violations during the 2014 hostilities in Gaza mirror those documented and investigated in 2008/09 and 2012, underscoring the recurrent nature of the violations in Gaza and the failure of efforts to prevent their repetition.[3] Three and a half years after the escalation of hostilities, serious concerns persist regarding the lack of accountability by the Israeli and Palestinian authorities for alleged violations of international humanitarian law — including allegations of war crimes — and alleged violations and abuses of international human rights law. The High Commissioner cannot overstress that the overall lack of accountability contributes to fuelling the conflict.

11. The lack of independence, impartiality, promptness and transparency of the Office of the Israeli Military Advocate General is an additional concern. When investigations have taken place, they have rarely resulted in prosecutions, and sentences frequently do not match the gravity of the violation(s) committed by the Israeli security forces.

12. The last public update by the Military Advocate General on the status of criminal complaints related to the 2014 hostilities in Gaza dates back to August 2016.[4] Out of 500 complaints related to 360 incidents referred to the Military Advocate General in relation to alleged violations of international human rights and humanitarian law, criminal investigations were ordered into only 31 incidents, leading to the indictment of three soldiers for looting. This is the only outcome to date of all the complaints submitted on behalf of Gaza victims. Information received indicates that at least 22 appeals are still pending in relation to incidents that occurred during the 2014 hostilities in Gaza for cases in which a criminal investigation was either closed without charges or not opened at all.[5] This information notably pertains to the shelling of an area near a United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) school serving as a shelter for civilians in Rafah, which caused the death of 15 people, including 8 children,[6] and the case of 4 children killed by a shell while playing on a Gaza beach.[7]

13. The number of cases that, despite serious allegations, have not been subject to a criminal investigation and have been closed by the Military Advocate General for lack of

[2] See, in particular, A/71/364, paras. 40 and 51−55; and A/HRC/34/38, para. 42.

[3] See A/HRC/28/45, para. 16.

[4] See A/72/565, para. 56.

[5] Of the pending appeals, 19 were filed by the Palestinian Centre for Human Rights while 3 were submitted by the Al Mezan Centre for Human Rights and Adalah: Legal Center for Arab Minority Rights in Israel.

[6] See A/HRC/29/CRP.4, para. 440. See also appeal presented before the Attorney General of Israel in October 2016 by Adalah and the Al Mezan Centre for Human Rights and still pending. See further the statement by UNRWA on the initial closing of the case, available at www.unrwa.org/newsroom/official-statements/record-response-idf-closing-criminal-investigation-shelling-near-unrwa.

[7] See A/HRC/28/80/Add.1, para. 36; and A/HRC/29/CRP.4, paras. 632−633.

"reasonable grounds for suspicion of criminal behaviour" is of particular concern.[8] Hence, recommendations made by the commission of inquiry related to investigations and redress for victims remain unimplemented, as evidenced by the failure to open investigations into all credible allegations and the lack of access to justice. The focus of the Israeli military justice system on soldiers, as opposed to higher-level military commanders, enables the closure of cases — before the start of an investigation — for lack of prima facie evidence of a wrongful act committed by the soldier.[9] However, the responsibility of high-level military commanders remains unexamined, as is the overall responsibility of policymakers.[10]

14. The Secretary-General had underlined that "findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney General to open investigations in cases where there is prima facie evidence, including eyewitness testimony, medical reports and audiovisual materials indicating that actions by State agents were unlawful".[11] The failures by the Military Advocate General undermine current and any future efforts to achieve accountability for these specific incidents by creating the misconception that cases were effectively addressed through the military justice system, hence enabling Israel to argue that justice is being pursued.

15. Palestinians face a range of other obstacles that prevent them from gaining access to justice, including to civil remedies. For Gaza victims in particular, a number of challenges remain which limit their ability to access accountability mechanisms, including restrictive legislation on State liability and on statutes of limitations, considerable court guarantees that must be paid and the ban on the entry of Gazans into Israel for legal procedures.[12] Reportedly, the limited prospects for compensation explain the consistent reduction in the number of civil compensation cases filed before Israeli courts in recent years on behalf of Gaza victims. While the Palestinian Center for Human Rights reported having filed 97 such cases in relation to the 2008–2009 hostilities (91 dismissed and 6 still pending as at January 2018), it filed only 5 cases (1 dismissed, 4 still pending) for the 2012 and 2014 hostilities.

16. In particular, the exclusion of the population of Gaza (as residents of an "enemy territory") from the scope of Israeli civil liability legislation in October 2014 — with retroactive applicability to July 2014 — has exempted Israel from liability for any wrongful act committed by the Israeli Defense Forces during the 2014 escalation.[13] The constitutionality of the exclusion clause has been challenged within the scope of a tort lawsuit brought to the District Court of Beersheva.[14] In this case, the plaintiffs are arguing that a similar exclusion clause had been ruled unconstitutional by the Supreme Court in 2006.[15] In its response to the court's decision, the Knesset's legal adviser supported the State's position that the clause was constitutional. The decision of the court was still pending as at mid-January 2018. It is expected to affect the outcome of three other cases of Palestinians killed by the Israeli Defense Forces during the 2014 escalation of hostilities that were filed by the Palestinian Center for Human Rights.

[8] Israeli Defense Forces/Military Advocate General, decisions regarding exceptional incidents that allegedly occurred during operation Protective Edge. See A/71/364, para. 40 and A/HRC/34/38, para. 42.

[9] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Operation-Protective-Edge-Investigation-of-exceptional-incidents-Update-4.aspx.

[10] See A/HRC/35/19, para. 20, including references.

[11] Ibid., para. 18, including references.

[12] See A/71/364, paras. 40 and 56−57.

[13] Ibid., paras. 56−57. See Israeli government decree of 26 October 2014 declaring the Gaza strip as "enemy territory" retroactively from 7 July 2014, thereby activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree".

[14] The case was brought to court by the Al Mezan Centre for Human Rights and Adalah on behalf of Ateyeh Nabaheen and his parents, from Gaza. On 16 November 2014, 15-year-old Ateyeh Nabaheen was shot and seriously wounded (leading to tetraplegia) by the Israeli Defense Forces as he was walking home on his family's land about 500 m from the Gaza fence.

[15] See *Adalah v. Government of Israel*, case HCJ 8276/05, decision of 12 December 2006 regarding amendment No. 7 of 2005, which excluded all residents of "conflict zones" as designated by the Minister of Defense.

17. In its report, the independent commission of inquiry also identified violations by the Palestinian Authority, Palestinian armed groups and the authorities in Gaza. The report of the Palestinian Independent National Committee established to follow up on the commission's recommendations addressed to the Palestinian Authority was issued in January 2017. While the Committee's report focuses on Israeli violations, it also elaborates on specific violations by Palestinian actors committed between 2014 and 2015. However, none of the findings specifically address the violations committed by Palestinian actors in Gaza during the 2014 escalation of hostilities, nor indicate what actions might be taken to establish accountability for such violations. To date, there is no information suggesting that any meaningful step has been taken by the Palestinian authorities to address violations by Palestinian actors during the 2014 escalation of hostilities.

B. Accountability for unlawful use of force

18. The independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, called upon Israel to "ensure full accountability for all violations … in a non-discriminatory manner, and to put an end to the policy of impunity".[16]

19. With respect to incidents that occur outside the context of active hostilities, and particularly in cases that pertain mainly to apparent excessive use of force by the Israeli Defense Forces, the Secretary-General and the High Commissioner have continuously expressed concerns as to the prevalence of a culture of impunity.[17] They also reported on the conviction for manslaughter of Sergeant Elor Azaria in the death of Abdelfattah al-Sharif, a Palestinian who, while already incapacitated after having allegedly stabbed an Israeli soldier, was shot in the head by another Israeli soldier. This conviction remains exceptional, and the 18-month prison sentence has been described as excessively lenient.[18] While the Military Appeals Court confirmed the conviction and the sentence of 18 months on 30 June 2017,[19] in September 2017 the Israeli Defense Forces Chief of Staff announced his decision to shorten the sentence by four months.[20]

20. Recent developments in two other cases further undermine confidence in the Israeli military justice system, as they seem to reinforce the culture of impunity. On 9 January 2018, the sentencing of Border Police officer Ben Deri was postponed, after more than three years of proceedings before the District Court of Jerusalem. On 15 May 2014, during a demonstration in Beitunia, officer Deri shot and killed 17-year-old Nadeem Nuwara, despite video evidence presented in court showing that he was not posing any threat.[21] The officer's criminal conduct was downgraded to negligent manslaughter based on his claim that he was not aware that his weapon contained live ammunition. Mr. Deri later admitted, in a plea bargain with Israeli prosecutors, that he had been guilty of negligence.[22] Within the scope of the plea bargain, the prosecution has argued for a sentence ranging between 20 and 40 months' imprisonment, while the defence has pleaded in favour of no additional restriction of liberty. The announcement of the sentence, initially expected in January 2018, was postponed until April 2018. The fact that the proceedings are likely to be concluded with a plea bargain, as well as the downgrading of the criminal conduct, raises concerns that the sentence will not be in line with the gravity of the crime.

21. On 12 January 2018, the media reported that an Israeli soldier who shot into a Palestinian car on 21 June 2016, killing 15-year-old Mahmoud Badran and injuring four

[16] See A/HRC/22/63, para. 114.

[17] See, for instance, A/71/364, para. 66; A/HRC/34/38, paras. 43−44; and A/HRC/35/19, paras. 17−18.

[18] See A/HRC/34/36, para. 78; A/HRC/34/38, para. 48; and A/HRC/35/19, para. 21.

[19] See A/72/565, para. 52.

[20] See A/HRC/37/38, para. 30.

[21] See a video of the event at www.theguardian.com/world/2014/may/20/video-indicates-killed-palestinian-youths-no-threat-israeli-forces.

[22] The family of Nadeem Nuwara had previously objected to the plea bargain but lost their appeal in the High Court.

others, including three other children,[23] will not stand trial and will only be dismissed from the army for failure in conduct during the incident.[24] Following an initial probe, the Israeli Defense Forces did acknowledge that the car had been "mistakenly" targeted by the soldier,[25] upon which they announced the opening of an investigation.[26] While information reported by the media regarding the fact that the soldier would not stand trial remains to be confirmed by the Israeli Defense Forces, the failure to prosecute a soldier who opened fire on a car full of individuals who did not represent a threat to life or of serious injury has raised serious concerns with regard to accountability for conduct that blatantly constitutes excessive use of force.

III. Impediments to the work of human rights defenders

22. Of particular concern is that the prevailing atmosphere of impunity and lack of accountability for alleged violations impedes the work of human rights defenders and journalists, who are increasingly being targeted by the authorities for their work. Human rights defenders are particularly targeted when they seek to ensure accountability for alleged violations of international human rights and humanitarian law. The Human Rights Council has denounced all acts of intimidation and threats against civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem.[27]

A. Intimidation and threats against civil society actors

23. Harassment of and violence against human rights defenders, as well as journalists, have been continuously reported.[28] The High Commissioner has warned against the chilling effect of these attacks on freedom of expression.[29]

24. Public statements by senior Israeli leaders and politicians maligning human rights organizations are reinforcing this effect, as illustrated by verbal attacks — which may amount to incitement to violence — faced by a number of Israeli non-governmental organizations. For instance, following a briefing at the Security Council in October 2016, the Director of B'Tselem was publicly condemned by senior officials, including the Prime Minister and the Permanent Representative of Israel to the United Nations. The chair of the ruling government coalition called for him to be stripped of his citizenship.[30] The High Commissioner has expressed concern that the rhetoric by public figures is contributing to an increasingly repressive environment in which human rights organizations and activists in Israel are seen as legitimate targets for threats and violence.[31]

25. The recent growing intimidation of non-governmental organizations that have been calling for the use of foreign jurisdictions and international justice mechanisms to ensure accountability for Israeli violations is of additional concern. OHCHR has regularly reported on these incidents; specific examples include the anonymous death threats received by a representative of the Palestinian non-governmental organization Al-Haq in Europe in

[23] See A/HRC/34/36, para. 9.

[24] See www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-against-rules-killing-palestinian-boy-1.5730351.

[25] See www.theguardian.com/world/2016/jun/21/israeli-troops-mistakenly-kill-palestinian-teenager-stone-throwers; and www.haaretz.com/opinion/premium-palestinian-boy-killed-by-mistake-1.5399928.

[26] See www.haaretz.com/israel-news/israeli-army-opens-investigation-into-death-of-palestinian-teen-1.5399284.

[27] See, for example, resolution 34/28.

[28] See A/HRC/31/40, paras. 52−53; and A/HRC/34/36, paras. 39−42.

[29] See A/HRC/31/40, para. 53.

[30] See A/HRC/34/36, para. 42; and A/HRC/34/38, para. 69. See also www.haaretz.com/israel-news/coalition-chairman-seeks-to-strip-citizenship-of-b-tselem-head-1.5452046.

[31] See A/HRC/34/36, para. 50.

February 2016.[32] Other Palestinian organizations, including Al Mezan, also report having been threatened.[33]

26. Increased political tensions linked to the Palestinian political divide have created an environment conducive to human rights abuses and violations by Palestinian authorities, in particular in relation to the rights of freedom of expression and peaceful assembly. Instances of targeting political opponents through harassment, threats, assaults, arbitrary arrests, ill-treatment and torture have also been reported.[34] OHCHR regularly receives reports of human rights violations perpetrated by the Palestinian security forces and the authorities in Gaza, particularly against individuals and groups critical of the respective Palestinian authorities.[35]

B. Arbitrary detention of human rights defenders

27. The arrest and detention of human rights defenders by both Israeli and Palestinian authorities is of concern. In his report to the current session of the Human Rights Council (A/HRC/37/42) the High Commissioner shows, on the basis of cases monitored by OHCHR, that all duty bearers in the Occupied Palestinian Territory resort to this practice. According to the Working Group on Arbitrary Detention, the deprivation of liberty resulting from the exercise of fundamental freedoms is to be considered as arbitrary.[36]

28. The freedoms of expression, association and peaceful assembly are guaranteed by international human rights law.[37] While restrictions on the exercise of these rights are permitted, such restrictions must be provided by law and respect the strict conditions of necessity and proportionality.[38] The arrest and detention of human rights defenders because of their work not only infringes upon their rights to freedom of expression, association and peaceful assembly, but also contributes to the creation of a repressive environment and may lead to self-censorship among the population of the Occupied Palestinian Territory and in Israel.

C. Legislative measures affecting civil society

Israeli legislation

29. Recent legislative measures are likely to result in increased pressure on human rights organizations in Israel. In June 2016, the Knesset adopted the so-called Transparency Law, which requires non-governmental organizations that receive more than 50 per cent of their funding from foreign public sources to declare this publicly. The law is expected to have a disproportionate impact on human rights organizations, as most of their funding comes from abroad.[39] The Secretary-General noted that the law contributes to a climate in which the activities of human rights organizations are increasingly delegitimized.[40] In June 2017, Prime Minister Netanyahu announced his intention to further strengthen the Transparency Law by limiting the amount of donations organizations may receive.[41]

[32] See www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened. See also A/HRC/34/26, para. 48; and A/HRC/34/38, para. 69.

[33] See www.mezan.org/en/post/21475/Al+Mezan+Condemns+Continued+Death+Threats+to+Staff+Members+and+Calls+on+the+International+Community+to+Intervene. See also A/HRC/34/70, paras. 39−53.

[34] See, for example, A/HRC/37/42, paras. 57−60.

[35] See A/HRC/31/40, paras. 66−67; A/HRC/34/36, paras. 51−53; and A/HRC/34/38, para. 70.

[36] See A/HRC/33/66.

[37] International Covenant on Civil and Political Rights, arts. 19 and 21−22.

[38] See A/HRC/37/42, para. 40.

[39] See www.haaretz.com/israel-news/.premium-ngo-law-would-apply-almost-solely-to-human-rights-organizations-1.5390248.

[40] See A/HRC/34/36, para. 49. See also www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU.

[41] See www.timesofisrael.com/netanyahu-confirms-knesset-push-to-limit-ngos-foreign-funding/.

30. The Civil Service Law, which was enacted in March 2017, also raises concern with respect to the operational space of civil society organizations. It will enter into force on 1 April 2018. While this law does not bar foreign-funded non-governmental organizations from accepting national service volunteers, it stipulates that receipt of a volunteer by such organizations has to be specifically approved by the Prime Minister or any other minister authorized by the Government.

31. A bill denying tax benefits to certain organizations considered to act against the State of Israel was, at the time of writing, being promoted in the Knesset.[42] The proposal seeks to deny tax credit to donors who give money to public institutions that "act against the State of Israel", defined as including institutions that issue publications in which the State of Israel is accused of committing war crimes or call for a boycott against Israel or its citizens. The proposal also seeks to narrow the definition of "public institution" and to establish that the tax benefit will only be granted to persons who donate to an organization that acts on behalf of the citizens of the State of Israel or the Jewish Diaspora.

32. In March 2017, the Knesset adopted an amendment to the Entry into Israel Law,[43] which prohibits the granting of a visa or licence to persons who are not citizens or permanent residents of Israel if they or the organization for which they work has knowingly issued a public call to impose a boycott on Israel, or has committed to participating in such a boycott.[44] The amendment is worded broadly, automatically prohibiting the issuance of visas in the circumstances stated. The Minister of the Interior is authorized to make exceptions, with reasons provided in writing. The definition of "boycott" is explicitly articulated in the 2011 Boycott Law and includes boycotts aimed at Israeli settlements located in the Occupied Palestinian Territory.[45] In early January 2018, media published the so-called boycott divestment and sanctions list, containing the full list of organizations whose members will be barred from entering the country, that was reportedly divulged by the Strategic Affairs Ministry.[46]

33. In November 2017, a bill to amend the 2011 Boycott Law[47] passed a preliminary reading and was under preparation for first reading at the time of writing the present report. Criminalizing the act of calling for a boycott, the law notably enables the filing of civil lawsuits against anyone who calls for boycott and empowers the court to award compensation, including punitive damages, even if no actual damage is proven. The amendment proposes to limit to NIS 100,000 the amount of compensation when no actual damage is caused, and to NIS 500,000 if the court establishes that the call for boycott is done intentionally, in a systematic and organized manner.

34. As highlighted by the High Commissioner and several United Nations special rapporteurs, such laws will have significant negative effects on civil society space in Israel, the Occupied Palestinian Territory and beyond.[48] The cumulative effect of this legislation extends beyond the legal barriers created, which seem to predominately affect human rights organizations. According to many human rights organizations, the public discourse which surrounded the drafting and adoption of this legislation has had a detrimental effect on their reputation among Israeli citizens. Possible legal penalties, as well as risks to the reputations of civil society organizations, and particularly human rights organizations, have a chilling effect on their ability to address sensitive issues.

[42] As at January 2018, the "Income Tax Ordinance (Institutions Acting for the Benefit of the State of Israel)" was being prepared for first reading.

[43] Amendment No. 5777-2017.

[44] See A/72/565, paras. 45–46.

[45] The Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011) defines boycott as deliberately avoiding all economic, cultural or academic ties with an individual or other body, based solely on affiliation with Israel or any of its institutions or area under its control, in a manner that would cause economic, cultural or academic harm.

[46] See www.haaretz.com/israel-news/1.833502.

[47] Amendment No. 5771-2011.

[48] See A/HRC/34/36, para. 49, See also www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU; www.un.org/apps/news/story.asp?NewsID=54319#.WCXEZS196M9; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E.

Palestinian legislation

35. During the past five years, Palestinian authorities — in both the West Bank and in Gaza — also took a number of legislative steps that narrow the operative space of non-governmental organizations.

36. Following decisions of the Government of the State of Palestine in July 2015 and April 2016, all non-profit companies are required to seek the authorization of the Ministry of National Economy to receive any funding. Further to these decisions, and without prior notification, the bank accounts of a number of non-profit companies were reportedly frozen at the instruction of the Palestinian Monetary Authority and funding was released only after these companies supplied a complete breakdown of their operations to the Government. Some had to wait for several months to get government approval, despite having provided the requested documents.

37. These requirements seem to considerably impede access to funding and the conduct of financial transactions by these non-profit organizations and potentially undermine their autonomy and scope of operation. The measures have also restricted the ability of organizations to deliver crucial social and, in some instances, humanitarian services, including in Gaza.

38. In April 2016, the Gaza offices of non-governmental organizations based in the West Bank were ordered to register with the authorities in Gaza, despite their pre-existing registration with the Palestinian Authority. Among other requirements of registration, the West Bank headquarters offices of those organizations were asked to seek the authorization of the authorities in Gaza to open a branch office there. Despite reservations related to the status of the authorities in Gaza, a number of organizations complied with the requirements out of fear that the Hamas authorities would close down their offices and halt their operations.

39. Within a general context of restrictions on freedom of expression in the West Bank, the so-called Palestinian cybercrime law was adopted by presidential decree on 24 June 2017.[49] The law criminalizes the publication of data (or the creation of websites to this effect) that violates "public morality" and "public order", endangers "community safety", or insults "holy sites, religions and beliefs" as well as "family values". Based on such overly broad terms, the law could potentially be used to undermine freedom of expression, and has in fact already been invoked to arrest and detain several journalists and human rights defenders.[50] Despite the commitments expressed by the Government to take into account the concerns raised by OHCHR and of civil society about this law, it remains unchanged and is being applied.

IV. Third-State responsibility

40. In its resolution 34/28 the Human Rights Council called upon all States to promote compliance with international law and all High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions.

41. Ensuring respect implies taking measures to prompt States to act in compliance with international humanitarian law.[51] The Security Council, the General Assembly and the

[49] See www.amnesty.org/download/Documents/MDE1569832017ENGLISH.pdf.

[50] See A/HRC/37/38, paras. 58−59; and A/HRC/37/42, paras. 42 and 50−51.

[51] See A/HRC/34/38, para. 12. See also the commentary of the International Committee of the Red Cross (ICRC) to article 1 common to the Geneva Conventions, 2016, para. 154, available at https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1; paragraph 4 of the declaration of 5 December 2001 of the Conference of High Contracting Parties to the Fourth Geneva Convention; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134, paras. 158−159 and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, para. 220.

majority of States parties to the Geneva Conventions have relied on this obligation when calling upon third States to call upon Israel to respect international humanitarian law.[52]

42. In resolution 34/28, the Human Rights Council also called upon all duty bearers to pursue the implementation of the recommendations of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. In its report, the fact-finding mission also referred to third-State responsibility concerning situations where a State was breaching peremptory norms of international law. States should not recognize as lawful a situation that violates international law, or render aid or assistance in maintaining that situation. Accordingly, third States should not recognize the unlawful situation resulting from Israeli settlements, or aid or assist Israel in this regard.[53] In addition, third States shall also cooperate to bring to an end, through lawful means, any serious breach arising under a peremptory norm of general international law.[54] Such cooperation is also implied by Article 1 (3) of the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, as expressly recalled by most of the international human rights treaties.[55]

43. Recognizing that "business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements",[56] the fact-finding mission also called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conducted activities in or related to the settlements respect human rights throughout their operations.[57]

44. As provided for in various international law instruments, third States should take measures when States are violating international law. This obligation should be emphasized with regard to the context of the Occupied Palestinian Territory. In his comprehensive review on the status of recommendations addressed to all parties since 2009 as pertains to the Occupied Palestinian Territory, the High Commissioner identified 141 recommendations pertaining to international engagement.[58] Of those recommendations, only slightly over 10 per cent have been fully implemented, while over half of them appear not to have been implemented at all.[59]

V. Conclusions and recommendations

45. **The High Commissioner has previously expressed "serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip".[60] As reflected in the update provided in the present report,**

[52] See, for example, Security Council resolutions 465 (1980) and 2334 (2016); paragraphs 9 and 10 of General Assembly resolution 70/89; and paragraph 4 of the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention.

[53] See A/HRC/22/63, para. 116. See also the ICRC 2016 commentary on article 1 common to the Geneva Conventions, para. 163; see further *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 157−159.

[54] International Law Commission, draft articles on the responsibility of States for internationally wrongful acts, arts. 40 (1) and 41 (1).

[55] See preamble to the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Elimination of All Forms of Racial Discrimination; and Convention on the Rights of Persons with Disabilities.

[56] See A/HRC/22/63, para. 96.

[57] Ibid., para. 117.

[58] See A/HRC/35/19/Add.1, paras. 28−36.

[59] Ibid., table 1 and paras. 63−81.

[60] See A/HRC/31/40/Add.1, para. 39.

these concerns remain valid today, particularly, during the period under review, in relation to lack of accountability for continued allegations of excessive use of force by Israeli forces, as well as allegations related to the 2014 escalation of hostilities in Gaza that remain unaddressed.

46. **Alongside allegations related to the use of force, the work of human rights defenders is increasingly being challenged. Civil society organizations, journalists and human rights defenders must be permitted space to do their work, including calling for accountability for alleged violations of international human rights law and international humanitarian law. Measures which seek to hinder this work — for example through arrest and detention or the passage of stigmatizing legislation — raise serious concerns about the exercise of the right to freedom of expression and risk shrinking civic space.**

47. **Further, the comprehensive review of recommendations aimed at ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem, revealed that throughout the reports analysed for the review, general patterns of human rights violations and non-implementation of recommendations were not just symptoms of the conflict but further fuelled the cycle of violence.**[61] **As emphasized by the Secretary-General, lack of accountability "compromises chances for sustainable peace and security. Tackling impunity must be the highest priority."**[62] **The High Commissioner once again echoes this call.**

48. **Recalling the follow-up measures described in the comprehensive review, which remain valid, the High Commissioner further:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory;**

(b) **Urges Israel to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all alleged international crimes, and calls on Israel to ensure that all victims have access to remedies and reparation;**

(c) **Urges the State of Palestine to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all allegations of international crimes, and calls on the State of Palestine to ensure that all victims have access to remedies and reparation;**

(d) **Recommends that all parties respect international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(e) **Reiterates the calls to all States and to relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including resolution 2334 (2016);**

(f) **Calls upon all States parties to the Geneva Conventions to take measures to ensure respect of the Conventions by all parties.**

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[61] See A/HRC/35/19, para. 81.

[62] See A/71/364, para. 6.

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, the eleventh submitted by the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, covers the period from 1 November 2017 to 31 October 2018. It provides an overview of the human rights situation in the Occupied Palestinian Territory, including ongoing lack of accountability for violations of international human rights law and international humanitarian law. The report contains recommendations for the Government of Israel, the Government of the State of Palestine and the authorities in the Gaza Strip.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. Submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1, the present report provides an overview of the human rights situation in the Occupied Palestinian Territory for the period from 1 November 2017 to 31 October 2018.

2. The information contained in the report is drawn mainly from human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. It also reflects information obtained from government sources, other United Nations entities, and non-governmental organizations (NGOs). The report should be read in conjunction with other relevant reports submitted by the Secretary-General to the General Assembly and by the United Nations High Commissioner for Human Rights to the Human Rights Council.[1]

3. During the reporting period, violence resulted in a high number of casualties in the Occupied Palestinian Territory. Widespread protests and demonstrations, often escalating into clashes between Palestinians and Israeli security forces, followed the statement of the President of the United States of America, on 6 December 2017, on Jerusalem. Those demonstrations, which continued until the end of February 2018 in the West Bank and the Gaza Strip, were met with an often excessive response by Israeli security forces, resulting in the death of 28 Palestinians[2] and over 7,000 injured.[3] A new round of demonstrations, referred to as the Great March of Return, began in Gaza on 30 March 2018 and continued throughout the reporting period. In that context, 169 Palestinian demonstrators were killed and over 24,000 injured by Israeli security forces.[4] Hostilities between Israel and armed groups in Gaza escalated on several occasions, causing 65 Palestinian fatalities. During the reporting period, 274 Palestinians, including 50 children, were killed by Israeli security forces in the West Bank and Gaza, and 11 Israelis (7 civilians and 4 members of Israeli security forces) were killed by Palestinians in the Occupied Palestinian Territory.[5]

4. The Israeli blockade and closures of Gaza entered their twelfth year, with further movement restrictions introduced. Severe punitive measures by authorities of the State of Palestine on Gaza compounded an ever-deteriorating humanitarian situation and worsening de-development. Amid the intra-Palestinian political divide, over 100 alleged Hamas affiliates were arrested and many of them administratively detained in the West Bank at the end of September. In Gaza, the authorities continued to arbitrarily arrest and detain Fatah affiliates.

5. Israel failed to uphold its full human rights and international humanitarian law obligations as the occupying Power. Settlement expansion continued at a fast pace and several communities remained at a risk of forcible transfer. Demolitions and evictions, movement restrictions and practices of collective punishment continued. Settler violence significantly increased, with the Israeli authorities frequently failing to sufficiently protect the Palestinian population or ensure accountability for the perpetrators of violence. Concerns remained over the detention practices of Israel, including the use of administrative detention. Freedom of expression, association and peaceful assembly came under increasing pressure, with Israel taking measures to limit a number of critical voices.

6. In the West Bank and Gaza there were serious concerns regarding arbitrary detention and ill-treatment, in some cases amounting to torture, by Palestinian authorities. There was a marked deterioration in protection of the freedom of expression and of assembly. This included the violent dispersal by Palestinian security forces of a peaceful demonstration in Ramallah on 13 June 2018.

[1] A/73/410, A/73/420, A/HRC/40/42 and A/HRC/40/43.

[2] OHCHR monitoring.

[3] See www.palestinercs.org/index.php?langid=1&page=post&pid=24351&catid=4&parentid=11186.

[4] Figures provided by the Ministry of Health of the State of Palestine.

[5] Information provided by the Office for the Coordination of Humanitarian Affairs (OCHA).

Legal framework

7. International human rights law and international humanitarian law are applicable in the entirety of the Occupied Palestinian Territory, namely, Gaza and the West Bank, including East Jerusalem. A detailed analysis of the relevant legal obligations is contained in a report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, [6] and remained applicable for the duration of the reporting period.

II. Violations of international human rights law and international humanitarian law in the Occupied Palestinian Territory by all duty bearers

A. Israel

1. Obligations of the occupying Power under international humanitarian law

8. Advancement of plans for settlement construction continued at a fast pace. Settlements amount to a violation by the occupying Power of the prohibition to transfer parts of its civilian population into territory it occupies. Such transfer is considered a war crime.[7] Settler violence against Palestinians rose considerably, with the number of incidents in 2018 being the highest since 2015.[8] These developments are described in the report of the High Commissioner submitted pursuant to Human Rights Council resolution 37/36.[9]

9. During the reporting period, Israeli authorities demolished 402 Palestinian structures in the West Bank, including East Jerusalem, including 149 residential structures and a school. Forty-three Palestinians were evicted from four Palestinian structures in East Jerusalem.[10] On 24 May 2018, the Israeli High Court of Justice issued a ruling in the case of the Bedouin community of Khan al-Ahmar/Abu al-Helu, allowing for the demolition of the community's structures. The Court upheld the demolition orders in September 2018 following further petitions. The destruction of private property is prohibited under international humanitarian law unless rendered absolutely necessary by military operations.[11] As at 31 October 2018, the demolition had not been carried out, but the community of 180 Palestinians, half of whom are children, remained at imminent risk of forcible transfer.[12]

10. Israeli practices that in many cases constitute collective punishment[13] continued. The blockade of Gaza entered its twelfth year, with a wide-ranging impact on the rights of Palestinians. Closures were tightened during the second quarter of 2018, reportedly in response to rocket attacks and the launching of incendiary kites and balloons from Gaza into Israel. In a tweet dated 13 October 2018, the Israeli Defense Minister stated that as long as the violent protests continued on the Gaza border, including the launching of incendiary balloons and kites and the burning of tires near Israeli towns, the supply of fuel and gas for Gaza would not be renewed.[14] From July onward, Israel regularly changed the

[6] A/HRC/34/38, paras. 3–12.

[7] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention), art. 49; Rome Statute of the International Criminal Court, art. 8 (2) (b) (vii).

[8] Information provided by OCHA.

[9] A/HRC/40/42.

[10] Information provided by OCHA.

[11] Fourth Convention, art. 53.

[12] Individual or mass forcible transfers are prohibited. See the Fourth Convention, arts. 49 (1) and 147, and the Rome Statute, art. 8 (2) (b) (viii).

[13] A/HRC/34/36, para. 36 and A/HRC/24/30, para. 22.

[14] AvigdorLiberman@twitter.com, available at https://twitter.com/AvigdorLiberman/status/1051129236805865472.

fishing limit in waters off Gaza, at times reducing it to as little as 3 nautical miles,[15] reportedly in response to the Great March of Return demonstrations.[16]

11. In the West Bank, Israeli security forces punitively demolished five Palestinian houses and sealed two rooms in two other houses, affecting 51 Palestinians. Closures were frequently reported in Palestinian towns and villages, particularly following incidents involving attacks or alleged attacks on Israelis. For example, Israeli security forces imposed a closure on Hizma village between 17 and 29 January 2018, and put up posters in the village implying that the measure was in the nature of collective punishment in response to residents of the village throwing stones at Israeli settlers' cars. The posters depicted the roadblock and a damaged Israeli bus, with text to the effect of: When you inflict damage like that, we respond like this.

12. As at 31 October 2018, Israeli authorities continued to withhold the bodies of 31 Palestinians killed by Israeli security forces, including 4 children.[17] On 14 December 2017, the Israeli High Court of Justice ruled there was no legal basis for Israel to withhold the bodies of Palestinian attackers, and ordered the State to release them within six months unless legislation allowing the practice was enacted. On 18 December 2017, the Israeli Cabinet decided that the bodies would not be returned. The High Court held an additional hearing on 17 July 2018 on the matter, but a decision remained pending as at the end of the reporting period. Withholding from their families the bodies of individuals killed in attacks or alleged attacks amounts to a form of collective punishment. Collective punishment is prohibited by international humanitarian law and also violates several human rights.[18]

13. The adoption of the nation-State law, in July 2018, which anchors inherent discrimination against non-Jewish communities in Israel, raised further concern regarding compliance with the law of occupation, insofar as it applies to East Jerusalem and, possibly, to settlements in the rest of the West Bank.[19]

2. Civilian casualties in the context of hostilities

14. In 2018, hostilities between Palestinian armed groups and Israel reached the highest level since the 2014 conflict, with concern about the lack of respect for the principle of distinction by all parties. Some 308 rockets and 577 mortar shells[20] were fired from Gaza towards Israel, injuring 31 Israelis.[21] The rockets and mortars fired from Gaza are indiscriminate in nature and therefore in violation of international humanitarian law. Meanwhile, Israeli security forces launched dozens of attacks on Gaza, firing 725 missiles and 207 shells at armed groups' tunnels, military training sites and observation posts and, in several incidents, at buildings in residential areas. This resulted in the deaths of 65 Palestinians, including 3 children and 1 pregnant woman.

15. On 14 July 2018, Israeli security forces conducted air strikes targeting an empty building under construction belonging to the Palestinian Ministry of Culture, in a populated area of Gaza City. Two boys (aged 14 years) were killed and 23 Palestinians were injured. Significant damage was caused to nearby buildings, including the premises of an NGO providing services for children with cerebral palsy. The Israel Defense Forces asserted that the building was being used as a military training site. On 9 August 2018, Israeli security

[15] The fishing zone was reduced four times: on 12 December 2017, 9 and 17 July 2018 and 7 October 2018. On 31 October 2018, Israeli authorities reportedly decided to extend the southern sea border of Gaza from 6 to 9 nautical miles and kept the northern sea border at 6 nautical miles.

[16] "Liberman orders narrowing of Gaza fishing zone, citing border violence", *Times of Israel*, 6 October 2018. Available at www.timesofisrael.com/liberman-orders-narrowing-of-gaza-fishing-zone-citing-border-violence/.

[17] Jerusalem Legal Aid and Human Rights Center, communication sent to OHCHR.

[18] Fourth Convention, art. 33, International Covenant on Civil and Political Rights, arts.12, 14 and 17, and A/HRC/37/38, para. 12.

[19] See also A/HRC/40/42, para. 13.

[20] Information provided by the United Nations Department of Safety and Security.

[21] Information provided by OCHA.

forces struck a mosque in Dayr al-Balah, and hit a nearby house, killing a pregnant woman and her 18-month-old daughter.

16. On 28 October 2018, three children, aged 13, 14 and 15 years, were killed by a missile fired from a drone near the fence south-east of Dayr al-Balah. According to information received, Israeli security forces prevented paramedics from approaching the site for approximately two hours. The Israel Defense Forces stated that the soldiers were not aware the victims were children and said they "were observed sabotaging the fence and digging in the ground next to it".[22] According to information received by OHCHR, no ammunition or weapons were found near the bodies.

17. According to Israeli security forces, some of the Palestinians killed close to the Gaza-Israel fence were attempting to plant improvised explosive devices aimed at harming Israeli security forces, while others were attempting to breach the fence to enter Israel. On 17 February 2018, four Israeli soldiers were reportedly injured when an improvised explosive device exploded close to the fence.[23]

3. Recurring human rights violations

Violations of the right to life and security of person

18. There were serious concerns of excessive use of force and possible unlawful killings by Israeli security forces during the reporting period, with 274 Palestinian fatalities,[24] including 2 women, 48 boys and 2 girls, with a vast majority in Gaza. This marks a significant increase from the previous reporting period, during which Israeli security forces killed 55 Palestinians, including 14 children. Among the victims, 192, including 37 children, were killed in the context of demonstrations, 4 in search and arrest operations carried out by Israeli security forces and 12 in the context of attacks and alleged attacks against Israelis; 3 Palestinians died in Israeli custody.

19. Following the announcement by the President of the United States on Jerusalem, demonstrations broke out across the Occupied Palestinian Territory, which in many instances developed into clashes between demonstrators and Israeli security forces. Between 6 December 2017 and 28 February 2018, 28 Palestinians – 22 men and 6 boys – were killed by Israeli security forces in such contexts,[25] many in circumstances that did not seem to pose an imminent threat of death or serious injury that would have justified the use of lethal force. While the response of Israeli security forces initially seemed restrained in the West Bank, the forces increasingly used live ammunition against demonstrators starting in January 2018, with 175 injuries from such ammunition recorded since then. In Gaza, the use of live ammunition against demonstrators was observed from 6 December 2017, resulting in over 400 injuries by the end of February 2018.

20. Furthermore, on several occasions, Israeli security forces used force in law enforcement in a manner that led to unnecessary injury and death, including by targeting the head or upper part of the body with live ammunition or rubber bullets. In at least 10 incidents that occurred between December 2017 and February 2018 in the West Bank, 10 victims, including 6 children, were hit in the head with live ammunition or rubber coated metal bullets. Four of the victims, including three children, were consequently killed. In Gaza, during the same period, eight Palestinians, including a 15-year-old boy, were killed when shot with live ammunition in the head or upper part of the body.

[22] Judah Ari Gross and agencies, "Army says it didn't know Palestinians targeted on border were minors", *Times of Israel*, 31 October 2018. Available at www.timesofisrael.com/army-says-it-didnt-know-palestinians-targeted-on-border-were-minors/.

[23] Matan Tzuri and others, "4 soldiers wounded near Gaza border as explosive device is set off", *Ynetnews.com*, 17 February 2018. Available at www.ynetnews.com/articles/0,7340,L-5118147,00.html.

[24] Including one Palestinian killed by a private security guard.

[25] A total of 16 Palestinians, including 3 children, were killed in Gaza, and 12 Palestinians, including 3 children, were killed in the West Bank. Another Palestinian was killed in the West Bank by a private security guard.

21. During clashes in Nabi Salih in the West Bank on 15 December 2017, Israeli security forces shot and seriously wounded a 15-year-old boy in the face at close range with a rubber-coated bullet. The child was reportedly throwing stones at members of the Israeli security forces from the top of an abandoned building. On 11 January 2018 in Iraq Burin, in Nablus, Israeli security forces shot a 17-year-old in the head with live ammunition, killing him. The victim had reportedly thrown stones at a passing Israeli security forces' patrol and was running away when a soldier opened fire from a distance of approximately 40 m. In both cases, the victims did not appear to pose an imminent threat of death or serious injury when they were killed, raising concerns of excessive use of force.

22. On 15 December 2017, during demonstrations near the fence east of Gaza City, Israeli security forces killed a wheelchair user with a bullet to the head. The man was shot approximately 20 m from the fence in circumstances that did not appear to constitute an imminent threat of death or serious injury that would have justified the use of lethal force.[26]

23. Large-scale demonstrations started on 30 March 2018[27] along the perimeter fence between Israel and Gaza, under the banner of the Great March of Return, calling for the right of return for Palestinian refugees and protesting the Israeli blockade on Gaza. In the context of those demonstrations, 169 Palestinians (including 1 woman, 30 boys and 1 girl) and 1 Israeli soldier were killed. Three Israeli soldiers and over 24,000 Palestinians were injured, including over 5,800 with live ammunition.[28] The World Health Organization (WHO) estimated that as many as 1,200 of those injured would require long-term limb reconstruction and extensive rehabilitation,[29] which might not be available in Gaza.

24. On 30 March 2018, a 19-year-old man was shot dead approximately 400 m from the fence, near Jabaliya. Evidence, including video footage, shows that he was shot while he was carrying a tire and running away from Israeli security forces in circumstances that did not appear to constitute an imminent threat of death or serious injury. On 27 July 2018, Israeli security forces shot an 11-year-old boy in the head, killing him, east of Rafah. Witnesses reported that the boy was watching demonstrators waving flags, burning tires and throwing stones, approximately 30 m from the barbwire, when Israeli security forces opened fire indiscriminately towards the demonstrators.

25. Israeli security forces killed or injured several medical personnel while that personnel were carrying out their duties, mostly during demonstrations or clashes with demonstrators. According to WHO, Israeli security forces injured 17 health workers in the West Bank while 3 health workers were killed and 496 injured in Gaza. For example, on 1 June 2018, a female paramedic volunteering with the Palestinian Medical Relief Society was killed after being shot with live ammunition in the chest, approximately 25 m from the fence, east of Khan Yunis. Witnesses reported that she was killed while trying to rescue injured demonstrators at the fence.

26. In Gaza and the West Bank, journalists were injured and some were killed by Israeli security forces during demonstrations. In the West Bank, 52 instances of physical attacks against and injuries inflicted on journalists were documented during the demonstrations in December 2017 alone.[30] During the Great March of Return demonstrations in Gaza, 2 journalists were killed and 113 journalists were injured by Israeli security forces, including 70 with live ammunition.[31]

27. Throughout the reporting period, Israeli security forces enforced restricted areas at sea off the coast of Gaza by firing live ammunition and confiscating and damaging fishing boats and equipment. A total of 329 shooting incidents were recorded: 1 fisherman was killed and 21 others (including 1 child) were injured with live ammunition. A total of 70

[26] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22550&LangID=E.

[27] The demonstrations were ongoing at the end of the reporting period.

[28] Information provided by OCHA and Palestinian Ministry of Health.

[29] See www.emro.who.int/images/stories/palestine/documents/WHO_Health_Cluster_SitRep_23_Sep_-6_Oct_2018.pdf?ua=1.

[30] See www.madacenter.org/report.php?lang=1&id=1768&category_id=13&year=2018.

[31] Communication to OHCHR from Al Mezan Center for Human Rights, 13 December 2018.

fishermen (including 5 children) were detained, while 21 fishing boats were confiscated and 8 damaged.

28. There were also concerns of excessive use of force and interference with medical care during raids and arrest operations in Palestinian towns and villages in the West Bank. On 22 February 2018, shortly after midnight, Israeli security forces raided the centre of Jericho during an arrest operation and clashed with local residents. Israeli security forces shot a Palestinian in the stomach with live ammunition as the man was charging towards the soldiers with a metal bar. As recorded by surveillance cameras, the soldiers kicked and beat the injured man with the butts of their guns as he lay bleeding. Left without medical assistance, he eventually died. Initially, the security forces informed his family he had died from tear-gas inhalation, but the Palestinian forensic doctor who attended the autopsy concluded he had died of haemorrhage.

29. On 3 February 2018, during a night-time search and arrest raid in Birqin, Israeli security forces entered, by force and without prior warning, a house in the village, and according to the 40-year-old owner of the house, released an unmuzzled dog, terrifying his wife and young children. The dog bit the owner in the arm and thigh for at least 10 minutes, with no effort by the soldiers to restrain the dog. A soldier punched the man in the nose, fracturing it. The man was arrested and released eight days later without charges. He had to undergo reconstructive skin surgery and now suffers from severe health complications, including gangrene.

Detention, torture and ill-treatment, and violations of the right to a fair trial

30. Following the announcement by the President of the United States on Jerusalem and the demonstrations and clashes that followed, a spike in arrests of Palestinians was observed in the West Bank. Israeli security forces arrested 926 Palestinians in December 2017, and an average of 750 per month in January and February 2018. The number of arrests before and after this during the reporting period averaged around 450 per month.[32] As at 31 October 2018, 5,426 Palestinians were being held in Israeli detention, including 43 women, 218 boys and 2 girls; 41 of the children were under the age of 16. This included 481 Palestinians, [33] including 4 children, held under administrative detention without charge or trial. In Gaza, 175 Palestinians, including 28 children, were arrested by Israeli security forces during the reporting period. As previously noted, this included 70 fishermen arrested at sea.[34] Many of the cases raise concerns of arbitrary arrests.[35]

31. Certain cases have raised concerns of violations of due process and fair trial rights of such gravity as to give an arbitrary character to the deprivation of liberty, such as in the case of the Head of the Gaza World Vision office, Mohammad el Halabi, arrested in June 2016 and detained since then.[36] His lawyer was only allowed access to all previously undisclosed evidence one and a half years after the start of the trial and was only permitted to start examining defence witnesses 24 months into the trial, after the prosecution had heard witnesses for over a year and cross-examined the accused for six months. There were concerns that the prosecution might have unduly prolonged the proceedings, in contravention of the basic fair trial requirements outlined in article 9 (3) of the International Covenant on Civil and Political Rights. In view of such shortcomings, it is of concern that Mr. El Halabi has now been detained for more than two and a half years without receiving a verdict in his case.

32. The use by Israel of administrative detention, including for children, continued. An illustrative example was the continued administrative detention of Palestinian parliamentarian Khalida Jarrar, who was arrested by Israeli security forces on 2 July 2017.[37] Ms. Jarrar's current detention order, based on secret evidence, was set to end in February

[32] Information provided by the Palestinian Prisoners' Commission and human rights organizations.
[33] See www.btselem.org/statistics/detainees_and_prisoners.
[34] Information provided by Al Mezan Center for Human Rights.
[35] A/HRC/37/42, paras. 10–14.
[36] Ibid., paras. 27–32.
[37] A/HRC/37/42, para. 55.

2019. In February 2018, Palestinian administrative detainees started a boycott of Israeli courts to protest their detention and the involvement of Israeli courts in exacerbating this policy. The boycott was provisionally suspended in September 2018, following negotiations with the Israeli intelligence service to place limits on the length of administrative detention orders and their renewal. Administrative detention without charge or trial based on undisclosed evidence for indefinite periods, without an opportunity to meaningfully challenge the detention, raises serious concerns of arbitrary detention. Echoing concerns raised by the Human Rights Committee and the Committee against Torture, the Secretary-General and the United Nations High Commissioner for Human Rights have repeatedly called upon Israel to end the practice of administrative detention and to ensure that all administrative detainees are promptly charged or released.[38]

33. The treatment by Israel of children during arrest and detention remained of particular concern.[39] According to accounts collected by the NGO Military Court Watch, of 80 children detained by Israeli security forces in 2017, 65 per cent were arrested in night raids, 94 per cent were hand-tied upon arrest, 78 per cent were blindfolded or hooded following arrest, 65 per cent were subjected to physical abuse, 66 per cent were strip-searched and 81 per cent were denied access to a lawyer prior to questioning.[40]

34. On 19 December 2017, 16-year-old Ahed Tamimi was arrested by Israeli security forces in Nabi Saleh, in the West Bank, following an incident on 15 December 2017 during which she was filmed slapping and kicking two Israeli soldiers in the front yard of her family's house. The girl was arrested in the middle of the night and interrogated without the presence of her parents or lawyer. According to her lawyer, she was subjected to ill-treatment and threats during interrogation, and requests by the lawyer to release her on bail before and during the proceedings were refused. Following closed hearings, she accepted a plea bargain and was sentenced to eight months of imprisonment. She was released on 29 July 2018 after completing her sentence. Children should be detained only as a measure of last resort, for the shortest appropriate period of time, and with their best interests as the primary consideration.[41]

35. Ill-treatment of Palestinian detainees, both adults and children, in Israeli detention continued to be of concern. During the reporting period, Israeli civil society received allegations of ill-treatment from 194 Palestinians, including 17 women, 10 children and 1 person with Down's syndrome.[42] According to one NGO, the Public Committee Against Torture in Israel, out of 120 complaints of alleged ill-treatment and torture it submitted to the Israel Security Agency over five years, 85 per cent of the cases involved sleep deprivation, 58 per cent included threats to hurt or arrest family members, 36 per cent involved stress positions, 27 per cent implied harsh physical violence, 12 per cent involved sexual humiliation and assault, and 8.3 per cent involved refusal of access to toilets, especially during interrogation.[43]

36. During a night raid in Silwan on 2 July 2018, Israeli security forces arrested a 15-year-old boy along with his adult brother. The child was blindfolded, handcuffed and kicked several times during transport. During the interrogation, he was shackled to a chair and blindfolded by the interrogator, pushed to the floor and kicked in different parts of his body. Both the child and his brother were released the same day without charges.

37. There were reports of medical negligence and inadequate medical care for Palestinian detainees,[44] as in the case of an 18-year-old from Dayr Nizam, arrested by

[38] A/HRC/37/42, para. 18.

[39] See also A/HRC/34/38 and A/HRC/37/42.

[40] See www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20FEB%202018.pdf.

[41] In accordance with articles 3 (1) and 37 (b) of the Convention on the Rights of the Child. See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22590&LangID=E.

[42] Information provided by the Public Committee Against Torture in Israel.

[43] See http://stoptorture.org.il/wp-content/uploads/2018/07/SitRep2018.pdf.

[44] As at mid-2018, a total of 61 Palestinians had died in Israeli custody since 1967 due to medical negligence. See www.addameer.org/publications/joint-report-occupation-forces-arrested-3500-palestinians-during-first-half-2018.

Israeli security forces on 7 April 2018. Although his family informed Israeli security forces that he suffered from a chronic liver and kidney condition and also informed them of his dietary and medication needs, those needs were not provided for while he was in custody. On 14 May, he stopped receiving medication altogether, which led to serious complications and his transfer to hospital, where he was in a coma for three days. He was released from custody on 28 May 2018, suffering from a loss of eyesight, possibly permanent.

38. Some Palestinians reported being arrested to pressure family members to turn themselves in. For instance, on 6 August 2018, in Abu Dis, Israeli security forces arrested a 63-year-old man with a heart condition and reduced mobility, and detained him for several hours to pressure his wanted 23-year-old son. He was released after the son turned himself in following threats by Israeli security forces to keep his father in detention. The NGO B'Tselem reported two similar cases in Abu Dis and Ayzariyah in September 2018.[45]

Lack of access to justice and accountability

39. Lack of access to justice and accountability for Palestinian victims of violations committed by Israeli security forces persists. With the large number of killings at the Gaza fence during the reporting period, it is of particular concern that the internal fact-finding mechanism reportedly used by Israel to examine such incidents might not operate in line with international standards.[46] Several proceedings relating to older cases of apparent excessive use of force by Israeli security forces were closed with no resulting accountability during the reporting period. For a detailed analysis of accountability-related issues, see A/HRC/40/43.

Restrictions on the rights to freedom of expression, association and peaceful assembly

40. Media, civil society and human rights defenders working on the promotion and protection of Palestinian rights continued to operate under increasing pressure from Israeli authorities.[47] Reprisals against, and attempts to delegitimize and discredit, NGOs and other civil society actors continued. For example, B'Tselem was verbally attacked publicly by high-ranking politicians, including the Prime Minister of Israel.[48] Several civil society organizations in East Jerusalem were closed or had their closure orders extended on the basis of alleged ties to authorities of the State of Palestine[49] while legislative developments affected the funding, access and activities of others. Human rights defenders, journalists and media agencies were targeted and subject to harassment by the Israeli authorities and security forces. For example, on 7 May 2018, the Israeli authorities revoked the work visa of the director of Human Rights Watch in Israel and the Occupied Palestinian Territory, invoking alleged past involvement in boycott, divestment and sanctions activism. A challenge to this decision was pending in Israeli courts at the time of writing.

41. Journalists came under attack while covering demonstrations and clashes between demonstrators and Israeli security forces. In the West Bank, journalists were targeted with rubber coated bullets, crowd control measures and physical assault, especially during the demonstrations of December 2017.[50] On 20 December 2017, Israeli security forces arrested a journalist covering a peaceful protest in East Jerusalem. He was released the same day on the condition that he would be banned from certain areas of East Jerusalem for 10 days, thus restricting his ability to work. During the same protest, an Israeli security forces officer used pepper spray on another journalist filming the protest. According to the Palestinian Center for Development and Media Freedoms (MADA), 24 Palestinian journalists were arrested by Israeli security forces during the reporting period, 11 of whom remained in

[45] See www.btselem.org/routine_founded_on_violence/20181111_palestinians_arrested_to_pressure_relatives.

[46] A/73/420, paras. 60–61.

[47] For further information on measures targeting human rights defenders, see A/HRC/40/43.

[48] See www.timesofisrael.com/netanyahu-denounces-btselem-chiefs-un-speech-as-full-of-lies/.

[49] Mordechai Sones, "Israel extends ban on PA operations in Jerusalem", *Israel National News*, 1 February 2018. Available at www.israelnationalnews.com/News/News.aspx/241457.

[50] See para. 26 above.

custody as at the end of the reporting period, including 4 held under administrative detention.

42. In Gaza, two journalists were killed by Israeli security forces during the reporting period, including 25-year-old Ahmad Abu Hussein, who was shot in the abdomen with live ammunition on 13 April 2018, approximately 300 m from the fence, in Jabaliya. He died from his injuries on 25 April 2018. Evidence, including video footage, shows that when he was shot, he was photographing the demonstrations, wearing a vest marked "PRESS".

43. In April 2018, Israeli authorities closed the Elia Association for Youth Media, an East Jerusalem-based association that trains youth on working in the media sector. The Minister of Defense of Israel ordered the closure, claiming that the organization had a hidden agenda with activities supporting acts of terrorism.[51] Earlier in 2018, Israeli security forces had prevented the association from holding a press conference in East Jerusalem and arrested two men attending the conference, as well as the director of the association.

44. In July 2018, Israeli security forces arrested the director of Al-Quds TV and two journalists working for the channel after it was banned by the Israeli authorities. The journalists were interrogated about their work, subjected to threats and accused of incitement of violence. They were all released on bail within a few weeks, while the director of the channel was banned for two months from leaving Ramallah and contacting media agencies.

Restrictions on freedom of movement and on the enjoyment of economic and social rights

Gaza

45. Adding to the 11-year Israeli blockade and closures of Gaza, movement restrictions were tightened during the reporting period, with devastating impact on the exercise of the rights to health, education, family life and an adequate standard of living.[52] Statements by Israeli authorities suggested these additional restrictions were imposed in response to rocket attacks and the launching of incendiary kites and balloons from Gaza towards Israel, raising further concerns of collective punishment.[53]

46. Patients who need – often urgently – medical treatment continued to face difficulties in obtaining permits to exit Gaza.[54] Out of the 25,260 requests, submitted mainly by the Palestinian Authority Civil Affairs Office on behalf of patients, 1,741 (6.9 per cent) were denied and 8,544 (33.8 per cent) were delayed up to several months. Palestinians injured during the Great March of Return demonstrations were most affected, with only 22 per cent (74 of 335) of exit applications approved,[55] compared to the average monthly approval rate of about 58 per cent for other patients.[56] Some patients died after their permit was denied by Israel, or as they were waiting for its approval.[57]

47. For example, Israeli authorities delayed issuing an exit permit to a cancer patient from Gaza for a medical appointment because he did not provide information about members of armed groups in Gaza.[58] Following a significant deterioration in his condition, he was eventually allowed to pass through the Erez crossing point but died in hospital 10 days later. A 14-year-old boy who was shot in the chest with live ammunition on 30 May 2018 died on 18 June 2018 after being repeatedly denied an exit permit.

[51] AvigdorLiberman@twitter.com, 16 April 2018, available at https://twitter.com/AvigdorLiberman/status/985845422739607558 (in Hebrew).
[52] A/73/420, para. 25.
[53] See also para. 10 above.
[54] See also A/HRC/37/38, para. 45 and A/73/420, para. 19.
[55] See www.ochaopt.org/content/more-casualties-sustained-during-great-march-return-gaza.
[56] See www.ochaopt.org/content/gaza-strip-early-warning-indicators-september-2018.
[57] A/73/420, paras. 20–21.
[58] Ibid., para. 18.

48. Between 9 July and 14 August 2018, and between 17 and 21 October 2018, Israeli authorities banned altogether the exit of the few types and quantities of goods allowed out from Gaza, resulting in the lowest monthly export levels since 2015.[59] Entry of all goods except for food, medical supplies and animal fodder was halted. Between 9 July and 14 August 2018, fuel and cooking gas entered irregularly, and were banned again from 12 to 21 October 2018, including United Nations-funded fuel for critical water, sanitation and health facilities.

49. The unemployment rate in Gaza increased to 53.7 per cent in the second quarter of 2018, exceeding 70 per cent among young people and reaching 78 per cent among women.[60] Per capita gross domestic product decreased to an estimated $410 in the second quarter of 2018, down from $450 in the second quarter of 2017.[61] The situation was compounded by a steady decline in transfer of funds by authorities of the State of Palestine, a decrease in international aid support, and funding cuts to programmes of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

West Bank

50. In the West Bank, Israeli restrictions on the freedom of movement of Palestinians continued, severely affecting a range of rights. A survey conducted by the Office for the Coordination of Humanitarian Affairs in July 2018 recorded 705 permanent road obstacles to Palestinian vehicular and, in some cases, pedestrian movement, including checkpoints and roadblocks. OCHA further documented 93 instances of closures of village entrances between January 2017 and July 2018, which affected 30 communities.[62] While such restrictions can be justified for legitimate security needs, any limitation to the right to freedom of movement has to be necessary and proportional to the end sought and should not amount to collective punishment.

51. Restrictions particularly affected the exercise of the right to health. During the reporting period, 15 per cent of permit applications for Palestinian patients seeking health care in East Jerusalem hospitals or in Israel were rejected. The Palestine Red Crescent Society reported that 84 per cent of its ambulances had been forced to transfer patients to an ambulance with Israeli licence plates at a checkpoint, rather than allowed direct access to transport patients from other parts of the West Bank to East Jerusalem hospitals, causing delays and risking health complications. The Palestine Red Crescent Society reported 30 instances where ambulances were prevented access and 60 assaults by Israeli security forces or Israeli settlers on its ambulances during the reporting period.[63]

B. Palestinian authorities

Violations of the right to life and security of person

52. Palestinian security forces in the West Bank and Gaza violently dispersed peaceful demonstrators calling for the lifting of measures imposed by authorities of the State of Palestine on Gaza.

53. The authorities in Gaza did not carry out any executions during the reporting period, in comparison to six executions during the previous period. On 29 October 2018, a Gaza appeals court commuted a death sentence to life imprisonment in the case of a woman convicted of murder. Nonetheless, Gaza civilian and military courts handed down eight death sentences (to seven men and one woman). Serious concerns with regard to due process and fair trial guarantees were present in these cases, including the sentencing of

[59] See www.ochaopt.org/content/gaza-crossings-operations-status-monthly-update-september-2018 and www.ochaopt.org/sites/default/files/gaza_crossings_operations_status_october_2018.pdf.

[60] World Bank, “Economic monitoring report to the Ad Hoc Liaison Committee” (2018), p. 9.

[61] See www.ochaopt.org/content/gaza-strip-early-warning-indicators-september-2018.

[62] See www.ochaopt.org/content/over-700-road-obstacles-control-palestinian-movement-within-west-bank.

[63] See also A/HRC/40/42, para. 43.

civilians by military courts. On 6 June 2018, the President of the State of Palestine signed an instrument of accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. While this is an important step towards the abolition of the death penalty in the State of Palestine, further steps are required for accession to be given full effect.

Detention, torture and ill-treatment and violations of the right to a fair trial

54. There were concerns of arbitrary detention by Palestinian authorities in the West Bank and Gaza. Journalists, activists and political opponents were arrested by authorities in both areas for exercising their fundamental freedoms. In September 2018, a wave of political arrests took place throughout the Occupied Palestinian Territory, with the arrest or summons for interrogation of 50 Fatah affiliates in Gaza, followed by the arrests of over 100 Hamas affiliates in the West Bank, in a coordinated overnight arrest operation.

55. Other Palestinians reported being arrested without legal basis, with some spending weeks and, in some cases, months without being formally charged or having their case reviewed by a competent court. Some stated they had been denied procedural guarantees, including the rights to access legal counsel and to contact family. In other reported cases the presumed or actual sexual orientation of the individual could have been a reason for arbitrary arrest. While homosexuality is not criminalized in the West Bank, lesbian, gay, bisexual, transgender and intersex individuals reported being subjected to arrests and accused of crimes related to collaboration, morality, public indecency or drugs, while being questioned about their sexuality or asked to reveal names of lesbian, gay, bisexual, transgender and intersex individuals before being released without charges. In at least one case, a lawyer claimed having been harassed by the security forces for taking up such a case.

56. Many of those arrested in the West Bank were held in administrative detention based on orders by governors.[64] Between 1 November 2017 and 30 September 2018, the Independent Commission for Human Rights recorded 173 cases of administrative detention based on such orders, a sharp increase above the 99 cases recorded between 1 November 2016 and 31 October 2017. In some cases, individuals were detained for months without any apparent intention by the authorities to charge them and without a judicial review. In other cases, pretrial detainees released by the court for lack of evidence were immediately rearrested on a governor's orders. This form of administrative detention appeared to be used as an alternative to criminal proceedings, when evidence was lacking, which would constitute arbitrary deprivation of liberty.[65]

57. In Gaza, arbitrary arrests and detention also remained a concern,[66] as illustrated by an incident in January 2018, when eight children were among those detained by the internal security agency, which is tasked with maintaining security in Gaza, including in relation to alleged collaborators with Israel and dissident political groups. Several of those arrested were reportedly affiliated with Fatah, Salafist groups or other Islamic factions, raising concerns that some of them were detained solely on the basis of their political affiliation. Many of the detainees held under the custody of internal security agency spent significant time, in some cases two or three months, without access to legal aid or family.

58. In both Gaza and the West Bank, detainees continued to report ill-treatment, and in some cases torture, during interrogation, raising strong concerns of extraction of confession under duress. In the West Bank, there was a growing concern over treatment in some detention facilities, particularly over credible allegations of ill-treatment.[67] Forty-nine detainees interviewed by OHCHR reported having been subjected to some form of ill-treatment; several of the incidents described were of such gravity that they may amount to

[64] See also A/HRC/37/42, paras. 24–26.

[65] See also A/HRC/34/38, para. 54, A/HRC/34/36, paras. 55–58 and 70–74, A/HRC/31/44, para. 78, and A/HRC/31/40, paras. 56–58 and 69–70.

[66] See also A/HRC/37/42, paras. 59–60.

[67] OHCHR also observed conditions of detention that were very poor, unhygienic and inhumane, including overcrowded cells without proper ventilation and lighting, as well as detainees held in solitary confinement for prolonged periods.

torture. Detainees described the use of shackling; the holding of detainees in stress positions for prolonged periods of time to extract confessions; beatings and other forms of physical violence; prolonged use of solitary confinement; insults; threats; humiliating questioning or threats related to sexuality; sleep deprivation; and insufficient health care for severe mental health problems. Most reports concerned the interrogation period and were documented in particular at the facilities used by the joint operations committee in Jericho.[68] For example, several detainees reported a practice of assault and severe beating upon arrival at the facilities used by the joint operations committee, and several reported having been repeatedly forced to stand handcuffed and blindfolded, with their legs apart, for up to 10 hours at a time.

59. In Gaza, practices of the civil police and internal security agency involving ill-treatment and torture of detainees continued to be reported. In May 2018, two brothers arrested by the internal security agency over accusations of collaboration with authorities of the State of Palestine were subjected to ill-treatment, including beatings and *shabah*, which involves being forced to sit with one's hands tied to the back of a chair. One of them was released in September 2018 while the other remained in detention as at the end of the reporting period, awaiting his sentence by the military court.

Restrictions on the rights to freedom of expression, association and peaceful assembly

60. Restrictions on the rights to freedom of expression, association and peaceful assembly were imposed by authorities of the State of Palestine in the West Bank. Several journalists were arrested on the basis of provisions of the law of 2017 on cybercrime.[69] For instance, on 3 April 2018, Palestinian journalist Rami Samara was arrested and charged with defamation and slander, on the basis of the law. The charges were based on social media posts criticizing the head of the Media Center at An-Najah National University for the dismissal of 17 journalists who had refused to express support for the Prime Minister on their social media accounts. Although the law was amended and significantly improved in May 2018,[70] following strong criticism and concerns raised by civil society organizations and the international community, the proceedings against Mr. Samara and other journalists, which started before the amendment of the law, continued. The amended law still contains loosely defined provisions, which pose a risk of undue interference with the exercise of freedom of expression.

61. Amid a deep division between Fatah and Hamas, protests against punitive measures imposed by authorities of the State of Palestine on Gaza broke out in the West Bank. On 13 June 2018, the adviser to the Palestinian President on provincial affairs temporarily banned demonstrations in the West Bank in order to prevent a demonstration set to take place that day in Ramallah. Despite the ban, approximately 200 demonstrators gathered peacefully in the city centre, but were violently assaulted and dispersed by Palestinian security forces and individuals in plain clothes.[71] Fifty-six people were violently arrested and released the next day without charges. A staff member of Amnesty International monitoring the demonstration was among those arrested and reported having been subjected to ill-treatment and having witnessed at least 18 other detainees face similar treatment. At least 12 journalists were threatened or impeded from covering the demonstration, and some were physically assaulted.[72]

62. In Tulkarm and Nablus, on 27 and 30 June 2018 respectively, two demonstrations took place during which two women journalists were physically assaulted by Fatah supporters and prevented from filming the protest. In one instance, the attack occurred in

[68] This coordinating body is comprised of several Palestinian security agencies. It conducts joint operations and uses the Preventive Security Service headquarters in Jericho as its main detention and interrogation centre.

[69] See also A/HRC/37/42, para. 42.

[70] Presidential Decree No. 10; see also A/HRC/40/43, para. 46.

[71] Violent means included the use of flash grenades, pepper spray and tear gas, in addition to brutal arrests and beatings of protestors by large groups of plain-clothed individuals wearing identical caps and acting in a coordinated manner, including with uniformed officers.

[72] See www.madacenter.org/report.php?lang=2&id=1799&category_id=13&year= (in Arabic).

the presence of the police, who did not intervene. One of the journalists submitted a complaint to the public prosecution office which, according to available information, had not been addressed by the authorities at the time of writing. Civil society members and activists involved in organizing or monitoring the demonstrations were faced with a wave of summons and harassment by Palestinian security forces.

63. Similar violations were recorded in Gaza, where the security forces continued to arbitrarily arrest and subject individuals to ill-treatment for expressing opinions that could be considered critical of the authorities in Gaza.[73] In one incident, the internal security agency reportedly detained a journalist for three days at an unknown location, where he was interrogated about his political views and accused of incitement against the authorities in Gaza by planning popular protests. During interrogation, he was reportedly subjected to ill-treatment that may amount to torture, including beatings with batons and a plastic hose and *shabah*. He was eventually released without charge.

64. Between 13 and 15 September 2018, a journalist was summoned three times by the Gaza authorities for posting comments on social media questioning the Ministry of National Economy. On 15 September, after threats of arrest, he removed the post and made a public apology to the Ministry on social media. After 27 October 2018, he was summoned several times for questioning by the police and the public prosecution office following accusations of defamation by the Ministry. The charges were later dropped after mediation by the governmental media office.

65. Gaza security forces also continued to restrict the right of civilians to peaceful assembly, sometimes by forcibly dispersing demonstrations and gatherings. On 18 June 2018, they forcibly dispersed a demonstration calling for the lifting of punitive measures imposed on Gaza by authorities of the State of Palestine, despite the fact that previous authorization of the demonstration had been granted. Reportedly, about 50 plain-clothed security personnel, some carrying batons, raided the sit-in and forcibly prevented participants from filming or photographing the event. The phones of some participants were briefly confiscated and then returned to them after footage of the demonstration had been deleted by the security personnel. The Ministry of the Interior of Gaza denied this account of the events, including that participants had been arrested.[74]

III. Recommendations

66. **In the present report, the High Commissioner documents violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory by Israel, the State of Palestine and the authorities in Gaza. The report shows the persistence of patterns previously reported by the Secretary-General and the High Commissioner, which have been the subject of extensive past recommendations by various human rights mechanisms.**[75] **The persistent lack of accountability and the shrinking space for civil society continue to be of particular concern.**

67. **The High Commissioner calls on all duty bearers to comply with their international legal obligations and ensure that all alleged violations are promptly, impartially and independently investigated, that those responsible are held accountable, and that victims are provided with effective redress.**

68. **The High Commissioner also makes the recommendations listed below.**

69. **The High Commissioner recommends that the Government of Israel:**

(a) **Ensure that the rules of engagement of Israeli security forces and their application are fully in line with international standards, in particular, that firearms**

[73] See also A/HRC/37/42, paras. 43–45.

[74] Public statement by the spokesperson for the Ministry of the Interior, 18 June 2018. Available at https://moi.gov.ps/Home/Post/123353 (in Arabic).

[75] A/HRC/35/19.

are used only in cases of imminent threat of death or serious injury; take all measures necessary to prevent incidents of excessive use of force; and provide, at the earliest possible moment, first aid to individuals injured by use of force, while taking no steps to prevent the provision of necessary medical care;

(b) **Conduct prompt, thorough, independent, impartial and effective investigations into all incidents of use of force by Israeli security forces that led to death or injury of Palestinians, especially in the access-restricted areas of Gaza, and ensure that perpetrators are held accountable and victims are provided with redress;**

(c) **Ensure respect for international humanitarian law and conduct prompt, thorough, independent and impartial investigations into allegations of violations related to past and recent escalations of hostilities, hold those responsible accountable and provide redress for victims;**

(d) **Immediately end all practices of collective punishment; in particular, immediately lift the blockade and punitive closures imposed on Gaza, allow free movement of Palestinians across the Occupied Palestinian Territory, and end punitive demolitions and the policy of withholding bodies of Palestinians;**

(e) **End practices of administrative detention, and any form of arbitrary detention, ensure that all detainees are promptly charged or released, and fully guarantee the right to a fair trial;**

(f) **Ensure that conditions of detention are fully in accordance with international human rights law, and that detainees are not subject to torture or ill-treatment and ensure that all allegations of ill-treatment are promptly, thoroughly and effectively investigated by an independent and impartial body;**

(g) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected, and that civil society actors and journalists are allowed to conduct their professional activities safely, freely and without harassment.**

70. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Ensure compliance with its human rights obligations towards all Palestinians and immediately cease any measures that violate these obligations or that worsen the humanitarian situation in Gaza;**

(b) **Ensure that the use of force in the context of law enforcement operations is consistent with international human rights standards;**

(c) **Announce immediately a formal moratorium on executions while taking all steps necessary to give full effect to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;**

(d) **End all practices that amount to arbitrary detention, and fully guarantee the rights to due process and fair trial;**

(e) **Immediately end all practices that amount to torture or other cruel, inhuman and degrading treatment or punishment, ensure that allegations of such violations are promptly, impartially and independently investigated, hold perpetrators accountable, and guarantee non-repetition of such practices;**

(f) **Publish, without delay, the human rights treaties acceded to by the State of Palestine in the official government gazette and take steps to make their provisions known to all Palestinians;**

(g) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected, and that civil society actors and journalists are allowed to conduct their professional activities safely, freely and without harassment.**

71. **The High Commissioner recommends that the authorities in Gaza:**

(a) **Ensure, along with armed groups in Gaza, full respect for international humanitarian law, particularly as it pertains to the principles of distinction, proportionality and precaution, and ensure accountability, consistent with international standards, for grave violations;**

(b) **Implement an immediate moratorium on the use of the death penalty and cease the practice of trying civilians before military courts;**

(c) **Refrain from practices that amount to arbitrary arrest or detention, immediately end all practices that may amount to torture or other cruel, inhuman and degrading treatment or punishment, and ensure that all allegations of violations are promptly, impartially and independently investigated, and that those found responsible are brought to justice;**

(d) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected, and that civil society actors and journalists are allowed to conduct their activities safely, freely and without harassment.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 37/37. It presents an overview of the implementation of resolution 37/37 and also developments during the reporting period that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem.

* The present report was submitted after the deadline in order to reflect the most recent developments.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 37/37. In that resolution, the Council requested the United Nations High Commissioner for Human Rights to report on the implementation of the resolution, in particular with reference to the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict, the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict. The report should be read in conjunction with recent relevant reports of the High Commissioner.[1]

2. In the report, the High Commissioner addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law, including in connection with the 2014 escalation of hostilities in Gaza and within the scope of law enforcement operations in the Occupied Palestinian Territory. Pursuant to resolution 37/37, the report also addresses recent developments of relevance to ensuring accountability for international law violations, such as concerns about human rights defenders and civil society actors documenting violations and advocating for accountability by all duty bearers, as well as the responsibility of third States to ensure respect for international human rights law and international humanitarian law.

3. The High Commissioner recalls the obligation of Israel, as the occupying Power, to protect the population of the Occupied Palestinian Territory.[2] She reiterates the call to both Israel and the State of Palestine to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and international humanitarian law and to make full use of technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to assist with the implementation of recommendations addressed to them.[3] With respect to the international community, the High Commissioner suggests that the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties can fulfil their obligations in implementing the recommendations reviewed in the report.[4] Furthermore, in its resolution 37/37, the Council calls on all parties to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.[5]

II. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza

4. Over four years since the 2014 escalation of hostilities in Gaza, serious concerns persist with regard to the lack of accountability – by all parties to the conflict – for violations of international humanitarian law, including allegations of war crimes. Since the publication of the report of the independent commission of inquiry on the 2014 Gaza conflict, the Secretary-General and the High Commissioner have provided regular updates on the lack of progress in the implementation of the commission's recommendations and

[1] A/HRC/37/41 and A/HRC/35/19.
[2] A/HRC/34/38, para. 38.
[3] A/HRC/35/19, paras. 67, 69, 71 and 73.
[4] A/HRC/35/19, para. 75.
[5] See www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf.

highlighted concerns in terms of the lack of accountability by both the Israeli and Palestinian authorities.[6]

5. Particularly worrying is the number of cases that, despite serious allegations and prima facie evidence of international law violations, were closed by the Israeli Military Advocate General without any criminal investigation.[7] According to the most recent update of the Military Advocate General, dated 15 August 2018, out of 500 complaints related to 360 incidents referred to him,[8] only 31 were referred for criminal investigation. While one investigation led to the conviction of three soldiers for looting, investigations in 28 cases have been concluded without resulting in criminal charges and 2 cases remain pending. Cases relating to 189 incidents have so far been closed.[9]

6. The most recent update included information on decisions taken by the Military Advocate General since the previous update, such as the decision not to proceed to a criminal investigation of the events in and around Rafah that took place on 1 August 2014 (so-called Black Friday),[10] during which 3 Israeli soldiers and 207 Palestinians, including at least 144 civilians, were killed.[11] The Military Advocate General further decided not to take action following preliminary examinations relating to seven other cases involving the deaths of 79 Palestinians, mostly civilians, and damage to a hospital and several residential structures. He also provides information on the decision to close one case involving civilian deaths following a preliminary investigation by the military police, as well as to close eight cases pertaining to the killing of over 50 Palestinians, mostly civilians, following criminal investigations.

7. Concerning events that took place in and around Rafah on 1 August 2014, the Military Advocate General concluded that 114 Palestinians had been killed during the fighting, including at least 42 "military operatives". He acknowledged that Palestinian civilians might have been incidentally killed during the fighting, but concluded that none had directly been targeted. According to the Military Advocate General, the majority of civilians had been killed as a result of targeted aerial strikes aimed at military targets. In cases related to ground operations, he referred to the low number of civilian casualties to demonstrate respect for the principle of proportionality. In a few cases, he recognized that the civilian presence in the targeted area had been larger than expected by Israeli security forces following an initial assessment, but concluded that that had not affected the proportionality assessment, nor the legality of the use of force. He noted that precautionary measures had been taken whenever appropriate, underlining in a number of cases that warnings to the civilian population had not been possible as they would have undermined the objective of the operation at stake. For all cases examined in the update, he concluded that there had been no grounds for reasonable suspicion of criminal misconduct that would warrant the opening of a criminal investigation. Similar conclusions were reached in other cases, for example regarding two attacks that had occurred on 29 July 2014 that had respectively resulted in the deaths of 35 civilians in Khan Yunis and of 19 persons, of whom a significant majority were civilians, in Bureij camp.

8. The information provided by the Military Advocate General in the most recent update, as in previous ones, is insufficient to support the conclusion that the principles of

[6] A/HRC/37/41, paras. 9–17, A/HRC/34/38, para. 42, and A/71/364, paras. 40 and 51–55.

[7] See Israel Defense Forces, "Decisions of the IDF Military Advocate General regarding exceptional incidents that allegedly occurred during Operation 'Protective Edge' – update No. 6", available from www.idf.il/en/minisites/wars-and-operations/operation-protective-edge-legal-updates/). See also A/HRC/37/41, para. 14, A/HRC/35/19, para. 18, and A/71/364, para. 40.

[8] According to the Military Advocate General, "such incidents include events allegedly resulting in significant and unanticipated civilian harm and events where military activity allegedly resulted in damage to medical or UN facilities" (see www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-initial-release-sept-2014/).

[9] See Israel Defense Forces, "Decisions of the IDF Military Advocate General".

[10] Events on 1 August 2014 involved aerial attacks and a ground operation by Israeli security forces following the killing of two of its soldiers and the kidnapping of another one, who was later pronounced dead.

[11] See www.btselem.org/press_releases/20160720_fatalities_in_gaza_conflict_2014.

proportionality and precaution have been effectively respected throughout the military operations under review. Instead, the latest update confirms earlier concerns expressed by the Secretary-General and the High Commissioner as to the failure of the Military Advocate General and the Attorney General to consistently open criminal investigations in cases where there is prima facie evidence that State agents have committed unlawful actions.[12]

9. In the 31 cases where criminal investigations were launched by the Military Advocate General, most were closed on the grounds that the attacks complied with Israeli domestic law and international law. This was the reason given, for example, for closing the investigation into the incident in which strikes by Israeli security forces killed four boys, aged 10 and 11, from the Bakr family, who were playing on a beach in Gaza on 16 July 2014.[13] Information gathered by OHCHR and the independent commission of inquiry raises serious concerns as to whether fundamental principles of international humanitarian law were respected in this case.[14] An appeal against the Military Advocate General's decision to close the investigation, submitted in August 2015 by Adalah: The Legal Center for Arab Minority Rights in Israel, Al Mezan and the Palestinian Centre for Human Rights on behalf of the families, is still pending.[15] This case, featuring many eyewitnesses, also raises serious concerns about the ability of the internal investigation mechanism of the Military Advocate General to ensure accountability and provide an effective remedy for victims. The fact that the Military Advocate General provided legal advice to the military before and during the fighting further suggests an inherent conflict of interests faced by the Military Advocate General in his investigative role and calls into question his ability to ensure genuine accountability. The High Commissioner had previously expressed concerns with regard to the independence, impartiality, promptness and transparency of the Office of the Military Advocate General.[16]

10. On 14 March 2018, the Israeli State Comptroller, in his capacity as the Ombudsman, published a fourth report on the 2014 escalation of hostilities.[17] In the report, the State Comptroller suggests that international law was taken into account within the scope of the activities of the Israel Defense Forces in Gaza, and that the civilian population received assistance during the hostilities. However, he did not examine the policies and rules of engagement applicable to the conduct of hostilities, including the implementation thereof, that resulted in the killing of almost 1,500 civilians.[18]

11. In the report, the State Comptroller further provides an assessment of the General Staff Mechanism for Fact Finding Assessments, to which 220 out of 360 incidents that occurred during the 2014 escalation of hostilities in Gaza were referred for initial factual examination. He concluded that the mechanism was in line with requirements under international law, despite acknowledging its subordination to the Chief of General Staff of the Israel Defense Forces, as well as various gaps and flaws in its work. Those deficiencies included the failure to separate the mechanism from the general staff operational debriefing team, insufficient training for the teams and lack of legal expertise, independence, effectiveness and impartiality.[19] Given the structural and operational issues identified, it is

[12] A/HRC/37/41, para. 14, A/HRC/35/19, para. 18, and A/71/364, para. 40.

[13] In this case, the Military Advocate General found the following: "The professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances. However, it became clear after the fact that the identification of the figures as militants from Hamas's Naval Forces was in error. Nonetheless, the tragic outcome of the incident does not affect the legality of the attack ex post facto." (See www.idf.il/en/minisites/wars-and-operations/mag-corps-press-release-update-4-june-2015/.)

[14] A/HRC/37/41, para. 12, A/HRC/28/80/Add.1, para. 36, and A/HRC/29/CRP.4, paras. 631–633.

[15] The decision of 11 November 2018 of the District Court of Beersheba in the Nabaheen case (see para. 25 below) is expected to have a direct influence on the outcome of this case.

[16] A/HRC/37/41, para. 11.

[17] See www.mevaker.gov.il/he/Reports/Report_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf.

[18] See www.ochaopt.org/content/key-figures-2014-hostilities; and A/HRC/29/CRP.4.

[19] *Operation "Protective Edge" IDF Activity from the Perspective of International Law, Particularly with Regard to Mechanisms of Examination and Oversight of Civilian and Military Echelons*, table 1,

highly questionable whether the mechanism fulfils the international law requirements of independence, impartiality and effectiveness.[20]

12. In addition, the latest public update of the Military Advocate General shows the extent to which he relies on the findings of the mechanism in his decisions. While the mechanism examines compliance with Israel Defense Forces orders and procedures, it does not examine the compatibility of such orders and procedures with applicable international law. In that regard, the reliance of the Military Advocate General on the conclusions of this fact-finding mechanism, with its limited scope of examination and without the tools available to criminal police investigators, raises serious concerns about the adequacy and quality of the Military Advocate General's decisions concerning possible criminal behaviour in relation to the cases referred to him.[21]

13. With respect to Palestinian authorities and armed groups, there continues to be no information made available regarding any steps taken towards ensuring accountability for international law violations committed by them, as also identified by the commission of inquiry on the 2014 Gaza conflict.[22] Other than the engagement of the State of Palestine with the International Criminal Court, no information is available that indicates that any measures have been taken by the Palestinian authorities to address violations committed during the 2014 escalation of hostilities.[23] This complete lack of any accountability is of most serious concern. In accordance with international human rights and humanitarian law, the State of Palestine must investigate allegations of serious violations of international law committed on its territory, and prosecute suspects.

B. Accountability for unlawful use of force

14. The Secretary-General and the High Commissioner have repeatedly expressed concern for the prevailing culture of impunity for the excessive use of force by Israeli security forces outside the context of hostilities.[24] A total of 299 Palestinians were killed, including 57 children, and 29,878 were wounded, including 7,242 by live ammunition,[25] by Israeli security forces in 2018 throughout the Occupied Palestinian Territory, amounting to the highest numbers since the 2014 escalation of hostilities in Gaza. The vast majority of the killings and injuries occurred outside the context of hostilities, in which circumstances the use of force is governed by international human rights law and standards regulating the conduct of law enforcement officials. Of particular concern was the use by Israeli security forces of lethal force in the context of the Great March of Return demonstrations along the fence between Gaza and Israel.[26]

15. On 30 March 2018, the Secretary-General called for an independent and transparent investigation into those incidents.[27] That call was echoed on 6 April 2018 by the High Commissioner[28] and three special procedure mandate holders.[29] On 8 April 2018, the media

"the main findings of the Fact-Finding Assessment Mechanism", pp. 129–130. Available at www.mevaker.gov.il/he/Reports/Report_622/3cdfbe36-04fc-4ff2-b2df-33ce258ae838/dabla-eng.pdf).

[20] In terms of independence and impartiality, although the officers in the mechanism are supposed to be outside the chain of command of the incidents under review, it remains an internal military examination, where the military is examining its own conduct. The effectiveness of the mechanism is also questionable given the lack of results of its previous investigations.

[21] See Amichai Cohen and Yuval Shany, "Israel's Military Advocate General terminates 'Black Friday' and other investigations: initial observations", *Lawfare*, 27 August 2018.

[22] See A/HRC/29/52.

[23] A/HRC/37/41, para. 17.

[24] See, for example, A/HRC/35/19, paras. 17–18, A/HRC/34/38, para. 48, and A/71/364, para. 66.

[25] According to the Office for the Coordination of Humanitarian Affairs (OCHA), 23,814 persons were wounded in Gaza and 6,064 in the West Bank.

[26] A/HRC/40/39, paras. 23–24.

[27] See www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza.

[28] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E.

[29] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924.

reported that the Israel Defense Forces had appointed Brigadier General Moti Baruch, Head of the General Staff's Doctrine and Training Division, to lead the investigation into the conduct of the Israel Defense Forces. It appears that the General Staff Mechanism for Fact Finding Assessments, the same mechanism that was mandated to examine events that occurred during the 2014 escalation of hostilities in Gaza, is in charge of that inquiry.[30] In the light of the deficiencies of the mechanism described above, this raises concerns as to whether such an internal examination mechanism meets accountability requirements under international law.

16. On 15 and 23 April 2018, five Israeli and one Palestinian human rights organization submitted two petitions to the High Court of Justice regarding the rules of engagement of the Israel Defense Forces and their application during the Great March of Return. The Government of Israel, in its submission to the Court, advanced a novel category of "legitimate targets" of lethal force not sanctioned by international law, by authorizing the use of lethal force against "main rioters" or "key inciters", including when they do not pose an imminent threat to life or of severe bodily harm. The High Court decided that the soldiers present at the fence were acting in accordance with both international law and domestic Israeli law, relying on the Israeli legal principle of broad deference to governmental decisions in military operational matters, and invoking the general presumption in Israeli administrative law that the Government's actions were lawful unless proven otherwise. With regard to the lawfulness of targeting "main rioters" or "key inciters", the Chief Justice, while acknowledging that these amounted to a new category of targetable individuals not recognized in international law, deferred the question of its legality to the General Staff Mechanism for Fact Finding Assessments. This is particularly problematic because – as noted earlier – the mechanism focuses on the implementation of the rules of engagement. The mechanism's mandate does not extend to examining the compatibility or conformity of such orders and procedures with international law.[31]

17. As of the end of 2018, the Israeli security forces announced investigations into eight incidents involving the killing of demonstrators, including five children, during the Great March of Return. Al Mezan and the Palestinian Centre for Human Rights indicated that they had respectively submitted 82 and 56 cases to the Israeli authorities related to individuals killed or wounded at the Gaza fence since 30 March 2018.

18. The lack of accountability for the killing of Palestinians is evident not only in the context of escalations in hostilities in Gaza and of the Great March of Return, but persists also in the context of Israeli military control over and policing of Palestinians in the West Bank. In the past seven years, during which reportedly 114 criminal investigations were opened across the Occupied Palestinian Territory and almost 700 Palestinian civilians were killed by Israeli security forces,[32] only four indictments were issued against soldiers for the killing of unarmed Palestinians: three for killings in the West Bank and one for a killing in Gaza.[33] The three West Bank-related indictments were for the killings of Samir Awad in 2013, Nadeem Nuwara in 2014 and Abdelfattah al-Sharif in 2016. All three cases, closely monitored by the OHCHR office in the Occupied Palestinian Territory, were concluded in 2018 and raise serious concerns that justice and redress for the victims have not been delivered in accordance with international standards.

19. Sixteen-year-old Samir Awad was killed on 15 January 2013 by the Israeli security forces. He was struck by live ammunition in his back and head while caught between barbed wire fences near Budrus in the West Bank. After lengthy legal proceedings, on 30 December 2015, two soldiers were charged with reckless and negligent use of a firearm.

[30] A/73/420, para. 61.

[31] See www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement.

[32] According to the OCHA database on casualties, between 2012 and 2018, 692 Palestinians not considered to be members of armed groups, including 212 children, were killed outside the context of escalations of hostilities, including 611 by live ammunition and 23 by non-lethal ammunition (i.e., rubber coated metal bullets, tear gas canisters and tear gas inhalation).

[33] Regarding Gaza, an indictment was issued in relation to the killing of Mohammad 'Atta Abu Jame'a, a 59-year-old farmer, who was shot dead by the Israel Defense Forces east of Khan Yunis on 3 March 2018.

Despite the disparity between the gravity of the conduct and the charges advanced, the State Attorney's Office decided to withdraw the indictments against the two soldiers on 4 June 2018. According to reports, the two soldiers advanced a notion of "selective enforcement" in their defence, on the basis that there had been no indictments in similar cases in which Israeli security forces had shot and killed Palestinians.[34] The State Attorney's reasoning for the decision to withdraw the indictment was reportedly based on the fact that the accused soldiers had not actually violated the open-fire regulations that were in force in that particular part of the West Bank at the time of the shooting, as also confirmed by prosecution witnesses.[35] The case illustrates the significant concerns regarding the Israeli military justice system, which focuses on the responsibility of soldiers and the closure of cases based on the lack of reasonable grounds for suspicion of criminal behaviour, while overlooking the responsibilities of military commanders and policymakers.[36] In addition, the case also raises serious questions as regards the conformity of the applicable open-fire regulations with international law.[37]

20. On 19 August 2018, the Israeli Supreme Court accepted the State prosecution's appeal against the light sentence imposed on Border Police Officer Ben Deri, charged with killing 17-year-old Palestinian Nadeem Nuwara in 2014 in circumstances where the youth did not pose any threat to Israeli security forces. The Supreme Court doubled the lower court's prison sentence to 18 months. The Supreme Court justified the harsher sentence, inter alia, on the grounds of the officer's intent to cause harm even if he did not face any danger. Despite the Supreme Court decision, the sentence still appears to be incommensurate with the gravity of the offence, namely the killing of a child who did not pose a threat to life or of serious injury to the officer.

21. The case of Sergeant Elor Azaria, an Israeli soldier convicted of manslaughter for shooting the already-incapacitated Abdelfattah al-Sharif in the head after the latter had allegedly stabbed an Israeli soldier in Hebron in March 2016, continues to be of grave concern. His already lenient initial sentence of 18 months' imprisonment issued in February 2017 was reduced to 14 months by the Israel Defense Forces Chief of General Staff in September 2017. On 8 May 2018, the media reported that the sergeant had been granted early release after having served two thirds of his sentence, that is, after nine months.

22. These cases are emblematic of a pattern of killings of Palestinians who did not pose a threat at the time they were shot, as corroborated by eyewitnesses and additional evidence, such as video footage, and in which the perpetrators were known. At the same time, these cases remain exceptions, as they led to an indictment, despite some serious flaws in the investigations.[38] The vast majority of investigations into killings of Palestinians by Israeli security forces were closed by the Military Advocate General without further action.[39]

23. On 18 June 2018, Israeli media sources reported that the Military Advocate General had decided to close the case against the Israel Defense Forces commander who shot into a Palestinian car on 21 June 2016, killing 15-year-old Mahmoud Badran and wounding four others, including three other children.[40] While the commander of the force had allegedly acted based on the assumption that the occupants of the car were involved in an earlier

[34] See www.btselem.org/press_releases/20180610_samir_awad_case_whitewashed.

[35] See www.haaretz.co.il/blogs/johnbrown/BLOG-1.6140314 and www.haaretz.co.il/blogs/johnbrown/BLOG-1.6175907 (both in Hebrew); Yotam Berger, "Israeli soldiers indictment over Palestinian's death to be quashed", *Haaretz* (5 June 2018) (in English); and https://news.walla.co.il/item/3163565 (in Hebrew).

[36] A/71/364, para. 40, A/HRC/34/38, para. 42, A/HRC/35/19, para. 20, and A/HRC/37/41, paras. 9–16.

[37] These regulations are not publicly available. See www.adalah.org/en/content/view/9264.

[38] As shown by OHCHR monitoring of the trial in the Nuwwara case; for Awad's case, see https://mekomit.co.il/%D7%9B%D7%AA%D7%91-%D7%90%D7%99%D7%A9%D7%95%D7%9D-%D7%A1%D7%9E%D7%99%D7%A8-%D7%A2%D7%95%D7%95%D7%90%D7%93/ (in Hebrew).

[39] See www.btselem.org/publications/summaries/201605_occupations_fig_leaf and https://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx.

[40] A/HRC/37/41, para. 21.

incident of stone throwing, the military investigation that was launched after an initial probe found that the erroneous identification of the car was "sincere and reasonable" and that the force had "operated appropriately". At the same time, the Military Advocate General found that the force had committed professional errors, but that those did not warrant legal action due to the "complex operational environment" in which the soldiers were operating. The lack of prosecution of soldiers who opened fire towards a car full of individuals, including four children, who did not present a threat to life or of serious injury, raises serious concerns about the lack of accountability for conduct that appears to amount to excessive use of force.[41] It appears in the decision of the Military Advocate General that the only measure taken in this case was the dismissal of the commander from the Israel Defense Forces.[42] Such a disciplinary sanction is not considered in itself as a sufficient measure of accountability in a case implying excessive use force that resulted in the killing of children.

24. On 16 September 2018, the case of the killing by an Israeli security forces soldier of Bassem Abu Rahma during a peaceful demonstration in Bil'in in April 2009 was closed without the perpetrator being held accountable, despite the availability of reliable additional evidence, including video footage.[43] This decision of the High Court of Justice put an end to more than nine years of legal proceedings, involving three petitions to the High Court and two appeals to the Attorney General. In its decision, the High Court recognized that the Military Police and the Military Advocate General had been negligent, had protracted the investigation over a period of years and had made decisions only under pressure from the petitioners to the High Court. It nevertheless rejected the petition against the Attorney General's decision to close the investigation, declining to intervene in that decision and also noting difficulties linked to the long time that had passed since the incident. This decision was taken despite the High Court having been petitioned three times in the past to ensure accountability in the case.[44] This case raises concerns as regards the role of the High Court in overseeing accountability measures against Israeli soldiers involved in the killing of Palestinians.

Civil remedies

25. Palestinians residing in Gaza face numerous obstacles that impede or prevent them from pursuing accountability for alleged violations, including seeking civil remedies. Obstacles to access to justice include restrictive legislation on State liability, with wide exemption for the State from liability for "wartime activity", the statute of limitations, High Court guarantees to be paid and the difficulties residents of Gaza face to enter Israel to attend legal proceedings.[45] In particular, the exclusion of the population of Gaza (as residents of an "enemy territory") from the scope of Israeli civil liability legislation in October 2014 – with retroactive applicability to July 2014 – has exempted Israel from any liability for wrongful acts committed by the Israel Defense Forces since the 2014 escalation.[46] The constitutionality of this exclusion was challenged in Court in a tort lawsuit brought by Al Mezan and Adalah on behalf of Ateyeh Nabaheen, who was shot and

[41] See Yaniv Kubovich, "Israeli army closes probe into officer's 'errant killing' of Palestinian teen", *Haaretz* (11 June 2018).

[42] See www.idf.il/%D7%9E%D7%90%D7%9E%D7%A8%D7%99%D7%9D/%D7%AA%D7%99%D7%A7-%D7%97%D7%A7%D7%99%D7%A8%D7%94-%D7%A0%D7%A1%D7%92%D7%A8/ (in Hebrew). See also Yaniv Kubovich, "Israeli officer opened fire against regulations, killed a Palestinian boy – but won't be prosecuted", *Haaretz* (12 January 2018).

[43] Additional forensic evidence and analysis provided by human rights organizations (Yesh Din, B'Tselem, Forensic Architecture and SITU Research) considerably strengthened the evidence against the soldier. See http://archive.forensic-architecture.org/investigations/bassem-abu-rahma/ and www.yesh-din.org/en/petition-prosecute-responsible-killing-bassem-abu-rahmeh/.

[44] See www.yesh-din.org/en/petition-prosecute-responsible-killing-bassem-abu-rahmeh/.

[45] A/71/364, paras. 40 and 56–57, and A/HRC/37/41, para. 15.

[46] A/71/364, paras. 56–57. See Israeli government decree of 26 October 2014 declaring the Gaza strip as "enemy territory", retroactively from 7 July 2014, hence activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree".

seriously wounded on 11 November 2014 in Gaza, while on his family's property, outside the area of any military activity.[47] Ateyeh Nabaheen was left quadriplegic and confined to a wheelchair. The District Court of Beersheba issued its decision on 4 November 2018, ruling that the law prohibiting Palestinians living in Gaza from seeking compensation from Israel was constitutional, regardless of the circumstances and the gravity of the injury at stake. This decision is expected to affect the outcome of other cases of Palestinians killed by the Israeli security forces during the 2014 escalation of hostilities still pending before the court, such as the case of the killing of the four boys of the Bakr family (see para. 9 above).[48] Al Mezan and Adalah have indicated that they will appeal the decision to the Israeli Supreme Court.[49] Should the decision stand, all Gaza residents would appear to be precluded from seeking redress and remedy in Israeli civil courts, regardless of the circumstances and the severity of the injury or damages claimed.

26. The "enemy territory" exclusion clause is not the only obstacle to obtaining civil remedies. On 3 December 2018, the District Court of Beersheba rejected the lawsuit submitted by Izzeldin Abu El-Eish from Jabaliya, whose three daughters and niece were killed by Israeli security forces during the 2008–2009 escalation of hostilities in Gaza, attributing the responsibility for their deaths to Hamas. The plaintiff, who was seeking recognition by Israel of wrongdoing for the killing of the girls, claimed that there was no fighting in the area at the time of the attack on his home, meaning there was no military purpose for it being targeted. According to the ruling, the home was hit because figures on the roof were suspected of acting as lookouts for terrorist groups and directing fire at Israel Defense Forces, and due to a failure to share information regarding the civilian occupants of the house. The commander of the division testified that if this information had been made available to him, he would not have ordered the shelling. Nevertheless, the court concluded that it had not found any wrongful act and decided to close the case.[50]

III. Impediments to the work of human rights defenders

27. Measures impeding the work of human rights defenders and civil society actors, particularly in their work in documenting and advocating for accountability for alleged international human rights law and international humanitarian law violations in the Occupied Palestinian Territory, continued to be of serious concern. The prevailing atmosphere of impunity combined with intimidation, threats and arrests of human rights defenders and civil society actors contributed to a shrinking space for civil society and a lack of deterrence for further violations.[51]

A. Intimidation of, restrictions on and threats against civil society actors

28. Restrictions by all duty bearers on the rights of freedom of expression, peaceful assembly and association continued. This included, inter alia, intimidation, threats, harassment and movement restrictions, as well as assaults, arbitrary arrests, ill-treatment and prosecutions of individual human rights defenders. The activities of human rights organizations were curtailed by systematic delegitimization likely to affect their funding, denials or restrictions on work permits or visas and the closure of a civil society organization by Israel.

[47] A/HRC/37/41, para. 16.

[48] This would namely pertain to three cases filed by the Palestinian Center for Human Rights.

[49] See http://mezan.org/en/post/23316.

[50] Decision of the District Court CC (Beersheba District Court), *Abu El Eish v. Israel*, case No. 40777-12-10, judgment, 27 November 2018. Available at www.nevo.co.il/psika_html/mechozi/ME-10-12-40777-390.htm (in Hebrew).

[51] A/HRC/37/41, para. 22 ff., and Human Rights Council resolution 37/37, para. 7.

Israel

29. There were numerous statements by high-ranking officials against civil society organizations and human rights defenders, including verbal attacks that might amount to incitement to violence.[52] Human rights defenders were also subjected to threats, intimidation and attempts to delegitimize them, including with a view to influencing their foreign sources of funding. For example, the organization Breaking the Silence continued to face public condemnation by high-ranking Israeli officials, within the scope of an investigation against Dean Issacharoff, a spokesperson of Breaking the Silence and a former Israeli soldier who had publicly testified on using violence against a Palestinian in Hebron in 2014.[53]

30. A number of senior Israeli officials also publicly condemned the Executive Director of the Israeli non-governmental organization (NGO) B'Tselem, Hagai El-Ad, following his briefing to the Security Council on 18 October 2018. The Permanent Representative of Israel to the United Nations accused him of defaming his Government, called him a "lousy collaborator" and said that if he had been Palestinian or Bolivian he would "likely end up dead".[54] The Deputy Foreign Minister stated that action should be taken to end international funding of B'Tselem.[55]

31. Some organizations have been instrumental in distributing information aimed at discrediting human rights defenders and civil society actors.[56, 57] The Israeli Ministry of Strategic Affairs has accused the European Union of directly or indirectly funding organizations that promoted the delegitimization of and boycotts against Israel and alleged that European taxpayers' money was being used to support ties with terrorist organizations.[58]

32. There were increased restrictions on work permits and visas for human rights defenders, including through the enforcement of the amended Entry into Israel Law. The amendment prohibits the granting of a visa to persons who are not citizens or permanent residents of Israel if they or the organization for which they work has knowingly issued a public call to boycott Israel, or has committed to participating in such a boycott.[59] In early January 2018, a "boycott, divestment and sanctions blacklist" of 20 such organizations was published by the Strategic Affairs Ministry.[60] There are serious concerns that the amended

[52] See also A/HRC/37/41, para. 24, and A/HRC/34/36, para. 50.

[53] The investigation has been reopened and is ongoing (www.timesofisrael.com/breaking-the-silence-spokesman-cleared-of-beating-palestinian/). See also www.breakingthesilence.org.il/inside/ayelet-shakeds-private-prosecutor/, www.haaretz.com/israel-news/palestinian-allegedly-beaten-by-breaking-the-silence-spox-called-to-give-testimony-1.5629686 and Chemi Shalev, "To whitewash occupation, Netanyahu crew casts Breaking the Silence whistle-blower as bogeyman: right-wing sadists harass Israeli Ambassador to Germany Jeremy Issacharoff to act against his own son", *Haaretz*, 21 November 2017.

[54] See http://webtv.un.org/meetings-events/watch/part-1-the-situation-in-the-middle-east-including-the-palestinian-question-security-council-8375th-meeting/5850529585001/?term= (from minute 58:00).

[55] See www.timesofisrael.com/netanyahu-denounces-btselem-chiefs-un-speech-as-full-of-lies/. See also the text of a since-deleted Facebook post about Hagai El-Ad attributed to Knesset Member Oren Hazan, and available at www.nad.ps/en/media-room/israeli-incitement-reports/israeli-official-incitement-october-2018.

[56] See http://policyworkinggroup.org.il/report_en.pdf.

[57] See https://apnews.com/0601a79f13e041b9b5b312ec73063c98/covertly-israel-prepares-fight-boycott-activists-online. See also www.ngo-monitor.org/reports/political-advocacy-ngo-involvement-in-un-humanitarian-aid-clusters/.

[58] Israel, Ministry of Strategic Affairs and Public Diplomacy, *The Money Report: The Millions Given by EU Institutions to NGOs with Ties to Terror and Boycotts against Israel* (May 2018).

[59] A/HRC/37/41, para. 32. See also A/72/565, paras. 45–46. The definition of "boycott" is explicitly articulated in the 2011 boycott law and includes boycotts aimed at Israeli settlements located in the Occupied Palestinian Territory. The Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011) defines boycott as deliberately avoiding all economic, cultural or academic ties with an individual or other body, based solely on affiliation with Israel or any of its institutions or area under its control, in a manner that would cause economic, cultural or academic harm.

[60] See www.haaretz.com/israel-news/1.833502.

Entry into Israel Law is being used to prevent human rights defenders from entering into Israel, as illustrated by the case of two prominent American human rights lawyers who were denied entry to Israel on 29 April 2018 for their alleged support to the Boycott, Divestment and Sanctions movement.[61]

33. On 7 May 2018, the work visa of Human Rights Watch's Country Director in Israel and Palestine, Omar Shakir, was revoked by the Israeli Ministry of the Interior based on Mr. Shakir's supposed past involvement in activism with the Boycott, Divestment and Sanctions movement.[62] Following a petition by Human Rights Watch, the Jerusalem District Court issued an interim injunction allowing Mr. Shakir to remain in the country while the court considered the petition. The Government based its position on statements attributed to Mr. Shakir in support of the establishment of a database of businesses, mandated by the Human Rights Council in its resolution 31/36. An amicus brief filed by the organization NGO Monitor and accepted by the court also pointed to social media posts highlighting the support of Human Rights Watch for the database and its general advocacy work at the Council. In January 2019, the Government submitted a response, standing by its decision to deport Mr. Shakir. The case remains pending before the District Court.

34. Continuing restrictions on freedom of movement by Israeli authorities also hampered the work of Palestinian human rights defenders and organizations, as most of them were not allowed to move freely between the West Bank, including East Jerusalem, and Gaza.[63] There were also increasing measures to limit civic space available to Palestinians, in particular in East Jerusalem. Israeli security forces prevented the holding of a press conference organized by the Addar Foundation and Elia Association for Youth on the developments in East Jerusalem, following the statement by the President of the United States of America on Jerusalem of 6 December 2017. On 18 April 2018, Israeli authorities closed Elia Association for Youth in East Jerusalem.[64]

Palestinian authorities

35. Human rights defenders and civil society activists expressing views critical of the human rights record of Palestinian authorities were subjected to harassment, threats and restrictions to their freedom of expression and assembly in the West Bank and Gaza during the period under review. In June 2018, demonstrations were held in the West Bank calling for measures imposed by the authorities of the State of Palestine against Gaza to be lifted.[65] In addition to curtailing the demonstrations, high-ranking officials insulted and threatened the political opposition, civil society and activists who had organized the demonstration.[66] The Head of the Jerusalem Legal Aid and Human Rights Center was harassed, and one staff member was summoned by Palestinian security forces for an alleged role in organizing the demonstrations. An advocate from Addameer Prisoners Support and Human Rights Association, Muhannad Karaja, who has represented several individuals alleging arbitrary arrest, ill-treatment and torture by Palestinian security forces, reported receiving threats, including death threats, and having his car damaged by unknown assailants.

B. Arbitrary arrest, assault and detention of and legal proceedings against human rights defenders

36. The Israeli and Palestinian authorities continued to arbitrarily detain human rights defenders in the reporting period. Deprivation of liberty resulting from the peaceful

[61] See Dina Kraft, "Two leading U.S. human rights activists refused entry to Israel, one for BDS ties", *Haaretz*, 3 May 2018 and Roger Cohen, "Israel banishes a Columbia law professor for thinking differently", *New York Times* (4 May 2018).

[62] See www.hrw.org/news/2018/05/08/israel-orders-human-rights-watch-official-deported; www.hrw.org/sites/default/files/supporting_resources/israeli_governments_response_lawsuit_hebrew.pdf.

[63] See A/HRC/40/39, paras. 45–51. See also A/73/420, paras. 8–32.

[64] A/HRC/40/39, para. 43.

[65] Ibid., para. 61.

[66] See www.youtube.com/watch?v=Az_0ePNvIT4 (in Hebrew).

exercise of fundamental freedoms, including freedom of expression, association and peaceful assembly, is considered to be arbitrary.[67]

Israel

37. Abdallah Abu Rahma, a Palestinian human rights defender from the West Bank village of Bil'in, was arrested in May 2016 after having participated in a bicycle ride to mark what Palestinians refer to as Nakba Day[68] in Bil'in. The participants in the ride were violently dispersed by Israeli security forces, after the area was declared a closed military zone. In April 2018, Mr. Abu Rahma was convicted by the Israeli Military Court of disobeying a closed military zone order and obstructing a soldier. In its judgment, the court described Mr. Abu Rahma as a "leading inciter" who refused to obey the military for purposes of provocation and then forcibly resisted his own arrest. Mr. Abu Rahma was sentenced on 14 November 2018, to eight months of imprisonment, four of which were suspended, in addition to a fine of NIS 2,000.[69]

38. The case against two human rights defenders, Issa Amro and Fareed al-Atrash, has been ongoing in Ofer Military Court since 23 November 2016, despite concerns previously raised by the High Commissioner, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the situation of human rights defenders.[70] Mr. Amro's indictment includes 18 charges, some of them dating back to 2010, including allegedly obstructing, insulting and assaulting soldiers, incitement and participation in assemblies without a permit.[71] Mr. al-Atrash faces four charges, including participating in an illegal demonstration and assaulting soldiers.

39. Of particular concern is the case of human rights defender Aref Jaber, a well-known activist in the H2 zone in Hebron, who documents human rights violations in that zone, including by photographing and filming the use of force by Israeli security forces and settler violence. Mr. Jaber described to OHCHR the harassment that he and his wife and sons had experienced from Israeli security forces over the past 10 years, including repeated arrests, violent house raids and physical assaults. On 2 June 2018, Mr. Jaber filmed the aftermath of an incident in which Israeli security forces killed a Palestinian man in the H2 zone. Following the incident, Mr. Jaber and his son were arrested, allegedly physically assaulted, and interrogated by Israeli security forces. They were released and ordered to stop filming the security forces. Mr. Jaber was warned that he would be arrested every time he attempted to do so. Later, Israeli security forces stopped him and threatened him with a gun. Mr. Jaber's other son, aged 17, was arrested and interrogated on 23 June 2018. No charges were brought against him, and he was released after a few hours, after paying a fine of NIS 1,000.

Palestinian authorities

40. In the aftermath of demonstrations that took place in June 2018 in the West Bank calling for the lifting of punitive measures imposed by the authorities of the State of Palestine in Gaza,[72] local human rights organizations reported that 56 people had been arrested, beaten and released the next day by Palestinian security forces.[73] A staff member of Amnesty International, Laith Abu Zayed, present to monitor the demonstration, was

[67] A/HRC/37/42, para. 6. See also A/HRC/36/38.

[68] Annual day of commemoration of the displacement of Palestinians that preceded and followed the Declaration of the Establishment of the State of Israel in 1948.

[69] An appeal was submitted against the sentence.

[70] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21855&LangID=E.

[71] A/HRC/37/42, paras. 50–51.

[72] Detailed information regarding the demonstrations is provided in document A/HRC/40/39, paras. 60–62.

[73] A/HRC/40/39, para. 61.

among those arrested and reported having been subjected to ill-treatment and having witnessed other individuals facing similar treatment while in police custody.[74]

41. Issa Amro, who is also facing charges in Israel (see para. 38 above), is on trial in the Palestinian courts on charges pertaining to the cybercrimes law prior to its amendment.[75] Mr. Amro's lawyer has submitted a request to the public prosecution in Hebron in May 2018, seeking closure of the case. The final decision of the Attorney General is pending.

C. Legislative measures affecting civil society

Israel

42. On 16 July 2018, the Knesset passed the so-called Breaking the Silence Law, amending the State Education Law. The law prohibits organizations such as Breaking the Silence from gaining access to schools, but its ramifications are much broader. The law authorizes the Minister of Education to prevent a person or a body whose activity contradicts the State's educational objectives from entering schools. It also blocks access to schools by organizations or persons seeking to take legal or political proceedings outside Israel, either against Israeli soldiers for an action carried out in the course of their duties or against the State of Israel. The Knesset also approved at a late stage a provision applying the law to local organizations that also work abroad to assist institutions that might promote political proceedings against Israel.

43. A bill to amend the Israeli Income Tax Ordinance, denying tax benefits to certain organizations considered to be acting against the State, is being promoted in the Knesset.[76] It is currently being prepared for a first reading in the Knesset Finance Committee. Acts against the State are defined in the bill as issuing publications that accuse Israel of committing war crimes and calls for a boycott against Israel or its citizens.

44. On 17 June 2018, the ministerial committee for legislative affairs approved the promotion of an amendment to the criminal law. On 20 June, a bill to prohibit the photographing, or documenting of Israel Defense Forces soldiers passed its preliminary reading in the Knesset. The bill stipulates that anyone who films, photographs or records soldiers in the course of their duties, with the intention of undermining the spirit of Israel Defense Forces soldiers and residents of Israel, is liable to five years' imprisonment, whereas anyone intending to harm State security will be sentenced to 10 years' imprisonment.[77] In addition, the bill prohibits the distribution of photographs or recordings, including through social networks and media, with the same penalties.

45. On 6 June 2018, a bill to amend the 2011 boycott law that allows the filing of a lawsuit for punitive damages against those who call for a boycott, even if no damage is proven, was approved by the Constitution, Law and Justice Committee in preparation for its first reading in the Knesset.[78]

Palestinian authorities

46. In a positive development, the Palestinian cybercrime law, adopted by Presidential Decree No. 16 in June 2017, was amended in May 2018 by Presidential Decree No. 10 following serious concerns raised by civil society organizations and human rights experts.[79]

[74] See www.amnesty.org/en/latest/news/2018/06/state-of-palestine-amnesty-staff-member-arbitrarily-detained-and-tortured-by-palestinian-security-officers/.

[75] A/HRC/37/42, paras. 50–51.

[76] A/HRC/37/41, para. 31.

[77] See www.independent.co.uk/news/world/middle-east/israeli-knesset-ban-photographing-filming-idf-soldiers-recording-journalists-robert-ilatov-a8371426.html.and https://7amleh.org/2018/08/14/will-a-new-wave-of-israeli-legislation-diminish-internet-freedoms/.

[78] A/HRC/37/41, para. 33.

[79] The cybercrimes law raised serious concern about its potential to curtail free speech, and was adopted within a general context of restrictions on freedom of expression, in addition to serving as the basis

The amended law reflects significant improvements, though concerns remain in relation to certain loosely defined provisions that could allow the law's possible misuse by the authorities.

47. The impact of prior decisions of the authorities of the State of Palestine continued to hamper the functioning of human rights organizations, in particular in Gaza. Further to a decision issued on 21 April 2016, non-profit entities, including those operating in Gaza, continued to be subject to the requirement to submit all their applications for donations, grants and aid to the Ministry of National Economy for approval, and the receipt and disbursal of funds remained contingent on prior approval by the Cabinet. The 2016 decision continued to undermine the autonomy and scope of operation of non-profit entities across the Occupied Palestinian Territory, given that such organizations are also subject to the scrutiny of authorities in Gaza.

IV. Third-State responsibility

48. In its resolution 37/37, the Human Rights Council refers to article 1 common to the Geneva Conventions relating to the protection of victims of international armed conflicts, and calls upon third States to "ensure respect" for international humanitarian law in the Occupied Palestinian Territory. Ensuring respect implies taking measures to prompt States to act in compliance with international humanitarian law.[80]

49. Third States are free to choose between different possible measures, as long as those adopted are considered adequate to ensure respect for international humanitarian law, in line with their duty of due diligence.[81] This implies that the repetition of measures that have proven to be ineffective to ensure respect for the Geneva Conventions may no longer be considered adequate. More research and analysis as to the types of measures that are at the disposal of States in this regard would be particularly valuable. Support for national and international efforts to bring suspected perpetrators of serious violations of international humanitarian law to justice has been identified as one such measure. Other such measures could be bilateral diplomatic interventions or public denunciation of unlawful acts.[82]

50. In September 2018, following the decision of Israel to demolish the Palestinian Bedouin village of Khan al-Ahmar in the West Bank, the European Parliament passed a resolution that called on the Government of Israel to put an immediate end to its policy of threats of demolition and eviction against the Bedouin communities in the occupied West Bank.[83] The European Parliament expressed its concern that the demolitions would severely threaten the viability of the two-State solution[84] and condemned any unilateral decision and action that might undermine the prospects of that solution. The resolution furthermore echoed the joint statement by France, Germany, Italy, Spain and the United Kingdom of Great Britain and Northern Ireland[85] calling on Israel not to go ahead with its plan to demolish the Palestinian village.

for the arrest and detention of journalists and human rights defenders (A/HRC/37/42, para. 42, and A/HRC/37/41, para. 39).

80 A/HRC/37/41, para. 41 (with references).

81 International Committee of the Red Cross (ICRC), commentary of 2016 on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, para. 165.

82 ICRC commentary of 2016 on article 1, para. 181.

83 European Parliament resolution of 13 September 2018 on the threat of demolition of Khan al-Ahmar and other Bedouin villages, para. 5.

84 Statement by the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini, on the latest developments regarding the planned demolition of Khan al-Ahmar, 7 September 2018. Available at https://eeas.europa.eu/headquarters/headquarters-homepage/50237/statement-hrvp-mogherini-latest-developments-regarding-planned-demolition-khan-al-ahmar_en.

85 See www.diplomatie.gouv.fr/en/country-files/israel-palestinian-territories/palestinian-territories/events/article/khan-al-ahmar-france-germany-italy-spain-and-uk-joint-statement-10-09-18.

51. Given the obligations of third States not to recognize as lawful a situation violating international law and not to render aid or assistance in maintaining that situation, States should not recognize the unlawful situation resulting from Israeli settlements or aid or assist in maintaining it.[86] In this regard, having reaffirmed that that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity and constituted a flagrant violation under international law, the Security Council, in its resolution 2334 (2016), called upon all States to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.

V. Conclusion and recommendations

52. **The United Nations High Commissioner for Human Rights has previously expressed serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip.[87] As reflected in the update provided in the present report, these concerns continued to remain valid during the period under review, particularly in relation to the lack of accountability for continued allegations of excessive use of force by Israeli forces, as well as allegations against all parties to the 2014 escalation of hostilities in Gaza that remain unaddressed.**

53. **The work of human rights defenders and civil society actors is increasingly restricted. Civil society organizations, journalists and human rights defenders must be permitted the space to do their work, including calling for accountability for alleged violations of international human rights law and international humanitarian law. Measures that seek to hinder this work – for example through arrest and detention and other forms of intimidation and harassment, or the passage of stigmatizing and criminalizing legislation – raise serious concerns about the exercise of the right to freedom of opinion and expression, and the shrinking civic space in Israel.**

54. **The comprehensive review of recommendations addressed to all parties undertaken by the High Commissioner in 2017[88] aimed at ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem. In that review, the High Commissioner found that the general patterns of human rights violations and non-implementation of recommendations that had emerged from the reports analysed for the review were not just symptoms of the conflict but further fuelled the cycle of violence.[89] As emphasized by the Secretary-General, lack of accountability compromises chances for sustainable peace and security. Tackling impunity must be the highest priority.[90] The High Commissioner again echoes this call.**

55. **Recalling the follow-up measures described in the 2017 comprehensive review of recommendations, which remain valid, the High Commissioner further:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory, including its obligations as an occupying Power; urges it to conduct prompt, thorough, transparent, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all alleged international crimes; and also calls on it to ensure that all victims have access to effective remedies and reparation;**

[86] ICRC commentary of 2016 on article 1, para. 163. See also International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports (2004)*, p. 134, paras. 157–159.

[87] A/HRC/31/40/Add.1, para. 39.

[88] A/HRC/35/19.

[89] Ibid., para. 81.

[90] A/71/364, para. 6.

(b) **Urges the State of Palestine to conduct prompt, thorough, transparent, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all allegations of international crimes, and calls on it to ensure that all victims have access to effective remedies and reparation;**

(c) **Recommends that all parties respect international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(d) **Calls upon all States to take measures to ensure respect for the Geneva Conventions by all parties;**

(e) **Reiterates the calls upon all States and relevant United Nations bodies to take all necessary measures to ensure full respect for and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 40/13 and provides an overview of the implementation of the resolution between 1 November 2018 and 30 October 2019 and of developments that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/13 and follows the oral update provided by the United Nations High Commissioner for Human Rights during the forty-second session of the Council on the progress made in the implementation of the resolution.[1] It should be read in conjunction with recent relevant reports of the Secretary-General and the High Commissioner.[2]

2. The report covers the period between 1 November 2018 and 30 October 2019 and addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law, including in connection with incidents of alleged excessive use of force in the context of the large-scale protests related to the Great March of Return along the Gaza-Israel fence and of law enforcement operations in the West Bank and Gaza by all relevant duty bearers. It takes into account the report and recommendations of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory established by the Human Rights Council in its resolution S-28/1. It provides an update on accountability measures taken in relation to the three escalations of hostilities in Gaza since 2008. Lastly, it addresses measures linked to the responsibility of third States to ensure respect for international law.

3. The information contained in the present report draws mainly upon human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. It also draws upon information from governmental sources, other United Nations entities and non-governmental organizations. OHCHR requested the Government of Israel and the Palestinian National Authority to provide information, by 15 November 2019, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights and humanitarian law committed in the Occupied Palestinian Territory, in particular with regard to use of force by their respective security forces that may have led to killings or injuries. The Palestinian National Authority responded with three submissions dated 14 November 2019. The Government of Israel did not respond. OHCHR also requested the States Members of the United Nations for information on the steps taken by them as third States to promote compliance with international law and implement the recommendations addressed to them. As of 15 November 2019, Cuba and the Syrian Arab Republic had responded.

II. Violations of international human rights and humanitarian law in the Occupied Palestinian Territory

4. Serious violations of international human rights law and international humanitarian law continued in the Occupied Palestinian Territory, including in the context of large-scale civilian protests in Gaza. The present section focuses on developments related to possible excessive use of force in the context of law enforcement operations. The report of the High Commissioner on the implementation of Human Rights Council resolutions S-9/1 and S-12/1[3] provides an overview of violations of international human rights and humanitarian law by all duty bearers in the Occupied Palestinian Territory, and the report of the High Commissioner on the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan[4] focuses on the violations of international humanitarian law governing occupation, in particular in respect of settlement expansion and its negative impact on the human rights of Palestinians during the same period (1 November 2018–30 October 2019).

[1] www.un.org/unispal/document/human-rights-commissioners-update-on-the-implementation-of-recommendations-of-commission-of-inquiry-on-gaza-protests/.

[2] A/HRC/35/19 and Add.1, A/HRC/37/41, A/HRC/40/43 and A/74/468.

[3] A/HRC/43/70.

[4] A/HRC/43/67.

5. A total of 131 Palestinians were killed (103 men, 5 women and 23 children) by Israeli security forces during the reporting period throughout the Occupied Palestinian Territory. The vast majority of the killings and injuries happened outside the context of hostilities, in which circumstances the use of force is governed by international human rights law and standards regulating the conduct of law enforcement officials.[5] During the reporting period, 11 Israelis were killed by Palestinians, including 1 girl.

6. Demonstrations known as the Great March of Return at the Israel-Gaza fence, which commenced in March 2018, continued to take place almost every Friday throughout the reporting period. Protests remained largely peaceful, although on many Fridays demonstrators damaged and breached the fence, threw Molotov cocktails, homemade sound grenades and explosive devices towards the Israeli security forces and launched incendiary objects. In particular, 508 burning kites and incendiary balloons were launched by demonstrators towards Israel, causing significant damage to agricultural land and forests.[6] The Israeli security forces responded with tear gas, rubber-coated bullets, water cannons, skunk water and sound devices, as well as live ammunition. Thirty-nine Palestinians, including 12 children and 1 woman, were killed by the Israeli security forces in that context, while some 2,078 Palestinians were injured with live ammunition, including 577 children.[7] Many of those injured sustained permanent disabilities: 55 people, including 4 children and 1 woman, had limbs and/or fingers amputated, 6 were paralyzed and 10 partially lost their vision.[8] Two Israeli soldiers were injured after an armed individual opened fire at them towards the end of the demonstration on 3 May 2019, east of Al-Boureij.

7. OHCHR monitored several cases related to the killing and injury of demonstrators at the fence. In the large majority of cases, it found no indication that the demonstrators in question would have presented an imminent threat to life or of serious injury. Under international human rights law, the use of potentially lethal force, such as firearms, for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent a serious injury from an imminent threat.[9] Two incidents are particularly illustrative. On 21 December 2018, a 40-year-old man suffering from a physical disability resulting from poliomyelitis was shot dead with live ammunition to his head while approximately 400–600m from the fence, east of Al-Boureij. Witnesses reported that he was shot while walking around the bus parking area. On 8 February 2019, a 13-year-old boy was shot dead with live ammunition to his chest while standing and holding hands with three of his friends approximately 300m from the fence, east of Khan Younis, southern Gaza Strip.

8. Paramedics assisting injured demonstrators and journalists covering the protests were also subjected to live fire from the Israeli security forces. Thus, 110 paramedics and 62 journalists were injured by the security forces, tens of them with live ammunition and shrapnel.[10] On 2 August 2019, a journalist was injured with live ammunition to his left leg as he was covering the demonstrations east of Al-Boureij. Witnesses reported that he was wearing a vest visibly marked “press” and taking photographs 200–300m from the fence when he was shot. On 27 September 2019, a 28-year-old female volunteer first responder, visibly identifiable through a white coat, was shot and injured by the Israeli security forces with live ammunition to her right hand and abdomen as she tried to assist injured demonstrators approximately 100m from the fence, east of Rafah.

9. Of particular concern is the number of children who continued to be exposed to unacceptable levels of violence at the fence. Children accounted for around 31 per cent of the fatalities and 28 per cent of those injured by live ammunition during the reporting period.[11] Little effort appears to have been made by the organizers of the demonstrations and

[5] A/HRC/40/43, para. 14.
[6] Figures provided by the Department of Safety and Security of the Secretariat.
[7] Figures provided by the Office for the Coordination of Humanitarian Affairs of the Secretariat.
[8] Figures provided by the World Health Organization.
[9] Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 12.
[10] Figures provided by Al Mezan Center for Human Rights.
[11] Figures provided by OHCHR and the Office for the Coordination of Humanitarian Affairs of the Secretariat.

the authorities in Gaza to prevent children from being exposed to violence at the fence. While the Israeli security forces bear the primary responsibility for the killing and injury of demonstrators, including children, a considerable number of demonstrators and witnesses contacted by OHCHR during the reporting period noted that the Higher National Commission for the Great March of Return continued to provide buses to shuttle demonstrators, including children, from different places in the Gaza Strip to the five demarcated demonstration sites along the eastern border. Witnesses reported that only on very rare occasions were children prevented from boarding the buses, and then only when the children under the age of 9.

10. On 18 March 2019, the independent international commission of inquiry on the protests in the Occupied Palestinian Territory presented its report to the Human Rights Council.[12] It found that, in the vast majority of the cases it had assessed, the use of live ammunition by the Israeli security forces against demonstrators was unlawful and that demonstrators had been shot in violation of their right to life.[13] The commission of inquiry further determined that certain incidents could potentially amount to war crimes and crimes against humanity.[14] In its recommendations, it urged the Israeli authorities to refrain from using lethal force against civilians posing no imminent threat to life, to ensure that the rules of engagement did not authorize lethal force against "main inciters"[15] and to prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.[16] The commission of inquiry also recommended that the Government of Israel conduct prompt, impartial and independent investigations into every protest-related killing and injury, in accordance with international standards, while ensuring prompt, adequate and effective remedies for those killed or injured unlawfully.[17]

11. In the West Bank, including East Jerusalem, possible excessive use of force by the Israeli security forces – in some cases possibly amounting to arbitrary deprivation of life – continued in the context of law enforcement operations. During the reporting period, 35 Palestinians were thus killed, including 6 children and 1 woman.

12. OHCHR monitored several cases where the Israeli security forces used lethal force, killing or injuring a Palestinian, in circumstances in which lethal force did not appear to be strictly necessary in order to protect life or prevent a serious injury from an imminent threat.[18] For example, on 14 December 2018, an 18-year-old man was shot with live ammunition to his lower back from a distance of 50m while he was running away from Israeli soldiers who were firing tear gas to disperse a group of youth outside Al-Jalazun refugee camp, north of Ramallah. The Israeli security forces did not provide medical assistance to that person and prevented a Palestinian ambulance from approaching by firing sound grenades. After 30 minutes, Palestinian paramedics were allowed to transport the man to Ramallah hospital, where he was pronounced dead. An investigation was opened by the Israel Defense Forces into the incident.[19] On 4 March 2019, in the vicinity of Kafr Nimeh village, west of Ramallah, the Israeli security forces shot and killed two Palestinians and injured a third during an apparent car ramming attack in which two Israeli soldiers were injured. From video footage of the incident, it is possible to hear the sound of ramming followed by a single shot and, after a four-minute interval, three consecutive bursts of fire. Witness testimonies were consistent with the video footage. The Israel Defense Forces spokesperson refused to

[12] A/HRC/40/74.
[13] Ibid., paras. 94 and 97.
[14] Ibid., paras. 114–115.
[15] The term refers to the category of "key instigators" used by the Israel Defense Forces in a number of submissions and mentioned below in paragraph 34.
[16] A/HRC/40/74, para. 119.
[17] Ibid., para. 125 (a)–(b).
[18] For further illustrative cases, including of possible excessive use of force against children, paramedics and people with disabilities, see A/HRC/43/70.
[19] www.haaretz.co.il/news/politics/1.6766320 (in Hebrew only).

comment on enquiries by Israeli media regarding the delay between the ramming and the shooting.[20] The Forces opened an operational inquiry into the incident.[21]

13. In other cases, the use of lethal force led to severe and permanent injuries. On 12 July 2019, the Israeli security forces shot and critically injured a nine-year-old Palestinian boy in the head during the weekly demonstrations in Kafr Qaddum, near Qalqiliya. According to eyewitnesses, protesters were throwing stones at the Israeli security forces about 150 metres away from where the boy was standing at the entrance of a friend's house when he was hit. At the time of reporting, the boy remained hospitalized with around 100 fragments lodged in the brain, unable to speak and with very limited ability to move. Media reported that Israel Defense Forces was investigating the incident, however this has not been officially confirmed.[22]

III. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza and other rounds of hostilities

14. Over five years after the 2014 escalation of hostilities in Gaza, lack of accountability remains pervasive for suspected violations of international humanitarian law, including allegations of war crimes perpetrated by all parties to the conflict. Since the publication of the report of the commission of inquiry on the 2014 Gaza conflict,[23] the Secretary-General and the High Commissioner have provided regular updates on the lack of progress regarding the implementation of the recommendations contained in that report, and highlighted concerns about the lack of accountability by both Israeli and Palestinian authorities.[24]

15. With respect to Israel, the most recent update by the Israeli Military Advocate General was provided on 15 August 2018 and referred to in the previous report of the High Commissioner. [25] No notable progress in the investigation and prosecution of alleged violations in the context of the 2014 round of hostilities was registered during the reporting period.[26]

16. Lack of progress and transparency persists also in relation to accountability efforts linked to previous rounds of hostilities. In particular, since July 2010, no information has been made available by the Government of Israel in relation to progress in the investigation and prosecution of alleged wrongdoing committed by the Israeli security forces in the context of Operation Cast Lead.[27]

[20] www.timesofisrael.com/9-days-after-alleged-car-ramming-eyewitnesses-say-israel-hasnt-contacted-them/.

[21] www.haaretz.com/israel-news/.premium-palestinian-car-hit-soldiers-they-shot-back-once-four-minutes-later-nine-bullets-followed-1.7045801.

[22] www.timesofisrael.com/family-of-palestinian-boy-shot-in-the-head-wants-answers-from-israel/.

[23] A/HRC/29/52.

[24] See, in particular, A/HRC/34/38, para. 42, A/HRC/37/41, paras. 9–17, A/HRC/40/43, paras. 4–13, and A/71/364 paras. 40 and 51–55.

[25] A/HRC/40/43, para. 5.

[26] In particular, of the 500 complaints (relating to 360 incidents) referred to the Military Advocate General, 31 were referred for criminal investigation and most were closed on the ground that the conduct of the Israeli security forces complied with domestic and international law. While one investigation led to the conviction of three soldiers for looting, investigations in 28 cases did not result in criminal charges; two cases remain pending. Cases relating to 189 incidents have so far been closed. See https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf and A/HRC/40/43 paras. 5 and 9.

[27] According to the latest available update, 47 military police investigations have been opened and led to the indictment of three Israeli soldiers (two of whom for forcing a Palestinian minor to assist them in a manner that put him at risk and another for killing a Palestinian civilian) and to the conviction of one soldier for the theft of a credit card. See https://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaUpdateJuly2010.pdf.

17. The absence of any significant progress in the investigation of and prosecution for alleged violations confirms the serious concerns previously expressed by the High Commissioner and the Secretary-General regarding the consistent failure of the Israeli Military Advocate General to open criminal investigations in cases of alleged violations of international humanitarian law, including possible war crimes, committed by Israeli security forces in the context of hostilities.[28]

18. In relation to more recent escalations, on 19 December 2018 the Israel Defense Forces publicly reported that the Military Advocate General had opened an investigation into the killing of two Palestinian children by an Israeli airstrike on 14 July 2018.[29] On that day, the Israeli Air Force conducted airstrikes targeting a vacant building belonging to the Palestinian Ministry of Culture, located in Al Katiba yard, in Gaza City, killing two 14-year-old boys and injuring 23 others.[30] Israel alleged that the building was being used for militant activity. According to the Israel Defense Forces spokesperson, an internal military investigation had showed that "at the time of the [missile] fire, no people were spotted on the roof of the building".[31] This announcement followed the publication of an independent investigation into the case by the Israeli human rights organization B'Tselem and the international non-governmental organization Forensic Architecture, which found that the sequence of video footage of the attacks initially published through the Twitter account of the Israel Defense Forces spokesperson had been edited in relation to the first fatal strike, in an alleged attempt to obscure the unlawful nature of the strike.[32]

19. As also underlined by the High Commissioner in previous reports,[33] no information was made available on steps taken to ensure accountability for possible international humanitarian law violations, including possible war crimes, committed by the Palestinian authorities and armed groups in the context of the different rounds of hostilities, as identified by the commission of inquiry on the 2014 Gaza conflict and, before that, by the United Nations Fact-Finding Mission on the Gaza Conflict.[34] Such lack of accountability remains of the gravest concern.

B. Accountability for unlawful use of force

20. Impunity continues to prevail also in relation to incidents of possible excessive use of force by Israeli security forces outside the context of hostilities, confirming a worrying trend that has been repeatedly highlighted by the Secretary-General and the High Commissioner.[35] The lack of progress in the investigations related to the widespread use of lethal force by the Israeli security forces in the context of the Great March of Return extends this unacceptable trend.

21. In February 2019, prior to the release of the report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the Israel Defense Forces published a document intended to provide information on the nature of the events related to the Great March of Return protests and on the response by the Forces. In large part, the document echoes the position of the Government of Israel expressed in its response to the 2018 Supreme Court petition on the open-fire policy.[36]

[28] A/HRC/35/19, para. 18, A/HRC/37/41, para. 14, A/HRC/40/43, para. 8, and A/71/364, para. 40.

[29] www.haaretz.com/israel-news/israel-probing-death-of-two-palestinian-teens-in-gaza-warning-missile-strike-1.6762293.

[30] See also A/HRC/40/39, para. 15.

[31] www.haaretz.com/israel-news/israel-probing-death-of-two-palestinian-teens-in-gaza-warning-missile-strike-1.6762293.

[32] www.btselem.org/video/201812_lethal_warning#full.

[33] See, in particular, A/HRC/37/41, para. 17, and A/HRC/40/43, para. 13.

[34] A/HRC/29/52 and A/HRC/12/48 and Corr.1.

[35] See, for instance, A/HRC/34/38, paras. 43–44, A/HRC/35/19, paras. 17–18, and A/71/364, para. 66.

[36] www.idf.il/media/48315/petition-gaza-border-events-summary-of-state-position.pdf and https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Gaza+Fire+Regulations+Petition/State+response+Gaza+petition.pdf (in Hebrew only).

22. In particular, the Israel Defense Forces continue to view the protests as events that cannot be considered detached from the ongoing armed conflict with armed groups in Gaza. Such a view translates into an operational approach that questions the applicability of the law enforcement framework based on international human rights law, as reflected in the claim that "most of the means and methods employed by law enforcement agencies in situations of riots or border incidents are simply ineffective or irrelevant to this scenario".[37] That assessment is inconsistent with the findings of the commission of inquiry and with the information gathered by OHCHR through its continuous monitoring activities on the ground. Both the commission of inquiry and OHCHR have observed that the Great March of Return demonstrations along the Israel-Gaza fence are civilian in nature and, despite some acts of significant violence, do not constitute combat or a military campaign.[38] With regard to the use of lethal force, the Israel Defense Forces stress that, according to their standard operating procedures, "in contexts such as the Gaza border events, potentially lethal force may only be used in circumstances in which there is a real and imminent danger to human life or bodily integrity. Dangers that are not as serious cannot be dealt with by the use of such force," adding that the Forces use "various measures to ensure the use of potentially lethal force is accurate and restrained".[39] OHCHR monitoring activities on the ground, however, continue to indicate a persistent pattern of Palestinians getting killed or severely injured at the fence in circumstances where they do not seem to pose an imminent threat to life or serious injury.[40]

23. According to the Israel Defense Forces, allegations of misconduct by members of the Forces are investigated in an effective and thorough manner.[41] However, 19 months after the start of the Great March of Return, the Israeli military system had delivered only one sentence in relation to possible unlawful acts committed by the Israeli security forces at the fence (see para. 25 below).

24. According to information provided by the Israeli Ministry of Justice, as of 30 July 2019, 226 incidents resulting in the killing of Palestinian demonstrators during the Great March of Return had been referred to the General Staff Mechanism for Fact-Finding Assessments. The Mechanism has completed the investigation of 55 cases. In 10 cases, the Military Advocate General announced the opening of a military police investigation; in 20 other cases, the determination was to conclude the investigation without proceeding any further. The other cases referred to the Military Advocate General by the Mechanism were still pending. In three additional cases, a police investigation was initiated without the involvement of the Mechanism. The High Commissioner has highlighted the shortcomings of the Mechanism in previous reports, raising concerns as to whether such an internal mechanism meets accountability requirements under international law.[42] The organizations Al Mezan Center for Human Rights and Palestinian Centre for Human Rights have submitted to the Israeli authorities 74 and 177 cases respectively related to individuals killed or injured at the Gaza fence since 30 March 2018.

25. On 29 October 2019, an Israeli military court sentenced an Israeli soldier to one month in prison, to be served by carrying out military-related labour, and to a two-month suspended sentence and demotion for shooting and killing without authorization Othman Hilles, a 14-year-old Palestinian. The killing occurred on 13 July 2018, close to the Israel-Gaza fence, east of Gaza City, and was captured on video. The independent international commission of inquiry on the protests in the Occupied Palestinian Territory reviewed the incident and found that the victim had not posed an imminent threat of death or serious injury to Israeli security forces soldiers when he was shot.[43] According to the Israel Defense Forces, the conviction

[37] Israel Defense Forces, "Gaza border events: questions and answers", p. 70. Available from www.idf.il/media/48555/gaza-border-events-questions-and-answers.pdf.

[38] A/HRC/40/74, para. 32.

[39] www.idf.il/en/minisites/questions-and-answers-concerning-the-violent-riots-and-attacks-occurring-on-the-border-between-gaza-and-israel-during-2018-9.

[40] www.un.org/unispal/document/human-rights-commissioners-update-on-the-implementation-of-recommendations-of-commission-of-inquiry-on-gaza-protests/.

[41] Israel Defense Forces, "Gaza border events", p. 92.

[42] A/HRC/40/43, paras. 11 and 15.

[43] A/HRC/40/CRP.2, para. 517.

was part of a deal in which the soldier had pleaded guilty to "disobeying an order leading to a threat of life or health".[44] Also according to the Forces, the defendant shot the Palestinian boy "without receiving the required permission from his commanders, not in accordance with the rules of engagement and not in accordance with the instructions he had received prior".[45] Moreover, the soldier was not convicted of a more serious offence because military prosecutors were unable to collect sufficient evidence connecting his gunshot to the victim's death.[46] The offence that forms the basis for the conviction and the leniency of the sentence appear starkly inconsistent with the gravity of the conduct, casting serious doubts on the effectiveness of the Israeli internal investigation and prosecution system to ensure accountability for human rights and international humanitarian law violations in line with international standards. The case appears also to highlight structural limitations inherent to the Israeli military justice system in focusing on the responsibility of soldiers in complying with orders and standard operating procedures, without addressing the legality of those same rules of engagement and the connected responsibility of military commanders.

26. Although not linked to the Great March of Return, on 15 May 2019 the Israeli Military Police Criminal Investigation Division closed the probe opened on 4 January 2018 into the killing of Ibrahim Abu Thoryah during demonstrations at the Gaza fence on 15 December 2017.[47] A double amputee in a wheelchair, Mr. Abu Thoryah was shot dead with live ammunition to the head. His killing sparked widespread international condemnation, including a statement by the High Commissioner.[48] According to media reports, the military investigation concluded that there was no evidence that the man had been killed by direct Israeli fire.[49] The Israel Defense Forces added that they had contacted Palestinian officials to obtain the bullet that had hit Mr. Abu Thoryah to examine it, but that the request had been denied. According to information collected by OHCHR at the time of the incident, there was no indication that Mr. Abu Thoryah had posed an imminent threat of death or serious injury at the moment he was killed. His physical disability must have been clearly visible to the person who shot him, in the front of the head, some 15–20m from the fence.

27. The lack of accountability for the killing and injury of Palestinians is evident in the context of the Great March of Return protests in Gaza as well as in the West Bank. On 17 December 2018, the Israeli Attorney General rejected an appeal submitted by the Association for Civil Rights in Israel (ACRI) contesting the Military Advocate General's decision of April 2016 to close the investigation into the killing of 17-year-old Mohammad al-Qusbah by an Israel Defense Forces officer with three bullets to his upper limbs. The boy was running away from Israel Defense Forces personnel after throwing a stone towards Israeli installations near the village of Ar-Ram, on 3 July 2015.[50] In justifying the closing of the investigation, the Military Advocate General noted that security personnel had made "a professional error" by firing while the boy was running, adding that the incident occurred in "operational circumstances".[51] The Attorney General regarded the delay in the promotion of the officer as an "appropriate and proportionate response".[52] The failure to prosecute a soldier who had opened fire against an individual (in this case a minor) who, according to information resulting from OHCHR monitoring activities, did not seem to pose a threat to life or serious

[44] www.timesofisrael.com/in-first-soldier-convicted-over-killing-of-gaza-rioter-gets-1-month-sentence.

[45] Ibid.

[46] Ibid.

[47] www.haaretz.com/israel-news/.premium-israel-army-closes-case-disabled-gazan-s-death-citing-no-evidence-soldiers-shot-him-1.7246465 and www.ynetnews.com/articles/0,7340,L-5066263,00.html.

[48] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22550&LangID=E%2027%20 and www.timesofisrael.com/idf-soldiers-didnt-intentionally-kill-double-amputee-in-gaza-riot/.

[49] This reflects what was already announced in the Israel Defense Forces initial probe, which indicated that there were "no moral or professional failures" on the part of the Israel Defense Forces in the incident. See www.timesofisrael.com/idf-soldiers-didnt-intentionally-kill-double-amputee-in-gaza-riot/.

[50] www.btselem.org/press_releases/20160410_muhammad_ali_qusbah_case_closed.

[51] Letter dated 13 December 2018 from the Israeli Attorney General addressed to ACRI. See also www.timesofisrael.com/idf-colonel-cleared-in-shooting-death-of-rock-thrower/ and www.haaretz.com/israel-news/.premium-idf-officer-who-killed-stone-throwing-palestinian-tapped-for-top-post-1.6358286.

[52] Letter dated 13 December from the Israeli Attorney General addressed to ACRI.

injury, again casts doubt on the effectiveness of the accountability system in place. Concerns also persist in relation to the Attorney General's position that the delay in the officer's promotion represents an appropriate and proportionate punishment for the conduct in question. In March 2019, ACRI and the family of the victim filed a petition with the Israeli High Court of Justice against the decision of the Attorney General.

28. On 27 March 2019, the Public Committee against Torture in Israel (PCATI) appealed to the Israeli Attorney General against the decision of the Military Advocate General to close the investigation into the killing of Aref Jaradat, a 22-year-old Palestinian with Down syndrome who was shot on 4 May 2016 in the abdomen in the context of an operation of the Israeli security forces in Sa'ir, near Hebron. Mr. Jaradat died of his wounds on 19 June 2016. According to the information collected by OHCHR at the time, the man, who was seemingly disoriented by the ongoing operation, was shot while standing with his hands visible some 20m from the Israeli security forces, in an open location, in circumstances where he did not seem to pose any threat. PCATI reported that the Military Advocate General ordered an investigation several months after the complaint had been submitted and the involved soldiers were only interviewed nine months after the incident. The investigation was closed on 25 July 2017 for lack of evidence, with various contradictions and discrepancies between the testimonies of soldiers. The Military Advocate General rejected, on 22 January 2019, a motion by PCATI to reconsider its decision.

29. During the reporting period, the spokesperson for the Military Advocate General announced the closure of the investigations into the killing by the Israeli security forces, in three separate incidents, of Ali Omar Nimer Qinu (aged 17), Layth Haitham Fathi Abu Na'im (aged 16) and Yassin Omar Sliman a-Saeadih (aged 35) during law enforcement operations conducted in the West Bank in the context of clashes in January and February 2018.[53]

30. The persisting lack of accountability for possible unlawful acts committed against Palestinians perpetuates a cycle of impunity that facilitates the occurrence of further violations. Moreover, by leaving unanswered the quest for redress, justice and truth, the suffering of the affected families is exacerbated. The two cases below are illustrative in that regard.

31. On 20 April 2018, 14-year-old Mohammad Ibrahim Ayoubi was killed by the Israeli security forces with a single shot of live ammunition to his head while running away from the Gaza-Israel fence, some 250–300m from it, at Abu Safia demonstration site, in northern Gaza Strip. An initial Israeli military investigation determined that the boy was attempting to damage the fence.[54] Video footage, however, showed the boy being shot as he was running away. Eyewitnesses confirmed the circumstances of his killing to OHCHR. In July 2018, the family filed a complaint to the Military Advocate General, with the support of the Palestinian Centre for Human Rights, which told OHCHR that the Centre had been informed on 14 March 2019 that an investigation had been opened by the military police and that, on 13 May 2019, the military police had arranged for two witnesses to provide testimony by videoconference. No further update has been received since then. Both of Mohammad's parents have described suffering from continuous psychological distress and his 16-year-old brother, who was present at the demonstration site the day his brother was killed, has suffered from recurring nightmares and episodes of increased aggressiveness. The family has denounced the lack of psychosocial, medical and financial support.

32. On 21 June 2016, 15-year-old Mahmoud Badran was shot and killed by an Israel Defense Forces officer. In the same incident, four other Palestinians, including three children, were injured when the security forces opened fire on the roof of their car as they were driving on an underpass connecting two Palestinian villages along route 443. One of the injured boys told OHCHR that they had been shot without warning by two individuals standing next to a parked car.[55] Mahmoud's father reported that the family had retained a lawyer to support them in following up on the investigation carried out by the Israeli authorities. Each time the lawyer

[53] www.btselem.org/press_releases/20191028_mag_corps_closes_3_more_cases_of_palestinian_fatalities.

[54] www.timesofisrael.com/army-said-to-find-teen-was-trying-to-damage-gaza-fence-when-shot/.

[55] A/HRC/34/36, para. 9.

approached the Military Advocate General, he was told that the investigation was almost completed and that a charge list would be issued soon. On 12 January 2018, Israeli media reported that the Military Advocate General had decided to close the case against the Israel Defense Forces officer.[56] With the defendant having supposedly acted based on the assumption that the persons in the car were involved in an earlier incident of stone throwing, the military investigators found that the erroneous identification of the car was "sincere and reasonable" and that the forces had "operated appropriately".[57] After the investigation was closed, the family proceeded with a civil lawsuit, which was pending as at December 2019. The father has explained that the loss of Mahmoud has had a devastating impact on his family. His younger son avoids leaving the house while his wife suffers from episodes during which she abruptly breaks down in tears or stares in front of her without saying a word.

Rules of engagement

33. The independent international commission of inquiry on the protests in the Occupied Palestinian Territory has stressed that scarce accountability measures arising out of Operations Cast Lead and Protective Edge and public comments by high-ranking public officials cast doubt over the State's willingness to scrutinize the actions of military and civilian leadership who drafted, approved and supervised the implementation of the rules of engagement governing the actions of Israeli forces at the demonstrations.[58] The rules of engagement of the Israeli security forces remain largely confidential. The Government of Israel, however, has outlined some of their operational implications in its response to two petitions submitted by six Israeli and Palestinian human rights organizations to the High Court of Justice on 15 and 23 April 2018.[59]

34. The Israel Defense Forces have provided further information on its rules of engagement (referred to as "standard operating procedures"). In particular, they have clarified the notion of "key instigators" or "key rioters", which had been treated with caution by the High Court of Justice in its judgment on the legality of the open-fire regulation policy in May 2018.[60] International law does not recognize as such these two categories of individuals in the context of demonstrations. According to Israel Defense Forces instructions, "where the commander assesses that the use of potentially lethal force is required to repel the real and imminent danger posed by a crowd, the commander will order such force only against 'key instigators' or 'key rioters'".[61] The Forces also note that individuals falling into those two categories "are often conducting activities within the violent riots for a lengthy period of time, and snipers face a challenge in identifying a time which provides the necessary circumstances for carrying out their fire while reducing the risk of hitting above the knee or hitting someone else. For example, snipers may act as a person temporarily moves away from the crowd or rests before continuing his activity".[62] Such a conclusion is highly problematic because it excessively broadens the notion of "imminent threat", particularly in relation to its temporal proximity, an interpretation that does not find support in international human rights law standards or jurisprudence.[63] The Israel Defense Forces have provided a list of examples of behaviour that could trigger the use of lethal force against the two categories of

[56] A/HRC/37/41, para. 21. See also www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-againstrules-killing-palestinian-boy-1.5730351.

[57] See A/HRC/40/43, para. 23.

[58] A/HRC/40/74, para. 111.

[59] www.idf.il/media/48315/petition-gaza-border-events-summary-of-state-position.pdf and https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Gaza+Fire+Regulations+Petition/State+response+Gaza+petition.pdf (in Hebrew only). See also A/HRC/40/43 para. 16.

[60] High Court of Justice of Israel, *Yesh Din v. Chief of General Staff, IDF* (case No. 3003/18), judgment of 24 May 2018.

[61] Israel Defense Forces, "Gaza border events", p. 83.

[62] Ibid., pp. 87–88.

[63] In that regard, the commission of inquiry has stressed that it is clear that the "imminent threat to life" standard – as applied in the rules of engagement – was too far removed from the criteria as understood in international law (A/HRC/40/CRP.2, para. 324).

individuals.[64] As emphasized by the commission of inquiry, such examples of behaviour cannot in themselves lawfully trigger the use of lethal force under the law enforcement paradigm as framed under international law, unless the victim is simultaneously posing an imminent threat to life or serious injury.[65]

35. Conflicting media reports emerged in July and August 2019 on whether the open-fire regulations employed by the Israel Defense Forces along the Israel-Gaza fence were amended during the reporting period to ensure that soldiers would primarily shoot below the knee and fine-tune the regulations to shooting at the ankle after it emerged in many cases that firing at the lower limbs above the knee led to death.[66] In a letter addressed to ACRI in August 2019, the Military Advocate General denied that any change or revision of the instructions provided to soldiers at the fence had occurred since the beginning of the large-scale demonstrations in March 2018.[67] While the Israel Defense Forces have not expressed any official position on the matter, OHCHR findings continue to suggest the persistence of live ammunition injuries to the upper limbs, including the torso and the head, among casualties at the fence, in certain cases leading to fatalities.[68] Such persistence does not appear to support the notion that any change has been made to the regulations of the Israeli security forces or to manner of their implementation. In addition, no change in the rules of engagement has been reported to prohibit the authorization of lethal force against "key instigators" or "key rioters" as a status.

Civil remedies

36. As highlighted in previous reports of the High Commissioner, Palestinians residing in Gaza face significant barriers that impede or prevent them from seeking civil remedies to pursue accountability for alleged violations.[69] The reporting period did not witness any amendment to the 2014 clause excluding the Gaza population (as residents of an "enemy territory") from the scope of Israeli civil liability legislation. The applicability of such a clause has exempted the State from liability for wrongful acts committed by the Israel Defense Forces since the 2014 escalation.[70]

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[64] In particular, reference is made to the following actions: coordinating the tactical placement and setting on fire of tyres; coordinating people to contribute towards pulling back parts of the security infrastructure; moving through the crowd while talking into a radio; pulling wires attached to part of the security infrastructure (barbed wire coils), together with a group of people; inciting a mob, influencing the behaviour of those in the mob or providing the conditions for mass breaches or infiltrations to occur; and connecting wires to the security infrastructure (i.e., barbed wire coils placed by the Israel Defense Forces inside Gaza) so that it may be pulled backwards. See Israel Defense Forces, "Gaza border events", pp. 84–85. See also A/HRC/40/CRP.2, para. 315.

[65] A/HRC/40/CRP.2, para. 316.

[66] www.btselem.org/press_releases/20190724_military_admits_to_killing_protestors_for_no_reason, www.ynet.co.il/articles/0,7340,L-5569938,00.html and www.haaretz.com/israel-news/.premium-israel-takes-tactical-risk-in-gaza-to-serve-a-strategic-goal-1.7866444.

[67] Letter dated 15 August 2019 from the Military Advocate General to ACRI. The Israel Defense Forces stressed that there had been additional restrictions imposed on the use of force over and above what was authorized by the standard operating procedures, but that this had not required any changes to the standard operating procedures (Israel Defense Forces, "Gaza border events", p. 66). See also www.idf.il/en/minisites/questions-and-answers-concerning-the-violent-riots-and-attacks-occurring-on-the-border-between-gaza-and-israel-during-2018-9/.

[68] On 26 July 2019, a 22-year-old demonstrator was shot dead with live ammunition to his abdomen, east of Khuza'a; on 31 August 2019, a 22-year-old demonstrator was pronounced dead after being shot in the head with live ammunition the day before, also east of Khuza'a; on 6 September 2019, a 14-year-old boy and a 17-year-old boy died after being shot by live ammunition to their waist and neck at Malaka and Abu Safia demonstration sites; and, on 4 October 2019, a 28-year-old demonstrator was hit by live ammunition to his chest at Abu Safia demonstration site and was pronounced dead later on the same day, upon arrival at the hospital.

[69] See, in particular, A/HRC/37/41, para. 15, and A/HRC/40/43, paras. 25–26. See also A/71/364, paras. 40 and 56–57.

[70] A/71/364, paras. 56–57. See Government of Israel decree of 26 October 2014 declaring the Gaza strip "enemy territory", valid retroactively from 7 July 2014, thereby activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree". On 3 February 2019, an

C. Accountability for violations by the Palestinian authorities

37. During the reporting period, few developments have been reported in relation to actions undertaken by the Palestinian authorities in the West Bank and the Gaza Strip to investigate and prosecute the authors of alleged violations linked to incidents of excessive use of force by the Palestinian security forces.

38. OHCHR sought information, in particular, on the steps taken by the Palestinian Authority to investigate allegations of excessive use of force by Palestinian security forces in the context of the civilian demonstrations held in Ramallah and Nablus on 13 June 2018 to protest against the imposition by the Palestinian Authority of restrictive measures on the Gaza Strip. According to information provided by the Ministry of the Interior, an internal investigation found that the Palestinian security forces had acted according to the law, except for some minor violations, for which disciplinary measures had reportedly been taken. However, as previously reported by the High Commissioner and several independent human rights organizations, [71] first-hand monitoring and verification activities suggest that demonstrators were physically assaulted, that at least 56 people were violently and arbitrarily arrested and that some were subjected to ill-treatment in detention. The Palestinian Authority also informed OHCHR that, during the reporting period, three incidents involving possible excessive use of force by police personnel were referred to the military courts. The status of those proceedings remains unknown. The High Commissioner urges the State of Palestine to ensure that incidents involving possible excessive use of force are promptly, impartially and independently investigated in line with international standards, and that those responsible are held accountable.

39. In the context of Gaza, OHCHR did not receive information indicating any measures taken by the de facto authorities to investigate and prosecute those allegedly involved in incidents of possible excessive use of force by the Gaza security forces during the civilian demonstrations that took place between 14 and 16 March 2019. A considerable number of participants, including women and children, were beaten by Gaza security forces in uniform and by others in plainclothes, and consequently hospitalized. Up to 1,000 demonstrators were arrested and detained, and some of them were subjected to ill-treatment while in detention.[72] Staff members of the Palestinian Independent Commission for Human Rights who were physically assaulted by Gaza security forces during the March 2019 protests reported having been informally approached by representatives of the comptroller mechanism of the Ministry of the Interior in Gaza, which offered them apologies and a verbal commitment to opening a probe into the incidents. However, as at the end of the reporting period, no information has been published about any concrete steps taken to that effect.

IV. Third-State responsibility

40. In its resolution 40/13, the Human Rights Council called upon all States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions. It also called upon all States to fulfil their obligations with regard to penal sanctions, grave breaches and the

appeal was filed by Al Mezan Center for Human Rights and Adalah to the Supreme Court of Israel against the decision of the District Court of Beersheva of 4 November 2018 upholding the constitutionality of the law prohibiting Palestinians living in Gaza from seeking compensation from Israel. The constitutionality of the exclusionary clause was challenged in a tort lawsuit brought by two human rights organizations on behalf of Ateyeh Nabaheen, who was shot and seriously wounded on 11 November 2014 in Gaza, while on his family's property, outside any area of military activity, and who was left quadriplegic and confined to a wheelchair as a result of his wounds. See www.nevo.co.il/psika_html/mechozi/ME-10-12-40777-390.htm (in Hebrew only); A/HRC/37/41, para. 16, and A/HRC/37/41, para. 26.

[71] A/HRC/40/39, para. 61. See also www.alhaq.org/advocacy/6185.html and https://www.amnesty.org/en/latest/news/2018/06/state-of-palestine-amnesty-staff-member-arbitrarily-detained-and-tortured-by-palestinian-security-officers/.

[72] A/HRC/43/70, paras. 44–45.

responsibilities of the High Contracting Parties to the Fourth Geneva Convention, in accordance with articles 146, 147 and 148 of the Fourth Geneva Convention. Moreover, it called upon all the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.

41. Third States may take various measures to comply with their obligations under relevant international law, in particular to ensure respect for international humanitarian law.[73] Such measures may range from diplomatic interventions and démarches to more significant steps, including supporting domestic and international efforts to bring suspected perpetrators of serious violations of international human rights and humanitarian law to justice, applying measures of retortion or adopting lawful countermeasures.[74]

42. In October 2019, with a view to contributing to the present report, OHCHR sent a note verbale to Member States requesting them to provide information on any steps they may have taken as third States to promote compliance with international law and implement the recommendations addressed to them in the report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory. Two responses were received, from Cuba and the Syrian Arab Republic. In their responses, both States reiterated their support for Human Rights Council resolution 40/13 and reaffirmed the need for the international community to take decisive steps to end violations of international law in the Occupied Palestinian Territory, while emphasizing the importance of continuing to document the violations and crimes committed.

43. On 17 September 2019, the District Court of The Hague held an admissibility hearing on a case brought by a dual national of the State of Palestine and the Netherlands, Ismail Ziada, against a former Chief of General Staff of the Israel Defense Forces and a former Commander of the Israeli Air Force, alleging their responsibility as commanders in an airstrike that hit the plaintiff's family house in Bureij refugee camp in Gaza, on 20 July 2014, during Operation Protective Edge[75] and that resulted in the death of six members of the plaintiff's family. The case has been submitted in accordance with the law of the Netherlands extending civil jurisdiction for citizens unable to initiate legal proceedings elsewhere.

44. While States Members of the United Nations have often supported the adoption of resolutions and declarations by different United Nations bodies enshrining respect for international law principles in relation to the situation in the Occupied Palestinian Territory, the degree of compliance with the decisions and recommendations of these bodies remains uneven, as underlined in previous reports of the High Commissioner.[76]

V. Conclusion and recommendations

45. **The period under review was characterized by a persistent failure to ensure accountability for allegations of excessive use of force by the Israeli security forces in the context of the large-scale protests in Gaza and law enforcement operations in the West Bank, including East Jerusalem. Impunity also remained pervasive in relation to allegations against all parties to the 2014 escalation and to previous rounds of hostilities in Gaza. Furthermore, there were concerns about the insufficiency of steps taken to investigate and prosecute the members of Palestinian security forces or of the security forces in Gaza responsible for alleged excessive use of force and other human rights abuses committed against Palestinians.**

[73] International Committee of the Red Cross (ICRC), commentary of 2016 on article 1 common to the Geneva Conventions, para. 165. See also A/HRC/40/43, para. 49.

[74] ICRC, commentary of 2016 on article 1, para. 181.

[75] www.reuters.com/article/us-netherlands-israel-gantz/dutch-court-to-hear-case-against-israels-gantz-idUSKBN1W12JZ.

[76] A/HRC/31/40/Add.1 and A/HRC/35/19, para. 62. Also, as emphasized by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the international community possesses a great deal of power to ensure a positive, durable and just solution to the occupation. Indeed, it will not end without the international community acting decisively in support of international law and its common values to compel Israel to fulfil its obligations (A/74/507, para. 76).

46. **With regard to the responsibility of third States, and as already emphasized by the High Commissioner, despite the incessant calls made by the international community and the support provided to Palestinian and Israeli authorities in their peace efforts, not enough has been done by the international community to that effect.**[77] **In its resolution 2334 (2016), the Security Council stressed that the status quo was not sustainable and that significant steps were urgently needed to stabilize the situation and to reverse negative trends on the ground. In that regard, the Secretary-General has emphasized that a lack of accountability compromised chances for sustainable peace and security, adding that tackling impunity must be the highest priority.**[78] **The High Commissioner again echoes those calls.**

47. **Recalling the follow-up measures described in previous comprehensive reviews of recommendations,**[79] **the High Commissioner:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory; urges it to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and also calls upon Israel to ensure that all victims and their families have access to effective remedies, reparation and truth;**

(b) **Urges the State of Palestine to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and calls upon the State of Palestine to ensure that all victims and their families have access to effective remedies, reparation and truth;**

(c) **Recommends that all parties ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and that they ensure accountability for grave violations;**

(d) **Calls upon all States to take measures to ensure respect for the Geneva Conventions by all parties;**

(e) **Reiterates the calls upon all States and relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.**

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[77] A/HRC/35/19, para. 62.
[78] A/71/364, para. 6.
[79] A/HRC/35/19, para. 62.

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, the twelfth submitted by the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, covers the period from 1 November 2018 to 31 October 2019. It provides an overview of the human rights situation in the Occupied Palestinian Territory and highlights, in particular, the shrinking civic space and the restrictions on the rights to freedom of expression, peaceful assembly and association. The High Commissioner makes recommendations to the main duty bearers concerned, namely the Government of Israel, the Government of the State of Palestine and the authorities in Gaza.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. Submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1, the present report provides an overview of the human rights situation in the Occupied Palestinian Territory between 1 November 2018 and 31 October 2019. In accordance with the above-mentioned resolutions, it details violations of international humanitarian law by the occupying Power, Israel, and by Palestinian armed groups, and violations of international human rights law by all three duty bearers, namely the Government of Israel, the Government of the State of Palestine, and the authorities in Gaza.

2. The information contained in the present report relies mainly on the human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. It also reflects information from governmental sources, other United Nations entities and non-governmental organizations (NGOs). The report should be read in conjunction with other relevant reports of the Secretary-General and the High Commissioner to the Human Rights Council and the General Assembly.[1]

3. Throughout the Occupied Palestinian Territory, the reporting period was marked by the ongoing shrinking of civic space as the Government of Israel, the Palestinian Authority and the authorities in Gaza continued to restrict the rights to freedom of expression, association and peaceful assembly. Many of those detained for simply expressing their opinion through social media, attending demonstrations or criticizing the authorities reported being ill-treated and, in a number of cases, tortured.

4. Violence continued at high levels. During the reporting period, the Israeli security forces killed 131 Palestinians,[2] including five women, 21 boys and two girls. Eleven Israelis were killed in attacks by Palestinians, including five soldiers, four civilians during hostilities and two settlers, one of whom was a girl. Of the fatalities, 39 occurred in the context of mass demonstrations along the perimeter fence of Israel with Gaza, with continuing concerns about excessive use of force and absence of accountability. In the West Bank, 35 Palestinians were killed, most of whom in the context of clashes, search and arrest operations or in response to attempted or alleged attacks. These developments are examined in greater detail in the report of the High Commissioner on ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem.[3] There were several brief but significant escalations in hostilities between Palestinian armed groups and Israel in Gaza, one of which represented the most intense escalation since 2014.

5. In Gaza, the Israeli blockade and closures, which entered its thirteenth year, continued to severely restrict the movement of people and goods in and out of Gaza, as well as access within Gaza to basic services, electricity, fuel and medical supplies. Amid a faltering reconciliation process between Fatah and Hamas, the Palestinian Authority continued to apply punitive measures on the population of Gaza by cutting civil service salaries and forcing early retirement. The authorities in Gaza continued to arbitrarily arrest and detain Fatah affiliates and others; numerous reports were made of ill-treatment of detainees. The authorities also handed down 11 death sentences during the reporting period, seven of which by military courts, including against one woman.

6. In the West Bank, Israel escalated settlement expansion, demolitions and evictions of Palestinian homeowners. The Prime Minister of Israel expressed his intention to annex the Jordan Valley.[4] Levels of settler violence remained high, as the Israeli authorities continued to frequently fail to protect the Palestinian population and, in some cases, accompanied and protected settlers during attacks against Palestinians. These developments are examined in further detail in the report of the High Commissioner on Israeli settlements

[1] A/HRC/40/39, A/HRC/40/43, A/74/357 and A/74/468.

[2] Including four men wounded before the reporting period who succumbed to their wounds during the reporting period.

[3] A/HRC/43/21.

[4] www.timesofisrael.com/netanyahu-after-jordan-valley-and-settlements-ill-annex-other-vital-areas.

in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.[5] Concerns also remained over the detention practices of Israel, particularly against children, human rights defenders and journalists.

Legal framework

7. International human rights law and international humanitarian law are applicable in the entirety of the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. A detailed analysis of the relevant legal obligations is contained in a report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and remained applicable for the duration of the reporting period.[6]

II. Violations of international human rights law and international humanitarian law in the Occupied Palestinian Territory by all duty bearers

A. Israel

1. Obligations of the occupying Power under international humanitarian law

8. The Israeli blockade and punitive closures continued to severely restrict the movement of people and goods in and out of Gaza. Other Israeli practices that may amount to collective punishment, including punitive demolitions, closures and withholding of bodies, continued at a high rate. Collective punishment, in addition to being explicitly prohibited by international humanitarian law, violates a range of human rights.

9. On 9 September 2019, the High Court of Justice of Israel reversed its earlier decision of December 2017 and ruled that the Israeli authorities could withhold the bodies of Palestinians killed by the Israeli security forces as a tool for bargaining.[7] By the end of the reporting period, Israel held the bodies of 303 Palestinians, 253 of whom had been killed during hostilities and buried in graves marked only by numbers. This figure includes a further 20 bodies of Palestinians who were killed and withheld during the reporting period.[8] Withholding bodies punishes the families of the deceased and thus could amount to collective punishment and violate the prohibition of torture and ill-treatment and the obligations of Israel, as an occupying Power, pursuant to article 27 of the Fourth Geneva Convention.[9]

10. In the West Bank, the Israeli security forces carried out eight punitive demolitions, all in Areas A and B, under Palestinian civilian control.[10] In one case, on 15 December 2018, the Israeli security forces demolished a four-storey building in Al Ama'ari refugee camp that was home to three families, including the family of a man indicted for killing an Israeli soldier. The High Court of Justice of Israel rejected a petition against the demolition order, stating that demolitions could be authorized even if the other residents did not help to perpetrate or were not aware of the intention to commit the attack.[11]

11. Also of concern was the continued closure of villages by the Israeli security forces following alleged stone-throwing in surrounding areas.[12] In one such case, following the alleged throwing of stones at settlers' vehicles outside Azzun, Qalqilya Governorate, the

[5] A/HRC/43/67.
[6] A/HRC/34/38, paras. 3–12.
[7] High Court of Justice, *The IDF Commander in the West Bank v. Alian* (case No. 10190/17).
[8] Information provided by the Jerusalem Centre for Legal Aid and Human Rights Center.
[9] See also A/71/364, para. 25.
[10] Information provided by the Office for the Coordination of Humanitarian Assistance of the Secretariat.
[11] High Court of Justice, *Naji v. the Military commander of the West Bank* (case No. 6905/18).
[12] A/HRC/40/39, para. 11.

Israeli security forces closed the main entrance to the town and placed a checkpoint at the secondary entrance for 20 days, starting on 27 March 2019, affecting around 9,000 inhabitants.[13]

12. Between June and October 2019, allegedly in response to stone-throwing, the Israeli security forces conducted frequent arrests and night raids and imposed movement restrictions in Al Isawiya neighbourhood of East Jerusalem. During that period, the Israeli security forces arrested 365 Palestinians, including at least 95 children and 42 women. By the end of September, fewer than 10 of those persons had reportedly been indicted, raising concerns that most arrests and detentions were without legal grounds, which would render them arbitrary.[14] On 29 and 30 July 2019, the Israeli security forces summoned for interrogation the parents of two children, aged 5 and 6, alleging that they had thrown stones at the forces. According to Israeli media, the chief of the Jerusalem District Police stated in September that the arrests in Al Isawiya would continue, "until they stop throwing rocks at every police car driving by".[15] The stated aim of these continued operations and detentions raise concern about a pattern of collective punishment of the population of Al Isawiya.

13. Advancement of settlement plans and construction continued at a high rate. During the reporting period, the Israeli authorities demolished 957[16] structures in the West Bank, including East Jerusalem – the highest levels since 2016.[17] Settler violence against Palestinians continued at high levels.[18] According to the results of OHCHR monitoring activities, some families were consequently left with no choice but to leave their homes in East Jerusalem, Nablus and Hebron governorates, raising concerns that these cases may amount to forcible transfer. These developments are described in the report of the High Commissioner submitted to the Human Rights Council at its fortieth session.[19]

14. The Israeli security forces continued to use live ammunition to enforce unilaterally declared restrictions at sea in Gaza.[20] They injured 18 fisherfolk during 354 shooting incidents. In addition, 42 fisherfolk, including five children, were arrested and 17 fishing boats were confiscated. Along the land perimeter with Israel, Israeli security forces tanks and bulldozers routinely conducted incursions into Gaza to level and excavate farmland. Four farmers were injured by the Israeli security forces during the reporting period.

15. The enforcement methods used by Israel in the restricted areas are not in accordance with international law insofar as they often violate the rules on the use of force by law enforcement officials. In the context of hostilities, the methods used often violate the principle of distinction, which establishes that civilians (in this case, the fisherfolk and the farmers) and civilian objects are not to be targeted.

2. Civilian casualties in the context of hostilities

16. During the reporting period, Palestinian armed groups launched 1,078 rockets and 352 mortar shells towards Israel and Israel fired 848 rockets and 308 tank shells into Gaza, which resulted in the death of four Israeli civilians and 16 Palestinian civilians, including four women and three children, two of whom were infants.[21] The rockets and mortars launched from Gaza, most of which landed inside Israel, were indiscriminate in nature, violating international humanitarian law through their inability to distinguish between military and civilian objectives. Several Israeli attacks on Gaza raised serious concern with regard to the principles of distinction, proportionality and precautions in attack.

[13] http://pcbs.gov.ps/Portals/_Rainbow/Documents/QalqiliyaE.html.

[14] www.haaretz.com/middle-east-news/palestinians/israel-police-arrest-25-in-east-j-lem-neighborhood-despite-vow-toease-crackdown-1.7883879.

[15] Ibid.

[16] www.ochaopt.org/data/demolition.

[17] Ibid.

[18] Information provided by the Office for the Coordination of Humanitarian Assistance of the Secretariat.

[19] A/HRC/40/42.

[20] A/73/420, para. 33.

[21] Information provided by the Department of Safety and Security of the Secretariat.

17. In May 2019, during the most intense escalation of hostilities, the Israeli security forces targeted the military sites of Palestinian armed groups, which resulted in 25 fatalities, a number of which were claimed by the armed groups to have been members. The Israeli security forces also struck cultural centres, seaports, commercial buildings and 324 residential buildings and houses located in populated areas. On 5 May 2019, in Beit Lahia, northern Gaza Strip, the Israeli security forces struck a residential tower, killing six Palestinians, including two women and their children, a girl aged 4 months and a boy aged 12 years. Witnesses reported that there was no prior warning of the missile strikes. These incidents also raise concerns with regard to the principles of distinction, proportionality and precautions in attack.

18. OHCHR is not aware of any investigations conducted by Israel into the attacks on residential buildings in Gaza that caused civilian fatalities during the reporting period. Similarly, there is no public information to indicate that the authorities in Gaza have conducted any investigations in response to the indiscriminate firing of rockets towards Israel that resulted in civilian fatalities.

B. Recurring human rights violations

1. Violations of freedom of movement

19. Severe restrictions by Israel on Palestinians' freedom of movement remained in place, including through 705 permanent checkpoints and obstacles, the Wall (which is 465km long),[22] barriers and an arbitrary and restrictive permit and identification system. Freedom of movement is guaranteed under international human rights law[23] and is a frequent prerequisite for the enjoyment of many other rights, including the rights to an adequate standard of living, health, education, work and family life.

20. During the reporting period, the Israeli authorities imposed 306 travel bans on Palestinians in the West Bank based on alleged "security grounds", without providing the individuals or their lawyers with the basis for the decision, even in appeal processes.[24] In one case, a Palestinian journalist, Majdoleen Hassoneh, was twice interrogated by the Palestinian General Intelligence Services at the border crossing with Jordan, on 6 and 18 August 2019. Following her interrogations, the Israeli authorities issued a ban denying her travel to Jordan. Ms. Hassoneh was summoned by the Israeli security forces for a security interview and presented herself on three occasions, but the Israeli security forces refused to interview her and referred her instead to the Palestinian District Coordination and Liaison Office, where she filed a request to have the ban lifted. She had not received a response by the end of the reporting period.

21. While, in comparison to the previous reporting period, there was a slight increase in the number of persons exiting Gaza, thousands continued to be denied requests to exit through the Israel-controlled Erez crossing and the Egypt-controlled Rafah crossing, or faced delays. Of the 55,950 permit applications submitted to the Israeli authorities by the Palestinian General Authority of Civil Affairs,[25] 24,623 (44 per cent) were granted, 15,447 (27.6 per cent) were denied, 14,291 (25.5 per cent) were delayed and 1,539 (2.74 per cent) remained under security review.[26] The Rafah crossing was open for 242 calendar days, a noticeable increase compared to the previous reporting period, enabling 75,961 Palestinians to exit Gaza and 64,807 others to enter Gaza.[27]

[22] Information provided by the Office for the Coordination of Humanitarian Assistance of the Secretariat.

[23] International Covenant on Civil and Political Rights, article 12 (1).

[24] Figures provided by Hurryyat.

[25] For details on the permit applications, see A/73/420, paras. 11–18.

[26] Figures provided by the Palestinian National Authority of General Authority of Civil Affairs, 24 October 2019.

[27] Information provided by the Office for the Coordination of Humanitarian Assistance of the Secretariat.

22. Patients from Gaza requiring specialized medical treatment not available in Gaza continued to face challenges in accessing medical care due to the movement restrictions imposed by Israel. According to the World Health Organization, of the 25,063 patient applications submitted to the Israeli authorities during the reporting period, 16,334 (65 per cent) were approved, 2,050 (8 per cent) were denied and 6,679 (26.6 per cent) were delayed.

2. Violations of the right to life and physical integrity

23. Almost every Friday, Palestinians in Gaza continued to organize demonstrations, known as the "Great March of Return", at the Israel-Gaza fence, calling for the lifting of the blockade and an end to the Israeli occupation. While the demonstrations remained largely peaceful, on numerous occasions a number of demonstrators damaged and breached the fence and/or threw Molotov cocktails, sound grenades and improvised explosive devices towards the Israeli security forces. Two Israeli soldiers were thus injured during the reporting period. A total of 508 burning kites and incendiary balloons[28] were reportedly launched by demonstrators, causing significant damage to agricultural land and forests inside Israel.

24. The Israeli security forces used tear gas, rubber-coated bullets, water cannons and sound devices, and regularly fired live ammunition against demonstrators. Consequently, 39 Palestinians, including 12 children and one woman, were killed in the reporting period. Over 2,075 others,[29] including 577 children, were injured by live ammunition fired by the Israeli security forces. Many injuries led to permanent disabilities, with 55 people, including four children and one woman, having limbs and/or fingers amputated, six being paralyzed and 10 partially losing their vision.[30] OHCHR monitored numerous cases related to the killing and injury of demonstrators near the fence. In the vast majority of the cases, no indication was found that the demonstrators, including children who were killed or seriously injured by live fire, represented an imminent threat of death or risk of serious injury to either Israeli security forces personnel or others.

25. On 8 December 2018, east of Khan Younis, the Israeli security forces opened fire on a group of demonstrators, fatally injuring a 4-year-old boy. Witnesses reported that the boy was holding his father's hand at the time of the incident and that he was standing approximately 150–300m from the fence. He was struck with shrapnel in the abdomen and skull and underwent multiple surgeries, but died on 11 December 2018 from mass haemorrhaging. On 11 January 2019, the Israeli security forces shot a 44-year-old woman in the head with live ammunition, approximately 250m from the fence. Witnesses reported that she was watching the demonstrations at the time of her killing. On 8 February, east of Gaza city, the Israeli security forces shot a 17-year-old boy in the neck with live ammunition as he was watching the demonstrations, 300m from the fence. On 6 September 2019, also east of Gaza city and east of Jabalia respectively, two boys, aged 14 and 17, were shot dead in the waist and neck with live ammunition.

26. In the West Bank, the Israeli security forces killed 35 Palestinians: 28 men, one woman, five boys and one girl. The majority of the victims (21) were men under the age of 24 years and boys. In 18 of the incidents, the Israeli security forces alleged an attack had prompted the killings, while in nine of the incidents there were no reports of injuries against the Israeli security forces or anyone else. The Israeli security forces killed 12 persons during clashes, raids, at checkpoints or while driving, seemingly while there was no threat of death or serious injury to them, and five persons during arrest operations. Additionally, settlers killed two Palestinian men in the West Bank.

27. On 27 March 2019, in Bethlehem, the Israeli security forces killed a 17-year-old volunteer paramedic in Ad Duheisha refugee camp while he was carrying out his duties, attempting to reach an injured man. He was clearly identifiable, wearing a marked orange

[28] Information provided by the Department of Safety and Security of the Secretariat.

[29] Figure provided by the World Health Organization.

[30] Ibid.

vest, when the Israeli security forces shot him in the abdomen at a distance of 25m with live ammunition.

28. East of Bethlehem, on 18 April 2019, the Israeli security forces twice shot a 16-year-old Palestinian boy in the leg, from behind, with live ammunition, at a distance of 50m. The boy, who was trying to escape the Israeli security forces, was handcuffed and blindfolded. On 31 May 2019, the Israeli security forces shot in the chest and killed an unarmed 16-year-old boy with live ammunition from a distance of 3–4m, as he was climbing a fence attempting to enter East Jerusalem.

29. On 20 February 2019, in Bethlehem Governorate, the Israeli security forces broke into the home of a 47-year-old visually impaired man. While the man was in bed, one soldier repeatedly punched him in the face and hands for several minutes, fracturing one hand and dislocating his jaw. The Israeli security forces, who had searched the apartment above for a wanted man, left without arresting anyone. The case raises serious concerns about the unwarranted use of force against a person with disabilities. The victim filed a complaint; his case was closed by the Israel Defence Forces on 18 November 2019 without further action having been taken.

30. Under international law, the use of force in law enforcement operations must be limited to situations in which it is strictly necessary and in accordance with the principle of proportionality. Lethal force should be used only in situations of last resort, specifically in response to an imminent threat of death or serious injury. Use of force that does not comply with those principles and that results in death amounts to arbitrary deprivation of life. Under international humanitarian law, this may also constitute an act of willful killing.

31. The High Commissioner reiterates that Israel has an obligation under international law to conduct prompt, thorough, independent and impartial investigations into all use of force by its security forces that results in death or injury.

3. Gender-based violence

32. United Nations experts have in the past observed that femicide threatens Palestinian women's right to life and that legislation to tackle gender-based violence remains inadequate.[31] Although a high number of gender-based violence cases are reported to service providers, it is likely that such violence is significantly underreported. In November 2019, the Palestinian Central Bureau of Statistics published its 2019 violence survey, in which it was found that 29 per cent of women across the Occupied Palestinian Territory had experienced some form of violence by their husbands at least once.[32] According to a recent study published by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),[33] the increasingly fragile and stressful situation in Gaza was likely to increase the vulnerability of women to violence. During the reporting period, the Women's Centre for Legal Aid and Counselling registered 22 cases of gender-related killings in the Occupied Palestinian Territory: 17 in the West Bank and five in Gaza. Of grave concern is the insufficient response by the responsible authorities in terms of preventive action and of investigating, prosecuting and bringing to justice those responsible for violence in the private sphere.

33. In Gaza, one women's centre reported having received around 1,250 new cases of gender-based violence, with victims requiring services such as legal aid, shelter, and psychosocial support.[34] Serious gaps remained in addressing the increasing need for protection and services, with one women's shelter in Gaza reporting it had received approximately 10 cases of violence against women daily.[35] Another organization

[31] A/HRC/35/30/Add.2, paras. 24–25, 29, 66 and 69, and CEDAW/C/PSE/CO/1, paras. 26–27.

[32] Palestinian Central Bureau of Statistics, "Preliminary results of the violence survey in the Palestinian society" (November 2019). Available from http://pcbs.gov.ps/Downloads/book2480.pdf (in Arabic and English).

[33] Eugenie Reidy in cooperation with UNRWA, *How Does She Cope? Women Pushed to New Limits in the Gaza Strip* (October 2019).

[34] Information provided by the Centre for Women's Legal Research, Counselling and Protection.

[35] Ibid.

documented the death of six women under circumstances suggestive of gender-related killings.[36] Although investigations had reportedly been opened, as at the end of the reporting period no case had been brought before a court.[37] In one reported case, a 31-year-old woman who had been missing since 17 September 2019 was found killed and buried in the family home on 14 October. The father reportedly confessed to the killing. The younger sister of the victim was placed in a shelter due to protection concerns as she had reported the disappearance and made allegations of past violence by the father towards the victim.[38]

34. In one case in the West Bank, a 21-year-old woman was admitted to Beit Jala hospital on 10 August 2019 with spinal fractures. The following day, she was released while still in a serious condition at the request of her family. On 22 August, her family brought her dead body to the same hospital. On 29 August, the Palestinian Public Prosecution publicly declared that an investigation had been opened and the police later arrested the victim's two brothers and brother-in-law, who were charged with manslaughter for beating the victim to death, charges that are pending court proceedings. This case raises concern that the response of the hospital staff and the police was inadequate in terms of the support provided and the promptness of the investigation.

35. Many lesbian, gay, bisexual, transgender and intersex persons are continuously faced with physical and psychological violence by their families. For example, a lesbian woman in the West Bank who was kidnapped by family members after attempting to leave the country and who was subsequently locked inside the family house reported to OHCHR that her family would repeatedly threaten to kill her, tell her to kill herself and assault her. All victims of such violence reported fearing reprisals from the authorities and their families if they reported the incidents.

4. Restrictions of the rights to freedom of expression, association and peaceful assembly

36. Throughout the Occupied Palestinian Territory, the civic space continued to shrink, with violations of the rights to freedom of expression, peaceful assembly and association committed by the Government of Israel, the Palestinian Authority and the authorities in Gaza. Human rights defenders, journalists and civil society organizations (Palestinian mainly but Israeli too) continued to be regularly the targets of arbitrary arrest, detention and attacks on their reputations. Human rights defenders in the Occupied Palestinian Territory were particularly affected because of who they were, what they represented or the rights they promoted, for example the rights of lesbian, gay, bisexual, transgender and intersex persons. Women human rights defenders faced additional and unique challenges.[39]

Women human rights defenders[40]

37. On 19 March, a female staff member of Amnesty International covering demonstrations inside Gaza was interrogated by Gaza security forces for several hours. She was subjected to abusive language and intimidation by four male police officers, including threats of prosecution for working as a foreign agent.[41] In northern West Bank, a woman human rights defender reported having repeatedly received criticisms through social media from the municipality of Qalqilya aimed at preventing an event on women's rights in Azzun, in April 2019. Moreover, the Israeli security forces denied entry to a bus of participants on the day of the event.

38. On 27 September 2019, in East Jerusalem, a group of Palestinian women activists known as Tal'at organized a demonstration under the banner "free homeland, free women"

[36] https://pchrgaza.org/en/?p=13489.
[37] Ibid.
[38] Ibid.
[39] See A/HRC/16/44 and Corr.1, paras. 32–88, and A/HRC/34/52, para. 22.
[40] The Special Rapporteur on the situation of human rights defenders defines women human rights defenders as female human rights defenders and any other human rights defenders who work in the defence of women's rights or on gender issues (A/HRC/16/44 and Corr.1).
[41] www.amnesty.org/en/latest/news/2019/03/gaza-hamas-must-end-brutal-crackdown-against-protesters-and-rights-defenders.

as part of demonstrations across the Occupied Palestinian Territory, Israel and Lebanon. The entirely peaceful demonstration reached Damascus Gate, where some demonstrators raised a Palestinian flag, at which point the Israeli security forces forcibly dispersed the demonstration, pushing the women, confiscating the flag and preventing the demonstration from continuing.

39. In Gaza, a female journalist affiliated with Fatah reported that Gaza security forces had summoned her brother shortly after she had published an article criticizing the Hamas-led crackdown of a Fatah assembly. On 7 January, an officer from the Gaza internal security agency warned the brother that the authorities would take measures against him if he did not convince his sister to stop criticizing the authorities in Gaza.

Attacks on media and journalists

40. The Palestinian Centre for Development and Media Freedoms[42] received allegations that during the reporting period the Israeli security forces had injured[43] 113 journalists, including five women, in Gaza and the West Bank and had arrested or detained 40 journalists. The Israeli security forces reportedly bombed and destroyed two news agencies in Gaza and raided the WAFA news agency[44] in Ramallah. Palestinian Authority security forces reportedly detained 22 journalists,[45] which represents a significant decrease in the activities of the security forces since May 2019, after which five detentions and no attempts to prevent coverage by media outlets were reported. The decrease suggests that the new Government of the State of Palestine is making efforts to uphold the promises made to the public to prevent the detention of and attacks against journalists.[46] The de facto authorities in Gaza reportedly detained 46 journalists, including one woman, prevented media coverage of specific events on five occasions and prevented the distribution of one newspaper.[47] According to a poll carried out by the Palestinian Centre for Development and Media Freedoms among journalists in the Occupied Palestinian Territory, 90 per cent of the 182 respondents said they exercised self-censorship for fear of reprisals from security forces and nearly the same proportion did so owing to social considerations. The Centre reported that Facebook had closed 142 accounts of journalists in the Occupied Palestinian Territory, citing its own rules.

41. From 25 July 2018, the journalist and writer Lama Khater was detained by the Israeli security forces on charges of being a member of and carrying out activities for a banned group. She reported various forms of ill-treatment, including one month in solitary confinement, 17 days of interrogations lasting 20 hours a day, handcuffing to the back of a small chair and sleep deprivation. Interrogators reportedly threatened her with lengthy detention and the detention of her children unless she provided a confession, which she refused. The interrogations ended on 26 August 2018 and Ms. Khater was released on 26 July 2019 on a plea bargain following charges of being a member of and carrying out activities for a banned group, for served time and a fine. Her 19-year-old son was detained by the Israeli security forces on 2 July 2019 and remains in custody, as part of a group of over 60[48] students reportedly arrested at Birzeit University in 2019.

42. In the West Bank, a journalist was arrested twice while covering demonstrations in Nablus and Ramallah. Palestinian Authority security forces detained him for 18 days on suspicion of inciting sectarian strife until a court ordered his release on 6 January 2019. He was again arrested for five hours on 15 January and forced to delete footage.

43. On 17 October 2019, the Palestinian Authority Ramallah Magistrate Court blocked approximately 50 web pages, some belonging to popular news outlets, invoking national security, civic peace, public order and morals. Such generic bans on websites are not

[42] www.madacenter.org/en.
[43] Injuries with live ammunition, shrapnel, rubber-coated bullets and direct hits with gas canisters.
[44] http://english.wafa.ps/page.aspx?id=2wTHZxa107687996691a2wTHZx.
[45] Palestinian Centre for Development and Media Freedoms.
[46] www.alquds.com/articles/1555229023511210200/ (in Arabic only).
[47] Palestinian Centre for Development and Media Freedoms.
[48] Birzeit University “Right to education” campaign.

permissible restrictions to the right to freedom of expression under international human rights law, and content-specific restrictions may not be imposed solely on the basis that the content may be critical of the government.[49] Such measures raise concern about the use of overly broad provisions in the cybercrime decree law.[50] On 24 October, the Magistrate Court referred article 39 of the law to the Constitutional Court for an interpretive opinion without changing its original decision. The web pages remained closed as at the end of the reporting period.

44. In March 2019, a man was interrogated by the Gaza internal security agency, which accused him of ties with the Palestinian Authority and Israel for having posted a statement on Facebook criticizing the Great March of Return demonstrations, including Hamas leaders. While in detention, he was blindfolded, beaten, forced into stress positions and threatened with further detention and violence if he continued to criticize Hamas. In a similar case in Gaza, one journalist who posted live feeds on social media during demonstrations was detained for three days. He was severely beaten, interrogated and accused of being instructed by the Palestinian Authority to transmit the demonstrations. He was not officially charged with any criminal offence.

45. In Gaza, on 4 January 2019, unknown assailants who allegedly caused damages worth 170,000 US$ ransacked the Palestinian Broadcasting Corporation (PBC). Following a reported investigation, the Gaza Ministry of the Interior announced that five men affiliated with Fatah whose salaries had been cut by the Palestinian Authority, one of whom was allegedly working for PBC, were responsible. Fatah and the Journalists' Syndicate held Hamas responsible for the attack. The authorities in Gaza consequently arrested and detained a 40-year-old journalist for posting a statement blaming Hamas for the PBC attack. During his interrogation, the journalist was blindfolded, beaten with a hose and forced into stress positions.

Freedom of peaceful assembly

46. Across the Occupied Palestinian Territory, all three duty bearers continued to interfere with, prevent and forcibly disperse peaceful assemblies, resorting to arbitrary arrest, detention and ill-treatment of protestors.

47. An incident of particular concern was the brutal crackdown by Gaza security forces, between 14 and 16 March 2019, of demonstrations organized across the Gaza Strip over rising living costs, in response to calls by social media activists. Gaza security forces personnel in uniform and men in plain clothes – many of whom were masked and carrying batons – raided the demonstrations, forcibly dispersed participants and prevented them from filming or photographing. A considerable number of participants, including women and children, were beaten and hospitalized, and up to 1,000[51] of them were arrested and detained, including children. Hundreds of demonstrators were transferred between various detention facilities and security sites, subjected to beatings and forced into stress positions for considerable periods. In some cases, security personnel forcibly shaved off the hair of male demonstrators. In two separate incidents that took place on 16 March, two boys, aged 11 and 15 years, were hospitalized with leg and head injuries after masked men patrolling the streets beat them with batons. While the 11-year-old boy sustained moderate injuries, the 15-year-old boy was hospitalized in intensive care for two days, requiring surgery to his skull.

48. During a house raid in the context of the March demonstrations, a 49-year-old woman was beaten by the Gaza security forces and consequently suffered fractures to her hand and severe bruising on her body. While being treated in the local hospital, she had to flee through a back exit following another raid of the hospital by security personnel. Several injured demonstrators reported arriving at local hospitals for treatment but declined

[49] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 43.

[50] A/HRC/40/39, para. 60.

[51] Independent Commission for Human Rights, the national human rights institution of the State of Palestine (https://ichr.ps/ar/1/26/2629). See also Human Rights Committee, general comment No. 34.

to enter, observing that security personnel had been deployed to arrest them. The Deputy Director and the Coordinator of Complaints and Investigations of the Independent Commission for Human Rights, who were monitoring the demonstrations, were hospitalized after being beaten by the Gaza security forces. Four employees of local human rights organizations attempting to monitor the demonstrations were prevented from doing so and briefly held by the Gaza security forces. During that period, local human rights organizations and the Independent Commission for Human Rights were denied access to the detention facilities where demonstrators and journalists were being held. OHCHR publicly condemned the violence by the Gaza authorities at the time.[52]

49. In an alarming development, on 17 August 2019, the spokesperson for the Palestinian police released a statement banning all activities of the lesbian, gay, bisexual, transgender and intersex advocacy group Al Qaws, calling on the public to report their members to the police for prosecution. Thousands of messages of hatred and incitement to violence followed on social media, including death threats against persons perceived to be associated with Al Qaws. OHCHR monitored cases of individuals being physically threatened. The police removed the statement from its web page on 19 August 2019 but did not formally retract it nor publicly condemn the incitement to violence and hate speech.

50. In East Jerusalem, based on an order signed by the Israeli Minister of Public Security, the Israeli security forces raided the Burj Al-Luqluq Social Centre Society on 17, 18 and 31 August 2019, and prevented a seminar and football tournament from taking place, alleging they were sponsored by the Palestinian Authority. The Israeli police summoned one staff member of the Centre for questioning, beat the coordinator of the football tournament (who sustained two fractures in his arm) and arrested four staff members for several hours of interrogations before releasing one on unpaid bail and the others with a five-day ban from the Centre.

5. Arbitrary detention, torture and ill-treatment

51. According to the Palestinian Prisoner Society, the Israeli security forces arrested 5,846 Palestinians during the reporting period, including 901 children and 120 women. As of 31 October 2019, the Israel Prison Service reported that 4,731 Palestinians were in detention, of whom 4,515 were men, 185 were boys and 31 were women, compared with 5,426 during the previous reporting period.[53] The number includes 460 persons held in administrative detention, including three boys, compared to 481 in October 2018. The NGO Public Committee against Torture in Israel received 35 allegations of cruel, inhuman or degrading treatment and torture during the reporting period, seven of which concerned women and six of which concerned boys.

52. A trend of concern is the use of threats of indefinite detention against human rights defenders and journalists in Israeli detention, who are interrogated for long hours in stress positions and sleep deprived. The use of plea bargains at the end of detention under such circumstances further raises concerns of coerced confession.

53. Concerning Palestinian Authority detention centres in the West Bank, the Ministry of the Interior reported that 1,134 persons were detained as of 21 April 2019 and the Independent Commission for Human Rights reported that the Palestinian Authority had administratively detained 213 persons under Governor's orders during the reporting period. In Gaza, Hamas reported holding 1,885 persons in reform and rehabilitation centres as at 23 April 2019.

54. The Independent Commission for Human Rights received 354 complaints of ill-treatment and torture during the reporting period, 172 of which concerned persons under Palestinian Authority detention and 182 of which concerned persons in Gaza, under Hamas' de facto authority. The Commission also reported a decrease in the number of members of the Salafist groups detained in Gaza against a steady increase in the number Fatah members and supporters. On many occasions, victims were summoned and subsequently detained for

[52] www.facebook.com/UNHumanRightsOPT/posts/1082548781933446.

[53] A/HRC/40/39, para. 30.

several days, during which time they were interrogated about their political affiliation and accused of collaborating either with Israel or with the Palestinian Authority, or of having ties with "foreign powers". In the vast majority of the cases, victims were released without being officially charged.

55. On 28 February 2019, a member of the Palestinian Legislative Council of the Popular Front for the Liberation of Palestine, who is also an activist for women's and prisoners' rights, Khalida Jarrar, was released by the Israeli authorities after having served over 19 months of administrative detention, without trial, based on secret evidence. Ms. Jarrar was released on a plea bargain following charges of incitement and association with the Popular Front for the Liberation of Palestine, for time served, a suspended sentence and a fine, conditions identical to those of the plea bargain she agreed to in June 2016 after 14 months of administrative detention.[54] On 31 October 2019, the Israeli security forces again arrested her, reportedly on suspicions of involvement in "terror activity".[55]

56. On 10 December 2018, a freelance journalist and a human rights defender working for the Jerusalem Legal Aid and Human Rights Center were detained by the Israeli security forces in Tulkarem and Ramallah. Both independently reported having been subjected to interrogations related to their work that lasted 14–20 hours a day, to threats of administrative detention unless they confessed to a crime and to being held in cells that were constantly illuminated and had no windows, leading to sleep deprivation and disorientation. In addition, the journalist was reportedly placed on a low chair during the interrogations, with his hands and feet cuffed to the back legs of the chair. The Israeli security forces reportedly hit the human rights defender's head with a rifle during the arrest. Both individuals were released on plea bargains, on 16 and 24 January 2019 respectively, for served time, on conditional release and for paying fines. Both reported having falsely confessed, to avoid administrative detention – the journalist to membership of a student council in 2007 and the human rights defender to throwing stones at the Israeli security forces in 2014 and 2015.

57. On 25 August 2019, in Al Issawiya in East Jerusalem, the Israeli security forces arrested Mohammed Abu al-Hummos on the day that he had organized a recreational trip for 450 children. The Israeli security forces accused him of incitement to violence in a video that does not seem to show any incitement. He was released two days later, after refusing a plea bargain, on bail, and was banned from Al Issawiya until 15 September 2019. Previously, in March 2019, the Israeli security forces had arrested him for five hours on the day that he had organized a marathon.

58. On 2 January 2019, the Magistrate Court in Tulkarem acquitted a man, ruling that Facebook posts criticizing a campaign to pledge allegiance to the President of the State of Palestine, Mahmoud Abbas were within his right to freedom of expression, for which he had been detained one month in 2018 and reportedly been subjected to serious ill-treatment. On 28 January 2019, the Palestinian Authority security forces detained him again and interrogated him about Facebook posts in which he protested against the social security law. He was released after three days, without any charges.

59. In 2019, a gay man was interrogated by the Palestinian General Intelligence Service concerning a video posted on social media showing him with a male partner, disclosing his sexual relations and mentioning the names of lesbian, gay, bisexual, transgender and intersex people and activists in the West Bank. He was threatened with further detention if he continued to have sexual relations with men. In another case in 2019, a transgender woman was detained by the Palestinian police for five days with the accusation of possessing narcotics. She was repeatedly kicked, beaten and sexually harassed through the use of derogatory terms about her gender identity, including invasive questions about her sexual life.

60. Arrests and detention seemingly on political grounds by Palestinian Authority security forces continued, raising serious concerns about the lack of basic fair trial

[54] A/HRC/37/42, para. 55 and footnote 83, and A/HRC/WGAD/2016/15.

[55] www.timesofisrael.com/israeli-forces-re-arrest-senior-pflp-member-in-ramallah.

guarantees. From 4 to 10 June 2019, Palestinian Authority security forces arrested over 60 affiliates of the Islamic movement Hizb ut-Tahrir for reasons related to their criticism of the Palestinian Authority's decision about when to celebrate the Muslim holiday Eid al-Fitr. All were released by the beginning of July without any charges, raising concerns that their detention contravened the rights to freedom of association, religion and belief.

61. Between 23 and 27 June 2019, three men were arrested by Gaza security forces for trying to organize a cycling race in conjunction with a similar event organized in Israel. They were reportedly moved between different security agencies with varying levels of oversight and interrogated about the race. During the interrogations, they were reportedly subjected to ill-treatment, including through verbal insults that included suggestions that they were traitors, their heads were shaved, they were placed in stress positions and they were held in solitary confinement. None were charged with a criminal offence.

62. On the eve of the fifty-fourth anniversary of Fatah's founding, Gaza security forces summoned over 50 Fatah members and supporters across the Gaza Strip and reportedly forced some of them to sign a declaration stating that they would not participate in any event commemorating the anniversary. The de facto authorities in Gaza prohibited the events from taking place, noting that some 38 Fatah members had been summoned but released shortly thereafter as part of measures to keep order in Gaza. Similarly, on 23 February 2019, Gaza security forces arrested five Fatah members for organizing a sit-in demonstration in support of President Abbas. All were beaten with batons and plastic hoses, interrogated about their affiliation to Fatah and released without charge.

6. Delegitimizing human rights work and interfering with associations

63. Ongoing harassment and denunciations continued with the evident aim to silence and discredit the work of human rights defenders and to discourage support for their work, including by curtailing international funding.

64. In January 2019, the Ministry of Strategic Affairs and Public Diplomacy of Israel published a report in which it called upon the European Union to cease funding certain Palestinian and international NGOs and in which it alleged that the letters from some of those organizations addressed to the Secretary-General and the High Commissioner concerning reviews of business activities in Israeli settlements[56] constituted examples of promoting boycotts against the State of Israel.[57] The report of the Ministry appears to stigmatize civil society organizations for their engagement with the United Nations.[58] The Ministry further claims[59] that the detention of and travel bans against human rights defenders, dating as far back as the 1980s, and loose allegations of "membership" of groups such as Hamas and the Popular Front for the Liberation of Palestine, constitute connections to terrorist groups. The Ministry's reports also equate the boycott, divestment and sanctions movement with terrorism.[60] Accusations of terrorism must adhere to a clearly defined legal framework of prohibited actions and respect fair trial guarantees, including the right to judicial review, the principle of legality and the presumption of innocence.[61] State authorities must avoid making stigmatizing statements against human rights defenders[62]

[56] Pursuant to Human Rights Council resolution 31/36.

[57] Israel, Ministry of Strategic Affairs and Public Diplomacy, *The Money Trail: European Union Financing of Organizations Promoting Boycotts against the State of Israel*, 2nd edition (2019).

[58] A/HRC/42/30, para. 61, and annex I, paras. 62 and 65.

[59] Israel, Ministry of Strategic Affairs and Public Diplomacy, *The Money Trail*, and *Terrorists in Suits: the Ties between NGOs Promoting BDS and Terrorist Organizations* (2019).

[60] See the statement by three Special Rapporteurs made on 25 April 2019 (available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24516&LangID=E). While not taking a position on the boycott, divestment and sanctions movement, the Special Rapporteurs hold that supporting or opposing it is fully guaranteed by the rights to freedom of opinion, expression and association.

[61] A/HRC/16/51/Add.3 and Corr.1, paras. 26–27, and A/61/267, para. 26.

[62] Human Rights Council resolution 22/6, para. 5, and HRC/13/22, para. 27.

that violate those rights.[63] The information in the Ministry's reports was used on 15 July 2019 on a State-run social media account with a photograph of human rights defender Shawan Jabarin, Director of the Palestinian civil society organization Al Haq, which was followed by public comments made on social media calling for him to be killed.[64]

65. The Palestinian NGO Addameer reported that, on 19 September 2019, the Israeli security forces broke into their Ramallah office, confiscated office equipment and left a handwritten, unsigned note containing details of the equipment confiscated. In a similar incident, on 24 September, the Israeli security forces searched the Hebron office of the Union of Palestinian Women's Committees, confiscating office equipment without providing a search warrant or documentation of the confiscation. The Israeli security forces also broke into the Health Work Committees' offices in Al Bireh, on 11 October, and searched for one hour without confiscating anything. These searches of offices of NGOs, all located in Areas A or H1, which are under full Palestinian control, without a warrant, confiscation order or any other official documentation, appear to constitute arbitrary interference with an association and the right to privacy.

66. On 7 May 2018, the Ministry of the Interior of Israel revoked the work visa of the Israel and Palestine Director of Human Rights Watch, Omar Shakir.[65] Following appeals, the Israeli Supreme Court ruled on 5 November 2019 that the State was within its rights to deport Mr. Shakir. The Court stated that Mr. Shakir's past activism with the boycott, divestment and sanctions movement and his work with Human Rights Watch constituted calls for boycotts against Israel, all of which were aimed at Israeli settlements. The Court held that the meaning of "a public call for boycott against Israel" under the Entry into Israel (Amendement No. 28) Law that would allow for entry to be denied "includes boycott that is based on the identification of the Israeli control in the [Occupied Palestinian] territories as a violation of international law".[66] The ruling represents a serious deterioration in the situation for international human rights defenders in the Occupied Palestinian Territory, opening the possibility for deportation from Israel or the Occupied Palestinian Territory of any foreign national who calls for sanctions against Israel for its occupation.

III. Recommendations

67. **The High Commissioner recommends that the Government of Israel:**

(a) **Ensure that the rules of engagement of the Israeli security forces and their application are fully in line with international standards and, in particular, that firearms are used only in cases of imminent threat of death or serious injury; take all necessary measures to prevent incidents of excessive use of force; and provide, at the earliest possible moment, first aid to individuals injured by the use of force, while taking no steps to prevent the provision of necessary medical care;**

(b) **Conduct prompt, thorough, independent, impartial and effective investigations into all incidents of use of force by the Israeli security forces that have led to the death or injury of Palestinians, especially in the access-restricted area of Gaza, and ensure that perpetrators are held accountable and victims provided with redress;**

(c) **Ensure respect for international humanitarian law and conduct prompt, thorough, independent and impartial investigations into allegations of violations related to past and recent escalations of hostilities, hold those responsible accountable and provide redress for victims;**

[63] See also Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders* (2015), paras. 84–89.

[64] www.facebook.com/4IL.org/posts/2234827600161728 (in Arabic only).

[65] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24516&LangID=E.

[66] The definition of boycott is stated in the Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011).

(d) **Immediately end all practices of collective punishment and, in particular, immediately lift the blockade and punitive closures imposed on Gaza, allow free movement of Palestinians across the Occupied Palestinian Territory, and end punitive demolitions and the policy of withholding the bodies of Palestinians;**

(e) **End practices of administrative detention and any form of arbitrary detention, ensure that all detainees are promptly charged or released and fully guarantee the right to a fair trial;**

(f) **Ensure that conditions of detention are fully in accordance with international human rights law, immediately end all practices that may amount to torture or other cruel, inhuman or degrading treatment or punishment, ensure that all allegations of such violations are promptly, impartially and independently investigated, hold perpetrators accountable and guarantee non-repetition of such practices and that victims have access to an effective remedy;**

(g) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that civil society actors and journalists are allowed to conduct their professional activities safely, freely and without harassment.**

68. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Ensure compliance with its human rights obligations towards all Palestinians and immediately cease any measures that violate those obligations or worsen the humanitarian situation in Gaza;**

(b) **End all practices that amount to arbitrary detention and fully guarantee the rights to due process and a fair trial;**

(c) **Immediately end all practices that may amount to torture or other cruel, inhuman or degrading treatment or punishment, ensure that all allegations of such violations are promptly, impartially and independently investigated, hold perpetrators accountable and guarantee non-repetition of such practices and that victims have access to an effective remedy;**

(d) **Take all necessary measures to prevent all forms of gender-based violence and ensure that perpetrators of such violence, including gender-related killings, are prosecuted and appropriately sentenced;**

(e) **Uphold its human rights obligations to protect the rights of all Palestinians without discrimination, including discrimination based on sexual orientation or gender identity;**

(f) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that civil society actors and journalists are allowed to conduct their professional activities safely, freely and without harassment.**

69. **The High Commissioner recommends that the authorities in Gaza:**

(a) **Ensure, along with armed groups in Gaza, full respect for international humanitarian law, particularly as it pertains to the principles of distinction, proportionality and precaution, and ensure accountability, consistent with international standards, for grave violations;**

(b) **Take all necessary measures to ensure that the rights of persons deprived of liberty are respected, immediately end all practices that may amount to torture or other cruel, inhuman or degrading treatment or punishment, ensure that all allegations of such violations are promptly, impartially and independently investigated, hold perpetrators accountable and guarantee non-repetition of such practices and that victims have access to an effective remedy;**

(c) **Take necessary measures to prevent all forms of gender-based violence and ensure that perpetrators of such violence, including gender-related killings, are prosecuted and appropriately sentenced;**

(d) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that civil society actors and journalists are allowed to conduct their activities safely, freely and without harassment.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights**

Summary

The United Nations High Commissioner for Human Rights has prepared the present report pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.

* Reissued for technical reasons on 22 July 2020.

** The present report was submitted after the deadline in order to reflect the most recent information.

I. Background

1. The present report is submitted to the Human Rights Council pursuant to its resolution 31/36, on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, adopted on 24 March 2016.[1]

2. In paragraph 17 of that resolution, the Human Rights Council requested the production of a database of all business enterprises involved in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory, to be updated annually, and to transmit the data therein in the form of a report to the Council.

3. In 2018, a report on the matter was submitted to the Human Rights Council at its thirty-seventh session (A/HRC/37/39). That report contained the methodology used to respond to the request of the Council.

4. Also in that report, it was noted that the Office of the United Nations High Commissioner for Human Rights (OHCHR) had reviewed information on 321 business enterprises following the transmittal of notes verbales to States, the issuance of an open invitation for submissions and on the basis of its own research. A total of 206 business enterprises were assessed at that time for further consideration.

5. It was also noted that, once OHCHR had been in contact with all 206 companies, and subject to determinations of their responses and non-responses, OHCHR expected to provide the names of the companies engaged in listed activities in a future update. Before the determinations on the companies were made public, OHCHR would notify the companies concerned.

II. Mandate

6. The request for the production of a database made by the Human Rights Council in paragraph 17 of its resolution 31/36 was in follow-up to the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63). In paragraph 96 of its report, the fact-finding mission set out a list of activities that had raised particular human rights concerns (referred to as "listed activities"). In its resolution 31/36, the Council defined the database by reference to those listed activities, which are the following:

(a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructure;

(b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;

(c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;

(d) The supply of security services, equipment and materials to enterprises operating in settlements;

(e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;

(f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;

[1] While the Human Rights Council referred, in its resolution 31/36, to the occupied Syrian Golan, in paragraph 17 of that same resolution it requested the production of a database based on information contained in a report (A/HRC/22/63) that pertains to the Occupied Palestinian Territory only. Business enterprises involved in activities related to the occupied Syrian Golan are not therefore considered for the purposes of the present report.

(g) The use of natural resources, in particular water and land, for business purposes;

(h) Pollution, and the dumping of waste in or its transfer to Palestinian villages;

(i) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;

(j) The use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.

7. The parameters of the database encompass business enterprises, whether domiciled in Israel, the Occupied Palestinian Territory or abroad, carrying out listed activities in relation to the Occupied Palestinian Territory (A/HRC/37/39, para. 5).

8. The database produced in response to the request made by the Human Rights Council in its resolution 31/36 includes only business enterprises involved in the 10 activities listed above. It does not cover all business activities related to settlements, nor does it extend to other business activities in the Occupied Palestinian Territory that may raise human rights concerns. In addition, while there may be other types of enterprises involved in significant business activities related to settlements, only business enterprises are considered; non-business enterprises are excluded from consideration.

III. Definitions

9. The mandate set out in Human Rights Council resolution 31/36 requires the identification of three cumulative elements: (a) "business enterprises"; (b) "involved"; and (c) in one or more listed activities. For the purpose of the present report, each of those elements is understood as set out below.

Business enterprises

10. As OHCHR has already noted (A/HRC/37/39, para. 18):

> When contacting companies, OHCHR included in the communications, wherever possible, all relevant entities with respect to that particular situation of concern, including parent companies and their subsidiaries, franchisors and franchisees, local distributors of international companies, partners and other entities in relevant business relationships. In some of these cases, further research by OHCHR revealed relevant business entities, such as parent companies or subsidiaries, that were not initially named in the submissions received in notes verbales from Member States or through the open call for submissions from interested stakeholders.

11. In assessing whether an entity was a "business enterprise", for the purposes of the present report OHCHR considered the nature and substance of the entity's functions and activities, irrespective of its specific corporate form or structure or of its characterization in the national law of the State of domicile.

Involved

12. In assessing whether an entity was "involved", for the purposes of the present report OHCHR considered whether there were substantial and material business activities that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:

(a) A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;

(b) A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory (a business enterprise owning a minority share in a subsidiary was not considered to be "involved" for the purposes of the present report);

(c) A business enterprise granting a relevant franchise or licence to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.

13. In temporal terms, OHCHR required the involvement to have taken place during the period from 1 January 2018 to 1 August 2019.

Listed activities

14. As already noted in paragraph 6 above, the Human Rights Council defined the specific activities to be reflected in the database by reference to those set out by the fact-finding mission (A/HRC/22/63, para. 96).

15. Due to the specific formulation of certain listed activities, the additional considerations set out below were taken into account.

Activities listed in paragraph 6 (a), (b), (c) and (d) above: activities of "supply"

16. The activities listed in the report of the fact-finding mission and reproduced in para. 6 (a), (b) and (d) above involve the supply of equipment, services or materials for certain purposes, uses or effects. The notion of "supply" was considered to encompass, as relevant, processes of manufacture, provision and/or distribution of equipment, services and/or materials that have been employed for those purposes, uses or effects.

17. In relation to paragraph 6 (c), the listed activity is formulated more restrictively to indicate that the relevant equipment must be specifically supplied for the particular purpose of demolishing or destroying the forms of property set out in that subparagraph.

Activity listed in paragraph 6 (g) above

18. The activity listed in paragraph 6 (g) above refers to the use of natural resources, in particular water and land, for business purposes. As such, it includes business enterprises that are physically located in the Occupied Palestinian Territory and those that benefit commercially from the use of natural resources located in the Occupied Palestinian Territory, irrespective of their physical presence there.

IV. Methods of work

19. In fulfilling the mandate contained in Human Rights Council resolution 31/36, OHCHR applied the comprehensive methodology already outlined in the previous report on the matter (A/HRC/37/39, paras. 7–25). The work done by OHCHR to produce the database, in full compliance with the above-mentioned resolution, is not and does not purport to constitute a judicial or quasi-judicial process of any kind or to provide any legal characterization of the listed activities or business enterprises' involvement in them. Rather, it provides the Council with the requested factual determinations as to those business enterprises that were involved in the listed activities (A/HRC/37/39, para. 8).

20. The direct contact held between OHCHR and all screened business enterprises, in consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, sought to ensure procedural fairness and consistency in the conclusions reached.

21. Since the previous report, a further analysis was carried out of the 206 business enterprises assessed, which in turn resulted in 188 business enterprises being identified for additional consideration. The enterprises that were not included for additional consideration were set aside, in particular, because there was insufficient factual basis in the submissions or in the public domain to support the contentions of their involvement in the listed activities. The 188 business enterprises were contacted between September 2017 and October 2018.

22. By letter, OHCHR informed each of the above-mentioned 188 business enterprises of the listed activities that they appeared to be involved in, based on the totality of information reviewed by it, and set out the basic facts of the enterprises' alleged involvement in the listed activity or activities. The business enterprises were requested to

respond in writing within 60 days with an initial response, providing any clarification or update of the information. Moreover, they were informed that they could request that the substance of their written responses be kept confidential; a number of enterprises made such a request (A/HRC/37/39, para. 20). In some cases, lengthier processes of dialogue developed between OHCHR and business enterprises. In other cases, no response was received.

23. At the conclusion of that process, OHCHR assessed all the information available to it against the definitions of the three necessary elements set out in paragraph 9 above, whether, as a factual matter, the standard of reasonable grounds to believe involvement in the listed activities had been met.

V. OHCHR engagement with business enterprises

24. OHCHR engaged with business enterprises throughout all stages of its work on the database. The direct communication facilitated the exchange of information and offered business enterprises the opportunity to provide views on their alleged involvement in listed activities. In several instances, business enterprises denied any involvement in the listed activities. These business enterprises were not included in the database. Some business enterprises requested further information on the methodology and mandate, to which OHCHR responded.

25. As already noted in the previous report (A/HRC/37/39, para. 22), responses from business enterprises included: (a) objection to the mandate of OHCHR and a refusal to provide a substantive response to the information presented; (b) rejection of the information presented and objected to being included in the database; (c) confirmation of the information presented concerning their involvement in one or more of the listed activities, and the provision of explanations; and/or (d) provision of updated information that indicated they were no longer involved in one or more of the listed activities.

26. OHCHR responded to business enterprises' queries on the mandate and presented, as necessary, further detailed information concerning the alleged involvement in listed activities.

27. All those business enterprises that met the standard of proof for inclusion in the database were informed in writing of their inclusion and of the procedure by which they could be removed. OHCHR invited the business enterprises to continue to engage with it, in line with the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex).

28. OHCHR rescreened all business enterprises prior to the submission of the present report to confirm that the activity or activities for which they were included in the database met the applicable standard of proof during the period under review.

29. A number of business enterprises communicated to OHCHR that they were no longer involved in the relevant activity or that the nature of their involvement had fallen outside the scope of the mandate. In those cases, OHCHR assessed the information provided and discontinued its consideration of those business enterprises no longer assessed to be involved in the listed activities.

30. Where business enterprises did not provide additional information or clarifications, OHCHR relied on desk research to assess the information received from Member States and other stakeholders.

VI. Database of business enterprises

31. OHCHR found that 112 of the 188 business enterprises considered for inclusion in the database met the required standard of reasonable grounds to believe that they were

involved in one or more of the listed activities (see table below). The remaining 76 business enterprises did not meet the standard of proof and were not included in the database.[2]

Business enterprises involved in listed activities

No.	*Business enterprise*	*Subparagraph of listed activity*	*State concerned*
1.	Afikim Public Transportation Ltd.	(e)	Israel
2.	Airbnb Inc.	(e)	United States of America
3.	American Israeli Gas Corporation Ltd.	(e), (g)	Israel
4.	Amir Marketing and Investments in Agriculture Ltd.	(g)	Israel
5.	Amos Hadar Properties and Investments Ltd.	(g)	Israel
6.	Angel Bakeries	(e), (g)	Israel
7.	Archivists Ltd.	(g)	Israel
8.	Ariel Properties Group	(e)	Israel
9.	Ashtrom Industries Ltd.	(g)	Israel
10.	Ashtrom Properties Ltd.	(g)	Israel
11.	Avgol Industries 1953 Ltd.	(g)	Israel
12.	Bank Hapoalim B.M.	(e), (f)	Israel
13.	Bank Leumi Le-Israel B.M.	(e), (f)	Israel
14.	Bank of Jerusalem Ltd.	(e), (f)	Israel
15.	Beit Haarchiv Ltd.	(g)	Israel
16.	Bezeq, the Israel Telecommunication Corp Ltd.	(e), (g)	Israel
17.	Booking.com B.V.	(e)	Netherlands
18.	C. Mer Industries Ltd.	(b)	Israel
19.	Café Café Israel Ltd.	(e), (g)	Israel
20.	Caliber 3	(d), (g)	Israel
21.	Cellcom Israel Ltd.	(e), (g)	Israel
22.	Cherriessa Ltd.	(g)	Israel
23.	Chish Nofei Israel Ltd.	(g)	Israel
24.	Citadis Israel Ltd.	(e), (g)	Israel
25.	Comasco Ltd.	(a)	Israel
26.	Darban Investments Ltd.	(g)	Israel
27.	Delek Group Ltd.	(e), (g)	Israel

[2] With respect to three listed activities (see para. 6 (c), (i) and (j) above), OHCHR did not find any business enterprise satisfying the standard of reasonable grounds to believe involvement consistent with the definitions set out above.

No.	*Business enterprise*	*Subparagraph of listed activity*	*State concerned*
28.	Delta Israel	(g)	Israel
29.	Dor Alon Energy in Israel 1988 Ltd.	(e), (g)	Israel
30.	Egis Rail	(e)	France
31.	Egged, Israel Transportation Cooperative Society Ltd.	(e)	Israel
32.	Energix Renewable Energies Ltd.	(g)	Israel
33.	EPR Systems Ltd.	(e), (g)	Israel
34.	Extal Ltd.	(g)	Israel
35.	Expedia Group Inc.	(e)	United States
36.	Field Produce Ltd.	(g)	Israel
37.	Field Produce Marketing Ltd.	(g)	Israel
38.	First International Bank of Israel Ltd.	(e), (f)	Israel
39.	Galshan Shvakim Ltd.	(e), (d)	Israel
40.	General Mills Israel Ltd.	(g)	Israel
41.	Hadiklaim Israel Date Growers Cooperative Ltd.	(g)	Israel
42.	Hot Mobile Ltd.	(e)	Israel
43.	Hot Telecommunications Systems Ltd.	(e)	Israel
44.	Industrial Buildings Corporation Ltd.	(g)	Israel
45.	Israel Discount Bank Ltd.	(e), (f)	Israel
46.	Israel Railways Corporation Ltd.	(g), (h)	Israel
47.	Italek Ltd.	(e), (g)	Israel
48.	J.C. Bamford Excavators Ltd.	(a)	United Kingdom of Great Britain and Northern Ireland
49.	Jerusalem Economy Ltd.	(g)	Israel
50.	Kavim Public Transportation Ltd.	(e)	Israel
51.	Lipski Installation and Sanitation Ltd.	(g)	Israel
52.	Matrix IT Ltd.	(e), (g)	Israel
53.	Mayer Davidov Garages Ltd.	(e), (g)	Israel
54.	Mekorot Water Company Ltd.	(g)	Israel
55.	Mercantile Discount Bank Ltd.	(e), (f)	Israel
56.	Merkavim Transportation Technologies Ltd.	(e)	Israel
57.	Mizrahi Tefahot Bank Ltd.	(e), (f)	Israel
58.	Modi’in Ezrachi Group Ltd.	(e), (d)	Israel
59.	Mordechai Aviv Taasiot Beniyah 1973 Ltd.	(g)	Israel
60.	Motorola Solutions Israel Ltd.	(b)	Israel

No.	*Business enterprise*	*Subparagraph of listed activity*	*State concerned*
61.	Municipal Bank Ltd.	(f)	Israel
62.	Naaman Group Ltd.	(e), (g)	Israel
63.	Nof Yam Security Ltd.	(e), (d)	Israel
64.	Ofertex Industries 1997 Ltd.	(g)	Israel
65.	Opodo Ltd.	(e)	United Kingdom
66.	Bank Otsar Ha-Hayal Ltd.	(e), (f)	Israel
67.	Partner Communications Company Ltd.	(e), (g)	Israel
68.	Paz Oil Company Ltd.	(e), (g)	Israel
69.	Pelegas Ltd.	(g)	Israel
70.	Pelephone Communications Ltd.	(e), (g)	Israel
71.	Proffimat S.R. Ltd.	(g)	Israel
72.	Rami Levy Chain Stores Hashikma Marketing 2006 Ltd.	(e), (g)	Israel
73.	Rami Levy Hashikma Marketing Communication Ltd.	(e), (g)	Israel
74.	Re/Max Israel	(e)	Israel
75.	Shalgal Food Ltd.	(g)	Israel
76.	Shapir Engineering and Industry Ltd.	(e), (g)	Israel
77.	Shufersal Ltd.	(e), (g)	Israel
78.	Sonol Israel Ltd.	(e), (g)	Israel
79.	Superbus Ltd.	(e)	Israel
80.	Supergum Industries 1969 Ltd.	(g)	Israel
81.	Tahal Group International B.V.	(e)	Netherlands
82.	TripAdvisor Inc.	(e)	United States
83.	Twitoplast Ltd.	(g)	Israel
84.	Unikowsky Maoz Ltd.	(g)	Israel
85.	YES	(e)	Israel
86.	Zakai Agricultural Know-how and inputs Ltd.	(g)	Israel
87.	ZF Development and Construction	(g)	Israel
88.	ZMH Hammermand Ltd.	(g)	Israel
89.	Zorganika Ltd.	(g)	Israel
90.	Zriha Hlavin Industries Ltd.	(g)	Israel

Business enterprises involved as parent companies

No.	*Business enterprise*	*Subparagraph of listed activity*	*State concerned*
91.	Alon Blue Square Israel Ltd.	(e), (g)	Israel
92.	Alstom S.A.	(e), (g)	France
93.	Altice Europe N.V.	(e)	Netherlands
94.	Amnon Mesilot Ltd.	(e)	Israel
95.	Ashtrom Group Ltd.	(g)	Israel
96.	Booking Holdings Inc.	(e)	United States
97.	Brand Industries Ltd.	(g)	Israel
98.	Delta Galil Industries Ltd.	(g)	Israel
99.	eDreams ODIGEO S.A.	(e)	Luxembourg
100.	Egis S.A.	(e)	France
101.	Electra Ltd.	(e)	Israel
102.	Export Investment Company Ltd.	(e), (f)	Israel
103.	General Mills Inc.	(g)	United States
104.	Hadar Group	(g)	Israel
105.	Hamat Group Ltd.	(g)	Israel
106.	Indorama Ventures P.C.L.	(g)	Thailand
107.	Kardan N.V.	(e)	Netherlands
108.	Mayer’s Cars and Trucks Co. Ltd.	(e)	Israel
109.	Motorola Solutions Inc.	(b)	United States
110.	Natoon Group	(e), (d)	Israel
111.	Villar International Ltd.	(g)	Israel

Business enterprises involved as licensors or franchisors

No.	*Business enterprise*	*Subparagraph of listed activity*	*State concerned*
112.	Greenkote P.L.C.	(g)	United Kingdom

VII. Removal from the database

32. A business enterprise may provide information indicating that it is no longer involved in the relevant listed activity. Should there be reasonable grounds to believe that, based on the totality of the information available, the business enterprise is ceasing or is no longer involved in the relevant activity, the business enterprise would be removed from the database.

VIII. Recommendation

33. **With reference to any updating of the database, OHCHR would recommend that the Human Rights Council establish a group of independent experts, with a time-bound mandate, to report directly to the Council for such a purpose.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 43/3 and provides an overview of the implementation of the resolution, and developments that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem. The reporting period is from 1 November 2019 to 31 October 2020.

* The present report was submitted after the deadline so as to include the most recent information.

Please recycle

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 43/3 and should be read in conjunction with recent relevant reports of the Secretary-General and the United Nations High Commissioner for Human Rights.[1]

2. In the report, which covers the period between 1 November 2019 and 31 October 2020, the High Commissioner addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law committed by all relevant duty bearers in the West Bank, including East Jerusalem, and Gaza. The High Commissioner also provides an update on measures of accountability taken by all relevant duty bearers in relation to possible violations of international humanitarian law and international human rights law during escalations of hostilities in Gaza since 2008. As requested by the Council in resolution 43/3, in the present report the High Commissioner addresses how parties can fulfil their obligations in implementing the relevant recommendations previously addressed to them, which were reviewed by the High Commissioner in 2017.[2] The High Commissioner also outlines measures to be taken by third States to ensure respect by all parties to the conflict for their obligations under international law in the Occupied Palestinian Territory.

3. The report draws on information arising from human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, and information from governmental sources, other United Nations entities and non-governmental organizations. OHCHR requested Israel and the State of Palestine to provide information, by 15 November 2020, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights law and international humanitarian law committed in the Occupied Palestinian Territory, in particular with regard to the use of force by their respective security forces that may have led to death or injury, and on allegations of torture or any other ill-treatment in their detention facilities. The State of Palestine responded on 9 November 2020. Israel did not respond. OHCHR also requested other States Members of the United Nations to provide information on the steps taken by them as third States to promote compliance with international law and implement the recommendations addressed to them. No responses have been provided as at the time of writing the present report.

4. The human rights situation in the Occupied Palestinian Territory remained dire during the reporting period. Israeli security forces killed 67 Palestinians (64 males and 3 females), including at least 47 civilians of whom 16 were children. In addition, 3,678 Palestinians were injured by Israeli security forces. One Israeli soldier was killed and 90 other Israelis were injured by Palestinians. Many incidents monitored by OHCHR outside the context of hostilities raised serious concerns of excessive use of force by Israeli security forces,[3] in some cases such use may amount to arbitrary deprivation of life, including extrajudicial execution. Continuing lack of respect for international humanitarian law by all parties to the conflict, including in the context of hostilities, remained of concern. The prevailing climate of impunity described in previous reports of the Secretary-General and the High Commissioner persisted.[4]

[1] See A/75/336, A/75/376, A/HRC/46/63 and A/HRC/46/65.

[2] See A/HRC/35/19.

[3] The term “excessive use of force” is used in the present report to refer to incidents in the context of law enforcement operations in which force was not used in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Such incidents may entail situations in which force was used unnecessarily and/or disproportionately; and/or in pursuit of an illegal law enforcement objective; and/or in a discriminatory manner.

[4] A/75/376, para. 26; A/HRC/34/38, para. 48; and A/HRC/40/43, para. 14.

II. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza and other rounds of hostilities

5. More than six years after the 2014 escalation of hostilities in Gaza, serious concerns persist over the lack of accountability for suspected violations of international humanitarian law, including allegations of war crimes, perpetrated by all parties to the conflict. Since the publication of the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1,[5] the Secretary-General and the High Commissioner have provided regular updates on the lack of progress regarding the implementation of the recommendations contained in the commission's report and highlighted concerns about the lack of accountability by both Israeli and Palestinian authorities.[6]

Israel

6. With respect to Israel, the most recent update by the Military Advocate General of Israel was provided on 15 August 2018.[7] No further updates have been published since and no notable progress in the investigation and prosecution of alleged violations in the context of the 2014 round of hostilities was made public during the reporting period. During the reporting period, Al Mezan Center for Human Rights, which represented some of the victims, was informed by Israeli authorities that 13 cases related to the killing of Palestinian civilians during the 2014 hostilities had been closed. On 6 April 2020, the Attorney General of Israel rejected an appeal submitted by Adalah: Legal Center for Arab Minority Rights in Israel and Al Mezan Center for Human Rights against the decision taken in January 2017 by the Military Advocate General to close the investigation into the killing of five members of the Abu Dahrouj family during an Israeli air strike on 22 August 2014.[8] Adalah also reported that, on 19 July 2020, the Military Advocate General had notified it that the case related to the killing of three children in the Israeli air strike on the Shuheibar family home, on 17 July 2014, had been closed without further investigation.[9]

7. Similarly, lack of progress and transparency persists in relation to accountability efforts linked to previous major rounds of hostilities in 2008 and 2009 (with no public information made available since July 2010) and in 2012 (with no public updates provided since April 2013).

8. The absence of any significant progress in the investigation of and prosecution for alleged violations confirms the serious concerns repeatedly expressed by the Secretary-General and the High Commissioner regarding the consistent failure of the Military Advocate General to open criminal investigations into cases of alleged violations of international humanitarian law, including possible war crimes, committed by Israeli security forces in the context of hostilities.[10]

9. On 14 November 2019, Israeli security forces struck, with at least four missiles, two houses belonging to an extended family in Deir El-Balah, killing 9 individuals, including 5 children, and 2 women, and injuring 12 others, including 11 children. Media sources, citing Israeli defence officials, reported that the houses had been hit based on an outdated target

[5] A/HRC/29/52.

[6] In particular, A/71/364, paras. 39 and 51–55; A/HRC/37/41, paras. 9–17; A/HRC/40/43, paras. 4–13; and A/HRC/43/21, paras. 14–15 and 19.

[7] A/HRC/40/43, paras. 5 and 9; and https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf.

[8] For an assessment of the incident, see www.adalah.org/en/content/view/8990.

[9] For an assessment of the incident, see the conference room paper containing the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/CRP.4), paras. 194–200. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx.

[10] A/71/364, para. 40; A/HRC/34/38, para. 42; A/HRC/37/41, para. 14; A/HRC/40/43, para. 8; and A/HRC/43/21, para. 17.

database and without prior verification of civilian presence at the site.[11] However, an internal review of the incident by the Israel Defense Forces determined that the target had been designated as a Palestinian Islamic Jihad military compound in June 2019 and vetted several times, including a few days prior to the attack.[12] It also acknowledged that, while militant activity had taken place at the targeted site in the past, including during the November 2019 escalation, it was not an area from which civilians were excluded and that they had, in fact, been present at the time of the strike.[13] The incident raises serious concern about the failure by Israel to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury of civilians and damage to civilian objects, in accordance with international humanitarian law.[14]

Palestinian authorities

10. As previously and repeatedly underlined by the Secretary-General and the High Commissioner,[15] no information was made available on steps taken to ensure accountability for possible violations of international humanitarian law, including possible war crimes, committed by the Palestinian authorities and armed groups in the context of the different rounds of hostilities.[16] Such lack of accountability remains of grave concern. During the reporting period, concerns persisted regarding the continuous indiscriminate launching of rockets and mortar shells towards Israel by Palestinian armed groups in Gaza, some of which resulted in the injury of Israeli civilians and damage to civilian buildings. Incendiary balloons were also launched towards Israel from Gaza, with some reportedly damaging lands and crops in Israel.[17]

B. Accountability for unlawful use of force and other violations of international human rights law

Israel

11. Impunity remained pervasive for incidents of possible excessive use of force by Israeli security forces outside the context of hostilities, confirming the alarming trend repeatedly highlighted by the Secretary-General and the High Commissioner in the past.[18] Between 1 January 2017[19] and 31 October 2020, 354 Palestinians[20] (including 74 children) were killed by Israeli security forces in the Occupied Palestinian Territory in law enforcement operations. OHCHR is aware of 46 investigations opened in relation to incidents that occurred in this context, of which at least 10 were closed without further action being taken and 4 resulted in indictments, 3 of which led to convictions.[21]

12. In Gaza, the number of Palestinian fatalities and injuries in the context of the Great March of Return sharply decreased compared with the previous reporting period, due to the

[11] See www.haaretz.com/israel-news/.premium-outdated-intelligence-social-media-rumors%20behind-israel-s-killing-of-gaza-family-1.8131101.

[12] See https://app.activetrail.com/S/eiwixjxjejf.htm.

[13] Ibid.

[14] International Committee of the Red Cross (ICRC), Customary International Humanitarian Law database, rule 15 (see https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule15); and A/75/336, para. 5.

[15] A/70/421, para. 61; A/HRC/40/43, para. 13; and A/HRC/43/21, para. 19.

[16] See, in particular, A/HRC/29/52 and A/HRC/12/48 and Corr.1.

[17] A/75/336, para. 5.

[18] A/71/364, para. 66; A/75/336, paras. 4 and 9; A/HRC/34/38, para. 48; and A/HRC/43/21, para. 20.

[19] 1 January 2017 represents the beginning of the first reporting period during which the High Commissioner was requested by the Human Rights Council to report on accountability and justice for violations of international law in the Occupied Palestinian Territory.

[20] This number does not include those killed in the context of hostilities and those killed in situations in which it was not possible to determine the circumstances. The total number of Palestinians killed by Israeli security forces during the same period amounts to 531.

[21] One of the convictions refers to the killing of a 14-year-old Palestinian in the context of the Great March of Return demonstrations (A/HRC/43/21, para. 25). For information on the other two convictions, see paras. 15–16 below.

suspension of the weekly demonstrations in December 2019.[22] However, the continuing lack of notable progress in the investigations related to the widespread use of lethal force by Israeli security forces against Palestinian demonstrators between 30 March 2018 and December 2019 remained striking.[23] The last update provided by the Ministry of Justice of Israel in relation to progress in the investigations and prosecutions referred to July 2019.[24] In September 2020, the human rights organization Yesh Din published a report highlighting that, since the beginning of the Great March of Return, of the 231 incidents that had resulted in the killing of Palestinian demonstrators referred to the General Staff Mechanism for Fact-Finding Assessments of the Israel Defense Forces, only 17 investigations had been opened by Israeli military authorities, resulting in 1 conviction.[25] Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights have submitted to Israeli authorities 81 and 186 cases, respectively, related to individuals killed or injured at the Gaza fence since 30 March 2018.

13. Along the Gaza coast, the Israeli Navy continued to enforce unilaterally imposed access restrictions, using live ammunition, rubber-coated bullets and water cannons on Gaza fishers while conducting arrest and seizure operations, often reportedly within the authorized fishing zones.[26] In its response to a freedom of information request submitted by the organization Gisha regarding its operations along the Gaza coast, Israel Defense Forces pointed out that "as part of [its] regulations and directives, it has been established that the use of force for the purpose of enforcing the security restrictions will be only as a last resort, carried out gradually and only to the smallest extent required to stop the breach of restrictions or to seize the vessel".[27]

14. During the reporting period, Al Mezan Center for Human Rights recorded a total of 294 shooting incidents at sea, resulting in the injury of 11 fishers. In many of the cases monitored by OHCHR, fishers appear to have been subjected to force that may have been unnecessary or excessive, and many of them alleged degrading treatment during seizure and arrest operations. For example, on 14 August 2020, Israeli security forces shot and injured a 22-year-old fisher in his right leg within the Israeli-authorized fishing zone at around 3 nautical miles from the northern Gaza coast. According to information collected by OHCHR, the victim, who sustained heavy bleeding requiring hospitalization, was attempting to communicate to Israeli security forces his right to fish within the authorized fishing zone and did not appear to pose an imminent threat to Israeli security forces at the moment that he was shot. OHCHR is not aware of any investigations being opened by Israeli authorities in relation to any of these incidents.

15. On 15 June 2020, an Israeli military court sentenced an Israeli officer to 45 days in prison, to be served by carrying out military-related labour, for the killing of a 23-year-old Palestinian fisher, Nawaf al-Attar, off the Sudaniyah coast, north of Bayt Lahya, on 14 November 2018.[28] According to OHCHR monitoring, after a first warning shot was fired while he was fishing on the Gaza beach, the fisher was shot in the pelvis while he was running away from Israeli security forces, which were located at the Gaza northern maritime border at a distance of 250 metres. The shooting took place in circumstances in which the victim's behaviour did not appear to present an imminent threat of death or serious injury to anyone. The conviction was based on the charges of "exceeding authority causing a risk to life or health" and "injury through negligence". Such charges, along with the leniency of the

[22] During the reporting period, 3 Palestinians, including 2 children, were killed and 126 Palestinians, including 50 children, were injured with live ammunition in the context of the Great March of Return demonstrations.

[23] Conference room paper containing the detailed findings of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2), paras. 737–758. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Pages/ListReports.aspx.

[24] A/HRC/43/21, para. 24.

[25] Yesh Din, "Killing time: the slow processing of complaints regarding Gaza Great March of Return casualties and the use of the fact-finding assessment mechanism to thwart prosecution of soldiers" (September 2020). See also A/HRC/43/21, para. 25.

[26] A/75/336, para. 38.

[27] Israeli army response to the Gisha freedom of information request (15 December 2019).

[28] See www.mezan.org/en/post/23760.

sentence, appear starkly inconsistent with the gravity of the conduct, reinforcing the serious concerns previously expressed by the High Commissioner regarding the effectiveness of the Israeli internal investigation and prosecution system to ensure accountability for violations of international law in line with international standards.[29]

16. The ongoing lack of accountability for the killing and injury of Palestinians is also evident in relation to Israeli law enforcement operations in the West Bank, including East Jerusalem. On 16 August 2020, the Military Advocate General requested a sentence of three months' military service and three months' suspended sentence for an Israeli soldier who had shot and killed a 23-year-old Palestinian, Ahmad Manasra, as part of a plea bargain agreed to by the soldier, pending ratification by a military court.[30] On 20 March 2019, Mr. Manasra had been shot multiple times with live ammunition in the chest and shoulders while helping the family of a Palestinian man, Ala Ghayadeh, who had himself been shot and seriously wounded by Israeli security forces in the immediate aftermath of his car breaking down at a junction near the village of El-Hadar, close to Bethlehem. Monitoring of the case by OHCHR pointed to serious concerns of unnecessary or excessive use of force by Israeli security forces. According to the plea bargain, which refers to the charge of "causing death by negligence", the soldier mistakenly thought that the two men were throwing stones at an Israeli security forces installation located nearby. The soldier was not charged with wounding Mr. Ghayadeh, although the first shooting was included in the initial indictment. On 23 August 2020, the victims' families filed a petition with the High Court of Justice of Israel against the plea bargain and obtained an interim injunction to prevent the military court's issuing a sentence until the petition was discussed.[31] The charges and leniency of the sentence proposed as part of the plea bargain appear starkly incommensurate with the gravity of the conduct, raising serious concerns that justice and redress for Palestinian victims of alleged violations of international human rights law and international humanitarian law have not been delivered in accordance with international norms and standards.

17. On 3 September 2020, the High Court of Justice unanimously rejected a petition submitted in March 2019 by the Association for Civil Rights in Israel regarding the closing of the investigation into the killing of Mohammad al-Qusbah.[32] Mr. Al-Qusbah, aged 17, was killed by an Israel Defense Forces officer with three bullets to his upper body, while running away from Israel Defense Forces personnel after throwing a stone near the village of Ar-Ram, on 3 July 2015. The High Court of Justice found no reason to consider that the disciplinary action (delay in promotion) taken against the Israel Defense Forces officer represented an excessively lenient sentence.[33] The High Court of Justice reviewed the rules of engagement and concurred with the position of the Military Advocate General and the Attorney General that the killing had resulted from the officer not acting in accordance with the rules. In a previous report, the High Commissioner noted how the failure to prosecute a soldier who had opened fire against an individual (in this case a child) who was running away from Israeli security forces cast doubt on the effectiveness of the accountability measures put in place.[34] These concerns persist in relation to the High Court of Justice upholding the Attorney General's position that a delay in the officer's promotion represented an appropriate and proportionate punishment.[35]

[29] A/HRC/43/21, para. 25.

[30] See www.haaretz.com/israel-news/.premium-israeli-army-seeks-community-service-for-soldier-who-killed-innocent-palestinian-1.9076450.

[31] See www.haaretz.com/israel-news/.premium-top-court-to-hear-appeal-against-light-sentence-of-soldier-who-killed-palestinian-1.9124853; and https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\20\040\059\o08&fileName=20059040.O08&type=4 (in Hebrew only).

[32] The Association for Civil Rights in Israel had contested the decision taken by the Attorney General of Israel in December 2018 to uphold the closing of the investigation by the Military Advocate General in April 2016; and A/HRC/43/21, para. 27.

[33] See https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\19\820\017\k09&fileName=19017820.K09&type=4 (in Hebrew only).

[34] A/HRC/43/21, para. 27.

[35] The officer was chosen to represent the Israel Defense Forces at the Memorial Day ceremony at the Western Wall in Jerusalem, on 27 April 2020.

18. In its decision, the High Court of Justice did not depart from the position of the Military Advocate General and the Attorney General, who stated that the "unique intensity" characterizing "combat" or "operational activity" should be taken into account. In particular, the High Court of Justice noted that the officer performed in a "war-like situation", which was characterized by a real danger to his life. Such an approach is in clear contradiction of international law, which distinguishes between rules regulating law enforcement operations, governed by international human rights instruments, and those regulating the conduct of hostilities between warring parties in situations of armed conflict, mainly governed by international humanitarian law. Under the law enforcement framework, the use of lethal force by security forces is authorized only as a measure of last resort, when strictly necessary in order to protect life or prevent serious injury from an imminent threat.[36] Even in situations of armed conflicts and military occupation, the law enforcement framework applies when security forces, including the military, are interacting with the civilian population.[37] On the other hand, the conduct of hostilities refers to the means and methods of warfare that one party to the conflict employs to undermine the military capabilities of the other, including "active combat" or launching attacks, as regulated by the rules of international humanitarian law on the conduct of hostilities.[38] In qualifying a context in which Israeli security forces were engaged in a law enforcement operation as "combat activity", the High Court of Justice seemed to uphold its previous practice of conflating two sets of rules that have been maintained as clearly distinct under international law,[39] thereby creating a dangerous situation in which the protection afforded to civilians by their right to life under international law is diminished.

19. On 21 October 2020, the Department of Internal Police Investigations at the Ministry of Justice announced its intention to bring to trial an Israeli border police officer involved in the killing of Iyad Hallaq on a charge of reckless homicide, while the case against his commanding officer would be closed.[40] According to its statement, "the deceased posed no danger to police and civilians in the area" and the officer who shot him did so against orders and after speaking with the victim. On 30 May 2020, Mr. Hallaq, a 31-year-old Palestinian with autism, was shot and killed by Israeli security forces while walking from his home in the Wadi al-Jawz neighbourhood to a vocational training centre for persons with disabilities in Jerusalem's Old City.[41] Monitoring conducted by OHCHR raised serious concerns of unnecessary or excessive use of force by Israeli security forces. On 21 September 2020, Mr. Hallaq's parents had petitioned the High Court of Justice urging the Department of Internal Police Investigations to conclude the investigation of the case and put the two police officers involved in the incident on trial.[42]

20. No notable progress has been reported in relation to investigations into allegations of ill-treatment, possibly amounting to torture, in Israeli detention facilities, including serious public allegations following the widespread arrests after the Ein Bubin attack of 23 August

[36] Human Rights Committee, general comment No. 36 (2018), para. 12. See also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

[37] Regulations respecting the Laws and Customs of War on Land, art. 43; A/HRC/40/CRP.2, paras. 85–86. See also ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva, 2015), p. 36. This entails that, even in armed conflicts, the use of force directed against civilians not directly participating in hostilities is subject to human rights-based law enforcement rules. See the report of the Public Commission to Examine the Maritime Incident of 31 May 2010 (Turkel Commission) (Part One – January 2011), paras. 189 and 234.

[38] A/HRC/40/CRP.2, para. 94.

[39] In particular, the High Court of Justice upheld the stance already confirmed in its decision of May 2019 on the rules of engagement in the context of the Gaza protests (see www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement).

[40] See www.haaretz.com/israel-news/israeli-cop-who-shot-dead-autistic-palestinian-faces-trial-1.9251419; and www.gov.il/he/departments/news/21-10-2020-01 (in Hebrew only).

[41] A detailed assessment of the incident is provided in A/75/336, para. 8.

[42] See www.haaretz.com/israel-news/.premium-parents-of-autistic-palestinian-shot-by-cops-petition-high-court-to-charge-officers-1.9177147. See also OHCHR in the Occupied Palestinian Territory, "Israeli security forces yet again use lethal force against a Palestinian not presenting an imminent threat of death or serious injury, killing him", press statement, 2 June 2020.

2019.[43] In its response to a freedom of information request submitted by the Public Committee against Torture in Israel, dated 5 July 2020, the Ministry of Justice reported that, in 2019, 36 cases related to complaints of alleged ill-treatment and torture had been opened by the Inspector for Complaints against the Israel Security Agency, and 71 other cases had been transferred to the State Prosecutor's Office. OHCHR is not aware of any further steps having been taken as a result of these proceedings.

Palestinian authorities

21. During the reporting period, there was little progress in relation to actions carried out by the Palestinian authorities in the West Bank and Gaza to investigate and prosecute the perpetrators of violations linked to incidents of possible excessive use of force or allegations of torture and ill-treatment by Palestinian security forces.

22. In its submission of 9 November 2020, the State of Palestine reported that it had intensified efforts to adopt legislation on the mandate and working methods of the national preventive mechanism to independently investigate allegations of torture and ill-treatment, as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, OHCHR notes with concern that, despite the obligation contained in the Optional Protocol, to which the State of Palestine acceded in 2017, the establishment and operationalization of the national preventive mechanism remained pending at the end of the reporting period.[44]

23. With regard to allegations of excessive use of force by Palestinian security forces in the West Bank, OHCHR monitoring of incidents resulting in the killing and injury of Palestinians during the reporting period[45] confirmed that certain steps had been taken by Palestinian authorities, including the creation of ad hoc inquiries, pledges to compensate the victims' families, and announcements regarding the opening of criminal investigations and the adoption of disciplinary measures against the officers involved. However, no information has been made publicly available regarding the criminal charges filed against those allegedly responsible. OHCHR monitoring also points to the use of informal reconciliation mechanisms to address cases of killing or serious injury resulting from possibly excessive use of force by Palestinian security forces. This raises concerns that such mechanisms may be used instead of judicial proceedings and other disciplinary measures to ascertain the truth and ensure accountability.

24. With regard to allegations of ill-treatment, in some cases possibly amounting to torture, OHCHR monitoring points to very serious concerns with regard to the lack of steps taken to investigate and prosecute individuals possibly responsible for these crimes, as well as the inadequacy of internal disciplinary mechanisms. Of particular concern are a number of credible allegations that detainees had been subjected to intimidation by Palestinian security forces and pressured into not filing complaints against Palestinian law enforcement officers or withdrawing those that had been made, as a condition for release from detention.

25. The High Commissioner reiterates the call upon the State of Palestine to ensure that incidents involving human rights violations are promptly, impartially, independently and thoroughly investigated in line with international standards, and that those responsible are held accountable.[46] Within this framework, OHCHR intensified its efforts, during the reporting period, to provide technical assistance to the State of Palestine, including on strengthening accountability. This included targeted training for Palestinian security forces aimed at combating arbitrary arrest and detention, and torture and ill-treatment, to accelerate criminal accountability.

26. The Office of the Attorney General of the de facto authorities in Gaza reported having received and investigated complaints related to incidents of possible excessive use of force by the authorities' security forces during the civilian demonstrations held between 14 and 16

[43] A/75/336, paras. 14–18.

[44] OHCHR notes that the international treaties to which the State of Palestine has acceded had not been published in the *Official Gazette* at the time of writing.

[45] A/HRC/46/63, para. 22.

[46] A/HRC/43/21, para. 38.

March 2019.[47] However, the outcomes of such investigations have not been made public and OHCHR is not aware of any other measure having been taken by the de facto authorities in Gaza to investigate and prosecute those allegedly involved in violations, including possible excessive use of force against demonstrators, arbitrary arrests and ill-treatment and torture in detention.

27. OHCHR monitoring continues to point to widespread allegations of ill-treatment, possibly amounting to torture, in Gaza detention facilities.[48] Little information has been made public in relation to any steps taken by the authorities in Gaza to investigate these allegations, notwithstanding the Independent Commission for Human Rights having reported that it had received 85 complaints of ill-treatment or torture during the reporting period.

28. The lack of transparency in relation to any steps taken to ensure accountability for serious human rights violations is a matter of utmost concern. In the rare cases in which the authorities in Gaza have formed ad hoc committees or commissions of inquiry to investigate such allegations through a decision by the de facto Ministry of the Interior, their findings have not led to criminal charges or to the adoption of other concrete accountability steps. For example, on 23 February 2020, a 39-year-old man from the Bureij camp, central Gaza, died while in the custody of the de facto Internal Security Agency after being arrested on the charge of "undermining public security" for collaborating with the Palestinian Authority. The de facto Minister of the Interior announced the creation of an ad hoc committee to investigate the incident. On 29 February 2020, the committee released the results of its investigation, pointing out that, while the man did not receive proper medical care in detention, his death had resulted from natural causes. The family of the victim rejected the probe, highlighting that signs of torture had been found on his body.[49]

C. International mechanisms

29. On 20 December 2019, the Prosecutor of the International Criminal Court released a statement in which she stated that she had determined that there was a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53 (1) of the statute of the Court, concerning alleged war crimes committed by multiple parties since 13 June 2014 in the West Bank, including East Jerusalem, and Gaza.[50] However, before opening an investigation, the Prosecutor considered it appropriate to make a request to the Court's Pre-Trial Chamber for a jurisdictional ruling on the scope of the Court's territorial jurisdiction in relation to the situation.[51] The matter remains pending.

III. Implementing the recommendations reviewed by the High Commissioner in A/HRC/35/19

30. In its resolution 43/3, the Human Rights Council requested the High Commissioner to report on how all parties could fulfil their obligations in implementing the recommendations reviewed by the High Commissioner in 2017 (A/HRC/35/19), pertaining to accountability in the Occupied Palestinian Territory. In that report, the High Commissioner reviewed more than 900 recommendations addressed to all parties since 2009, which had been formulated to improve the human rights situation in the Occupied Palestinian Territory. They essentially pertain to violations of international humanitarian law and international human rights law, mainly by Israel but also by Palestinian duty bearers and parties. The recommendations were subdivided into seven areas: accountability and access to justice; international engagement; arrest and detention; settlements; freedom of movement; other civil and political rights; and economic, social and cultural rights. In the 2017 report, the High Commissioner showed that the vast majority of the recommendations had not been

[47] A/HRC/43/70, paras. 47–48; and A/HRC/43/21, para. 39.
[48] A/HRC/46/63, paras. 62–63.
[49] See www.alwatanvoice.com/arabic/news/2020/03/01/1318541.html (in Arabic only).
[50] See www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine.
[51] Prosecution request pursuant to article 19 (3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020.

implemented, and concluded with follow-up measures addressed to Israel, the State of Palestine and the international community.

31. Given that the human rights situation in the Occupied Palestinian Territory has not improved materially since the publication of the 2017 report, these recommendations remain valid.[52] Hence, the High Commissioner reiterates the proposal to both Israel and the State of Palestine to make full use of OHCHR technical assistance, including for the development of national mechanisms to monitor recommendations.[53] This suggestion is particularly relevant for Israel, given its publicly stated freeze in relations with OHCHR, in particular in the Occupied Palestinian Territory since February 2020, including in relation to the issuance of visas for international staff.[54]

32. As noted, the vast majority of recommendations reviewed in the 2017 report relate to unlawful conduct by the parties. Continued OHCHR monitoring shows that the concerns expressed in prior reports remain.[55] In particular, numerous alleged violations of international humanitarian law are attributable to Israel in relation to its conduct during the escalations of hostilities in Gaza. Further violations pertain to the rules on law enforcement operations and those related to belligerent occupation both in the West Bank, including East Jerusalem, and Gaza.[56] Accordingly, the High Commissioner reminds Israel of its obligations under the international human rights instruments to which it is party, under the Geneva Conventions of 12 August 1949 and other norms of international humanitarian law, and under customary international law, and reiterates the call upon Israel to fully comply with them in the Occupied Palestinian Territory.[57]

33. In 2017, the High Commissioner noted the repeated failure of Israel to comply with the calls for accountability made by the entire human rights system.[58] In view of the continuous lack of steps taken to ensure accountability according to international standards (see sect. II), the High Commissioner reiterates the calls upon Israel and the State of Palestine to conduct prompt, impartial, independent and thorough investigations into all alleged violations of international human rights law and international humanitarian law, including all allegations of international crimes. The High Commissioner also reiterates the call upon all duty bearers to ensure that all victims have access to remedies and reparation.[59]

34. As regards follow-up measures addressed to the international community in the 2017 report, the High Commissioner notably suggested that the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties could fulfil their obligations in implementing the recommendations reviewed in the report.[60] The High Commissioner reiterates the call upon all States and relevant United Nations bodies to take all measures necessary to ensure full respect for and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including Security Council resolution 2334 (2016), in which the Security Council reaffirmed that the establishment by Israel of settlements in the West Bank, including East Jerusalem, had no legal validity and constituted a flagrant violation under international law.[61] In signing the Charter of the United Nations, States have bound themselves to comply with the decisions of

[52] See, e.g., A/HRC/37/38, A/HRC/40/39 and A/HRC/43/70.
[53] A/HRC/35/19, paras. 67 and 73.
[54] See www.timesofisrael.com/israel-freezes-ties-with-un-rights-chief-after-release-of-settlement-blacklist.
[55] See A/HRC/46/63 and A/HRC/46/65.
[56] In A/HRC/34/38, the Secretary-General summarized the applicable legal framework and referred to the main recurrent violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory.
[57] A/HRC/35/19, para. 67.
[58] Ibid., para. 69.
[59] Ibid., paras. 69 and 71.
[60] Ibid., para. 75.
[61] Ibid., para. 80.

the Security Council and are also under an obligation to bring to an end a situation deemed illegal by the Security Council.[62]

35. Under the principles of State responsibility, the State responsible for an internationally wrongful act must cease that act if it is continuing, in addition to making full reparation for any injury that such act has caused.[63] Despite continuous calls over decades for the occupying power to fully respect international law and to comply with its obligations under the law of occupation, violations continue to occur at an alarming pace. The international community could therefore consider further efforts towards bringing the occupation to an end, thereby also putting an end to these associated violations.[64] The articles on the responsibility of States for internationally wrongful acts also oblige States to cooperate to bring to an end any serious breach of an obligation arising under a peremptory norm of general international law.[65] Accordingly, the High Commissioner calls upon all States to act collectively to stop the serious violations of international humanitarian law and international human rights law that are being perpetrated in the Occupied Palestinian Territory on an ongoing basis and to enable the Palestinian people to exercise their right of self-determination.

IV. Responsibility of third States

36. In its resolution 43/3, the Human Rights Council reiterated its call upon all States to promote compliance with international law and all contracting parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions. It further requested the High Commissioner to report on legal measures to be taken by States to ensure that Israel, and all relevant parties, respect their obligations under international law in the Occupied Palestinian Territory.

37. The obligation to respect and ensure respect for the Geneva Conventions, as enshrined in common article 1, is valid in all circumstances.[66] This duty extends to the entire body of international humanitarian law.[67] It encompasses both negative and positive obligations: while States are expected to abstain from certain conduct (i.e. they must not encourage, aid or assist in violations of the Geneva Conventions), they must also take proactive steps to bring to end violations by parties to the conflict.[68] This obligation further imposes a positive

[62] Charter of the United Nations, Article 25; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, at pp. 53–54, para. 117.

[63] Articles 30–31 of the articles on the responsibility of States for internationally wrongful acts (General Assembly resolution 56/83, annex).

[64] International Covenant on Civil and Political Rights, art. 1; and International Covenant on Economic, Social and Cultural Rights, art. 1. The International Court of Justice confirmed the *erga omnes* nature of the right to self-determination in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at pp. 171–172, para. 88. See also paragraph (5) of the commentary to article 26 of the draft articles on the responsibility of States for internationally wrongful acts about the right to self-determination being a peremptory norm (Report of the International Law Commission on its fifty-third session, A/56/10 and Corr.1, p. 208).

[65] Article 41 (1).

[66] See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, at p. 114, para. 220.

[67] ICRC, Customary International Humanitarian Law database, rule 144 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144); and ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: 28th International Conference of the Red Cross and Red Crescent, 2–6 December 2003* (Geneva, 2003) (www.icrc.org/en/doc/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf).

[68] A/HRC/43/35, para. 34. See also, e.g., ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: 28th International Conference*; Knut Dörmann and Jose Serralvo, "Common article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations", *International Review of the Red Cross*, vol. 96, No. 895/896, p. 719 (https://international-review.icrc.org/articles/common-article-1-geneva-conventions-and-obligation-

duty on States to do everything reasonably in their power to stop ongoing violations of international humanitarian law and to prevent those that are foreseeable.[69]

38. It follows that third States must, to the degree possible, exert the influence they possess over the parties to the conflict to ensure respect for international humanitarian law.[70]

39. As discussed in previous reports of the High Commissioner, in complying with their obligation to ensure respect for international humanitarian law, States can choose among different measures considered as adequate. Such measures may range from diplomatic steps to more significant ones, including measures of retortion and the adoption of countermeasures[71] that are appropriate and proportional to the circumstances.[72] The International Committee of the Red Cross, in its 2016 updated commentary to common article 1, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and various authors have outlined possible measures that States can take to comply with their obligation to ensure respect for the law.[73] The European Union Guidelines on promoting compliance with international humanitarian law present another useful indicative list of measures in this regard.[74]

40. In a note verbal dated 15 October 2020, OHCHR reiterated its request to States Members of the United Nations for information on the steps taken to promote compliance with international law in the Occupied Palestinian Territory and to implement the recommendations contained in the reports of the relevant independent international commissions of inquiry and fact-findings missions.

41. Some public measures were taken by third States during the reporting period, mainly in relation to the publicly announced plans of Israel to annex the Occupied Palestinian Territory. Several Governments denounced these plans. On 7 July 2020, the Ministers of Foreign Affairs of Egypt, France, Germany and Jordan issued a joint statement calling on Israel not to proceed with its plan to annex parts of the Occupied Palestinian Territory, asserting that it "would be a violation of international law and imperil the foundations of the peace process".[75] On 23 June 2020, 1,080 parliamentarians from 25 European States published a joint letter to European Governments and leaders against the Israeli annexation of the West Bank, asking European leaders to act decisively in response to this challenge.[76]

42. Supporting international efforts to bring to justice suspected perpetrators of violations of international humanitarian law and international human rights law is another measure available to third States to comply with their obligations under common article 1. It may include support for ongoing international legal proceedings or the creation of commissions

prevent-international-humanitarian-law); ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., 2016, paras. 164–173 (on common article 1); and Théo Boutruche and Marco Sassòli, "Expert opinion on third States' obligations vis-à-vis IHL violations under international law, with a special focus on common article 1 to the 1949 Geneva Conventions", 8 November 2016 (www.nrc.no/globalassets/pdf/legal-opinions/eo-common-article-1-ihl---boutruche---sassoli---8-nov-2016.pdf), pp. 13–14.

69 A/HRC/43/35, para. 34.

70 ICRC, Customary International Humanitarian Law database, rule 144 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144); and ICRC, *Commentary*, para. 165.

71 A/HRC/40/43, para. 49; and A/HRC/43/21, para. 41.

72 A/74/507, para. 78. In the same report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 suggested that States should escalate the range of their targeted countermeasures until compliance had been achieved.

73 A/74/507, paras. 72–76; ICRC, *Commentary*, para. 181; and Dörmann and Serralvo, "Common article 1", pp. 725–726.

74 See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN.

75 See www.diplomatie.gouv.fr/en/country-files/israel-palestinian-territories/peace-process/events/article/joint-statement-of-the-foreign-ministers-of-france-germany-egypt-and-jordan-07.

76 See www.scribd.com/document/466688615/Letter-by-European-Parliamentarians-Against-Israeli-Annexation.

of inquiry, fact-finding missions and other international investigative mechanisms. Support may also pertain to proceedings under national justice.[77]

43. States parties to the Geneva Conventions and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), must provide for universal jurisdiction in their national legislation for the war crimes defined as grave breaches by these instruments.[78] Accordingly, such third States must investigate and prosecute or extradite alleged perpetrators of grave breaches of the Geneva Conventions committed in the Occupied Palestinian Territory. They must also investigate other relevant war crimes over which they have jurisdiction and prosecute the suspects, if appropriate.[79] Given that resorting to penal measures to repress violations of international humanitarian law may also be considered as a means of ensuring respect for the law,[80] States should consider vesting their national courts with competence – including on principles of universal or extraterritorial jurisdiction, in accordance with international law – to inquire into allegations of breaches of international humanitarian law, wherever they are committed.

44. For instance, in Germany, a preliminary investigation is ongoing for war crimes allegedly committed by members of the Israel Defense Forces within the scope of a strike in Gaza, on 24 July 2014, which killed several members of the same family (*Kilani* case).[81] In Belgium, Switzerland and the United Kingdom of Great Britain and Northern Ireland, criminal complaints were filed between 2009 and 2017 against senior Israeli officials for alleged war crimes committed during the escalation of hostilities in Gaza in 2008 and 2009.

45. In addition to the responsibility of third States under common article 1 to take reasonable measures to ensure respect for the law, States have an obligation, according to the articles on the responsibility of States for internationally wrongful acts, not to recognize as lawful a situation created by a serious breach of international law, nor render aid or assistance in maintaining that situation.[82] As highlighted above, States have an obligation to cooperate to bring to an end, through lawful means, any serious breach of international law.[83] The duty of cooperation is also implied in the obligation of States, under the Charter of the United

[77] ICRC, *Commentary*, para. 181.

[78] Fourth Geneva Convention, art. 146; and Protocol I Additional to the Geneva Conventions, art. 85 (1). A number of international human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also provide for mandatary universal jurisdiction over certain crimes. See also ICRC, Customary International Humanitarian Law database, rule 157 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule157), and the commentary thereto.

[79] ICRC, Customary International Humanitarian Law database, rule 158 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158). Numerous States require the presence of the accused on their territory to establish jurisdiction.

[80] Ibid., with reference to the International Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, case No. IT-94-1, Decision on the Defence Motion on Jurisdiction, 10 August 1995, para. 71.

[81] See www.ecchr.eu/en/case/israeli-airstrikes-in-gaza-justice-in-the-kilani-case.

[82] Article 41 (2). For instance, States should not recognize the unlawful situation resulting from Israeli settlements or aid or assist in maintaining it (A/HRC/40/43, para. 51).

[83] Article 41 (1) of the articles on the responsibility of States for internationally wrongful acts. Considered as serious are breaches by a State of an obligation arising under a peremptory norm of general international law (article 40 of the articles on the responsibility of States for internationally wrongful acts). The prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination, as well as fundamental rules of international humanitarian law, are generally considered peremptory norms under international law (see paragraph (5) of the commentary to article 26 and paragraph (4) of the commentary to article 40 of the draft articles on the responsibility of States for internationally wrongful acts (Report of the International Law Commission on its fifty-third session, A/56/10 and Corr.1, pp. 208 and 283, respectively)). See paragraph (3) of the commentary to article 50 of the draft articles on the law of treaties (Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session, A/6309/Rev.1, pp. 76–77).

Nations, to promote universal respect for, and observance of, human rights and freedoms, as also recalled by almost all core international human rights treaties.[84]

V. Conclusion and recommendations

46. **The period under review was characterized by a persistent pervasive failure to ensure accountability for allegations of excessive use of force by the Israeli security forces in the context of law enforcement operations in the Occupied Palestinian Territory. Impunity also persisted in relation to allegations against all parties to the 2014 escalation and to previous and more recent rounds of hostilities in Gaza. Furthermore, there were concerns that few steps had been taken to investigate and prosecute the members of Palestinian security forces or of the security forces in Gaza responsible for alleged excessive use of force and other human rights violations committed against Palestinians.**

47. **With regard to the responsibility of third States, the High Commissioner underlines the obligation of all States to ensure respect for international humanitarian law by taking all necessary measures to that effect.**

48. **As already emphasized by the High Commissioner, despite the insistent calls made by the international community for compliance with applicable obligations under international law, and the support provided to Palestinian and Israeli authorities in their peace efforts, the steps taken by the international community have continued to remain insufficient to ensure that end.**[85] **In its resolution 2334 (2016), the Security Council stressed that the status quo was not sustainable and that significant steps were urgently needed to stabilize the situation and to reverse negative trends. In that regard, the Secretary-General has emphasized that a lack of accountability has compromised chances for sustainable peace and security, adding that tackling impunity must be the highest priority.**[86] **The High Commissioner again echoes those calls.**

49. **Recalling the follow-up measures described in previous comprehensive reviews of recommendations,** [87] **as well as all the recommendations reviewed, the High Commissioner:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory; urges it to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and also calls upon Israel to ensure that all victims and their families have access to effective remedies, reparation and truth;**

(b) **Calls upon Israel to resume its cooperation with OHCHR and make full use of OHCHR technical assistance;**

(c) **Urges the State of Palestine to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and calls upon the State of Palestine to ensure that all victims and their families have access to effective remedies, reparation and truth;**

[84] Charter of the United Nations, Article 1 (3). See the preambles of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.

[85] A/HRC/35/19, para. 62.

[86] A/71/364, para. 6.

[87] A/HRC/35/19, paras. 63–81.

(d) **Recommends that all parties ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and that they ensure accountability for grave violations;**

(e) **Calls upon all States to take all necessary measures to effectively ensure respect for the Geneva Conventions by all parties to the conflict, taking into account the means reasonably available to them and their level of influence on the parties; and, in particular, reminds States with close ties to the parties that they must exert their influence to ensure respect for the law;**

(f) **Reiterates the calls upon all States and relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.**

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Human rights situation in Palestine and other occupied Arab territories

Implementation of Human Rights Council resolutions S-9/1 and S-12/1

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, the thirteenth submitted by the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, covers the period from 1 November 2019 to 31 October 2020. It provides an overview of the human rights situation in the Occupied Palestinian Territory and focuses, in particular, on the realization of the human rights of women and girls by all duty bearers, namely Israel, the State of Palestine and the authorities in Gaza.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. Submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1, the present report covers the period from 1 November 2019 to 31 October 2020.

2. The report is based on monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, governmental sources and information collected by other United Nations entities and non-governmental organizations. It should be read in conjunction with other relevant reports of the Secretary-General and the High Commissioner to the Human Rights Council and the General Assembly.[1] In the present report, the High Commissioner draws on trends and cases documented by OHCHR to illustrate how Palestinian women are subjected to multiple layers of violence and discrimination, in the public and private spheres, stemming from the Israeli military occupation, prevailing patriarchal norms and practices and gender-based violence. Owing to space constraints, the High Commissioner does not address all issues of concern, nor does it address all cases documented during the reporting period.

3. Following the publication in February 2020 of a report to the Human Rights Council on a database of business enterprises involved in activities linked to Israeli settlements,[2] the Government of Israel publicly announced a freeze in relations with the High Commissioner and OHCHR, in particular in the Occupied Palestinian Territory. That freeze was extended to cover the issuance or renewal of visas, resulting in international OHCHR staff being obliged to leave Ramallah and Gaza and in new staff being unable to deploy. On 26 October 2020, the Special Coordinator for the Middle East Peace Process, addressing the Security Council, urged Israel to facilitate the return of international staff members to the Occupied Palestinian Territory.[3]

II. Legal framework

4. International humanitarian law and international human rights law apply concurrently in the Occupied Palestinian Territory.[4] Under international human rights law, the Convention on the Elimination of All Forms of Discrimination against Women – to which Israel and the State of Palestine are parties – provides the broadest framework for the protection of women's rights in times of peace and conflict alike. The Convention sets out clear obligations to eliminate all forms of discrimination against women, direct and indirect, including violence against women and gender-based violence.[5] Discrimination against women can take multiple forms, including gender-based violence, namely violence directed towards a woman because she is a woman or that affects women disproportionately.[6] In certain circumstances, gender-based violence, including domestic violence, child marriage and harmful practices, may amount to torture.[7] The prohibition of gender-based violence is viewed as having evolved into a norm of customary international law.[8] In addition to affording to women the general protection afforded to all civilians, international humanitarian law provides that the specific protection, health and assistance needs of women must be respected and addresses specific conflict-related forms of violence against women.[9]

5. The Convention on the Elimination of All Forms of Discrimination against Women applies to the Occupied Palestinian Territory in its entirety, namely to Gaza and the West

[1] A/75/336, A/HRC/46/22 and A/HRC/46/65.
[2] A/HRC/43/71.
[3] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_26_october_2020.pdf.
[4] A/HRC/34/38.
[5] Arts. 1–2, 5, 7, 9–11 and 16.
[6] Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017), para. 1.
[7] Ibid., para. 16. See also A/HRC/31/57, paras. 11 and 55.
[8] General recommendation No. 35 (2017), para. 2.
[9] See, e.g., Fourth Geneva Convention, art. 27.

Bank, including East Jerusalem.[10] Israel and the State of Palestine bear obligations under the Convention, as well as other human rights treaties, to the extent of their jurisdiction or effective control. The de facto authorities in Gaza also bear human rights responsibilities, given their exercise of government-like functions and territorial control.[11]

III. Implementation of Human Rights Council resolutions S-9/1 and S-12/1

6. The human rights situation in the Occupied Palestinian Territory remained dire. During the reporting period, 67 Palestinians (48 male, 3 female), including 16 children, were killed and 3,678 injured by the Israeli security forces. One Israeli soldier was killed and 90 Israelis were injured by Palestinians.[12] Most incidents monitored by OHCHR raised serious concerns about excessive or unwarranted use of force by the Israeli security forces, in some cases possibly amounting to arbitrary deprivation of life, including extrajudicial execution. Lack of accountability for unnecessary or disproportionate use of force and other violations by all duty bearers remained of great concern, as detailed by the High Commissioner in a separate report.[13]

IV. Violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory by all duty bearers

A. Israel

1. Obligations of the occupying Power under international humanitarian law

7. The land, sea and air blockade of Gaza, which amounts to collective punishment,[14] entered its fourteenth year. Three times during the reporting period Israel imposed punitive closures of crossings and the fishing zone and halted the entry of fuel and other essential supplies, further aggravating the suffering of the civilian population. Israeli officials cited the launch of rockets, mortars and incendiary balloons as reasons for the closures.[15] Frequent fuel and electricity shortages have a devastating impact on women and girls, who are, due to sociocultural norms, mainly charged with household tasks. Shortages also greatly hamper their access to basic health and education services, including schooling and psychosocial services, which have mostly been provided remotely during the coronavirus disease (COVID-19) pandemic.[16]

8. International humanitarian law expressly prohibits the punishment of protected persons for acts they have not committed.[17] Under international human rights law, collective punishment violates several rights, notably the presumption of innocence and the right to a fair trial, and may violate the prohibition of torture and ill-treatment.[18]

9. Israel withheld the bodies of 18 Palestinian males, including 2 boys, killed in the context of alleged attacks during the reporting period. As of 31 October 2020, Israel held the bodies of 67 Palestinians.[19] On 2 September 2020, the Israeli cabinet formally expanded its

[10] A/HRC/35/30/Add.2, para. 8.
[11] Ibid., para. 11. See also A/HRC/34/38, paras. 5–9.
[12] Office for the Coordination of Humanitarian Affairs of the Secretariat (OCHA).
[13] A/HRC/46/22.
[14] A/HRC/37/38, para. 4; A/HRC/34/36, para. 36; and A/HRC/24/30, para. 22.
[15] See www.timesofisrael.com/liveblog-august-12-2020/.
[16] See www.ochaopt.org/sites/default/files/sitrep-16-covid-19.pdf.
[17] Fourth Geneva Convention, art. 33. See also the Regulations annexed to the Convention respecting the Laws and Customs of War on Land of 1907, art. 50.
[18] A/74/468, para. 21.
[19] Jerusalem Legal Aid and Human Rights Center. This number does not include the 253 bodies of Palestinians killed in hostilities and buried in graves marked only by numbers.

policy of withholding bodies as a tool for bargaining and stated that the bodies of all alleged attackers should be retained, regardless of their political affiliation.[20] On 25 September 2020, the Israeli security forces returned the body of Nayfeh Kaabneh. Ms. Kaabneh had been killed on 18 September 2019 by private security personnel (contracted by the Israeli security forces) while holding a knife but not posing any concrete threat at Qalandia checkpoint. In respect of that incident, OHCHR pointed to concerns of excessive use of force and failure to provide first aid to an injured person. Withholding bodies punishes the families of the deceased and thus amounts to collective punishment. It could also violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the obligations of Israel under article 27 of the Fourth Geneva Convention.[21]

10. Thirteen Palestinian structures, including nine homes, were punitively demolished or sealed by the Israeli security forces, resulting in the displacement of 40 Palestinians, including 13 women and 16 children, in the West Bank, including East Jerusalem.[22] While upholding the overall practice of punitive demolitions, the High Court of Justice of Israel cancelled two demolition orders during the reporting period. In one case, the Court held that the punitive demolition of the family home would not be "proportional" since it would mostly harm the innocent wife and eight children of Nazmi Abu Bakar, accused of killing an Israeli soldier with a brick during a raid by the Israeli security forces in Ya'bad, on 10 May 2020.[23] The Court authorized instead the sealing of one room in the three-bedroom home, which the forces filled with concrete on 21 October 2020, as the trial was still ongoing. Punitive demolitions are a form of collective punishment, forbidden under any circumstances.[24]

11. Settlement plans and construction continued unabated during the reporting period.[25] Despite the COVID-19 pandemic, the Israeli authorities demolished 726 Palestinian structures in the West Bank, including East Jerusalem, which resulted in the displacement of 1,028 Palestinians, including 255 women and 523 children.[26] Settler violence against Palestinians continued at high levels in what the Secretary-General has called a prevailing climate of impunity.[27] In previous reports, OHCHR has documented that women and girls have been particularly targeted by settler attacks in their homes when men were absent and that the constant risk of attacks has kept women confined to the domestic environment, thus compounding negative aspects of traditional gender roles.[28] The Committee on the Elimination of Discrimination against Women has stated that forced evictions and home demolitions, including punitive demolitions, disproportionally affect Palestinian women and girls, particularly female heads of households, and have a devastating impact on their physical and psychological well-being.[29]

2. Civilian casualties in the context of hostilities

12. In Gaza, Palestinian armed groups launched 580 rockets and 213 mortars towards Israel and Israel fired 591 missiles and 140 tanks shells in recurrent escalations of hostilities.[30]

13. The Israeli security forces killed 36 Palestinians during three escalations of hostilities with Palestinian armed groups in Gaza and injured 103 (77 male, 26 female).[31] At least 16 of the Palestinians killed were civilians, including 8 boys and 3 women. In several instances,

[20] The decision updates a previous decision of 1 January 2017 by which only the bodies of alleged attackers affiliated with Hamas and those who allegedly committed acts of exceptional gravity should not be returned. In practice, the Israeli security forces were already withholding the bodies of all alleged attackers regardless of their affiliation.

[21] A/HRC/43/70, para. 9; and A/75/336, para. 35.

[22] OCHA.

[23] High Court of Justice, *Abu Baher et al. v. Military Commander of the West Bank Area et al*., HCJ 4853/20, judgment, 10 August 2020.

[24] Fourth Geneva Convention, arts. 33 and 53.

[25] A/HRC/46/65.

[26] OCHA.

[27] A/75/376, para. 26.

[28] Ibid., para. 21; and A/74/357, para. 42.

[29] CEDAW/C/ISR/CO/6, paras. 32–33.

[30] Department of Safety and Security of the Secretariat.

[31] OCHA.

strikes by the Israeli security forces on or near residential buildings rendered women and children particularly vulnerable to death and injury. On 14 November 2019, Israeli Air Force missiles struck two houses in Deir El-Balah, killing nine members of an extended family: two married couples and five children. Thirteen other children who survived the attack, of whom seven were girls, remained under the sole care of their 70-year-old grandmother.[32] During another escalation, following the launch of dozens of incendiary balloons from Gaza that caused extensive fire and damage to farmlands in Israel, the Israeli security forces struck open areas close to residential buildings on 14 and 21 August 2020, injuring four Palestinian children (two boys, two girls). These air strikes raised serious concerns about respect for the international humanitarian law principles of distinction, precaution and proportionality.

14. Serious concerns also remained regarding the indiscriminate launching of rockets and mortars by Palestinian armed groups towards Israel. Forty-three Israeli civilians were reportedly injured in those attacks.[33] At least 29 rockets and mortars dropped short in Gaza,[34] resulting in the killing of an 18-year-old Palestinian man on 12 November 2019. The indiscriminate launching of rockets is illegal under international law.

B. Recurring human rights violations

1. Violations of the right to life and physical integrity

15. In line with international law, law enforcement officials should use firearms only as a measure of last resort, in response to an imminent threat of death or serious injury and always in such a manner as to minimize damage and injury and preserve human life.[35]

16. Serious concerns of unnecessary or disproportionate use of force against Palestinians persisted, although at the Gaza-Israel fence the number of casualties significantly dropped as Great March of Return demonstrations were suspended from 27 December 2019. Three Palestinian males, including two boys aged 16 and 14,[36] were killed by the Israeli security forces in the context of the demonstrations. Some 673 Palestinians were injured (644 male, 29 female), including 126 with live ammunition, of whom 50 were children.[37] In the vast majority of cases monitored by OHCHR, Palestinians were killed or injured by the Israeli security forces while appearing to pose no imminent threat of death or serious injury.[38]

17. Women were also victims of unnecessary or disproportionate use of force at demonstrations. On 6 December 2019, east of Al Boureij, a 20-year-old woman was struck in the face by a rubber-coated bullet fired by the Israeli security forces, causing permanent loss of eyesight in her right eye. When she was hit, the woman was standing about 100 metres from the fence in a group of women holding Palestinian flags and not posing any threat to the Israeli security forces. The independent international commission of inquiry on the protests in the Occupied Palestinian Territory found that, although fewer women than men participated in the demonstrations due to the prevailing cultural norms, the protests at the fence provided women and girls in Gaza, who had little access to public spaces, to participate in cultural and social activities.[39] Women and girls represented 7.1 per cent of the 36,142 Palestinians injured during the Great March of Return demonstrations.[40] While injured or disabled women are often expected to continue to fulfil their domestic duties, they may experience reduced decision-making power and their access to medical treatment may be limited by social norms.[41] Reports also highlight the impact on women and girls of the killings and injuries of male family members, such as the increase in female-headed

[32] A/75/336, para. 5.
[33] OCHA.
[34] Department of Safety and Security.
[35] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
[36] A/75/336, para. 8.
[37] OCHA.
[38] A/75/336, paras. 6–7.
[39] A/HRC/40/CRP.2, paras. 592–598.
[40] Injuries were inflicted on 36,143 persons, including 2,040 women and 552 girls (OCHA).
[41] OCHA.

households, in pressure on women as the main caregivers to the injured and in domestic violence.[42]

18. In the West Bank, including East Jerusalem, the Israeli security forces killed 23 Palestinian males, including 5 children and 1 man with autism. Three Palestinians were killed during demonstrations, 8 during search-and-arrest operations and 12 in the context of attacks or alleged attacks against the Israeli security forces or settlers. In several incidents, the Israeli security forces may have resorted to unnecessary or disproportionate use of force resulting in arbitrary deprivation of life, including extrajudicial execution.[43]

19. Excessive use of force by the Israeli security forces and generalized violence pose a constant threat to the rights to life and physical integrity of civilians, including women and girls. On 22 February 2020, the Israeli security forces injured with live fire a 43-year-old woman during an alleged stabbing attack in the Old City of Jerusalem. The woman told OHCHR that she saw a man being chased by the Israeli security forces. The man had stopped while holding a knife with his back against the wall, a few metres away from the woman, when the Israeli security forces shot him, first with one bullet and then with dozens of bullets from different directions. One of them passed through the woman's left thigh causing serious injury.

20. In another incident, on 7 August 2020, a 23-year-old woman was killed by live ammunition while shutting the windows of her home to prevent teargas from entering during an operation of the Israeli security forces and ensuing clashes with Palestinian residents in Jenin. There were contradictory claims over responsibility for the shooting, with the Israeli security forces and local residents denying the use of live ammunition.

21. United Nations experts have pointed to the severe impact on women and girls of raids and search operations, including night-time home incursions, routinely conducted by the Israeli security forces.[44] Even when they are not directly victims of physical violence, women experience extreme psychological violence leading to sleeping disorders, anxiety and depression. A study conducted by the organization Yesh Din, which monitored over 158 raids by the Israeli security forces, showed that 88 per cent of home incursions occurred between midnight and 5 a.m. and that in 74 per cent of such incursions homes were invaded by 10 or more soldiers, in 25 per cent violence was used and in 30 per cent property was damaged. In none did the Israeli security forces have a search warrant.[45] On 23 August 2020, at 3 a.m., some 50 soldiers raided Deir Abu Mashal village and entered the house of a 21-year-old Palestinian to arrest him. The Israeli security forces pepper-sprayed the father, the mother and the grandmother, all of whom resisted the arrest of the young man because he had a medical condition resulting from a previous injury caused by the Israeli security forces. As documented in a video, the soldiers were not wearing surgical masks notwithstanding the COVID-19 outbreak.[46] For three days, the family remained unaware of the whereabouts of the young man, who was released with no charges or conditions on 26 August 2020.

22. Three Palestinian males, including a 14-year-old boy, were killed and several others were injured in law enforcement operations carried out by Palestinian security forces in the context of a surge in crime and violence in the West Bank and to enforce COVID-19 restrictions. On 23 May, in Ad Duheisha refugee camp, during clashes with residents after attempts to forcefully implement COVID-19 precautions, a Palestinian officer fired several live bullets and injured two persons in the legs in an incident raising concern of unnecessary or disproportionate use of force. On several occasions, Gaza security forces used force to

[42] See https://www2.unwomen.org/-/media/field%20office%20palestine/attachments/publications/2020/12/d7-gmr%20report-271120.pdf?la=en&vs=2457, pp. 12–13 and 17–20; https://www2.unwomen.org/-/media/field%20office%20palestine/attachments/publications/2020/10/gender%20alert%20analysis%20august%202020%20unw.pdf?la=en&vs=5731, pp. 7–12; and https://palestine.unfpa.org/sites/default/files/pub-pdf/Situation%20Report%20Gaza%20-%208%20June%202018%20-%20Great%20Return%20March%20-%20final.pdf.

[43] A/75/336, para. 8.

[44] CEDAW/C/ISR/CO/6, para. 30 (b); and A/HRC/35/30/Add.1, para. 61.

[45] See https://life-exposed.com/wp-content/uploads/2020/11/Exposed_Life_EN_FINAL.pdf, p. 15.

[46] See also A/75/336, para. 42.

implement COVID-19-related curfews and movement restrictions, resulting in the injury of Palestinians, including women. In one case, on 4 September, security forces raided several houses in Khan Younis to find individuals who had thrown stones in protest at the use of force in the enforcement of the night curfew and beat a 34-year-old woman in the head, after which she required stitches.

23. Courts in Gaza issued 10 death sentences, 3 of which by military courts. Five other death sentences previously issued were confirmed on appeal, two of them by military courts. Those sentences raise serious concern about due process and fair trial guarantees, including in respect of the sentencing of civilians by military courts.

2. Discrimination and gender-based violence

24. Gender-based violence is a form of discrimination against women and a human rights violation. Moreover, it jeopardizes women's enjoyment of several fundamental rights, including the rights to life and physical integrity, liberty and security of the person.[47] Under the Convention on the Elimination of All Forms of Discrimination against Women and other human rights treaties, authorities have the obligation to prevent, prosecute and provide reparations for acts of gender-based violence committed by public officials and in the private sphere.[48]

25. The occupation compounds women's vulnerability to gender-based violence and can pose critical obstacles to the prevention of and punishment for acts of violence against women and girls, particularly in East Jerusalem and in Area C, where the occupying Power, Israel, exercises exclusive jurisdiction over security.[49] As has been pointed out by United Nations experts, this situation does not exonerate the Palestinian authorities in the West Bank and Gaza from fulfilling their due diligence obligations in areas under their effective jurisdiction and control.[50] In this regard, the multiplicity of authorities, security forces and legal systems poses additional challenges. Women also suffer from violence emanating from patriarchal social norms.[51]

26. Six years after accession by the State of Palestine, the Convention on the Elimination of All Forms of Discrimination against Women has not been published in the official gazette, a precondition for its domestic application. Very limited progress was made during the reporting period towards repealing laws discriminating against women in the areas of legal capacity and personal status, criminal and family law and passing legislation to protect women from violence. Violence against women is both a cause and consequence of gender inequality. [52] Despite very high literacy levels, Palestinian women remain severely underrepresented in the workforce (18.1 per cent), national and local government (14 per cent) and areas such as the police (4.9 per cent), the judiciary (18 per cent) and the public prosecution (20 per cent).[53]

Gender-based violence against women and girls

27. In November 2019, the Palestinian Central Bureau of Statistics found that the 38 per cent of currently married or ever married women in Gaza and 24 per cent of currently married or ever married women in the West Bank had experienced domestic violence, and that only 1 per cent of women who had suffered domestic violence sought psychosocial support or legal counselling or report to the police.[54] Despite efforts to strengthen the national referral system, the scarcity of gender-sensitive services and mistrust in the system remained major reasons why gender-based violence was underreported. [55] Stigma, lack of privacy and

[47] General recommendation No. 35 (2017), para. 15.
[48] Ibid., para. 24 (b). See also A/HRC/31/57, paras. 11 and 55.
[49] A/HRC/35/30/Add.1., para. 58.
[50] Ibid., para. 15.
[51] A/HRC/35/30/Add.2, para. 23.
[52] Ibid., para. 92 (a).
[53] See www.pcbs.gov.ps/Downloads/book2528.pdf.
[54] See www.pcbs.gov.ps/Downloads/book2480.pdf, pp. 20 and 22.
[55] United Nations Population Fund, *Seeking Protection: Survivors of Sexual Violence and Their Access to Services in Palestine* (2020), p. 16.

confidentiality, and the frequent dismissal by law enforcement officials of gender-based violence claims remained obstacles to accessing services. In addition, women with disabilities and other groups most vulnerable to violence, such as drug users, sex workers, those accused of criminal offences and members of the lesbian, gay, bisexual, transgender and intersex community, remained excluded, either by law or de facto, from protection such as shelters.[56] Discriminatory laws and the criminalization of adultery, incest, abortion and, in Gaza, the broadly defined "moral misconduct" continue to deter women from reporting gender-based violence for fear of further victimization. A 19-year-old separated woman from the West Bank reported to OHCHR that, in February 2020, the Palestinian Authority police refused to accept her complaint of rape. When the woman refused to stay in a shelter for battered women, the police reportedly detained her under adultery charges.

28. The outbreak of COVID-19 since March 2020, and related movement restrictions, increased the vulnerability of women and girls to domestic violence, while almost all in-person services were halted. Government and civil society service providers recorded a spike in cases of domestic violence in the following months reported through the emergency hotlines that were rapidly established to provide remote services.[57] The total or partial closure from March to May 2020 of the sharia and family courts dealing with cases of alimony, custody and divorce in the West Bank and Gaza also disproportionally affected vulnerable women.[58] Government-run shelters in Gaza stopped accepting new cases. In the West Bank, quarantine requirements further reduced access to these life-saving services.

29. Women's organizations demanded once again that the Government of the State of Palestine immediately adopt legislation to protect women from domestic violence. On 10 May 2020, the Cabinet adopted in first reading a draft family protection bill that had been pending since the early 2000s but the process for the adoption of anti-violence legislation did not advance further. Furthermore, a strong campaign against both the bill and the Convention on the Elimination of All Forms of Discrimination against Women was carried out by sharia lawyers, judges, scholars and religious groups on social and other media platforms.

Gender-related killings or femicides

30. The high number of femicides indicates a failure of the authorities to fulfil their obligations to prevent this extreme manifestation of violence against women and to punish those responsible.[59]

31. The Women's Centre for Legal Assistance and Counselling recorded 35 cases of gender-related killings, suicide and death in suspicious circumstances in the West Bank (20) and Gaza (15), including cases involving two pregnant women and six girls, one of whom was 11 years old and had been beaten to death by her father in Gaza on 19 July 2020.[60] There was a dramatic increase from the 22 cases recorded during previous reporting period.[61] In several cases, women were reportedly killed purportedly in the name of "honour", that is, for challenging prevailing patriarchal social norms and traditions.

32. Inadequate responses and impunity for gender-related killings persisted and contributed to a widespread social acceptance of those crimes. The Office of the Attorney

[56] Ibid., p. 19.

[57] See https://www2.unwomen.org/-/media/field%20office%20palestine/attachments/publications/2020/5/fianl%20rapid%20assessment%20on%20covid-19%20(003).pdf?la=en&vs=5745 and https://palestine.unfpa.org/sites/default/files/pub-pdf/Impact%20of%20COVID19%20outbreak%20and%20lockdown%20on%20family%20dynamics%20and%20domestic%20violence%20in%20Palestine.pdf.

[58] See www.wclac.org/files/library/20/07/aoazpvvqscgipswyhc3fqr.pdf and https://aisha.ps/public/files/1602012326.pdf.

[59] A/71/398, para. 27. Despite being a growing phenomenon in the Occupied Palestinian Territory, there is no agreed criteria among governmental and non-governmental entities on how to classify gender-related killings.

[60] See www.unicef.org/sop/press-releases/unicef-and-un-human-rights-office-call-greater-protection-domestic-violence-children.

[61] Women's Centre for Legal Assistance and Counselling.

General in the West Bank, where a specialized unit addresses violence against women, indicated that in eight of the cases mentioned above an indictment for homicide was filed against the suspects and that three cases were under investigation. In Gaza, no information was available on the status of the cases. There is concern that cases of reported suicides and deaths in mysterious circumstances are not further investigated.

33. Despite the abrogation by Presidential decree in 2011 of specific legal provisions condoning so-called "honour" killings,[62] a range of mitigating circumstances – among them the possibility for the victim's family member to waive the right to prosecution, including following informal justice "reconciliation" – are frequently granted by judges in cases of gender-related killings, resulting in reduced sentences for perpetrators.[63] Judicial rulings in these cases, which sometimes take several years to be issued, are often influenced by gender stereotypes that subordinate women to men.[64] A further challenge to the prosecution of perpetrators of gender-based violence, including killings, was the reported inability of the Palestinian security forces to carry out law enforcement in areas under exclusive Israeli security control, particularly following the suspension of coordination in mid-2020.

34. On 29 May 2020, 21-year-old Madleen Jaraba was brought to hospital in a serious condition, with signs of violence on her body, and died after allegedly having been beaten by her father in Deir El-Balah, Gaza. The father was arrested but then released on 10 July and has remained at large since then, despite new arrest warrants against him.

35. On 17 September 2020, 21-year-old Nawal Hathalin, her fiancé and his sister were shot dead with M16 rifles near Bethlehem. Ms. Hathalin had been hosted in a government shelter fearing for her safety after reportedly having had a relationship with a 21-year-old man from Salfit whom she wished to marry. The woman was killed as she left the shelter, under police escort, to go to her wedding. As at the end of the reporting period, the police had not arrested the suspects from the bride's family, who were reportedly hiding in Area C.

Child, early and forced marriage

36. Child, early and forced marriage are forms of gender-based violence that violate the rights of children, particularly girls, to enter into a marriage with their full consent and has a detrimental impact on their education and on their physical and psychological health.[65] Despite some positive developments, the protection against this harmful practice remained fragmented and inadequate, including due to the application of different legal regimes.

37. On 3 November 2019, the President of the State of Palestine issued a law by decree (No. 21 of 2019) raising to 18 years the minimum age of marriage for both sexes while also permitting the chief justices of sharia and other family courts to allow marriages below the age of 18, "if required in the interest of both parties". The decree is not applied in East Jerusalem, where the minimum age for marriage remains 15 years for girls and 16 years for boys, pursuant to the Jordanian Personal Status Law of 1976.

38. Since the entry into force of the decree on 29 December 2019 until 31 August 2020, the sharia courts in the West Bank received 1,304 applications for exceptions and granted 459 (35 per cent) of them; in most of those cases, the bride was reportedly 17 years old.[66] International standards stipulate that child marriage is a form of forced marriage, given that one or both parties have not expressed full, free or informed consent.[67]

39. In Gaza, the Egyptian Family Law of 1954, which stipulates that the minimum age for marriage is 18 years for men and 17 years for women, continued to be applied, despite the 2019 Decree. Of some 7,200 marriages registered by the sharia courts from 1 November

[62] A/HRC/28/80, para. 49.

[63] See www.wclac.org/files/library/19/08/wlqwzwcnecrxtgwq3yrlwo.pdf, pp. 2–3.

[64] Ibid., p. 5.

[65] Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019), para. 22.

[66] Sharia courts in the West Bank.

[67] Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019), para. 20.

2019 to 30 April 2020, 1,279 (17.7 per cent) involved children, with 94.4 per cent of them being girls.[68]

Violence against lesbian, gay, bisexual, transgender and intersex persons

40. Palestinian members of the lesbian, gay, bisexual, transgender and intersex community continued to be subjected to different forms of violence in the public and private spheres. They also faced obstacles in accessing justice, including non-investigation of complaints or breaches of confidentiality, which could expose their sexual orientation and place them at risk of further violence. Palestinian security forces reportedly also questioned and threatened persons detained under criminal charges about individuals and their affiliation to organizations in the West Bank promoting the rights of lesbian, gay, bisexual, transgender and intersex persons, raising concerns regarding the right to privacy and intimidation of human rights defenders.[69]

3. Violations of the right to freedom of movement and impact on other rights

41. Israel continued to maintain full control and severely restrict the movement of Palestinians between the West Bank and Gaza, access to Jerusalem and travel abroad through a multilayered system of physical, administrative and bureaucratic obstacles, including an arbitrary identification and permit system.[70] These restrictions violate the right of Palestinians to freedom of movement and prejudice the enjoyment of several other rights. Movement and travel restrictions hinder women's access to health services, education and employment opportunities, which are key factors inhibiting their equal participation in the workforce and public life.[71]

42. The outbreak of COVID-19 in March further compounded this situation. While in November 2019 the monthly average of Palestinians exiting Gaza through Erez was 19,404, it dropped to just 278 in March 2020.[72] Rafah crossing, which operated regularly until 8 March 2020, remained closed until the end of the reporting period, except for seven days.

43. In addition, the suspension by the Palestinian Authority of coordination with Israel in May, after Israel threatened to annex the West Bank, left Palestinians with no formal mechanism to channel applications for medical exit permits until 6 September, when the World Health Organization set up a temporary coordination mechanism. Thousands of patients requiring referrals for specialized medical treatment not available in Gaza had their access to life-saving treatment further reduced. From November 2019 to March 2020, 7,733 applications for medical exit permits were submitted, 5,058 (65 per cent) of which were approved. Due to COVID-19, the new criteria introduced by Israel on 12 March allowing only urgent medical referrals to be processed and the suspension of coordination, the number of applications dropped by 91 per cent to 159 in April and 160 in May.[73] OHCHR recorded four cases of Palestinians, including two male infants with heart conditions and a 6-year-old girl with cancer, who died in Gaza between May and September 2020 while waiting for medical care outside Gaza.

Residency rights and family unification

44. The Israeli permit system continued to impose arbitrary restrictions on family unifications between Palestinians from different parts of the Occupied Palestinian Territory. This separation policy[74] particularly affects women, as they are usually the ones who move for marriage.

[68] High Council of Sharia Courts in Gaza.
[69] A/HRC/43/70, paras. 35–36 and 49.
[70] A/HRC/31/44 and A/HRC/34/38.
[71] See https://gisha.org/UserFiles/File/publications/Discrimination_by_Default_EN.pdf?mc_cid=a4c5f70336&mc_eid=28f586c7f9; E/CN.6/2019/6, para. 3; and CEDAW/C/ISR/CO/6, para. 46 (b).
[72] General Authority for Civil Affairs.
[73] Ibid.
[74] A/75/336, para. 27.

45. Palestinians from East Jerusalem have the status of permanent residents. That status is not automatically extended to their children or spouses. Palestinians from the West Bank married to East Jerusalemites cannot receive permanent residence or citizenship, but can apply for temporary permits, subject to lengthy and restrictive family unification procedures. The Citizenship and Entry into Israel Law (Temporary Order), violates the obligations of Israel under several human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women,[75] and compounds women's vulnerability to domestic violence. According to the organization HaMoked, which assists Palestinians in family unification procedures, as women depend on their husbands for their residency status, those in abusive relationships are trapped, choosing to remain in the relationship in order not to be deported and separated from their children. Without an Israeli permit, women cannot access health and social security services and are at risk of arrest and deportation. In a case monitored by HaMoked, the Ministry of the Interior of Israel refused in July 2020 to grant residency status to a Palestinian woman with West Bank identification and her 2-year-old twins born in Jerusalem, after their father had passed away pending family unification application. The woman gave her husband's family official guardianship of the children to resubmit the application, which was again rejected.

46. Palestinians from Gaza are prevented from unifying with their families in the West Bank, including East Jerusalem. On the other hand, Palestinians are encouraged to leave the West Bank to unify with their families in Gaza. The organization Gisha monitored and legally challenged an increasing number of cases involving women from the West Bank who were required by Israel, in order to move to Gaza following marriage, to sign forms on "settlement in the Gaza Strip", thereby waiving indefinitely their right to return to live in the West Bank, raising concerns of forcible transfer.[76]

47. By suspending its coordination with Israel, the Palestinian Authority stopped communicating information to update the Palestinian population registry controlled by Israel, further affecting the travel of Palestinians. Several women were prevented from leaving the West Bank to go to Jordan with their newborns holding Palestinian and foreign passports because the babies were not registered in the Israeli population registry. On 26 July 2020, a woman from Ramallah and a woman from Nablus were stopped at the Allenby crossing by the Israeli security forces and prevented from travelling with their babies to the United Arab Emirates where they resided with their husbands. The women were able to register their babies directly with the Israeli authorities with the help of human rights organizations and left the West Bank.

48. Israel, the occupying Power, has the obligation to facilitate freedom of movement of the protected population, including entry and exit from the occupied territory, regardless of the policies of the Palestinian Authority.

4. Restrictions of the rights of freedom of expression, association and peaceful assembly

49. The Israeli security forces continued to systematically use force and other means to suppress demonstrations,[77] including those protesting Israeli threats of annexation and the blockade of Gaza. Palestinian Authority security forces invoked emergency regulations prohibiting gatherings due to COVID-19 to violently disperse and detain protesters demonstrating in Ramallah against corruption on 19 July 2020 and, in a different instance, against the application of the Convention on the Elimination of All Forms of Discrimination against Women. Palestinian security forces in the West Bank and the security forces of the de facto authorities in Gaza summoned and detained journalists and social media activists, including women, on multiple occasions, for posting statements and videos criticizing the authorities and for allegedly spreading misinformation about COVID-19. Violence in public spaces by all three duty bearers, coupled with the prevalent patriarchal norms, has a

[75] CCPR/C/ISR/CO/4, para. 21; CRC/C/ISR/CO/2-4, para. 49; CERD/C/ISR/CO/17-19, paras. 24–25; E/C.12/ISR/CO/4, paras. 40–41; and CEDAW/C/ISR/CO/6, para. 41.

[76] See https://gisha.org/UserFiles/File/publications/Discrimination_by_Default_EN.pdf?mc_cid=a4c5f70336&mc_eid=28f586c7f9 and A/75/336, para. 28.

[77] A/HRC/43/70, paras. 23–24; and A/75/336, paras. 6–9.

particularly deterrent effect on the participation of Palestinian women in public and political life.

50. Journalists continued to face attacks by the Israeli security forces while at work, leading to 95 persons being injured, including 1 woman,[78] as well as arrests and detentions by all duty bearers. The Israeli security forces arrested 32 journalists, including 10 women. The Palestinian Authority arrested 27 journalists, breaking the positive trend seen in May–October 2019.[79] The de facto authorities in Gaza arrested 16 journalists, some of them repeatedly. All were released without charges.

51. The Israeli security forces intensified the crackdown on Palestinian political figures in East Jerusalem.[80] Israeli authorities pressured East Jerusalem human rights defenders, activists and journalists by revoking or threatening to revoke their residency rights and limiting their freedom of movement.[81] Palestinian women documenting violations of the status quo at Al-Aqsa compound were also targeted. Hanadi Halawani, a 40-year-old Palestinian teacher, was detained six times by the Israeli security forces for her activism on social media and at Al-Aqsa and for violating previous orders barring her from the compound. For several months, she was barred from accessing the Al-Aqsa compound and from travelling abroad. In addition, her home was searched, her electronic equipment was confiscated and she was fined.

Human rights defenders, including women's human rights defenders

52. Arbitrary arrests and detentions of human rights defenders by all duty bearers continued,[82] including cases of alleged ill-treatment by the Israeli security forces and the de facto authorities in Gaza. The Israeli authorities also continued to hold human rights defenders under administrative or extended pretrial detention to pressure them to accept convictions based on plea bargains.

53. Women's human rights defenders continued to face distinct and additional challenges. Individuals demanding that the Government of the State of Palestine intervene to stop violence against women became the target of systematic attacks and smear campaigns in the West Bank by non-State actors, including religious and conservative groups, whereas providers of services to victims of gender-based violence reported increasing difficulties in carrying out their work due to community stigma, particularly in rural areas. Increasingly, State and non-State actors targeted women's human rights defenders for their online activities. Those attacks, including arrests of women because of their online activities, further reduced the space available to defenders to carry out their work and restricted their freedom of expression.

54. For example, in June 2020, four women's human rights defenders – a male doctor from the Human Rights and Democracy Media Centre, a female presenter at Ma'an News, a member of Women and Media Development and a member of the Women's Study Centre – received death threats and threats of sexual violence on social media directed at them and their family members after participating in a Palestine TV programme on violence against women. Four of them filed official complaints to the prosecutor's office in the West Bank. Two reported that there had been no substantive developments in their cases by the end of the reporting period. In one case, a man was charged for threatening rape and, in another case, the complainant did not pursue the complaint further. Apart from a few interventions, Palestinian officials did not publicly address expressions of sentiment against the Convention on the Elimination of All Forms of Discrimination against Women or dispel intimidation against women's human rights defenders.

55. In Gaza, on 11 April 2020, the security forces arrested a 22-year-old Palestinian woman for participating, together with seven other activists from the Gaza Youth Committee, in an online meeting between Israelis and Palestinians to promote peaceful coexistence. She

[78] As reported by the Palestinian Centre for Development and Media Freedoms.
[79] A/HRC/43/70, para. 40.
[80] A/75/336, para. 48.
[81] Ibid., paras. 46–47.
[82] A/HRC/43/70, paras. 3, 55–58 and 61.

was detained for 82 days, 15 of which she reportedly spent in solitary confinement, and was prosecuted by the Gaza military public prosecution, despite being a civilian, for "damaging the prestige of the revolution". The woman, who had been released on bail in June 2020, was convicted with two other activists on 26 October 2020 and sentenced to time already served.

56. In occupied East Jerusalem, Palestinian cultural and non-governmental organizations, several of them headed by women, continued to be targeted with raids, arrests, confiscation of equipment and closure orders. On 17 May 2020, the organization Volunteer for Hope, which was headed by a woman, was closed by the Israeli authorities for allegedly carrying out activities on behalf of the Palestinian Authority.[83] On 29 June 2020, the Israeli security forces arrested the director of the Women's Association for Development and Empowerment in Beit Hanina and her 18-year-old son, and interrogated them about funding by the Palestinian Authority. The woman was summoned and interrogated four more times, without being charged.

5. Arbitrary detention, torture and ill-treatment

57. According to the Palestinian Prisoner Society, 4,577 Palestinians were arrested by the Israeli security forces during the reporting period, including 133 women and 587 children. As of 30 September 2020, 4,184 Palestinians (31 women, 157 children) were detained on security-related charges by the Israel Prison Service. The vast majority were held in Israel in violation of international humanitarian law. Of the total, 373 Palestinians were held in administrative detention without having been charged or tried, including 2 boys and 1 woman. Visits by lawyers and family members were suspended from March to June 2020 under COVID-19 emergency regulations;[84] afterwards, they were strictly limited. Restrictions on the time and duration of lawyers' visits, delays and restrictions on the number of detainees that could be visited greatly hampered the right to legal counsel. Human rights and prisoners' organizations repeatedly expressed concern about the lack of preventive measures to protect Palestinian prisoners from COVID-19.[85] The Palestinian Prisoner Society reported that, as of 31 October 2020, about 40 Palestinian prisoners had tested positive for COVID-19.

58. The Israeli security forces detained dozens of Palestinians after the attack near the Dolev settlement in August 2019, many of whom reported severe ill-treatment possibly amounting to torture.[86]

59. University students, including female students, appear to have been arbitrarily detained and allegedly ill-treated by the Israeli security forces in relation to student activities. Shetha Hassan, the 22-year-old head of the Birzeit University student union, was arrested by the Israeli security forces on 12 December 2019 and held in administrative detention without charge or trial until 21 May 2020 under allegations of student activism tied to the Islamic Bloc student association. Samah Jaradat, a 22-year-old university student, was arrested at her home during the night of 7 September 2019 and imprisoned for nine months. For 21 days she was held incommunicado and subjected to physical and psychological violence possibly amounting to torture, including lengthy interrogations, sleep deprivation, being shackled in stress positions, forced to listen to Palestinian detainees under "military interrogation" and threatened with the same treatment. She also reported sexual harassment by male interrogators. As her colleague Mays Abu Ghosh was,[87] Ms. Jaradat was convicted of membership in the Progressive Democratic Students Pole, a student association, declared on 21 October 2020 a terrorist organization by military order.[88] This conviction raises significant questions with regard to the respect of the principle of legality.

[83] A/75/336, para. 48.

[84] Ibid., para. 13.

[85] Ibid. See also www.alhaq.org/cached_uploads/download/2020/09/03/200820-hrc45-written-submission-on-prisoners-final-1599123626.pdf.

[86] A/75/336, paras. 14–18.

[87] Ibid., para. 16.

[88] From 1967 to July 2019, the Ministry of Defense of Israel classified 411 organizations as "hostile", "unlawful" or "terrorist" associations, including all major Palestinian political parties and the ruling Fatah party. See www.hrw.org/sites/default/files/report_pdf/palestine1219_web_0.pdf, pp. 37–38.

60. Arbitrary arrests and detention by the Palestinian security forces and the de facto authorities in Gaza, including on political grounds, continued. According to the Independent Commission for Human Rights, 92 Palestinians were administratively detained under Governor's orders. Widespread disregard for basic fair trial guarantees, such as undue restrictions on detainees' access to lawyers and the non-implementation of court release orders, continued.

61. In June 2020, Gaza security forces summoned and detained dozens of Fatah members and supporters across the Gaza Strip in relation to their participation in an event to mark the killing of a Fatah leader by Hamas in 2007. Some of them alleged physical ill-treatment. On 19 July 2020, Palestinian security forces arrested 22 Palestinians involved in a peaceful demonstration in Ramallah against alleged corruption by the Palestinian Authority. They were detained for participating in illegal demonstrations and violating COVID-19 emergency regulations. Most were released at the end of July, reportedly after pledging not to hold demonstrations during the state of emergency and not to publish allegations of corruption on social media without prior consultation with the relevant authorities.

62. The Independent Human Rights Commission received 195 complaints of torture and ill-treatment, including 110 (one of which by a woman) against the Palestinian Authority security forces in the West Bank and 85 (two of which by women) against the security forces of the de facto authorities in Gaza. OHCHR documented extremely worrying cases of ill-treatment, several of them possibly amounting to torture, by Palestinian security forces in the West Bank and by the security forces of the de facto authorities in Gaza. Reported forms of ill-treatment included the regular, prolonged use of solitary confinement, beating, shackling and suspension to extort confessions or as punishment. In two cases, male victims alleged sexual violence, including rape, and threat of sexual violence. In several instances, the victims were threatened into withdrawing complaints of ill-treatment against security forces in the West Bank, in some cases as a condition for release.

63. In January 2020, the Palestinian Civil Police arrested a Palestinian man in Ramallah accused of robbery. For four consecutive days, he was beaten, shackled with metal chains and suspended for long hours, causing a fractured arm. The man reported that police officers undressed him, put a heater between his legs close to his genitals causing burns. They covered his head, nose and mouth with a hood and poured liquids over his face simulating suffocation. In Gaza, allegations of ill-treatment and torture were often linked to drug-related offences, assumed collaboration with Israel or "moral misconduct", and the alleged affiliation with Fatah and Salafist groups. In April 2020, a 25-year-old man arrested by the Gaza police for drug trafficking was transferred to hospital with bruises on his body and a fractured hand shortly after his arrest. He had reportedly been beaten with an iron pipe while at the police station.

64. The detention of women for sexual offences such as adultery, incest, prostitution and other sexual or "moral misconduct" raised serious concerns of arbitrary detention. Of the 70 female detainees, 14 per cent were held in the West Bank on adultery charges and 49 per cent were held in Gaza on "moral misconduct" charges, including adultery. Laws criminalizing adultery and other "moral misconduct" offences directly or indirectly discriminate against women, thus giving rise to arbitrary detention.[89] In the West Bank, for example, the law envisages heavier punishments for women accused of adultery, and complaints of adultery can only be filed by men. Many complaints of adultery are made to blackmail or exploit women, for example during divorce proceedings.

65. The detention of pregnant women and mothers with infants was also cause of concern. During the reporting period, at least four pregnant women and four mothers with infants were detained in the Palestinian detention centres of the West Bank and Gaza, in most cases in pretrial detention, including on misdemeanour charges. OHCHR observed that pregnant women and mothers with infants were held in unsuitable conditions, including in overcrowded cells lacking access to outdoor space.

[89] A/HRC/36/38, para. 8 (e); A/HRC/31/57, para. 14; and www.ohchr.org/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf.

66. A 34-year-old woman who had left her violent husband was detained under adultery charges in Ramallah, from 8 March to 3 September 2020, while heavily pregnant. In order to be released, the woman agreed to divorce her husband and to waive all her rights under sharia law, including the dowry and visiting and custody rights over her four children. Upon release, the woman had nowhere to go and would not be accepted in a shelter.

67. Recognizing that prisons are not designed for pregnant women and women with children, international standards prescribe that custodial measures in such cases shall be considered as a last resort, when the offence is serious or violent and the woman represents a continuing danger, and subject to the best interests of the child.[90]

V. Conclusions and recommendations

68. **The High Commissioner recommends that the Government of Israel:**

(a) **With the occupation remaining the main driver of human rights violations in the Occupied Palestinian Territory, immediately end all human rights violations and abuses perpetrated against women and girls in the Occupied Palestinian Territory and affecting women disproportionally, including and in particular the unnecessary or disproportionate use of force, home raids not in compliance with international standards, demolitions and forced evictions, settler violence and restrictions to freedom of movement and family life;**

(b) **Ensure that the rules of engagement of the Israeli security forces and their application are fully in line with international standards and, in particular, that in law enforcement activities firearms are used only in cases of imminent threat of death or serious injury;**

(c) **Conduct prompt, thorough, independent, impartial and effective investigations into all incidents of use of force by the Israeli security forces that have led to the death or injury of Palestinians, and ensure that perpetrators are held accountable and victims provided with redress;**

(d) **Ensure respect for international humanitarian law and conduct prompt, thorough, independent and impartial investigations into allegations of violations related to past and recent escalations of hostilities, hold those responsible accountable and provide redress for victims;**

(e) **Immediately end all practices of collective punishment, including by lifting the blockade and the punitive closures imposed on Gaza and ending punitive demolitions and the policy of withholding the bodies of Palestinians;**

(f) **End practices of administrative detention and any form of arbitrary detention, ensure that all detainees are promptly charged or released and fully guarantee the right to a fair trial;**

(g) **Ensure that conditions of detention are fully in accordance with international human rights law, including the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and immediately end all practices that may amount to torture or ill-treatment, ensuring that violations are promptly, impartially and independently investigated, perpetrators are held accountable and victims have access to an effective remedy;**

(h) **Introduce the offence of torture in domestic law and provide for its absolute prohibition, in line with international standards;**

(i) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that journalists and civil society actors, including women's human rights defenders, are allowed to conduct their professional activities safely, freely and without harassment;**

[90] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), rule 64.

69. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Uphold its obligations to protect the rights of all Palestinians without discrimination, including discrimination based on gender, sexual orientation or gender identity, and immediately cease any measures that violate those obligations or worsen the humanitarian situation in Gaza;**

(b) **Announce immediately a formal moratorium on executions while taking steps to give full effect to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty;**

(c) **Publish human rights treaties it has acceded to, including the Convention on the Elimination of All Forms of Discrimination against Women, in the official gazette, and amend legal provisions discriminating, directly or indirectly, against women and girls;**

(d) **Take all measures necessary to prevent all forms of gender-based violence, and ensure that perpetrators, including of gender-related killings, are prosecuted and appropriately sentenced;**

(e) **End all practices amounting to arbitrary detention and fully guarantee fair trial rights;**

(f) **Immediately end all practices that may amount to torture or ill-treatment, ensure that all violations are promptly, impartially and independently investigated, hold perpetrators accountable and guarantee that victims have access to an effective remedy;**

(g) **Introduce the offence of torture in domestic law and provide for its absolute prohibition, in line with international standards, establish urgently a national preventive mechanism and apply the Bangkok Rules;**

(h) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that journalists and civil society actors, including women's human rights defenders, are allowed to conduct their professional activities safely, freely and without harassment.**

70. **The High Commissioner recommends that the authorities in Gaza:**

(a) **Ensure, along with armed groups in Gaza, respect for international humanitarian law, particularly the principles of distinction, proportionality and precaution, and ensure accountability for all violations;**

(b) **Announce and implement an immediate moratorium on the use of the death penalty and cease trying civilians before military courts;**

(c) **Take all measures necessary to ensure that the rights of persons deprived of liberty are respected, immediately end all practices that may amount to torture or ill-treatment, ensure that all allegations of such violations are promptly, impartially and independently investigated, hold perpetrators accountable and guarantee that victims have access to an effective remedy;**

(d) **Take all measures to prevent all forms of gender-based violence and ensure that perpetrators, including of gender-related killings, are prosecuted and appropriately sentenced;**

(e) **Ensure that the rights to freedom of expression, association and peaceful assembly are respected and protected and that journalists and civil society actors, including women's human rights defenders, are allowed to conduct their activities safely, freely and without harassment.**

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Human rights situation in Palestine and other occupied Arab territories

Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report of the United Nations High Commissioner for Human Rights was mandated by Human Rights Council resolution 43/32, in which the High Commissioner was requested to prepare a report on the allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, and to recommend measures to ensure the implementation of equitable access to safe drinking water in the Occupied Palestinian Territory, including East Jerusalem, in accordance with international law.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 43/32. It draws on human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), governmental sources, and information from United Nations entities and non-governmental organizations.

2. OHCHR requested Israel and the State of Palestine to provide information on any action taken or envisaged concerning ensuring equitable access to safe drinking water in the Occupied Palestinian Territory, including East Jerusalem. The State of Palestine responded with multiple submissions in May and June 2021, while Israel has not responded. Following publication of the High Commissioner's report A/HRC/43/71 to the Human Rights Council in February 2020, the Government of Israel announced that it would freeze its relations with OHCHR. As a consequence, international staff working with the OHCHR office in the Occupied Palestinian Territory have been obliged to work outside the territory, complicating the critical mandated work on human rights by the United Nations.

3. The present report should be read in conjunction with other relevant reports.[1] The present report illustrates how Israeli occupation policies and practices negatively affect the enjoyment of human rights of the Palestinian people in terms of rights to safe drinking water and sanitation in the Occupied Palestinian Territory, including East Jerusalem. The report also assesses the Palestinian authorities' policies in the West Bank and Gaza to ensure the same rights in accordance with their obligations under international law.

4. The report assesses various aspects of the allocation of water resources, including measures to ensure the implementation of equitable access to safe drinking water in the Occupied Palestinian Territory, including East Jerusalem. Owing to space constraints, the report does not address all issues of concern nor all cases documented.

II. Mandate

5. In its resolution 43/32, the Human Rights Council requested the High Commissioner to prepare a report on the allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, and to recommend measures to ensure the implementation of equitable access to safe drinking water in accordance with international law.

III. Legal framework

6. International human rights law and international humanitarian law are concurrently applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. This includes the application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), which is binding upon Israel as the occupying Power.

1. International humanitarian law

7. International humanitarian law regulates situations of occupation and is thus applicable in the Occupied Palestinian Territory.[2] The occupying Power has an obligation to take all the measures in its power to restore, and ensure, as far as possible, public order and civil life in the occupied area, while respecting, unless absolutely prevented, the laws in force in the country.[3] This obligation comprises the duty to secure respect for the applicable rules

[1] A/HRC/46/22, A/HRC/46/65, A/HRC/46/63, A/HRC/40/73 and A/75/199.

[2] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, paras. 101 and 114; and A/HRC/34/38, para. 10.

[3] Regulations respecting the Laws and Customs of War on Land, 18 October 1907 (hereinafter referred to as the Hague Regulations), art. 43.

of international human rights law and international humanitarian law.[4] The occupying Power must maintain public health and hygiene in the occupied territory.[5]

8. The protection of property in international humanitarian law covers private property, as well as movable and immovable public property.[6] Natural resources such as groundwater constitute immovable public property, and the occupying Power must safeguard the capital of these properties, and administer and usufruct them in accordance with the applicable rules of international humanitarian law.[7] Water and sanitation infrastructure may also, depending on the circumstances, be regarded as public and/or private property. The occupying Power is prohibited from looting, plundering and exploiting any of the resources and property of the occupied territory,[8] and must take appropriate measures to prevent such acts carried out by non-State actors.[9] International humanitarian law further prohibits the confiscation of private property, and provides that requisitions are not to be demanded from municipalities or inhabitants except for the needs of the army of occupation.[10] Destruction by the occupying Power of real or personal property is prohibited, except where such destruction is rendered absolutely necessary by military operations.[11] Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully, may constitute a grave breach of the Fourth Geneva Convention and thus amount to a war crime.[12]

9. The transfer of parts of the civilian population of the occupying Power into the occupied territory is prohibited,[13] as is the additional consequence of such transfers in terms of use of the territory's natural resources, including water, to sustain this civilian population.

10. Where applicable, the law relating to the conduct of hostilities places limits on means and methods of warfare used by the parties to the armed conflict, including specific protections for objects indispensable to the survival of the civilian population, and for the natural environment.[14]

2. International human rights law

11. The rights to water and sanitation are contained in article 11 of the International Covenant on Economic, Social and Cultural Rights, in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and in article 28, paragraph 2 (a), of the Convention on the Rights of Persons with Disabilities,[15] to which Israel and the State of Palestine are parties. As affirmed by the General Assembly, the rights to water and sanitation are "essential for the full enjoyment of life and all human rights".[16]

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[4] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168, para. 178.

[5] Hague Regulations, arts. 43 and 46; and Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 56.

[6] Hague Regulations, arts. 46–47, 52 and 55; and Fourth Geneva Convention, arts. 33 and 53.

[7] Hague Regulations, art. 55. See also A/HRC/34/39, para. 8.

[8] Hague Regulations, art. 47; Fourth Geneva Convention, art. 33; and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168, para. 245.

[9] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168, paras. 246–248.

[10] Hague Regulations, arts. 46 and 52.

[11] Fourth Geneva Convention, art. 53. See also the Rome Statute of the International Criminal Court, art. 8 (2) (b) (xiii).

[12] Fourth Geneva Convention, art. 147; and Rome Statute, art. 8 (2) (a) (iv).

[13] Fourth Geneva Convention, art. 49 (6).

[14] See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule54, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule43, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule44 and https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule45.

[15] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), paras. 3 ff.

[16] General Assembly resolution 70/169. See also Human Rights Council resolution 18/1. In this regard, the Human Rights Committee has noted that "the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their life with dignity … The measures called for addressing adequate conditions for protecting the right to life include … to ensure access

12. The right to water entails the water being adequate for human dignity, life and health, and the determination of its adequacy depends on its availability, quality and accessibility.[17]

13. States are under an obligation to respect, protect and fulfil the rights to water and sanitation, without discrimination.[18] That is, States must refrain from violating the rights to water and sanitation and must take appropriate measures to prevent, stop and punish any abuse of the rights to water and sanitation by non-State actors.[19] In addition, States parties are under an obligation to fulfil the rights to water and sanitation, that is, to adopt the necessary measures for full realization of those rights.[20] The Committee on Economic, Social and Cultural Rights has held that certain minimum core obligations exist under the International Covenant on Economic, Social and Cultural Rights to ensure the satisfaction of, at the very least, minimum essential levels of the right to water.[21] These include the obligation to ensure: (a) access to the minimum essential amount of water; (b) the right of access to water and water facilities and services on a non-discriminatory basis; (c) physical access to water facilities or services that provide sufficient, safe and regular water; (d) that personal security is not threatened when physically accessing water; and (e) equitable distribution of all available water facilities and services.[22]

14. The right to self-determination is expressly affirmed in the Charter of the United Nations,[23] and in human rights treaties, such as in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. As affirmed by the International Court of Justice, it is one of the essential principles of contemporary international law.[24] The right includes the ability for people to "for their own ends, freely dispose of their natural wealth and resources",[25] including water. In its Declaration on the Right to Development, the General Assembly affirmed that the human right to development also implies full realization of the right of peoples to self-determination.[26]

IV. Local water resources

15. The Occupied Palestinian Territory is situated in a generally hot, arid and water-scarce region that has experienced an increase in average temperatures over the past fifty years. Climate change has also modified the water cycle, altering precipitation patterns and seasons. Average monthly precipitation may fall by 8–10 mm by the end of the century and seasonal rainfall patterns may also change, leading to greater aridity. Half of the Palestinian wells in the West Bank have dried up over the last 20 years.[27] Climate-related hazards are projected

without delay by individuals to essential goods and services such as … water"; see that Committee's general comment No. 36 (2018), para. 26, as well as the Committee on the Rights of the Child, general comment No. 7, para. 27. The Committee on Economic, Social and Cultural Rights recognized that the right to water was a "prerequisite for the realization of other human rights"; see that Committee's general comment No. 15 (2002), para. 1. See also Committee on the Rights of the Child, general comment No. 7 (2005), para. 27.

17 Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), paras. 10–12.

18 Human Rights Council resolution 15/9, para. 7.

19 See, for example, Human Rights Committee, general comment No. 31 (2004), paras. 6 and 8; and Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), paras. 20–24.

20 Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), paras. 25–29; and Human Rights Council resolution 18/1, para. 5.

21 Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), para. 37.

22 Ibid.

23 Article 1 (2).

24 *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995*, p. 90, para. 29.

25 Art. 1 (2) common to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

26 General Assembly resolution 41/128; art. 1.

27 See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 14.

to occur more frequently and be more severe, straining already-constrained water management structures.[28]

16. Demand for water in the Occupied Palestinian Territory is increasing primarily due to population growth. The population of the Occupied Palestinian Territory is currently estimated at 5.2 million and is expected to increase to 7.2 million by 2030.[29] The United Nations Environment Programme projects an annual domestic supply gap for Gaza and the West Bank of approximately 79 and 92 million cubic metres respectively by 2030 unless supply and service options are expanded.[30]

17. The Israeli occupation of the Palestinian territory has increased land scarcity, territorial fragmentation, and urbanization.[31] The occupation has also imposed restrictions on access to and control over natural resources, including water.[32] Urban populations in the Occupied Palestinian Territory have nearly tripled in the past 25 years, contributing to a reduction of local groundwater recharge. From 1992 to 2015, the land area in the Occupied Palestinian Territory under artificial surfaces increased from 1.4 to 4.3 per cent, while areas under vegetation cover decreased, increasing vulnerability to extreme weather events. In Gaza this phenomenon has also reduced groundwater recharge, where built-up areas have increased from 8.25 per cent (in 1982) to 25 per cent (in 2010).[33]

1. Water governance

18. There are three primary sources of natural fresh water in the Occupied Palestinian Territory: the Jordan River, the coastal aquifer and the mountain aquifer.[34] Following the beginning of the occupation in 1967, Israel placed all water resources in the Occupied Palestinian Territory under its military control (Military Order No. 92, of 1967),[35] and prohibited Palestinians from constructing new water installations or maintaining existing installations without a military permit. These orders still remain in force and apply only to Palestinians, and not to Israeli settlers, who are governed by Israeli law.[36] Mekorot, the government company operating under the Israeli Ministry of Energy and the Water Authority, assumed ownership of all West Bank water supply systems in 1982.[37] According to information provided by the State of Palestine, the company continues to operate dozens of wells, trunk lines and reservoirs in Area C that abstract water inside Palestinian territory and provide service instead to the Israeli settlements in the West Bank.

19. In accordance with the Declaration of Principles on Interim Self-Government Arrangements, of 1993 (the Oslo I Accord), and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, of 1995 (the Oslo II Accords), some water governance powers were devolved to the Palestinian Authority.[38] However, Israel did not relinquish its primary control over the waters of the West Bank. In accordance with article 40 of the environmental provisions in the Oslo II Accords, entitled “water and sewage”, approximately 80 per cent of the waters pumped from the aquifers were allocated for Israeli use, and the

[28] Ibid.
[29] See https://www.unfpa.org/data/world-population/PS.
[30] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 14.
[31] See https://unhabitat.org/urban-issues-palestine.
[32] A/HRC/34/39, para. 57.
[33] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 15.
[34] See https://unispal.un.org/pdfs/47657-GZ.pdf, at para. 32.
[35] See http://www.jmcc.org/documents/JMCCIsraeli_military_orders.pdf.
[36] A/HRC/22/63, para. 40.
[37] A/HRC/22/63, para. 83.
[38] The Oslo Accords were signed by Israel and the Palestine Liberation Organization in 1993 and 1995 respectively; see https://www.mdpi.com/2073-4441/13/5/620/htm.

remaining 20 per cent for Palestinian use.[39] The agreement provided that Israel would recognize "Palestinian water rights" in the West Bank, however the issue of ownership of water- and sewage-related infrastructure was to be addressed in permanent status negotiations.[40]

20. The Oslo II Accords remain the key agreement on regulating water use in the West Bank. Although they were intended to be a five-year interim agreement when concluded in 1995, they remain in place today. The Oslo II Accords established the Joint Water Committee, to regulate water and sanitation in the West Bank. The Committee has an equal number of water officials from Israel and the Palestinian Authority.[41]

21. The Oslo Accords – including the Oslo interim agreement (the Oslo II Accords, signed in 1995) – also divided the West Bank into Area A (where the Palestinian Authority would fully manage security and civil affairs), Area B (where the Palestinian Authority would manage civil affairs and Israel would manage security) and Area C (where Israel would have exclusive control). In Areas A and B, Palestinian institutions manage civilian governance, including that relevant to the environment.[42] The Palestinian Authority has no access to Area C (60 per cent of the West Bank), which contains the majority of the agricultural lands, water sources and underground reservoirs of the Occupied Palestinian Territory.[43]

2. Water and sanitation infrastructure

22. Functioning, adequate and reliable infrastructure is a necessity and a pre-requisite for the ability to supply water and remove waste. Electricity is a requirement in order to operate this infrastructure – notably wastewater processing, water stations and desalination plants. In Gaza, severe electricity shortages have significantly affected the functionality of the existing infrastructure and the population's access to clean water. In the West Bank, the already restricted access to water in many locations, including in Area C, has been compounded by an aging water infrastructure and limited physical space to develop water resources or construct new infrastructure.[44]

23. There is also a shortage of infrastructure allowing for the reuse of treated wastewater, with serious environmental consequences. In 2018, it was reported that only one quarter of wastewater generated was collected in sewage networks, and of that, only two thirds (approximately 13 million cubic metres annually) was treated; while 25 million cubic metres of untreated sewage from the West Bank are discharged into the environment annually. Almost none of the treated amount is reused, due to challenges in planning as well as constraints on developing the necessary infrastructure.[45] This has direct consequences for Palestinians' health and environment, as water left untreated can enter into waterways and have a detrimental impact on the health of the population.[46]

24. Water-related infrastructure is also subject to confiscation and demolition by Israel.[47] In 2020, 84 of the 849 structures destroyed in the West Bank by Israel were water and

[39] See https://content.ecf.org.il/files/M00261_TheIsraeli-PalestinianInterimAgreement-EnglishText.pdf, appendix 1 entitled "Powers and responsibilities for civil affairs", art. 40, schedule 10 entitled "Data concerning aquifers".

[40] Ibid., appendix 1 entitled "Powers and responsibilities for civil affairs", art. 40, paras. 1 and 5.

[41] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 101.

[42] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 146.

[43] See https://www.ochaopt.org/content/palestinians-strive-access-water-jordan-valley.

[44] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. xxxi.

[45] Ibid., at p. xx.

[46] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 14.

[47] A/73/499, para. 22.

sanitation structures. In 2021,[48] 40 water and sanitation structures had been demolished in the West Bank by Israel.[49]

V. Allocation of water resources and equitable access to safe drinking water in the Occupied Palestinian Territory

25. This section assesses the allocation of water resources and equitable access to water and sanitation in the Occupied Palestinian Territory (in the West Bank, including East Jerusalem, and in Gaza), taking into consideration the key criteria of availability, quality, accessibility and affordability.

A. West Bank, including East Jerusalem

Water availability

26. Water in the West Bank is unavailable in a sufficient and continuous manner. It is estimated that nearly 660,000 Palestinians have limited access to water,[50] with 420,000 persons consuming less than 50 litres on average daily per capita,[51] which is well below the 100 litres recommended by the World Health Organization (WHO). Water shortage is a feature of life for all Palestinians, in both urban and rural areas, and is directly linked to a lack of appropriate water infrastructure. Roughly 14,000 Palestinians in approximately 180 communities in Area C have no connection to a water network, are without water infrastructure, and are considered at high risk for water scarcity.[52]

27. The water arrangements in the Oslo Accords have proven inequitable. This is partially because the Palestinian population has doubled in size since the Oslo Accords were signed, but also because the practical implementation of the Oslo Accords in relation to water presented additional challenges in coordination and collaboration between the two parties.[53] Key reported constraints have included Israeli reluctance to agree to projects proposed by Palestinians, technical challenges on the Palestinian side in seeking to exploit the extra resources allocated from the eastern aquifer, movement and access restrictions imposed by Israel, and the Palestinian Authority's withdrawal from the Joint Water Committee for nearly a decade.[54] These constraints have led to an extremely inequitable distribution of water, whereby, as estimated in 2014, 87 per cent of the mountain aquifer waters were used by Israelis and only 13 per cent by Palestinians.[55]

28. Despite the Palestinian Authority maintaining a degree of autonomy within Areas A and B, it relies on infrastructure projects, including water and sewage pipes, which require

[48] As at 5 August 2021.

[49] See https://reliefweb.int/report/occupied-palestinian-territory/palestinian-access-water-attacks-wash-structures-area-c and https://www.ochaopt.org/data/demolition.

[50] See https://reliefweb.int/sites/reliefweb.int/files/resources/WBPC%20article.%20Access%20to%20water.%20Apr%2021.%20FORMATTED%20.pdf.

[51] As of 2020. See https://reliefweb.int/report/occupied-palestinian-territory/challenges-accessing-water-west-bank.

[52] See https://www.ochaopt.org/content/how-dispossession-happens-takeover-palestinian-water-springs-israeli-settlers-march-2012, at p. 14; and A/HRC/40/73, para. 52.

[53] See https://unispal.un.org/pdfs/47657-GZ.pdf, at para. 39.

[54] The Palestinian Authority reportedly withdrew on the grounds that the Committee was not facilitating development of the Palestinian water sector as well as on the grounds that Israel held inequitable powers in the Committee. Reportedly, only in 2017 did it agree to reconvening of the Committee. See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 101.

[55] See https://reliefweb.int/report/occupied-palestinian-territory/palestinian-access-water-attacks-wash-structures-area-c; and https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 101.

Israeli-issued permits or which cross through Israeli-controlled Area C.[56] Coordination and approvals for such projects are handled through the Joint Water Committee. Although the Joint Water Committee was required to operate by consensus,[57] reports indicate that in practice, Israeli members of the Committee vetoed projects proposed by the Palestinian Authority, resulting in the effective blocking of Palestinian projects relating to developing and maintaining water infrastructure.[58] According to the Palestinian Authority, as a result of this imbalance of power in the Committee, its representatives on the Committee have had to sign off on water infrastructure projects for Israeli settlements in order to receive support for their projects.[59] Additionally, the Israeli Civil Administration in the West Bank reportedly has often blocked agreements reached in the Joint Water Committee.[60]

29. Beyond the challenges noted above, it is estimated that one third of all water supplied to the Palestinian Authority is lost to leakage due to the poor condition of pipelines and water grids linking Palestinian communities in the West Bank.[61] According to the Palestinian Authority, Israel has blocked both maintenance and upgrades, and has also limited the ability to increase water availability by stalling the creation of desalination plants and of advanced irrigation and wastewater recycling systems, as well as approval for deep well drilling, and the deployment of rain-harvesting cisterns.[62]

30. More than 80 per cent of the annual water supply of the West Bank (91 million cubic metres) is purchased from Mekorot, much of which has been extracted from the mountain aquifer within the West Bank.[63] As a result of aforementioned issues with the Joint Water Committee, as well as Israeli policies restricting access to water in Area C,[64] the Palestinian Water Authority is constrained in improving service delivery. Palestinians in the West Bank therefore suffer severe water shortages, and irregular supply, and often need to place water tanks on their roofs to stock water when there is no running water.[65]

31. In addition, Israeli authorities treat the nearly 450,000 Israeli settlers and 2.7 million Palestinians residing in the West Bank (excluding East Jerusalem) under two distinct bodies of law, resulting in unequal treatment on a range of issues, including access to water.[66] Israeli settlements have had a significant impact on Palestinians' access to their natural resources, especially as a result of the diversion of water resources, including the seizure of water wells by Israeli settlers. Israeli settlements have taken over, destroyed or blocked Palestinian access to natural water resources.[67] Israeli settlements have also appropriated dozens of Palestinian water springs, assisted by the Israeli military. Palestinians who have lost access to their

[56] See https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution.

[57] As per the Oslo II Accords.

[58] See https://documents1.worldbank.org/curated/en/775491468139782240/pdf/476570SR0P11511nsReport18Apr2009111.pdf, at para. 130; and https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 101.

[59] Interviews with the Palestinian Authority on 20 May 2021 and with the Palestinian Water Authority on 26 May 2021.

[60] Ibid.

[61] See https://www.btselem.org/water.

[62] Interviews with the Palestinian Authority on 20 May 2021 and with the Palestinian Water Authority on 26 May 2021.

[63] See https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/the_wash_contingency_plan_for_the_west_bank_2021.pdf, at p. 11.

[64] A/HRC/22/63, para. 82.

[65] Interview with B'Tselem on 27 May 2021; and see https://www.btselem.org/firearms/20200527_soldiers_shoot_holes_in_water_tanks_at_kafr_qadum; and https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 36.

[66] A/HRC/22/63, para. 39.

[67] See https://www.btselem.org/water; and A/HRC/22/63, paras. 36, 67 and 82.

springs often have no connection to water networks and had relied upon the springs as their main or only source of drinking water and for agricultural requirements.[68]

32. Mekorot prioritizes Israeli settlements to ensure their permanent water supply, in particular during summer droughts.[69] Palestinian communities connected to the Mekorot network often suffer lengthy water outages, while neighbouring settlements are largely spared any significant water reduction.[70] In the settlement of Ma'ale Adumim, for example, Israeli settlers have access to a water supply roughly four times greater than that of Palestinians in East Jerusalem and benefit from well-irrigated farmlands and from water-intensive domestic infrastructure such as swimming pools.[71]

33. Aid or assistance on the part of the occupying Power in appropriating water springs and wells, its failure to prevent the destruction of or the blocking of access to water resources and its failure to react to the diversion of water resources by Israeli settlers raise concerns regarding the obligation under international humanitarian law for the occupying power to safeguard the capital of public properties and administer them in accordance with the rules of usufruct, as well as under international human rights law.[72]

34. Israeli authorities have confiscated and destroyed water infrastructure, including property provided as humanitarian assistance by States.[73] For example, in late 2020, the Israeli Civil Administration reportedly cut a water pipe donated by humanitarian organizations which was servicing communities in Masafer Yatta (South Hebron Hills).[74] In April and May 2020, in the village of Kafr Qaddum (Qalqiliyah Governorate, Areas B and C), Israeli security forces reportedly deliberately shot at water tanks on the roofs of Palestinian homes, damaging 24 of them.[75] Unlawful physical destruction of water tanks and water infrastructure by the occupying Power is contrary to its duty to restore and maintain public order and civil life in the occupied territories, and to respect the rights to water and property.[76]

35. Water is also unequally distributed within the West Bank by municipal water departments, through service providers.[77] In 2015, the average quantity delivered by West Bank service providers was as little as 26 litres per capita per day in areas such as Dura and Yatta in Hebron Governorate and as high as 242 litres per capita per day in Jericho.[78] Reportedly, inadequate regulation has led to the industrial and agricultural sectors using water resources at the expense of water being available to individuals and communities.[79] Related to this situation, a Water Law was enacted in 2014, as part of a water governance reform process intended to clarify the responsibilities of the different ministries involved and

[68] See https://www.ochaopt.org/content/how-dispossession-happens-takeover-palestinian-water-springs-israeli-settlers-march-2012, at p. 1; and A/HRC/22/63, para. 52.

[69] See https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/the_wash_contingency_plan_for_the_west_bank_2021.pdf, at p. 11.

[70] See www.haaretz.com/israel-news/.premium-palestinian-city-parched-after-israel-cuts-water-supply-1.5401178.

[71] See https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/.

[72] Hague Regulations, art. 55.

[73] A/73/499, para. 22.

[74] See https://www.btselem.org/facing_expulsion_blog?nid=213516.

[75] See http://vprofile.arij.org/qalqiliya/pdfs/vprofile/kafqaddum-vp-en.pdf and https://www.btselem.org/firearms/20200527_soldiers_shoot_holes_in_water_tanks_at_kafr_qadum.

[76] Fourth Geneva Convention, art. 53. See also the Rome Statute, art. 8 (2) (b) (xiii).

[77] Municipal water departments operate under the Local Authorities Law of 1997 and report to the Ministry of Local Government. About three quarters of water services are provided by municipal water departments under the Local Authorities Law of 1977. See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 59.

[78] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at pp. xxi, 11 and 59–60.

[79] Interview with a Palestinian civil society representative, on 24 May 2021.

to define legal issues related to water. According to the Palestinian Authority, the law has not been fully implemented to date.[80]

Water quality

36. While groundwater quality in the West Bank was reported in 2016 as being generally acceptable,[81] many wells in the Jordan Valley demonstrated a high concentration of chloride, exceeding the acceptable values in the WHO guideline (250 mg/l).[82]

37. Israeli settlements and their expansion in the West Bank and East Jerusalem place additional pressure on limited natural resources, further contributing to the pollution of water, as well as of air and soil.[83] Freshwater courses and groundwater are being polluted by waste from Palestinian towns and villages as well as from Israeli settlements; untreated wastewater infiltrates into the groundwater of the mountain aquifer, affecting its quality.[84] One of the most polluted places in the West Bank is Wadi al-Nar (Kidron Valley), in south-east Jerusalem, which has been estimated as receiving over 13 million cubic metres per year of sewage from Jerusalem and Palestinian communities.[85] In June 2020, Israel began construction of an 800 million shekel project to set up filtration and purification facilities to treat sewage in this area and make it suitable for agriculture and use by Palestinians and Israeli settlers.[86] However, the project has been criticized as intended primarily to benefit settlers by treating their wastewater and providing them with treated water for irrigation.[87] As the occupying Power, Israel has an obligation to carry out its responsibilities for the benefit of the occupied population.

38. Industrial and commercial activities located in and around Israeli settlements, as well as specialized industrial zones, have placed additional pressure on limited natural resources and have contributed to the pollution of water, as well as of air and soil.[88] Israeli companies own at least eight quarries in the West Bank and 11 Israeli industrial complexes are located in the West Bank. In several cases, nearby towns and villages are affected by chemical and wastewater runoff, odours and dust, from industries and quarries.[89]

39. Israel transfers various types of waste – including sewage sludge, infectious medical waste, used oils, solvents, metals, electronic waste and batteries – to West Bank waste

[80] See https://www.gwp.org/contentassets/7a0a956a3e8147a486a83672f3793c36/govfin_pal_final-report_softcopy.pdf, at pp. 17–18; http://www.pwa.ps/userfiles/server/law/Water%20Law%20new%202014.pdf; and https://documents1.worldbank.org/curated/en/736571530044615402/Securing-water-for-development-in-West-Bank-and-Gaza-sector-note.pdf, at p. 6.

[81] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y; p. 76.

[82] Ibid., p. 168. Although some data exist on water quality in the West Bank, there are also significant data gaps; further information is needed to quantify the damage caused by overabstraction and pollution in the mountain aquifer.

[83] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 13.

[84] Ibid., p.14.

[85] See https://www.haaretz.com/israel-news/.premium-israeli-palestinian-cooperation-is-necessary-to-tackle-israel-s-worst-sewage-hazard-1.8965141.

[86] Ibid.; see also https://milkeninnovationcenter.org/news/60-m-deep-tunnel-and-a-joint-wastewater-treatment-facility-this-is-how-the-kidron-river-will-be-restored/.

[87] See https://www.alhaq.org/advocacy/6723.html.

[88] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at pp. 14–15. Soil pollution comes from the discharge of raw and untreated wastewater into wadis and agricultural lands, from the remains from stone quarries and the stone and marble industry in the form of dust or slurry, and from the excessive use of pesticides and chemical fertilizers.

[89] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 15.

treatment facilities.[90] Although waste treatment is seen as preferable to waste disposal, it still results in substantial pollution. Waste treatment of hazardous waste could, for example, result in health hazards and pollution, including water, air and ground pollution.[91] The creation of such waste disposal facilities in the West Bank, and the transfer of waste from Israel to these facilities, may amount to a violation of the obligations of Israel as an occupying Power and breach its human rights obligations to ensure the right to safe drinking water and public health and hygiene services for everyone within its jurisdiction.

Water accessibility

40. The high pace of Israeli settlement expansion in the West Bank, including East Jerusalem, with the consequent confiscation of land and property and the appropriation of essential natural resources, such as water, has impacted the accessibility of water.[92] Israel, as the occupying Power, has adopted practices and policies creating a coercive environment and unbearable living conditions, including by placing restrictions on access to water in the West Bank.[93]

41. Palestinians in East Jerusalem face specific constraints in accessing water, since they are linked to several different water systems. Parts of East Jerusalem city are connected to the Water Authority of Israel, while older East Jerusalem houses and structures are not connected to any water grid. Areas where Palestinians live, beyond the separation wall, are connected to a separate water grid, while Palestinians who live in East Jerusalem refugee camps (such as Shuafat) access water through the United Nations Relief and Works Agency for Palestine Refugees in the Near East.[94]

42. Demolitions, confiscation of property and forced evictions have created additional challenges for vulnerable Palestinian communities in accessing water. For example, demolitions and confiscations by Israeli security forces of a total of 158 structures (including mobile water tankers, plastic water tanks and hygiene facilities) and forced evictions carried out in November 2020[95] and February and July 2021[96] in the Bedouin community of Humsah al-Buqay'ah have had a detrimental impact on the community's access to water. According to reports in July 2021, 70 people, including 35 children, were displaced.[97] The destruction of water facilities in this context may violate obligations of the occupying Power to restore and maintain civil life and to respect and ensure the right to water under international human rights law.

Water affordability

43. The scarcity of safe drinking water in the West Bank, including East Jerusalem, has led Palestinians to purchase water at extremely high prices through official providers and to a lesser extent from private entities.[98] The cost of purchased network water can be six times higher than the national price (i.e. $1.50) per cubic metre in Area C. In some Palestinian communities in Area C, water makes up 15 per cent of household expenses. For herder communities, such as Bedouins, the cost of water undermines their ability to maintain their livelihood.[99] Roughly 10 per cent of Palestinians in the West Bank rely on water purchased from water tankers, and pay up to 400 per cent more per litre than communities connected to

[90] See https://www.btselem.org/sites/default/files/publications/201712_made_in_israel_eng.pdf, at p. 6.
[91] Ibid., p. 5.
[92] A/74/356, para. 7.
[93] See A/HRC/43/67.
[94] Interview with B'Tselem on 27 May 2021.
[95] See https://www.ochaopt.org/content/west-bank-witnesses-largest-demolition-years.
[96] See https://www.ochaopt.org/content/humsa-al-bqaia-flash-update-7 and https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27300&LangID=E.
[97] See https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27300&LangID=E.
[98] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. 6, as well as table 3.3, p. 42.
[99] See https://reliefweb.int/report/occupied-palestinian-territory/palestinian-access-water-attacks-wash-structures-area-c.

the network.[100] Water purchased from private tankers may be of variable quality in addition to being expensive, as it is not monitored by any official body.[101]

Rights to water and sanitation during health emergencies

44. The rights to water and sanitation are particularly critical during health crises such as the coronavirus disease (COVID-19) pandemic. WHO has identified access to water and sanitation infrastructures and facilities as a critical priority to prevent COVID-19 transmission.[102] Access to water and sanitation is important for hydration, personal hygiene and reducing the risk of infection. Palestinians who have been displaced as a result of Israeli demolitions in Area C have been particularly vulnerable to the pandemic, particularly where water and sanitation facilities were also demolished.[103]

45. The 2020 cut to water piping in Masafer Yatta prevented about 1,400 people, including children, from accessing water and practising adequate hygiene during the COVID-19 epidemic. The actions of Israel in depriving these communities of water significantly worsened the pre-existing coercive environment in the area and could have particularly grave health consequences during the pandemic.[104]

46. The obligation of Israel, as the occupying Power, to ensure adequate and safe water and sanitation services for Palestinian communities is particularly important for groups in vulnerable situations, including persons with disabilities, rural and nomadic groups, and those living in communities in vulnerable situations (such as the access-restricted areas, in Gaza; Area C and the seam zone, in the West Bank; and the H2 zone, in Hebron), as well as people in detention.

B. Gaza

Water availability

47. The available water in Gaza does not meet the basic needs of the population. According to the World Bank Group, the water supply in Gaza has been "at crisis levels since 2005".[105] In 2020, the United Nations Children's Fund (UNICEF) estimated that only 10 per cent of the population in Gaza had direct access to clean and safe drinking water.[106] Overall, about 1 million people – half of the population – are estimated as being in need of water and sanitation interventions.[107]

48. Israel has restricted the import of materials and equipment categorized as "dual-use" (materials considered by Israel to be usable both for civil or for military purposes), which include the materials needed to maintain, repair and improve the water and sewage systems.[108] These include materials such as cement and iron, which are essential for repairing water and sanitation infrastructure.[109] Requests for the importation of dual-use items are submitted primarily through the Gaza Reconstruction Mechanism, which receives Israeli approval for a period of one year to import the specific item. Since approvals are only valid for one year, on many occasions approved materials are delayed or held by Israel, resulting

[100] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 78.
[101] See https://www.amnesty.org/en/wp-content/uploads/2021/06/mde150272009en.pdf, at p. 19; and https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/.
[102] See https://www.who.int/publications/i/item/WHO-2019-nCoV-IPC-WASH-2020.4.
[103] See https://reliefweb.int/sites/reliefweb.int/files/resources/critical_access_to_water-the_case_of_masafer_yatta_.pdf.
[104] A/HRC/46/65, para. 36.
[105] See https://openknowledge.worldbank.org/handle/10986/30316, at p. xvi.
[106] See https://www.humanitarianresponse.info/en/operations/occupied-palestinian-territory/document/humanitarian-situation-report-no-2-april-june.
[107] See https://www.ochaopt.org/content/humanitarian-needs-overview-2021, at p. 37.
[108] See https://gisha.org/project/50shades-en/.
[109] A/75/199, para. 30.

in a gap between approvals for dual-use materials and actually receiving the materials and using them for water and sanitation projects in Gaza.[110]

49. Although some materials have been able to enter Gaza via the Gaza Reconstruction Mechanism, its capacity to facilitate the import of sufficient materials to meet the needs of Palestinians living in Gaza has been limited.[111] As a result of these challenges, the water pipeline system in Gaza remains outdated, is thus prone to losses of water through leakage, and cannot meet the needs of population growth or respond to damage from recurring military escalations. The poor condition of the infrastructure has also increased the risk of communities being affected by the overflow of stormwater facilities and sewage pumping stations.[112]

50. The Committee on Economic, Social and Cultural Rights has noted that "States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure."[113]

51. Water availability is also negatively affected by challenges in operating the existing water management system in Gaza, due to the lack of a consistent power supply. Gaza suffers from a chronic electricity deficit, which has a severe impact on the availability of essential services, particularly health, water and sanitation services, and affects the agricultural and industrial sectors. In 2021, power was available for 13 hours a day on average.[114] Electricity shortages have impacted the functioning of local water systems, as well as the operation of approximately 130 critical, local water and sanitation facilities resulting in the continued contamination of the coastal aquifer and the wider environment.[115] While three desalination plants supported by the international community produce about 13 million cubic metres of water per year locally in Gaza, desalination requires significant electricity and fuel; as such, acute power shortages and restrictions on the import of materials limit their the plants' ability to function at capacity or to provide sufficient and continuous access to water.[116]

52. Recurring escalations of hostilities[117] have severely damaged the infrastructure for water, sanitation and hygiene in Gaza.[118] The most recent escalation, in May 2021, caused widespread destruction of civilian infrastructure, including water and sanitation facilities, raising serious concerns as to whether these attacks by Israel complied with the principles of distinction and proportionality under international humanitarian law.[119] The Office for the Coordination of Humanitarian Affairs has indicated that 290 water and sanitation facilities were damaged or destroyed during this escalation.[120] In addition, the North Gaza Seawater Desalination Plant stopped operating due to the risk to workers and a damaged electrical supply line, affecting the access of about 250,000 people to drinking water. Approximately 160,000 people from Gaza City had limited access to piped water, due to increased power cuts. The electricity shortage affected water and sanitation facilities in Gaza, including water

[110] See https://reliefweb.int/sites/reliefweb.int/files/resources/bn-treading-water-gaza-reconstruction-mechanism-220321-en.pdf, at pp.8–10.

[111] See https://www.nrc.no/globalassets/pdf/briefing-notes/mb-gaza-israel-blockade-civilians-270818-en.pdf, at p. 4.

[112] See https://www.ochaopt.org/content/humanitarian-needs-overview-2021, p. 38.

[113] General comment No. 15 (2002), para. 32.

[114] See https://www.ochaopt.org/page/gaza-strip-electricity-supply.

[115] See https://reliefweb.int/sites/reliefweb.int/files/resources/hno_20_12_2017_final.pdf, p. 8.

[116] See https://gisha.org/en/hand-on-the-switch-whos-responsible-for-gazas-infrastructure-crisis/.

[117] See A/HRC/12/48; A/HRC/22/35/Add.1; A/HRC/29/52; A/HRC/29/CRP.4; A/HRC/40/39, paras. 14–17; and A/HRC/S-30/1.

[118] See https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2515/RAND_RR2515.pdf, at p. ix.

[119] See https://www.un.org/unispal/document/un-high-commissioner-for-human-rights-bachelet-addresses-human-rights-council-special-session-on-the-deteriorating-human-rights-situation-in-opt-statement/.

[120] See https://www.ochaopt.org/content/response-escalation-opt-situation-report-no-8-8-28-july-2021.

wells and reservoirs and wastewater treatment plants. Water pipelines were damaged in the Gaza City, Tall al-Hawa and Muntar areas.[121]

53. The political division between the Palestinian Authority and the de facto authorities in Gaza has negatively affected the governance of water resources and has contributed to reduced availability of water in Gaza.[122] Water and sanitation in Gaza are managed by several actors – including the Palestinian Water Authority, responsible for water and sewage policy; and the Coastal Municipalities Water Utility, responsible for pumping and distributing water, maintaining and developing infrastructure and rainwater treatment; as well as private entities.[123] Additionally, and as noted above, since 2015, all water-related reconstruction projects by international organizations must be managed by the Gaza Reconstruction Mechanism and every project requires the approval of Israel.[124] Internal political tensions, together with mismanagement and corruption, have reportedly contributed to impeding improvement of the water and sanitation systems through these mechanisms, impacting the ability to improve water availability and the sanitation infrastructure.[125]

54. Strict regulations and penalties on the digging of private wells also contribute to reduced availability of water. In August 2021, the de facto authorities announced a ban on the digging of water wells in all Gaza governorates, in order to address the severe decline in groundwater levels and quality due to overexploitation of the aquifer into which the wells are drilled. Those who had already dug wells were called upon to obtain a special licence.[126]

55. The limited availability of water has a disastrous impact on Palestinians in Gaza as a whole, and a particularly harmful impact on the living conditions of women and girls, who are traditionally responsible for ensuring the basic needs of their families, including water. The gendered impact of a lack of access to clean water and sanitation has a particularly marked effect on women and girls in Gaza, where the lack of access to clean water affects tasks traditionally performed by them, such as cleaning, and preparing food, as well as gender-specific needs, notably menstrual hygiene.[127]

Water quality

56. The quality of water in Gaza is of a low standard and it is generally considered unsafe for drinking. Israeli practices and policies outlined in the present report affecting water infrastructure, its destruction during military escalations, the impact of closures, power shortages, and challenges in water governance, have all contributed to a situation where 96 per cent of households receive water that does not meet drinking water quality standards.[128]

57. Given that water is insufficiently available in Gaza, water from the coastal aquifer has been subjected to overextraction at a rate of almost three times the rate of natural

[121] See https://www.ochaopt.org/content/escalation-west-bank-gaza-strip-and-israel-flash-update-3-1200-13-may-2021.

[122] See https://www.ochaopt.org/content/humanitarian-needs-overview-2021, at p. 37.

[123] Ibid.

[124] See https://reliefweb.int/sites/reliefweb.int/files/resources/bn-treading-water-gaza-reconstruction-mechanism-220321-en.pdf, at p. 6.

[125] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf.

[126] See https://www.al-monitor.com/originals/2021/08/gazans-fear-worst-after-hamas-bans-water-wells and http://www.pwa.gov.ps/post/75/%D8%A8%D9%8A%D8%A7%D9%86-%D8%B5%D8%A7%D8%AF%D8%B1-%D8%B9%D9%86-%D8%B3%D9%84%D8%B7%D8%A9-%D8%A7%D9%84%D9%85%D9%8A%D8%A7%D9%87-%D9%88%D8%AC%D9%88%D8%AF%D8%A9-%D8%A7%D9%84%D8%A8%D9%8A%D8%A6%D8%A9-%D8%A8%D8%B4%D8%A3%D9%86-%D8%AD%D9%81%D8%B1-%D8%A2%D8%A8%D8%A7%D8%B1-%D8%A7%D9%84%D9%85%D9%8A%D8%A7%D9%87.

[127] See https://blogs.unicef.org/blog/searching-clean-water-gaza/ and https://www.wclac.org/files/library/19/10/yekz3kqu2vf4q0o3xolozc.pdf.

[128] See https://reliefweb.int/report/occupied-palestinian-territory/gaza-wash-sector-damage-assessment.

replenishment by rainfall, leading to increasing seawater intrusion.[129] The continuous damage to water infrastructure incurred through hostilities as well as the ongoing electricity crisis have led to increased pollution of the sea and groundwater, as the sewage treatment plant cannot operate fully and raw sewage is consistently dumped directly into the Mediterranean Sea.[130] The sea also flushes large amounts of untreated or insufficiently treated sewage back to the shores of Gaza. According to assessments published by the Palestinian Environmental Quality Authority, 75 per cent of the water along the shores of Gaza is contaminated.[131]

58. Water quality is also reduced to some degree due to the method of its supply by Israel. Under the Oslo Accords, Israel must supply Gaza with at least 5 million cubic metres per year.[132] The Palestinian Authority purchases this water from Mekorot, which streams it through the existing network, where it is then mixed with groundwater, resulting in water that is not fit for human consumption. Although it cannot be used for drinking or cooking, this water is reportedly used for other purposes.[133] In 2019, several reports indicated that work was under way to establish a fourth pipeline that would help double the amount of water supplied by Israel to Gaza.[134]

59. Restrictions on the use of water and land and on the importation of materials and technologies have also affected farming practices. As the ability to use irrigation is limited, farmers use excessive amounts of chemical fertilizers and pesticides to increase crop yields.[135] The intensive use of agricultural pesticides, and the inflow of sewage into the aquifer, has resulted in only 12.4 per cent of wells in Gaza meeting WHO standards for nitrate concentrations and only 19.3 per cent of wells meeting chloride concentration standards, according to a 2015 study.[136] Special procedures of the Human Rights Council have noted that children in Gaza are particularly susceptible to nitrates in water, which stunt growth and affect brain development, impacting health in ways that have lifelong consequences. High levels of nitrates cause cyanosis, harm pregnant women and increase risks of cancer.[137] Water-associated diseases account for approximately 26 per cent of childhood diseases in Gaza and are a primary cause of child morbidity.[138] The combination of poor clean water supplies, limited hygiene practices and insufficient sewage treatment risks further outbreaks of disease.[139]

60. The lack of water and sanitation infrastructure in Gaza has forced individuals increasingly to purchase water from private vendors through tanker trucks in unhygienic

[129] Mohammed Seyam and others, "Investigation of the influence of excess pumping on groundwater salinity in the Gaza coastal aquifer (Palestine) using three predicted future scenarios", *Water*, vol. 12, issue 8 (April 2020), p. 2.

[130] See https://www.ochaopt.org/content/seawater-pollution-raises-concerns-waterborne-diseases-and-environmental-hazards-gaza-strip.

[131] A/74/356, para. 53.

[132] See https://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf, at pp. 11–12; and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, annex III, art. 40, available at https://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20III.aspx#app-40.

[133] See https://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf, at pp. 11–12.

[134] See https://www.al-monitor.com/originals/2019/07/water-pipeline-israel-gaza-pollution-palestinian-authority.html.

[135] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 13.

[136] Ibid., at p. 77; and see http://dx.doi.org/10.4236/jwarp.2013.51007.

[137] See AL ISR 13/2020, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25840.

[138] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 14.

[139] See https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2515/RAND_RR2515.pdf, at p. 41.

conditions, exposing them to significant health risks.[140] It is estimated that 97 per cent of the population rely on informal and unregulated private water tankers and small-scale informal desalination plants for drinking water.[141] As aquifer water must be purified in order to be used, dozens of such plants operate. They are required to be licensed, however monitoring is reportedly lax.[142]

Water accessibility

61. Despite the access that Israel has to alternative water resources, special procedure mandate holders have noted that Israel contributes to the inaccessibility of water in Gaza by using 75 per cent of the sustainable groundwater amount each year from the coastal aquifer, leaving little of it available for Gaza.[143] The water scarcity in Gaza is also augmented by the diversion carried out by Israel of an aquifer from the Jabal al-Khalil mountains in the southern West Bank, which had previously contributed to replenishing groundwater in Gaza.[144] The high population density in Gaza poses an additional challenge as regards access to water and sanitation services.[145]

Water affordability

62. Despite its low quality, drinking water has become virtually unaffordable in Gaza, where approximately 64 per cent of the population lives in poverty.[146] An estimated 20,200 families cannot afford to buy safe drinking water and rely on water from public filling points or on unsafe tap water, with a high risk of waterborne diseases, particularly among children under 5 years of age.[147]

63. While the General Assembly has recognized that affordable water costs should not exceed 3 per cent of household income,[148] according to surveys, families in Gaza spend up to a third or even half of their income on water.[149]

VI. Conclusions and recommendations

64. **The occupying Power has an obligation to take all measures in its power to restore, and ensure, as far as possible, public order and civil life in the occupied area, while respecting, unless absolutely prevented, the laws in force in the country. It also has an obligation to respect and ensure international human rights law, including the rights to water and sanitation.[150] Natural resources, such as groundwater, constitute immovable public property, and the occupying power must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct, further to the applicable rules of international humanitarian law.**

65. **Israel, as the occupying Power, is likely to have acted contrary to these obligations in relation to the allocation and administration of water resources in the Occupied Palestinian Territory, including East Jerusalem. This has had a severe impact**

[140] Ibid., p. 33.

[141] See https://documents1.worldbank.org/curated/en/684341535731512591/pdf/Toward-Water-Security-for-Palestinians.pdf, at p. xvii.

[142] See https://gisha.org/UserFiles/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf, at p. 11.

[143] See AL ISR 13/2020, available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25840.

[144] Ibid.

[145] Ibid. Gaza has one of the highest population densities in the world.

[146] See https://www.un.org/unispal/in-facts-and-figures/.

[147] As of 2020. See https://www.ochaopt.org/content/humanitarian-needs-overview-2021, at p. 38.

[148] See https://www.un.org/en/global-issues/water.

[149] See https://reliefweb.int/sites/reliefweb.int/files/resources/The%20imperative%20of%20mainstreaming%20gender%20in%20humanitarian%20action%20in%20Palestine%20-%20six%20case%20studies%20from%20Gaza.pdf.

[150] Hague Regulations, arts. 46–47, 52 and 55; and Fourth Geneva Convention, arts. 33 and 53.

on the enjoyment of Palestinians' rights to water and sanitation in the Occupied Palestinian Territory.

66. **The establishment and expansion of Israeli settlements in the Occupied Palestinian Territory amounts to the transfer by Israel of its own civilian population into the territory that it occupies, and has a had significant impact on water resources. The prioritization by Israel/Mekorot of permanent water supply for Israeli settlements, to the detriment of the Palestinian population, severely affects the enjoyment of human rights of Palestinians, including the rights to water and sanitation. Palestinians face continuing discriminatory practices, which result in them being prevented from enjoying their rights to water and sanitation. This is further aggravated by harm caused to their environment by the exploitation by Israel of natural resources in the Occupied Palestinian Territory.**

67. **Access to water and sanitation must be addressed urgently to reduce the impact on vulnerable Palestinian communities and to prevent irreversible damage to ecosystems and human health. Recurrent hostilities, and public health emergencies such as the COVID-19 pandemic, have put further stress on the condition of public infrastructure, including the water, sewerage and electricity networks. Climate change will also continue to stress water availability in the Occupied Palestinian Territory and increase the costs of water services. The existing situation, in which the transboundary water systems are interdependent, must be managed in a coordinated manner to ensure that these shared resources are sustainable.**[151]

68. **In Gaza, Israeli restrictions on the import of equipment needed to maintain, repair and improve the water and sewage systems, combined with harm caused to these systems by recurring escalations of hostilities between the de facto authorities in Gaza and Israel, have had a disastrous effect on the availability of water. In this regard, the announcement by Israel on 25 August 2021 that it would increase the water supply to Gaza by 5 million cubic metres and allow the entry of construction materials and non-humanitarian goods is a welcome step.**[152]

69. **The Oslo Accords, which contain clauses regarding water, were designed to be an interim agreement leading to a final status agreement. In the period since adoption of the Accords, the water governance clauses within them, which were intended as interim arrangements pending a final status agreement, have proven inadequate and inequitable. Alongside a doubling of the size of the Palestinian population since the Accords, there have been substantial practical, technical and cooperation challenges in implementing the water governance clauses in the Accords. As 96 per cent of the water in Gaza is currently unsafe for human consumption and Palestinians are unable to access most of their water sources in the West Bank, access to water has become a major impediment to the enjoyment of human rights in the Occupied Palestinian Territory.**

70. **The High Commissioner recommends that the Government of Israel:**

(a) **End the blockade and closure of Gaza, lift all restrictions on imports, exports and humanitarian access, and facilitate the rebuilding of its water infrastructure, ensuring respect for international humanitarian law and international human rights law;**

(b) **Immediately address the humanitarian crisis in Gaza, which has been made acute by, inter alia, lack of access to materials essential for repairing water and sanitation infrastructure as well as the lack of a sufficient and reliable electricity supply for the water and wastewater sector;**

(c) **Establish a functioning and transparent water monitoring arrangement with the Palestinians to manage the shared aquifer systems in order to address the deficiencies in the existing mechanisms, including in the Joint Water Committee;**

[151] See https://wedocs.unep.org/bitstream/handle/20.500.11822/32268/SEORP.pdf?sequence=1&isAllowed=y, at p. 83.

[152] See https://www.haaretz.com/israel-news/israel-allows-construction-materials-into-gaza-loosening-postwar-blockade-1.10170010.

(d) **Halt the extraction of natural resources, including water, undertaken for the benefit of Israel, the occupying Power, which is inconsistent with international humanitarian law; and address the lack of sufficient access for Palestinians to important natural resources, notably water resources;**

(e) **Reduce water exploitation and environmental degradation in the Occupied Palestinian Territory caused by settlement activity, by ceasing such activity in compliance with Security Council resolution 2334 (2016);**

(f) **Immediately end the practice of demolitions, including administrative and punitive demolitions, which include the destruction of water tanks and of water infrastructure, which may negatively affect the enjoyment of the right to water;**

(g) **Ensure that hazardous waste is disposed of in compliance with international standards, with such disposal not infringing upon the human rights of the protected population to safe and clean water;**

(h) **Take steps with a view to renegotiating prior agreements on the administration and distribution of water resources with the Palestinian authorities, on the basis of equity and cooperation in the ownership, exploration, distribution and use of water sources in the Occupied Palestinian Territory, particularly given the impact of climate change as well as of demographic growth.**

71. **The High Commissioner recommends that the Government of the State of Palestine:**

(a) **Address unequal distribution of water in parts of Area A of the West Bank, given the existing scarcity in water resources;**

(b) **Better regulate water distribution and use of water for industrial purposes, in order to increase water availability for personal and domestic use;**

(c) **Improve the regulation of groundwater extraction in Gaza, in order to reduce overextraction of the coastal aquifer;**

(d) **Implement the Water Law of 2014, establishing a governmental water company, and enable the independence and the by-laws of the water sector regulatory council.**

72. **The High Commissioner recommends that the de facto authorities in Gaza:**

(a) **Comply, and ensure compliance by armed groups in Gaza, with international human rights law and international humanitarian law in relation to the rights to water and sanitation;**

(b) **Support the Palestinian Water Authority in improving the regulation of groundwater extraction in Gaza in order to reduce overextraction from the coastal aquifer.**

73. **The High Commissioner recommends that the Government of Israel, the Government of the State of Palestine and the de facto authorities in Gaza increase efforts to harvest, preserve, treat and reuse water in the Occupied Palestinian Territory – including by facilitating rainwater harvesting; reducing losses from the water distribution system; reducing pollution of freshwater watercourses, groundwater and the Mediterranean Sea; increasing the reuse of wastewater; and enhancing wastewater treatment, also in order to maximize the benefits of investment in desalination.**

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 46/3 and provides an overview of the implementation of the resolution and the developments that are of relevance to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice.

* The present report was submitted after the deadline in order to include the most recent information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 46/3 and should be read in conjunction with recent relevant reports of the Secretary-General and the United Nations High Commissioner for Human Rights.[1]

2. The present report, which covers the period between 1 November 2020 and 31 October 2021, addresses issues relating to accountability for alleged violations of international human rights law and international humanitarian law committed by all relevant duty bearers in the Occupied Palestinian Territory, encompassing the West Bank, including East Jerusalem, and the Gaza Strip. The report also documents relevant measures taken against human rights defenders and civil society actors documenting violations and advocating for accountability by all duty bearers.

3. The present report draws on human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory and information from government sources, other United Nations entities and non-governmental organizations. OHCHR requested Israel and the State of Palestine to provide information, by 15 November 2021, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights law and international humanitarian law committed in the Occupied Palestinian Territory. The State of Palestine responded on 24 November. Israel did not respond. OHCHR also requested other States Members of the United Nations to provide information on the steps taken by them as third States to promote compliance with international law and implement the recommendations addressed to them. As at 30 November, Cuba, Spain and Tunisia had responded.

4. The human rights situation in the Occupied Palestinian Territory deteriorated during the reporting period. There was an increase in violence, including a major escalation of hostilities between Israel and Palestinian armed groups in Gaza from 10 to 21 May, an increase in the use of live ammunition by Israeli security forces in the West Bank, including East Jerusalem, and an intensification of settler-related violence. These patterns resulted in an increase in the number of Palestinians and Israelis killed and injured. Israeli security forces killed 315 Palestinians, including 197 men, 41 women and 77 children, and injured 17,597 Palestinians, including at least 527 women and 1,472 children, during the reporting period.[2] Thirteen Israelis, including 2 children, were killed and 824 others were injured by Palestinians.[3] In the context of hostilities between Palestinian armed groups and Israel in Gaza, OHCHR monitoring continued to indicate insufficient respect for international humanitarian law by all parties to the conflict. Outside hostilities, OHCHR documented numerous cases that raise concerns with regard to respect by Israel, as the occupying power, for international humanitarian law in the context of occupation and by all duty bearers with regard to their international human rights law obligations. Many incidents of the use of force monitored raised serious concerns that the force used was excessive,[4] in some cases amounting to the arbitrary deprivation of life, including extrajudicial execution. The prevailing climate of impunity, by all duty bearers, described in previous reports of the Secretary-General and the High Commissioner, persisted.[5]

[1] See A/76/333, A/76/336, A/HRC/49/83 and A/HRC/49/85.

[2] Information provided by the Office for the Coordination of Humanitarian Affairs.

[3] Information provided by the Office for the Coordination of Humanitarian Affairs, based on Israeli sources.

[4] A/76/333, paras. 11–15. The term “excessive use of force” is used in the present report to refer to incidents in the context of law enforcement operations in which force was not used in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Such incidents may entail situations in which force was used unnecessarily and/or disproportionately, and/or in pursuit of an illegal law enforcement objective and/or in a discriminatory manner.

[5] A/76/333, paras. 5 and 16; A/HRC/43/21, paras. 17 and 19–20; and A/HRC/46/22, paras. 4–5 and 10–11.

5. The international staff of OHCHR remained outside the Occupied Palestinian Territory during the reporting period due to the non-issuance of visas by Israel.[6]

II. Update on accountability

A. Accountability for the escalation of hostilities in Gaza in May 2021 and previous escalations of hostilities

Hostilities in May 2021

6. From 10 to 21 May 2021, the most significant escalation in hostilities between Israel and Palestinian armed groups in Gaza since 2014 took place. The United Nations verified that 261 Palestinians were killed, including 153 men, 41 women and 67 children (23 girls and 44 boys). At least 130 of those killed were civilians. About 2,200 other Palestinians were injured, including about 685 children and 480 women.[7] Ten Israeli citizens and residents (five men, three women and two children)[8] were killed by rockets and mortars launched by armed groups in Gaza and, according to Israeli sources, 710 others were injured.[9]

7. OHCHR documented a number of incidents in which Israeli attacks, having resulted in significant civilian casualties and damages to civilian objects, might have violated international humanitarian law principles of distinction, proportionality and feasible precautions.[10] However, as at 31 October 2021, OHCHR was not aware of any criminal investigation opened into the conduct of Israeli security forces during hostilities in May 2021.[11] The Palestinian Centre for Human Rights reported having submitted 57 criminal complaints to the Military Advocate General of Israel and 295 civil complaints to the compensation office of the Ministry of Defense of Israel in relation to incidents involving the killing of 101 Palestinians and the injury of another 100 during the hostilities in May 2021. According to the Palestinian Centre for Human Rights, the Military Advocate General of Israel had indicated that, to date, 11 of those complaints had been referred for further examination to the General Staff Mechanism for Fact-Finding Assessments, established in 2014.[12]

8. There are concerns that, despite preliminary examinations carried out by Israel in some cases, the findings regarding possible violations have been shielded from public scrutiny and do not appear to have yet triggered the opening of criminal investigations or any other meaningful accountability steps. For example, on 13 May 2021, Israeli artillery intensively shelled a residential neighbourhood and agricultural area adjacent to the Israel-Gaza fence, near Bayt Lahya. As a result, six people were killed, including a 17-year-old girl and a 9-month-old infant, and several others were injured. The incident raises serious concerns of its compatibility with the prohibition of indiscriminate and disproportionate

[6] A/HRC/46/63, para. 3.
[7] Information provided by the Office for the Coordination of Humanitarian Affairs.
[8] Indirect deaths on both sides are not included.
[9] Information provided by the Office for the Coordination of Humanitarian Affairs.
[10] A/76/333, para. 7 and A/HRC/49/83. See also paragraph 8 of the present report.
[11] Media reports indicated that one investigation had been launched into an incident on 12 May 2021 in which Israeli security forces positioned at the Israel-Gaza fence had fired at a group of Palestinian farmers, killing one and wounding two others. Israel Defense Forces reported that disciplinary measures had been taken against the officers involved. See https://www.haaretz.com/israel-news/.premium-idf-commander-soldier-dismissed-for-firing-at-palestinians-during-gaza-op-1.9896397.
[12] See https://www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_b1-474.pdf, p. 378; https://www.gov.il/BlobFolder/news/spoketurkelcommittee210915/en/documents_reporteng.pdf, pp. 21–23; and https://www.idf.il/en/articles/operation-protective-edge/idf-conducts-fact-finding-assessment-following-operation-protective-edge/. See also A/HRC/37/41, para. 11 and A/HRC/40/43, para. 9.

attacks under international humanitarian law.[13] According to the Israel Defense Forces, following an internal military examination – the findings of which have not been made public – it had learned professional lessons from the incident and instilled them into the unit. According to media reports, as a result of the internal preliminary examination, a number of low-ranking soldiers had been suspended for a limited period of time before returning to their positions, and a battalion officer had been moved to a training position.[14] While such disciplinary measures appear starkly incommensurate with the gravity of the incident and the possible offences committed, the Israel Defense Forces spokesperson indicated that details of the incident were being examined by the General Staff Mechanism for Fact-Finding Assessments.

9. With regard to the Israeli air strike that on 15 May 2021 destroyed Al-Jalaa tower in Gaza City, which hosted, among others, the Associated Press and Al-Jazeera offices and numerous residential units, media reports have pointed towards significant gaps in the process of intelligence gathering that had led to the attack. Reportedly, Israeli security officials were informed of the presence of media outlets' offices in the building prior to the strike, and questions have been raised regarding the necessity of the attack.[15] Given the absence of clear evidence that the strike could offer an effective contribution to military action and a definite military advantage, and the impact of the strike on civilian objects,[16] the attack raises serious concerns in terms of its compliance with the principles of distinction or proportionality under international humanitarian law.[17] According to an Israel Defense Forces internal examination, "the attack on the building caused significant damage to Hamas' capabilities and … there were no casualties from the attack".[18] No information regarding a possible criminal investigation had been made publicly available as at 31 October 2021.

10. A lack of transparency persists in relation to the existence, status, progress and outcome of any preliminary examination launched by the Israeli army into such incidents. The preliminary response made publicly available by Israeli authorities to possible violations by Israel Defense Forces of international humanitarian law in the context of the hostilities of May 2021 appears to confirm the pattern previously documented by the Secretary-General and the High Commissioner regarding the consistent failure of the Military Advocate General of Israel to open criminal investigations into cases of alleged serious violations of international humanitarian law in the context of hostilities.[19]

11. Rockets and mortars fired by Palestinian armed groups in Gaza killed and injured Israeli and Palestinian civilians and caused significant damage to civilian objects, such as residential buildings, public facilities and factories.[20] In addition to Israeli fatalities, at least 18 Palestinians, including 5 boys, 1 girl and 3 women, were killed seemingly by rockets fired by Palestinian armed groups falling short. On 10 May 2021, an explosion, seemingly provoked by a rocket fired by Palestinian armed groups in Gaza, took place in a densely populated area in Jabaliya, North Gaza, killing 8 people, including 2 children, and injuring many others, including at least 10 children and 2 women. These rockets are indiscriminate

[13] See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12 and https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14.

[14] See https://www.haaretz.com/israel-news/.premium-idf-covered-up-negligent-killing-of-six-gazans-during-recent-conflict-1.10073500?lts=1636456138539.

[15] See https://www.haaretz.com/israel-news/.premium-idf-only-discovered-foreign-media-was-based-in-gaza-tower-after-strike-begun-1.10362300.

[16] See https://www.haaretz.com/israel-news/israel-revised-intel-biden-answers-gaza-bombing-ap-al-jazeera-1.10395688 and https://www.haaretz.com/us-news/blinken-i-haven-t-seen-evidence-that-hamas-operated-in-downed-ap-building-in-gaza-1.9815458.

[17] See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule8, https://ihl-databases.icrc.org/applic/ihl/cihlweb_eng_1.nsf/docindex/v1_rul_rule12, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14 and https://ihl-databases.icrc.org/applic/ihl/cihlweb_eng_1.nsf/docindex/v1_rul_rule19.

[18] See https://www.haaretz.com/israel-news/.premium-idf-only-discovered-foreign-media-was-based-in-gaza-tower-after-strike-begun-1.10362300.

[19] A/71/364, para. 40; A/HRC/43/21, para. 17 and A/HRC/46/22, para. 8.

[20] A/76/333, para. 8 and A/HRC/49/83.

by nature and their use therefore constitutes a clear violation of the prohibition of indiscriminate attacks under international humanitarian law.[21]

12. No information has been made available publicly or directly to OHCHR in relation to any step taken by the State of Palestine or the de facto authorities in Gaza to investigate alleged violations of international humanitarian law by Palestinian armed groups during the hostilities in May 2021. Palestinian human rights organizations have raised concerns regarding the significant challenges Palestinian victims and their families face in filing complaints regarding the actions of the armed groups during hostilities due to fears of reprisal and stigmatization within the local community.

Previous rounds of hostilities

13. OHCHR is not aware of any step taken during the reporting period by any parties to the conflict to ensure accountability in relation to previous rounds of hostilities in Gaza. Serious concerns persist over the lack of accountability for actual or potential violations of international humanitarian law, including alleged war crimes, perpetrated by all parties to the conflict.[22]

14. With respect to Israel, the most recent update by the Military Advocate General of Israel was provided on 15 August 2018.[23] No further updates have been published since, and no notable progress in the investigation and prosecution of alleged violations in the context of the hostilities in 2014 was made public during the reporting period. The Palestinian Centre for Human Rights and the Al Mezan Center for Human Rights indicated that they had received communications from the Military Advocate General that no criminal investigation would be pursued in relation to four and nine complaints they had previously submitted, respectively. One of these complaints related to Israeli air strikes hitting adjacent homes in the Al-Shaboura neighbourhood, Rafah, on 2 August 2014, killing eight people, including six children and one woman. Similarly, a lack of progress and transparency persists in relation to accountability efforts linked to previous major rounds of hostilities in 2008/09 (with no public information made available since July 2010) and in 2012 (with no public updates provided since April 2013). Such lack of progress highlights the failure of the General Staff Mechanism for Fact-Finding Assessments to enable the prompt and effective investigation of those serious allegations.

15. No information was made available on steps taken by the Government of the State of Palestine or by the de facto authorities in Gaza to ensure accountability for possible violations of international humanitarian law, including possible war crimes, committed by Palestinian armed groups in the context of the hostilities in 2008/09, 2012 or 2014.[24]

16. The absence of any significant progress in the investigation and prosecution of alleged violations dating back in some cases to more than a decade calls into question the willingness of Israeli and Palestinian authorities to hold those allegedly responsible duly to account. These escalations and the sporadic hostilities in between them are characterized by long-standing patterns of violations of international humanitarian law and international human rights law by all parties, further underscoring their recurrent nature and the climate of impunity and the failure of efforts by all parties to take sufficient steps to prevent their repetition.[25]

[21] A/76/333, para. 8; and A/HRC/29/52, para. 33. See also https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule1 and https://ihl-databases.icrc.org/applic/ihl/cihlweb_eng_1.nsf/docindex/v1_rul_rule12.

[22] A/71/364, paras. 39 and 51–55; A/HRC/43/21, paras. 14–15 and 19; and A/HRC/46/22, paras. 5–6.

[23] A/HRC/40/43, paras. 5 and 9; and https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf.

[24] A/HRC/46/22, para. 10. See also A/HRC/29/52 and A/HRC/12/48.

[25] A/HRC/28/45, para. 16.

B. Accountability for unlawful use of force and other violations of international human rights law

Israel

17. Impunity remained pervasive for incidents of possible excessive use of force by Israeli security forces outside the context of hostilities.[26] Between 1 January 2017[27] and 31 October 2021, 428 Palestinians[28] (including 91 children) were killed by Israeli security forces in law enforcement operations in the Occupied Palestinian Territory. OHCHR is aware of 82 criminal investigations opened in relation to these deaths, of which at least 13 were closed without further action being taken and 5 resulted in indictments, 3 of which led to convictions.[29] These figures appear starkly inconsistent with Israeli investigation policy, applicable since 2011, according to which the Israel Defense Forces are obligated to open an immediate investigation into operations in the West Bank that result in the death of a person, except when the incident involves "actual combat".[30] Despite the frequent initial public statements by Israeli authorities announcing that a killing was under examination, in most cases a criminal investigation is not opened and details of the decision are not made public, despite Israeli law requiring the Military Advocate General to provide reasoning for all decisions, including cases involving "actual combat". Where a criminal investigation has been opened, the findings and conclusions have been made public only in a few, exceptional cases in which the killing or injury was caught on camera or video and received a high level of public attention.[31] The lack of transparency regarding the opening of investigations and the absence of progress and outcome of investigations by Israeli authorities is a matter of utmost concern, as the duty to investigate potential unlawful deaths is an important element of the protection afforded to the right to life.[32] In the rare cases where investigations result in criminal charges, these are often starkly incommensurate with the gravity of the conduct.[33]

18. Throughout the reporting period, Israeli security forces killed 74 Palestinians, including 17 children, 3 women and 54 men, in the context of law enforcement operations. The West Bank, including East Jerusalem, witnessed an increase in the unwarranted and disproportionate use of force by Israeli security forces in the context of demonstrations against the military occupation, settlement expansion and Palestinian evictions, and in response to attacks or alleged attacks by Palestinians against Israelis.[34] In the vast majority of cases monitored by OHCHR, the use of force by Israeli security forces did not appear to comply with the requirements of legality, necessity and proportionality, frequently resulting in potentially unlawful killings, including, in some circumstances, possible extrajudicial executions.[35]

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[26] A/71/364, para. 66; A/76/333, paras. 5 and 16; A/HRC/43/21, para. 20; and A/HRC/46/22, para. 11.

[27] 1 January 2017 represents the beginning of the first reporting period during which the High Commissioner was requested by the Human Rights Council to report on accountability and justice for violations of international law in the Occupied Palestinian Territory.

[28] This number does not include those killed in the context of hostilities and those killed in situations in which it was not possible to determine the circumstances. The total number of Palestinians killed by Israeli security forces during the same period amounts to 850.

[29] Nineteen investigations were opened into killings during this reporting period. Additionally, OHCHR became aware of 17 further investigations into killings between 1 January 2017 and 31 October 2020. See https://www.btselem.org/sites/default/files/publications/202112_unwilling_and_unable_eng.pdf.

[30] Supreme Court of Israel, *B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories v. The Judge Advocate General*, Case No. HCJ 9594/03, 21 August 2011. On the problematic character of the wide interpretation of the notion of "combat activity" in the Israeli judicial system, in relation to the protection of Palestinians' right to life, see A/HRC/46/22, para. 18.

[31] On 21 June 2021, an indictment based on the charge of reckless homicide was submitted to the Jerusalem District Court against an Israeli border police officer for the killing of Iyad Hallaq on 30 May 2020.

[32] Human Rights Committee, general comment No. 36 (2018), para. 27; and Minnesota Protocol on the Investigation of Potentially Unlawful Death.

[33] A/75/336, para. 9; A/HRC/40/43, paras. 19–21; and A/HRC/46/22, para. 16.

[34] A/76/333, paras. 12–13.

[35] See also A/76/333, para. 11.

19. Serious concerns persist in relation to the absence of accountability measures to hold those responsible to account.[36] On 14 October 2021, Israeli security forces killed 14-year-old Amjad Abu Sultan, having shot him, reportedly without warning, from a close range while he was attempting to light a Molotov cocktail near the wall in Bayt Jala. OHCHR monitoring indicated that Israeli security forces were likely to have seen the boy in advance, and his intention to throw Molotov cocktails in the location may have been known to the Israeli security forces even from before, as contacts had taken place between the victim and the security forces prior to the incident.[37] Nonetheless, Israeli security forces failed to resort to less lethal means to prevent the attack, raising concerns of the excessive use of force resulting in the killing of a child. As far as OHCHR is aware, the Israeli military authorities did not investigate the incident. The High Commissioner has previously expressed concern over the dual role of the Military Advocate General of Israel in providing legal advice before and during operational activity, while investigating operational activity afterwards.[38]

20. On 25 November 2020, Israeli security forces shot and killed 37-year-old Nour Shqair near Az-Zayyem checkpoint, east of Jerusalem. According to OHCHR monitoring, Shqair had accelerated his car and allegedly hit a border police officer, after Israeli security forces at the checkpoint had challenged his identity documents. As Shqair stepped out of the car at about 300 metres' distance, raising his hands, the security forces running towards him shot him multiple times from a close distance, despite shouts by one of the officers to stop the shooting. The incident raises concern of unlawful killing. On 5 February 2021, the Department of Internal Police Investigations at the Ministry of Justice notified the family of its decision not to open an investigation, indicating that the shooting was carried out in compliance with protocol, while noting the "real and immediate danger" the victim had been posing.[39]

21. Impunity remains pervasive also in relation to past incidents involving the unnecessary or excessive use of force by Israeli security forces resulting in the killing or injury of Palestinians. According to media reports, in this reporting period, Israeli authorities closed three investigations and one preliminary examination into four cases involving the killing of Palestinians, including one child, without taking any further legal steps.[40] Among these cases is the killing of Zaid Qaisiya on 13 May 2020 in Hebron. Israeli security forces shot Qaisiya, aged 17 years, in the head with live ammunition as he stood on the rooftop of a four-story building located 200 to 300 metres away from an Israeli security forces arrest operation and, according to multiple eyewitnesses, was not involved in any confrontation.[41] The investigation was reportedly closed on the grounds that it was not possible to determine how the child was killed and whether he had been hit by Israeli security forces fire, despite there being no indication of crossfire on the location at the moment of the incident. For the same reason, Israeli authorities authorized the closing of the investigation into the shooting with live ammunition in the head of 9-year-old Abd el-Shatawi in July 2019 in Kafr Qaddum. This incident, monitored by OHCHR, raises serious concerns of the possible unnecessary use of force by Israeli security forces resulting in the severe and life-changing injury of a child, who currently remains in a vegetative state in an Israeli hospital.

22. Regarding Gaza, the continuing lack of progress in the investigations relating to the widespread use of lethal force by Israeli security forces against Palestinians in the context of the Great March of Return demonstrations between 30 March 2018 and December 2019 remains of equal concern.[42] OHCHR is not aware of any accountability steps taken by the

[36] A/HRC/43/21, paras. 20 and 30; and A/HRC/46/22, para. 11.

[37] See https://www.haaretz.com/israel-news/.premium-cyberbullying-the-shin-bet-s-new-pastime-in-palestine-1.10417834 and https://www.haaretz.com/israel-news/.premium-the-premeditated-killing-of-amjad-1.10443238.

[38] A/HRC/40/43, para. 9.

[39] See https://news.walla.co.il/item/3416216 (in Hebrew).

[40] The other cases closed refer to the killing of 21-year-old Omar Badawi on 11 November 2019, 19-year-old Bader Nafla on 7 February 2020 and 60-year-old Fehmiye Hrb on 1 May 2021. See https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-what-the-israeli-army-does-to-soldiers-who-shoot-palestinians-1.10398852.

[41] A/75/336, para. 8.

[42] A/HRC/46/22, para. 12.

Israeli authorities during the reporting period, with the last update provided by the Ministry of Justice of Israel in relation to progress in the investigations and prosecutions dated July 2019.[43] The Al Mezan Center for Human Rights indicated that, during the reporting period, it had received communications from the Military Advocate General of Israel that no criminal investigation would be pursued in relation to seven complaints previously submitted regarding the killing of Palestinians during the Great March of Return protests. Among those is the case of 18-year-old Abed el-Nabi, whom Israeli security forces killed on 30 March 2018 in Abu Safya, North Gaza. El-Nabi was shot from the back with live ammunition to his head while he was approximately 400 metres from the fence and running away from it, in circumstances in which he did not seem to pose any imminent threat to the security forces.[44]

23. According to international human rights law, the use of potentially lethal force for law enforcement purposes should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat.[45] States must take all measures necessary to prevent the arbitrary deprivation of life by their law enforcement officials, including soldiers charged with law enforcement missions.[46] The unjustified and illegal recourse to firearms by law enforcement officials against a protected person, resulting in the person's death, may constitute a war crime when occurring in the context of a military occupation.[47]

Civil remedies

24. The legislative provision introduced in 2014 excluding the population of Gaza (as residents of an "enemy territory") from the scope of Israeli civil liability legislation remained in force.[48] In addition, on 19 May 2021, the Beersheba District Court rejected a compensation claim filed in 2005, based on the Civil Claims (State Liability) Law, by the family of Iman al-Hams, a 14-year-old girl who was killed in 2004 by Israeli security forces. Member of the security services had fired multiple live ammunition rounds from close range while she was already lying on the ground injured, after having been shot[49] because she had entered into a security zone near Rafah. Based on the wording of the law as it stood in 2005, the Court ruled that, despite the military forces having acted negligently and in violation of the rules of engagement and international humanitarian law, their conduct had constituted "combat activity", and therefore exempted the State from civil liability.[50]

Palestinian authorities

25. For Palestinians living under the effective control of the Palestinian Authority and the de facto authorities in Gaza, the reporting period was also marked by increased violence and conduct by Palestinian security forces, which may amount to violations of right to life and to physical integrity.[51] OHCHR is aware of two Palestinians killed by Palestinian security forces and two by the security forces of the de facto authorities in Gaza during this period. The Palestinian security forces justice commission reported having opened six investigations between 1 January and 31 October 2021 into the use of force by Palestinian security forces that had resulted in killing. Regardless, questions remain whether the actions carried out by Palestinian authorities in the West Bank and Gaza to investigate and prosecute the perpetrators of those violations were sufficient to meet international standards.

[43] A/HRC/43/21, para. 24. According to Israeli Defense Forces figures provided to B'Tselem in April 2021, of the 233 killings of Palestinians in Gaza referred to the General Staff Mechanism for Fact-Finding Assessments, 35 investigations had been opened by the Military Advocate General of Israel, and one conviction had been obtained. See https://www.btselem.org/sites/default/files/publications/202112_unwilling_and_unable_eng.pdf.

[44] A/HRC/40/39, para. 24.

[45] Human Rights Committee, general comment No. 36 (2018), para. 12.

[46] Ibid., para. 17.

[47] A/HRC/29/CRP.4, para. 546.

[48] A/71/364, para. 57; A/HRC/40/43, paras. 25–26; and A/HRC/43/21, para. 36.

[49] See https://www.shovrimshtika.org/testimonies/database/79471 (in Hebrew).

[50] Beersheba District Court, *Al-Hams v. State of Israel*, Case No. 5709-12-12, 19 May 2021.

[51] See A/HRC/49/83.

26. On 24 June, Palestinian Authority opponent and Palestinian Legislative Council candidate Nizar Banat, who had been repeatedly arrested by Palestinian security forces, was killed after having been brutally beaten during the course of an arrest operation in the H2 area of Hebron. On the same day, the Palestinian Prime Minister announced the creation of an "investigative committee" chaired by the Palestinian Minister of Justice, which transmitted its findings to the military prosecutor on 30 June.[52] The military prosecutor indicted the 14 Palestinian security forces officers who had carried out the raid on 5 September with "intentional beating and torture resulting in death", "abuse of authority" and "disobedience to orders and instructions". The trial has been ongoing at the Ramallah Military Court since 14 September. The Court has heard testimony of high-ranking security officials who had authorized and supervised the operation (but who had not been indicted). OHCHR documented threats against and harassment, arrests and ill-treatment of Nizar Banat's family members, including an eyewitness, and some had their houses violently raided during this period. On 15 August, a court in Ramallah convicted, in absentia, his brother, Ghassan Banat, and sentenced him to two years of imprisonment on corruption-related charges. According to Ghassan Banat and his lawyer, the former had not been informed of any charges against him, or summoned for questioning or any hearing. While the sentence had not been executed as at the end of the reporting period, the conviction raises serious concerns of a possible reprisal given that Ghassan Banat had publicly demanded accountability, including at the international level, for the killing of his brother. On 19 September, Palestinian security forces physically assaulted and arrested Hussein Banat, Nizar Banat's cousin and an eyewitness to the killing. According to Palestinian security forces, Hussein Banat had been arrested on suspicion of a shooting at a house of a Palestinian security forces member in Dura, near Hebron, on 16 September. Hussein Banat reported having been subjected to ill-treatment while in detention, and was released on bail on 7 October. On 28 October, Palestinian security forces arrested and detained Arafat Banat, the brother of Hussein Banat, reportedly for his involvement in the same incident.

27. In Gaza, there were a number of incidents where force used by security forces of the de facto authorities in Gaza in the context of law enforcement operations appeared excessive.[53] On 23 July, a 27-year-old man was killed after having been shot in the abdomen with live ammunition by security forces of the de facto authorities in Gaza after the car in which he had been traveling drove away from a checkpoint east of Gaza City, reportedly without authorization. The de facto authorities decided not to open a criminal investigation into the incident. While the de facto authorities in Gaza continue to indicate that they receive and investigate complaints relating to incidents of the possible excessive use of force by the authorities' security forces, the outcomes of such investigations have not been made public, and OHCHR is not aware of any further steps taken to investigate and prosecute those allegedly involved.

28. Impunity for gender-related killings remains pervasive in both the West Bank and Gaza.[54] In the West Bank, more than two years after the murder of 21-year-old Israa Ghrayeb,[55] the trial at the Bethlehem District Court has yet to be concluded. During the reporting period, the three accused were released on bail pending the conclusion of the trial. During the reporting period, OHCHR recorded 26 cases of possible gender-related killings (16 women and 10 girls) – 15 in the West Bank and 11 in Gaza. Of those, 12 were reported as killings and 14 as either death by suicide, accidental death or death in unclarified circumstances. OHCHR is aware that eight indictments relating to these cases have been issued – five in the West Bank and three in Gaza.

29. The High Commissioner reiterates the call upon the State of Palestine to ensure that all incidents involving possible violations of human rights are promptly, impartially, independently and thoroughly investigated in line with international standards and that those responsible are held accountable.[56]

[52] See https://english.wafa.ps/Pages/Details/125158.
[53] See A/HRC/49/83.
[54] Ibid.
[55] A/HRC/43/70, para. 34.
[56] A/HRC/46/22, para. 25.

C. Accountability for violations relating to torture and ill-treatment

Israel

30. OHCHR reiterates persistent concerns that scant accountability has been afforded by relevant Israeli authorities in investigating allegations of ill-treatment, possibly amounting to torture, of Palestinians in Israeli detention facilities.[57] According to the Public Committee against Torture in Israel, out of more than 1,300 torture complaints submitted on behalf of Palestinians to the Ministry of Justice of Israel since 2001, only two criminal investigations were opened. Both were closed during the reporting period, resulting in no further action. On 24 January 2021, the Attorney General of Israel announced the closing of the criminal investigation into the alleged torture by the Israeli Security Agency interrogators of Samer al-A'rbeed, who is currently on trial for his alleged role in the Ein Bubin attack in 2019. Mr. Al-A'rbeed was hospitalized two days after his arrest with life-threatening injuries due to allegedly having been subjected to severe ill-treatment and torture while in Israeli detention.[58] According to his statement, "the Attorney-General decided to close the case due to a lack of an evidentiary basis of the commission of an offense".[59] Israeli authorities have refused to disclose the investigation material, including regarding the "special interrogation methods" used, that was the basis of the decision. The decision not only casts doubts on the effectiveness of the Israeli judicial system in investigating and sanctioning torture in accordance with international norms and standards, but also raises serious concerns as to the validation by the Attorney General of the methods of interrogation used by the Israel Security Agency in disregard for the absolute and non-derogable prohibition of torture under international human rights law. In April 2021 media reports indicated that the Attorney General of Israel decided to close the investigation into two forced genital searches of a Palestinian woman detainee in 2015, which could have amounted to sexual assault.[60] The investigation was closed reportedly due to the lack of an evidentiary basis, despite the fact that the Israeli security forces officers involved admitted that the search had taken place.

Palestinian authorities

31. With regard to allegations of ill-treatment, in some cases possibly amounting to torture, by the Palestinian security forces in the West Bank, OHCHR continued to document extremely concerning incidents during the reporting period.[61] The Independent Commission for Human Rights received 141 complaints, including 8 from women, of ill-treatment or torture. The Palestinian security forces justice commission reported having opened investigations into five cases of alleged ill-treatment or torture by Palestinian security forces between 1 January and 31 October 2021. Palestinian security forces detained a 45-year-old Palestinian man between September and December 2020 in Jericho and interrogated him over accusations of forgery. He reported having been subjected to severe beatings, stress positions and repeated physical assaults during interrogations. While the prosecutor had ordered a medical check-up after the victim's lawyer had raised concerns over his ill-treatment, Palestinian security forces did not comply. After having been forced to confess, the man was released on bail on 5 December 2020. Despite the constructive dialogue that OHCHR had with a number of concerned institutions of the Palestinian Authority, the response by Palestinian security forces and the action taken by competent judicial authorities in this and a number of other similar cases documented by OHCHR raise serious concerns with regard to the adequacy of the steps taken to investigate and prosecute individuals responsible for these crimes, as well as that of internal disciplinary mechanisms of Palestinian security forces. OHCHR also continued to receive credible allegations that victims of alleged ill-treatment had been subjected to intimidation by Palestinian security forces and pressured into not filing complaints against them, to withdraw complaints already made or to submit to

[57] Ibid., para. 20.

[58] A/75/336, para. 15.

[59] See https://www.haaretz.com/israel-news/.premium-case-closed-against-shin-bet-agents-accused-of-assaulting-palestinian-terror-suspect-1.9477634.

[60] See https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-it-started-with-palestinian-s-arrest-it-ended-with-israeli-officers-probed-for-rape-1.9737766.

[61] See A/HRC/49/83.

informal reconciliation mechanisms. Despite the public commitment by the Palestinian Authority to follow up on torture and ill-treatment complaints and to establish a national preventive mechanism further to its obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the establishment of the mechanism remained pending at the end of the reporting period after many years.[62]

32. OHCHR monitoring also continues to point to widespread allegations of ill-treatment, in some cases possibly amounting to torture, in detention facilities in Gaza.[63] The Independent Commission for Human Rights received 164 complaints, including 14 from women, of ill-treatment or torture during the reporting period. On 21 September 2021, security forces of the de facto authorities in Gaza arrested a 34-year-old man in Gaza City. He was first transferred to an unknown military site and then to the premises of the internal security agency of the de facto authorities in Gaza, where he was repeatedly interrogated on accusations of collaboration with Israel, repeatedly beaten, subjected to sleep deprivation and prevented from contacting his lawyer for more than a month. No information has been made public in relation to any steps taken to address this or other similar ill-treatment allegations.

D. International mechanisms

33. On 5 February 2021, the Pre-Trial Chamber of the International Criminal Court, which had been previously seized by the Prosecutor of the Court to rule on the scope of the Court's territorial jurisdiction in relation to the situation in Palestine,[64] decided by majority that the Court possessed territorial jurisdiction, extending to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.[65] On 3 March 2021, the Prosecutor of the Court announced the initiation of an investigation into the situation in Palestine,[66] with respect to crimes within the jurisdiction of the Court that are alleged to have been committed since 13 June 2014.

34. On 27 May 2021, the Human Rights Council convened a special session to address the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem, at which it decided to establish an ongoing, independent, international commission of inquiry, mandated to investigate all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.[67]

III. Restrictions and attacks on individuals and organizations promoting human rights and accountability

Israel

35. The long-standing series of actions by Israel to silence human rights defenders and civil society organizations speaking up for human rights of Palestinians and shrink the space in which they operate escalated during the reporting period.

36. In July 2021, two organizations learned that the Israeli military commander for the West Bank had earlier declared them as "unlawful associations".[68] On 19 October 2021, the

[62] A/HRC/46/22, para. 22.
[63] See A/HRC/49/83.
[64] A/HRC/46/22, para. 29.
[65] See https://www.icc-cpi.int/Pages/item.aspx?name=pr1566.
[66] See https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine.
[67] See Human Rights Council resolution S-30/1.
[68] The Union of Agricultural Work Committees and the Health Work Committees had been declared as "unlawful" in January 2020; however, both organizations reported having been unaware of the declarations until July 2021. On 3 November 2021, the Israeli military commander for the West Bank

Minister of Defense designated six Palestinian human rights and humanitarian organizations, namely the Addameer Prisoner Support and Human Rights Association, Al-Haq, the Bisan Center for Research and Development, Defense for Children International-Palestine, the Union of Agricultural Work Committees and the Union of Palestinian Women's Committees, as "terrorist organizations" under the Counter-Terrorism Law of 2016. The organizations have worked for decades to promote human rights and provide critical humanitarian assistance in the Occupied Palestinian Territory, and are key partners of the United Nations. The designation decisions were based on vague and unsubstantiated reasons. Some reasonings refer to entirely peaceful and legitimate human rights activities.[69] The decisions, which were amended after some weeks, state that the organizations are inseparable arms of the Popular Front for the Liberation of Palestine and that they obtained financial resources, which reached the Popular Front for the Liberation of Palestine terror activity. As of the end of the reporting period, OHCHR was not aware of any credible evidence to support these accusations. Israeli security forces also arrested at least 16 human rights defenders, including several staff members of the organizations declared as "unlawful" or "terrorist".[70]

37. The evidence reportedly presented by Israeli officials to Member States and international organizations that are donors to the six organizations, and subsequently made public in the media,[71] appears to include vague allegations against the six designated organizations, provided during interrogations of two former employees of the Health Work Committees, who are currently on trial in Israeli military courts.[72] So far, no evidence proving either the diversion of funds or the alleged link between the Popular Front for the Liberation of Palestine and any of these organizations has been presented in ongoing trials. According to the lawyer of one of the former employees, whose testimony reportedly represents the main source in the presented evidence,[73] his client was subjected to sleep deprivation, lengthy harsh interrogation sessions, stress positions, and made to believe that his family members had been arrested. He was largely kept in incommunicado detention during the 56 days of his interrogation, and his confessions were provided without the presence of a lawyer.

38. The Counter-Terrorism Law has a broad and vague definition of "terrorist acts" and "terrorist organizations", which risks unjustifiable restrictions on human rights.[74] The designation of these organizations as "terrorist" may have far-reaching consequences. The Counter-Terrorism Law provides for lengthy prison terms for membership or any type of support or cooperation with such organizations, closures of their offices, the prohibition of activities and the confiscation of property.[75] Additionally, banks may impose restrictions on donors to the organizations, seriously impacting the ability of these organizations to obtain financial resources.

39. Such organizations and their members can object to the designations; however, the due process guarantees under the Counter-Terrorism Law appear deficient, including a lack of independence of the review process[76] and an extensive possibility of keeping evidence

declared the other five organizations – the Addameer Prisoner Support and Human Rights Association, Al-Haq, the Bisan Center for Research and Development, Defence for Children International-Palestine and the Union of Palestinian Women's Committees – that had been declared as "terrorist organizations" on 19 October 2021, as "unlawful associations" under the Defence (Emergency) Regulations of 1945. See article 85 (b) of the Israeli Defence (Emergency) Regulations of 1945 and Military Order No. 101.

69 On file with the Office of the United Nations High Commissioner for Human Rights. The decisions were modified on 19 November 2021 and uploaded to https://nbctf.mod.gov.il/en/Pages/211021EN.aspx.

70 See A/HRC/49/83.

71 See https://theintercept.com/2021/11/04/secret-israel-dossier-palestinian-rights-terrorist/.

72 See A/HRC/49/83.

73 Ibid.

74 Counter-Terrorism Law, sect. 2. See also Security Council resolution 1566 (2004) and A/HRC/16/51.

75 Counter-Terrorism Law, sects. 20–24, 56 and 69–70, available at https://nbctf.mod.gov.il/en/legislation/Pages/default.aspx (in Hebrew).

76 Counter-Terrorism Law, sects. 7 (b) and 19. The listed entity should have a right to a court review of the decision from an application for delisting or non-implementation of sanctions or an independent competent authority (recommendation 6 of the Financial Action Task Force). See also A/HRC/16/51, para. 35.

secret,[77] and a person prosecuted under the law cannot challenge the underlying designation itself in criminal proceedings.[78] Under the Defense (Emergency) Regulations, the broad and vague definition of "unlawful associations" and the wide discretion of the Israeli military commander for the West Bank to declare associations as unlawful with limited opportunity for legal and independent review, as well as the inability to challenge the designation and declaration orders prior to their issuance, also raise serious concerns over undue restrictions on freedoms of expression, association and public participation and over the violation of affected individuals' due process and fair trial rights.

40. The designations and declarations by Israeli authorities of human rights and humanitarian organizations as "terrorist" and "unlawful" raise serious concerns that counter-terrorism legislation and military orders are being used to halt, restrict or criminalize legitimate human rights and humanitarian work. These concerns are compounded by the lack of compelling evidence to support the allegations against the organizations. These measures, adding to a series of actions undermining civil society organizations working for the human rights of Palestinians, constitute an attack on human rights defenders and seriously inhibit freedoms of association, opinion and expression and the right to public participation.

41. Human rights defenders who previously faced arrest or physical violence from Israeli security forces continued to face challenges in accessing remedies and accountability for possible violations of human rights. On 28 October 2021, the Israeli Ombudsman reportedly indicated that the investigation into the beatings and physical assaults by Israeli police of Mohammad Abu al-Hummos, a human rights defender with disabilities from the Isawiyah neighbourhood in East Jerusalem, entailed "serious flaws", in relation to the police misconduct unit of the Ministry of Justice having delayed investigating the complaints for nearly two years, having failed to question witnesses and having closed the case on the grounds of insufficient evidence.[79] Mr. Abu al-Hummos had sustained injuries and required hospitalization from having been physically assaulted by Israeli police officers on 9 November 2019 while he was filming Israeli security forces conduct, while Israeli police had also arrested and physically assaulted Mr. Abu al-Hummos's nephew. Both had filed a complaint with the Ministry of Justice of Israel against the police. As the Ministry's police misconduct unit had closed the investigation without further action, Mr. Abu al-Hummos and his nephew resorted to the Israeli Ombudsman of the State Representatives in the Courts.[80]

Palestinian authorities

42. Palestinian human rights defenders continued to come under pressure, including through arrest, prosecution and prolonged judicial processes, from several duty bearers at the same time.[81] On 7 April 2021, the Palestinian Authority's Hebron Magistrates Court acquitted human rights defender Issa Amro,[82] who had already been convicted to a three-month suspended sentence by an Israeli military court on 22 March for his activities with the Youth Against Settlements organization,[83] of the charges of inciting sectarian strife and publishing material that endangers the integrity of the public order of the State under the Cybercrimes Law after nearly four years of legal proceedings. The charges, issued on 10 September 2017, were based on a Facebook post by Mr. Amro critical of the Palestinian Authority. In the post he had called for the release of a detained journalist. Considering the significant delay between the charge and the judgment, there is a well-founded concern that the State of Palestine failed to uphold Mr. Amro's right to be tried without undue delay. Mr. Amro's cases under both duty bearers raise concerns over arbitrary detention, judicial

[77] Counter-Terrorism Law, sects. 8–9. The principle of equality applies also to civil proceedings and demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party. See Human Rights Committee, general comment No. 32 (2007), para. 13.

[78] Counter-Terrorism Law, sect. 19. On the problematic character of these provisions, see Human Rights Committee, general comment No. 32 (2007), para. 30.

[79] See https://www.haaretz.com/israel-news/.premium-watchdog-cites-serious-flaws-in-probe-into-israeli-police-beating-of-palestinians-1.10335012.

[80] See https://www.gov.il/en/departments/about/about_natam.

[81] See A/HRC/49/83. See also A/HRC/40/43, paras. 38 and 41.

[82] A/HRC/37/42, paras. 50–51.

[83] A/76/333, para. 19.

harassment and the intentional misuse of the judicial system to disrupt and deter the work of a human rights defender.

43. The Palestinian Authority also took actions that significantly curtailed civic space and demands for accountability. The President of the State of Palestine issued a series of decree laws concerning the impact on the freedom of association, peaceful assembly and expression.[84] On 28 February 2021, the President issued an amendment to the law concerning charitable associations and civil society organizations.[85] The amendment requires every non-governmental organization to submit an annual work plan and budget consistent with the plan of the competent ministry, includes limits on these organizations' salaries and expenses, and provides the Council of Ministers with the authority to issue regulations on fundraising by the non-governmental organizations.[86] The right to freedom of association includes the ability to seek, receive and use resources, while non-governmental organizations should be free to determine their statutes, structure and activities without State interference.[87] Any restriction on freedom of association must be necessary in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others and proportionate to the interest it seeks to protect.[88] The sweeping restrictions introduced in the decree law do not appear to serve any protected interest and carry serious consequences for the ability of the organizations to carry out their work freely. Despite pledges by the Palestinian Authority to freeze its implementation,[89] the decree remained in force as at the end of the reporting period.

44. Between late June and late August 2021, the killing of Nizar Banat[90] sparked protests in major cities in the West Bank demanding accountability for the killing. On several occasions documented by OHCHR, numerous demonstrators were subjected to physical violence by Palestinian security forces and armed individuals in civilian clothes seemingly acting in coordination with Palestinian security forces, raising serious human rights concerns.[91] Several women and men demonstrators, including political opposition candidates, journalists, human rights defenders and one OHCHR staff member who was monitoring the demonstration, were physically assaulted, and some of them were subjected to gender-based violence and harassment.[92] According to OHCHR monitoring, 75 people were arrested by Palestinian security forces, of whom at least 40 faced charges seemingly based on their exercise of freedom of peaceful assembly and expression. Some of them reported ill-treatment while in custody. The Addameer Prisoner Support and Human Rights Association submitted 11 complaints on behalf of the affected individuals, including seven women, to the Palestinian Military Prosecution and the Public Prosecution. The Association reported having only been informed about investigative steps in one case by the end of the reporting period.[93] The Palestinian security forces justice commission indicated that seven investigations had been launched into such incidents. As of the end of the reporting period, no other information had been made available regarding accountability steps taken in relation to other incidents of the alleged excessive use of force during such demonstrations.

[84] See A/HRC/49/83.

[85] Palestinian presidential decree law No. 7 of 2021, published in the official Gazette on 2 March 2021.

[86] Ibid., arts. 2–4.

[87] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 13. See also A/HRC/23/39, paras. 8 and 16.

[88] International Covenant on Civil and Political Rights, art. 22.

[89] See https://www.wattan.net/ar/news/334982.html (in Arabic).

[90] See paragraph 26 above.

[91] See https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27247&LangID=E.

[92] See A/HRC/49/83.

[93] The case refers to a member of the Palestinian Presidential Guard who was arrested on 8 September 2021 and indicted for assault and theft committed while acting in civilian clothes against a demonstrator during a protest on 27 June. See https://www.addameer.org/ar/news/4566?fbclid=IwAR1Ke3A5W5KfruaJ2mLpkVEql38slwUU4eR4MN2y18ngm41cC6I--dxfgTY.

IV. Conclusions and recommendations

45. **Despite intensified violence and recurring violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, impunity remained widespread and pervasive. There are serious concerns that steps taken thus far by Israel and the Palestinian authorities to investigate alleged violations of international humanitarian law during the escalation of hostilities in May 2021 have not been sufficient. Impunity also persisted in relation to alleged violations, including possible war crimes, by all parties during previous escalations in 2008/09, 2012 and 2014. There was an almost total failure to ensure accountability for numerous allegations of the excessive use of force by Israeli forces in the context of law enforcement operations in the Occupied Palestinian Territory, resulting in the killing and injury of Palestinians. With regard to the Palestinian authorities, few steps were documented in the investigation and prosecution of members of Palestinian security forces or of the security forces in Gaza responsible for the alleged excessive use of force and other human rights violations committed against Palestinians.**

46. **In this climate of impunity, increased restrictions on the freedom of expression, association and assembly of those who defend human rights and call for accountability are a cause for particular concern. Counter-terrorism legislation must not be applied to curtail human rights and humanitarian work, to suppress or deny the right to freedom of association, or to quash political dissent and limit the peaceful activities of civil society.**

47. **Recalling the follow-up measures described in the comprehensive review of the status of recommendations addressed to all parties since 2009,** [94] **the High Commissioner:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory; urges it to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, including into allegations of international crimes; and also calls upon Israel to ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth;**

(b) **Calls upon Israel to revoke the designations against Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations, absent sufficient evidentiary basis for them. Israel must also ensure that human rights defenders are not detained, charged and convicted in relation to their legitimate work to protect and promote human rights and accountability;**

(c) **Calls upon Israel to resume its cooperation with OHCHR and make full use of OHCHR technical assistance;**

(d) **Urges the State of Palestine to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and calls upon the State of Palestine to ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth;**

(e) **Recommends that all parties ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and that they ensure accountability for grave violations;**

(f) **Calls upon all States to take all measures necessary to effectively ensure respect for the Geneva Conventions of 12 August 1949 by all parties to the conflict, taking into account the means reasonably available to them and their level of influence**

[94] A/HRC/35/19, paras. 63–81.

on the parties, and reminds States, in particular those with close ties to the parties, that they should exert their influence to ensure respect for the law;

(g) **Reiterates the calls upon all States and relevant United Nations bodies to take the measures necessary to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 49/4. It provides an overview of the implementation of the resolution and developments relevant to the human rights situation in the Occupied Palestinian Territory and the obligation to ensure accountability and justice.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 49/4 and covers the period between 1 November 2021 and 31 October 2022. It draws on human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, and information from governmental sources, other United Nations entities and non-governmental organizations (NGOs). The international staff of OHCHR continued to remain outside the Occupied Palestinian Territory during the reporting period due to the failure by Israel to grant entry visas.[1]

2. For over 55 years, the Occupied Palestinian Territory – the West Bank, including East Jerusalem, and Gaza – has remained under belligerent occupation by Israel, affecting all rights of Palestinians, including the right to self-determination. The actions of Israel as the occupying Power also affect the protection and fulfilment of rights by the other duty bearers: the State of Palestine and the de facto authorities in Gaza. The present report covers alleged violations of international human rights law and international humanitarian law by all duty bearers in the Occupied Palestinian Territory, and accountability for them. It should be read in conjunction with recent relevant reports of the Secretary-General and the United Nations High Commissioner for Human Rights.[2]

3. On 25 November 2022, OHCHR requested Israel and the State of Palestine to provide information on any accountability measures adopted during the reporting period. OHCHR also requested other States Members of the United Nations to provide information on the steps taken by them as third States to promote compliance with international law. As at 28 December, only Qatar had responded.

4. The human rights situation in the Occupied Palestinian Territory continued to deteriorate during the reporting period, particularly in the northern West Bank. There was a sharp increase in the number of Palestinians killed in the West Bank, as well as Israeli fatalities. During the reporting period, at least 161 Palestinians were killed and 10,298 were injured in the Occupied Palestinian Territory by Israeli security forces.[3] This includes 30 killed and 383 injured during the escalation of hostilities in Gaza in August 2022, and 131 killed and 9,904 injured in the West Bank, including East Jerusalem.[4] The majority of the casualties were in the two northern Governorates of Jenin and Nablus. Settler violence continued unabated – with 2 Palestinian men killed and 248 injured by settlers – while 2 Palestinian boys were killed either by Israeli security forces or settlers, who both used firearms simultaneously. Twenty Israelis were killed – the majority by individual Palestinian attackers in Israel – and at least 112 injured.[5]

5. In the West Bank, including East Jerusalem, serious concerns persist that Israel continues to violate its international humanitarian law and international human rights law obligations. Many incidents raised serious concerns that the force used was unlawful, often leading to arbitrary deprivation of life, including extrajudicial execution. OHCHR monitoring of incidents during the escalation of hostilities in Gaza between Israel and some Palestinian armed groups indicated insufficient respect for international humanitarian law by all parties to the conflict. The prevailing climate of impunity by all duty bearers, noted previously by the Secretary-General and the High Commissioner,[6] persisted.

[1] https://www.ohchr.org/en/press-releases/2022/08/bachelet-deplores-israels-failure-grant-visas-un-human-rights-staff-occupied.

[2] See A/77/493, A/76/333 and A/HRC/52/76.

[3] Additionally, four West Bank Palestinians were killed by Israeli security forces in Israel.

[4] Also, 11 children were injured in Gaza, outside of hostilities.

[5] Information from the Office for the Coordination of Humanitarian Affairs, based on Israeli sources.

[6] A/76/333, paras. 16 and 30; A/HRC/46/22, para. 11; and A/HRC/43/21, para. 45.

II. Human rights situation in the Occupied Palestinian Territory

A. Civilian casualties and damage to civilian objects during conduct of hostilities

6. Civilians faced the brunt of the escalation of hostilities in Gaza from 5 to 7 August 2022, which resulted in the death of at least 50 Palestinians – 30 killed by Israeli security forces and 16 by Palestinian armed groups; the perpetrator is unclear for the deaths of four persons killed in one incident. OHCHR monitoring indicates that among those killed were 36 civilians (15 men, 12 boys, 5 girls and 4 women), while the status of 6 Palestinians remains undetermined. Of the 383 Palestinians injured (255 men and boys, 128 women and girls), the vast majority were civilians, including 164 children.[7] No Israelis were killed; according to Israeli sources, 34 Israelis were injured.[8]

7. The escalation began with Israeli air strikes against members of the Al-Quds Brigades, the armed wing of the Palestinian Islamic Jihad, allegedly for "the elimination of a concrete threat".[9] On 5 August, a senior Al-Quds commander was killed by Israeli air strikes at an apartment block in Gaza City. While no civilians were killed, over 50 families were left homeless due to building damage. Another senior commander was killed, along with two other armed-group members, in an Israeli attack in Rafah on 7 August. The air strikes destroyed the targeted three-storey building and seven adjacent buildings and also killed 4 civilians, injured 58 more and damaged 117 additional buildings, raising questions about the respect for the prohibition of indiscriminate attacks and the principles of proportionality and precautions in attack. Similar questions of precautions also arise with respect to the killing of a 5-year-old girl, along with another civilian, in an air strike that killed one armed-group member in Shuja'iyah on 5 August.

8. On 7 August, an Israeli air strike on a cemetery in Jabalya killed five boys, including a 4-year-old, and injured four other civilians. According to eyewitnesses, four of the boys had gathered around their grandfather's tomb with a friend. While the Israeli Defense Forces initially rejected responsibility, senior officials reportedly acknowledged responsibility.[10] This is consistent with OHCHR findings.[11] There was no apparent military objective nearby, raising concerns that this could potentially amount to a direct attack on civilians. Under international law, intentionally directing an attack against civilians not taking direct part in hostilities constitutes a war crime.[12]

9. Israeli strikes also hit prima facie civilian objects, causing civilian casualties and damage to civilian objects. According to the Office for the Coordination of Humanitarian Affairs, 32 houses were completely destroyed, 126 severely damaged and rendered inhabitable, and 1,445 partially damaged. Approximately 600 Palestinians were rendered homeless.

10. Palestinian armed groups, mainly Al-Quds Brigades, fired hundreds of rockets and mortars towards Israel. Most were intercepted, although some caused injuries and material damage in Israel. Many of the rockets fell short, killing 16 Palestinians (6 men, 6 boys, 3 girls and 1 woman) and injuring others in Gaza. On 6 August, seven civilians, including four boys, were killed after an explosion in a crowded area in Jabalya camp. According to the Gaza Ministry of Health, 37 others were injured, including 24 children. Israeli security forces denied responsibility for the attack.[13] OHCHR monitoring indicates that the cause of the explosion was a rocket fired by Palestinian armed groups that fell short of the intended target.

[7] Information from the Office for the Coordination of Humanitarian Affairs.

[8] Ibid.

[9] https://www.ynetnews.com/article/h1mtes5p5.

[10] https://www.haaretz.com/israel-news/2022-08-16/ty-article/.highlight/after-initial-denial-israeli-officials-admit-5-palestinian-minors-killed-in-gaza-strike/00000182-a2b6-d825-a5a7-aaf6d3320000.

[11] See also https://www.amnesty.org/en/documents/mde15/6079/2022/en/, p. 13.

[12] Rome Statute of the International Criminal Court, art. 8 (2) (b) (i); and https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156.

[13] https://www.ynetnews.com/article/syjgor3a5.

In another instance, a Palestinian armed group fired a mortar shell that killed a Palestinian woman and a girl in Beit Hanun on 6 August.

11. The rockets fired by Palestinian armed groups are inherently indiscriminate.[14] Their use constitutes a clear violation of the prohibition of indiscriminate attacks under international humanitarian law and may amount to a war crime.[15] The launching of mortars in indiscriminate attacks raises similar concerns.[16]

B. Collective punishment

12. Israeli practices that may amount to collective punishment – imposing punitive measures on individuals and communities for offences they did not commit – continued.[17] Collective punishment is expressly prohibited by international humanitarian law[18] and is incompatible with several provisions of international human rights law.[19]

13. The land, sea and air blockade and the closure of Gaza, which constitute collective punishment,[20] entered its sixteenth year, with extremely detrimental impacts on freedom of movement, and the enjoyment of economic, social and cultural rights, such as the rights to an adequate standard of living, health, education, work and family life.[21] One significant consequence of the blockade is severe restrictions on access to specialized medical care not available in Gaza. Affected patients require an Israeli exit permit to receive critical and sometimes life-saving care. Such permits are often delayed or denied. Between January and October 2022, OHCHR recorded the death of 11 patients (5 men, 4 boys, 1 woman and 1 girl) who died while waiting for exit permits to receive potentially life-saving care.[22]

14. Closures also repeatedly took place in the context of Israeli security forces operations in the West Bank. Some may amount to collective punishment, as they penalized entire communities without regard to individual responsibility. For example, following the killing of an Israeli soldier, Israeli security forces stated it had "implemented blockades and inspections around the city of Nablus and the nearby villages due to the recent rise in terrorism within the city".[23] Israeli security forces controlled entry and exit into the majority of the city with permanent checkpoints, closed metal gates, and earth mounds.[24] These closures from 11 October to 3 November affected almost 200,000 Palestinians, including their access to education and health care. Children and teachers struggled to reach schools, and there was a 20 per cent drop in patients arriving at primary health-care facilities in Nablus. The closures also had a dramatic impact on the economy.[25] Disproportionate

[14] https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIGaza/A_HRC_CRP_4.docx, para. 97.

[15] Rome Statute, art. 8 (2) (b) and (e).

[16] https://ihl-databases.icrc.org/en/customary-ihl/v1/rule11.

[17] A/75/336, para. 23.

[18] https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907, regulations: art. 50; https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949, art. 33 and commentary; and https://ihl-databases.icrc.org/en/customary-ihl/v1/rule103.

[19] International Covenant on Civil and Political Rights, arts. 12 and 14; and International Covenant on Economic, Social and Cultural Rights, art. 11.

[20] A/HRC/46/63, para. 7; A/HRC/37/38, para. 4; and A/HRC/34/36, para. 36.

[21] See A/73/420.

[22] The numbers are likely underreported, as such deaths are often unknown unless families approach organizations.

[23] https://www.nytimes.com/2022/10/26/world/middleeast/israel-palestinians-insurgency-blockade-nablus-jenin.html.

[24] https://static1.squarespace.com/static/54231cc6e4b0d46e9dc0c8c1/t/635ed5454fd8302e389fa2be/1667159365226/20221025+Nablus+interagency+visit+report+Final+.pdf.

[25] https://www.haaretz.com/israel-news/2022-10-27/ty-article-magazine/.premium/nablus-residents-putting-the-city-under-economic-siege-will-not-bring-peace/00000184-1531-d4e5-a3e6-f77dc8210000.

restrictions are inconsistent with the obligations of Israel, as the occupying Power, to ensure that Palestinians enjoy the rights to freedom of movement, health and education.

15. Israeli authorities continued punitive demolitions of the family homes of alleged Palestinian attackers as collective punishment . During the reporting period, Israeli security forces punitively demolished 11 residential structures in the West Bank, including East Jerusalem, forcibly evicting 71 Palestinians (40 male and 31 female, including 29 children); 59 others were also affected.[26] Punitive home demolitions violate international human rights law,[27] and are prohibited by international humanitarian law.[28] They disproportionally affect Palestinian women and girls, with severe impacts on their physical and psychological well-being.[29] Extensive destruction and appropriation of property in occupied territory, not justified by military necessity and carried out unlawfully and wantonly, is a grave breach of article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and thus a war crime.

16. Israel continued withholding bodies of Palestinians killed by Israeli security forces. During the reporting period, Israeli authorities withheld 30 bodies, including those of 3 boys and 1 woman. As at 31 October, a total of 114 bodies were being held, including of at least 12 boys and 2 women.[30] There were no developments regarding two Israeli civilians and the bodies of two Israeli soldiers being held in Gaza.[31] The Human Rights Committee has noted that withholding bodies of the deceased and denying the right of families to a burial may amount to torture and ill-treatment.[32] Withholding of bodies is also inconsistent with the obligations of Israel as an occupying Power.[33]

C. Unlawful killings and injuries in the context of law enforcement

17. During the reporting period, Israeli security forces killed 131 Palestinians (97 men, 29 boys and 5 women) in the West Bank, including East Jerusalem, mostly by use of firearms. Nearly half (65) were killed in the context of attempted or alleged attacks on Israelis or in armed clashes. Many of the clashes took place in Jenin and Nablus during Israeli raids against armed Palestinians. Heavy troop deployment by Israeli security forces and their use of heavy weaponry in densely populated areas exposed Palestinian residents and bystanders, including children, to serious harm and loss of life. In one arrest raid in Jenin on 13 May, Israeli security forces used the 16-year-old sister of a wanted Palestinian man as a human shield, forcing her to stand in front of an Israeli military vehicle for over two hours during a firefight with armed Palestinians. The use of human shields in law enforcement operations constitutes a violation of the right to life.

18. In another alarming resumption of an unlawful practice, at least one Palestinian was killed in an apparent targeted killing: a blatant violation of international human rights law.[34] On 22 October, a Palestinian man, reported to be a leader of a loose group of armed Palestinians in Nablus, was killed when an explosive device attached to a motorcycle detonated near him in the old city. Although Israel neither confirmed nor denied carrying out the operation, the modus operandi is consistent with previous Israeli extrajudicial

[26] Information from the Office for the Coordination of Humanitarian Affairs.
[27] E.g., International Covenant on Economic, Social and Cultural Rights, art. 11. They may also amount to ill-treatment (CAT/C/ISR/CO/5, para. 41).
[28] Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 53; and https://ihl-databases.icrc.org/en/customary-ihl/v1/rule50.
[29] CEDAW/C/ISR/CO/6, paras. 32–33. See also A/HRC/46/63, para. 10.
[30] Information from the Jerusalem Legal Aid and Human Rights Center.
[31] https://www.timesofisrael.com/hamas-netanyahu-lying-to-israelis-about-talks-to-free-captives/.
[32] CCPR/C/ISR/CO/5, para. 32.
[33] Fourth Geneva Convention, art. 27, and https://ihl-databases.icrc.org/en/customary-ihl/v1/rule114.
[34] International Covenant on Civil and Political Rights, art. 6 (1).

executions.[35] There are also concerns that other members of the same group may also have been targeted.[36]

19. OHCHR monitored several instances of apparent extrajudicial executions, where Israeli security forces used lethal force against attackers when they were wounded or subdued and no longer presenting imminent threat, to "confirm the kill". For example, on 7 March, Israeli security forces killed a 22-year-old Palestinian man at an Al-Aqsa Compound gate in East Jerusalem after he stabbed police officers. According to an eyewitness, one of the injured officers grabbed the knife from the Palestinian man, who was lying on the ground barely conscious after a struggle with one officer in which both rolled down a set of stairs. A second officer shot five or six bullets at him. Soon after, as seen on a video recorded by another eyewitness, the officer fired a single shot at close range at the upper body of the wounded man.

20. Nearly half (65) of the Palestinians were killed in the context of stone-throwing confrontations or otherwise during operations of Israeli security forces (i.e., without exchange of fire). During one such raid in Nablus' old city on 9 August, Israeli security forces shot dead two Palestinians – including a 16-year-old boy – and injured with live ammunition 76 Palestinians, including 15 boys.[37] Both killings and most injuries took place as Israeli security forces in the outer cordon used firearms extensively against Palestinians throwing stones at Israeli security forces vehicles and seeking to enter the old city. Among those killed in such operations was journalist Shireen Abu Akleh.[38] In that instance and in many other killings monitored by OHCHR, Israeli security forces used force unnecessarily or in a disproportionate manner, resulting in unlawful killings, in some cases possibly amounting to extrajudicial executions.

21. On 26 July, Israeli security forces shot a 59-year-old man with severe mental disabilities at Huwwara checkpoint, near Nablus – he succumbed to his wounds three days later. The man was apparently initially shot in the legs by Israeli security forces from a military tower as he approached the checkpoint. According to witnesses, while the injured and unarmed man was limping away from the checkpoint, Israeli security forces arrived in a military jeep and shot him in the upper body several times from close range, as he did not stop as directed.

22. In a series of incidents, unwarranted lethal force was employed against Palestinian workers attempting to cross the wall into Israel. On 8 May, Israeli security forces shot dead a 27-year-old Palestinian worker while he was attempting to cross the wall south of Tulkarm. Israeli security forces publicly stated that the man had been unarmed when shot.[39] A similar incident took place on 19 June near Qalqiliya, where Israeli security forces shot a 53-year-old worker multiple times in the back and killed him, allegedly solely for damaging the separation barrier in an attempt to cross into Israel.[40] There was no claim that the man was armed or otherwise presenting an imminent threat to life or of serious injury. In the reporting period Israeli security forces shot and injured 35 workers crossing into Israel.[41]

23. The above instances of extensive use of firearms, often wholly unwarranted, by Israeli security forces in the Occupied Palestinian Territory raise serious questions as to what extent Israeli security forces rules of engagement, particularly around arrests, comply with international standards on the use of force. International human rights law permits the use of

[35] https://www.timesofisrael.com/alleged-assassination-in-nablus-may-signal-major-israeli-policy-change-in-west-bank/.

[36] https://www.ohchr.org/en/press-briefing-notes/2022/10/unlawful-targeted-killings-west-bank.

[37] Information provided by the Office for the Coordination of Humanitarian Affairs.

[38] https://www.ohchr.org/en/press-briefing-notes/2022/06/killing-journalist-occupied-palestinian-territory.

[39] https://www.timesofisrael.com/palestinian-shot-dead-trying-to-illegally-cross-west-bank-security-barrier/.

[40] https://www.timesofisrael.com/palestinians-say-man-shot-dead-by-israeli-troops-near-qalqilya-security-barrier/.

[41] Information provided by the Office for the Coordination of Humanitarian Affairs.

firearms only when absolutely necessary, in extremely limited circumstances, namely where there is an imminent threat of death or serious injury.[42]

24. Similar concerns also arise with respect to the Israeli security forces approach of using firearms against Palestinian stone throwers, even though they rarely present any imminent threat to Israeli armoured vehicles and well-protected personnel, often at great distance. For example, on 9 August, Israeli security forces killed a 16-year-old boy during stone throwing by Palestinians in Hebron. According to eyewitnesses, an Israeli sniper, lying prone on the street, fired several rounds of live ammunition at stone throwers approximately 70 metres away, hitting the boy in the chest. These testimonies are consistent with photographs and video showing the distances. At least five other Palestinians were injured by live ammunition during the incident, including two teenage boys.

25. Concerns of Israeli unlawful use of force against Palestinian fishing boats along the Gaza coast remain. Israeli security forces reportedly injured at least 23 fishers (all male, including 2 boys), and arrested 65 male fishers, including 7 boys. This is a dramatic increase from the three fishers arrested and six injured during the previous reporting period. OHCHR monitoring indicates that the use of force against the fishers and their detention appears arbitrary, with many incidents taking place within the fishing zone unilaterally declared by Israel. Israeli security forces also confiscated at least 20 boats – only 2 had been returned as at 31 October – directly affecting livelihoods.

26. Israeli security forces' use of lethal force has become a pervasive practice in the Occupied Palestinian Territory, often employed regardless of the specific level of gravity of the potential threat detected and often as a first rather than as a last resort, contrary to international standards.[43] The use of firearms causing the death of persons not posing a threat to life or serious injury constitutes a violation of the right to life. In an occupation, these may also amount to wilful killings, under the Fourth Geneva Convention (art. 147), which is a war crime.[44]

27. Specific instances during the reporting period also raised concerns of unlawful use of force by Palestinian forces. On 4 October, police of the de facto authorities in Gaza killed two men and seriously injured another young man in central Gaza in an alleged anti-drug raid. Although the Gaza Ministry of the Interior claims that there was an exchange of fire, OHCHR monitoring suggests that this was a planned ambush, raising questions of extrajudicial executions. In another instance, on 9 June, the forces of the de facto authorities shot and injured four men during stone-throwing confrontations triggered by a forced eviction in Beit Lahiya. Dozens of others were beaten with batons.

28. In the West Bank, Palestinian security forces shot and injured a 22-year-old Palestinian man near Budrus on 17 July, reportedly after firing at an unlicensed car that turned away from a checkpoint. In another incident on 19 and 20 September, Palestinian security forces carried out a large operation in Nablus, arresting two men reportedly wanted by Israel. Clashes took place with armed Palestinians, during which a 55-year-old bystander was shot dead, apparently by Palestinian security forces. Eight other Palestinians and one Palestinian security forces member were reported to have been shot during the incident, where protesters threw stones and damaged property.

D. Undue restrictions on freedoms of expression and association

29. Civil society space continued to shrink. On 3 February, five human rights and humanitarian organizations submitted a procedural objection to the November 2021 decision of the Israeli military commander of the West Bank declaring them "unlawful",[45] based on

[42] Human Rights Committee, general comment No. 36 (2018), para. 12; and https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement.

[43] https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement.

[44] See also the Rome Statute, art. 8 (2) (a) (i).

[45] A/HRC/49/25, footnote 68.

the lack of due process and evidence. On 17 August, the military commander rejected the objection. Early the next morning, in Ramallah, Israeli security forces broke into and searched the offices of those organizations and another two declared "unlawful" in January 2020.[46] Israeli security forces sealed the offices' entrances with iron plates, confiscated and destroyed equipment and documents, and left copies of military orders to close the offices of the organizations. Between 18 August and 15 September, directors of four of the organizations were summoned by the Israeli Security Agency for interrogation. They all told OHCHR that the Agency officials had threatened them with further consequences, including arrest, if they did not stop working for the organizations. Two also reported Israeli Security Agency intimidation directed at their children. The continued Israeli measures against the seven organizations raise serious concern of flagrant undue interference with the legitimate work of those organizations, undue restrictions on freedoms of expression and association, harassment and threats against human rights defenders, and a chilling effect on broader civil society organizations.

30. The Palestinian Authority continued to introduce regulations raising serious concerns of unduly restricting freedom of association.[47] In September 2022, the Council of Ministers issued a regulation that, among other restrictions, placed a limit of 25 per cent on salary and operating expenses in non-profit companies,[48] identical to a change in the NGO law made in 2021, the implementation of which was subsequently frozen. The regulation includes extensive reporting requirements, ministerial approval as a condition for donations, and broad powers for the registrar, including conducting risk assessments of non-profits' activities.

31. The de facto authorities in Gaza continued to severely hamper the exercise of freedom of expression, especially of journalists. For example, on 30 October, the authorities briefly detained and questioned a Palestinian journalist who was investigating incidents related to misfired rockets during the August 2022 escalation. Another journalist reported similar treatment.

E. Gender-based violence, including against women human rights defenders

32. In connection with the designation and declaration by Israel of seven Palestinian organizations as "terrorist" or "unlawful", some women in senior positions in organizations promoting women's rights were targeted and arbitrarily detained. On 17 November 2021, an Israeli military court sentenced Juana Rishmawi to 13 months' imprisonment and a fine, including for providing services to an "unlawful" association, a reference to her fundraising work for Health Work Committees. She was released from prison on 7 February 2022, having been in detention since April 2021. On 12 May 2022, an Israeli military court sentenced Shatha Odeh to 16 months' imprisonment, a fine and a suspended five-year imprisonment sentence. She was convicted of holding a position in and attending a meeting of an "unlawful" association, namely, Health Work Committees, of which she was the Director, and receiving and bringing funds into the West Bank without military authorization. She was released on 3 June 2022, having been detained since July 2021.

33. Both women were convicted on the basis of plea bargains. Ms. Odeh told OHCHR that she had no option but to accept it because of her age and health condition and because she believed she would be sentenced regardless of her innocence. Her testimony of ill-treatment that she suffered for weeks – limited sleep, 8-to-11-hour interrogations, being transported to interrogation while handcuffed, and being shackled for 8 hours every day – and that it led to her coerced confession, raises serious concerns of torture. Ms. Rishmawi was held in incommunicado detention for 13 days and not allowed to meet her lawyer for seven weeks. She described the plea bargain as "blackmail" – the only way of ending her detention. Both women were also detained three to four weeks in a cell in a men's prison,

[46] Ibid.

[47] The President introduced by decree-law a requirement for NGOs to submit their workplans and budgets consistent with the plan of line ministries, among other unacceptable restrictions.

[48] Regulation on non-profit companies, No. 20 of 2022.

apparently a practice to intimidate women at the beginning of their detention, and in violation of the international human rights obligation to incarcerate women and men separately.[49]

34. Another designated organization – the Union of Palestinian Women's Committees – reported that 15 women staff or volunteers had been interrogated or called by the Israeli Security Agency in the reporting period. All were told to stop working for the Union, some were intimidated, including with threats of action against their families. Some of the reported threats had a clear gender dimension, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society, and were aimed at intimidating and silencing them.[50]

35. The declarations and the arbitrary detention and intimidation of women human rights defenders had a significant chilling effect on the women's rights movement in Palestine, as it deprived it of leaders and intimidated other women. Such defenders also face threats and hate speech from private actors, mostly on social media, without significant protection from Palestinian authorities. The intimidation includes accusations of "destroying" the "social fabric and collaborating with Israel and Western countries. In March, one such defender was vilified on a website against the Convention on the Elimination of All Forms of Discrimination against Women, which labelled her and other women human rights defenders "collaborators" and threatened her. On 31 March, she submitted a complaint to the Palestinian Attorney General, but was unaware of any steps taken as at 31 October.

36. Gender-based violence in the private sphere – exacerbated by the occupation – remained a human rights violation of utmost concern.[51] According to the July 2022 results of an official Palestinian survey on violence, 59.3 per cent of Palestinian women – 70.4 per cent in Gaza and 52.3 per cent in the West Bank – had experienced violence by their husbands.[52] In the reporting period, OHCHR noted 23 cases raising concerns of gender-based killings or femicides of women (20) and girls (3) – 17 in the West Bank and 6 in Gaza – a slight decrease from the previous period (26). Many of these cases are officially reported as suicides, "accidents" and deaths in unclarified circumstances. Women, including victims of gender-based violence, who report to the police continue to be arbitrarily detained on discriminatory charges, such as for adultery and other moral crimes, leading to their revictimization.[53] Claiming pressure from conservative groups, the Government of the State of Palestine also stalled the adoption of a family protection bill pending since the early 2000s and the revision of outdated criminal and personal status laws that discriminate against women and girls and create fertile ground for gender-based violence.

37. During the reporting period, there were various instances of intimidation, including by individuals and groups involved with the movement against the Convention on the Elimination of All Forms of Discrimination against Women, who coerced organizations to cancel activities perceived to promote LGBTI+ rights and gender equality. For example, on 17 June, approximately 40 Palestinian men attacked the Al-Mustawda' cultural centre in Ramallah, forcing the cancellation of a concert, alleging that the singer was gay. Similarly, on 8 July, participants in a march by the Ashtar Theatre group in Ramallah were attacked by young Palestinians shouting "gay, LGBTI, collaborators". In these incidents, there was concern that Palestinian authorities failed to protect the rights of the affected groups or hold the perpetrators to account.

38. LGBTI+ persons continued to be subjected to violence in the private and public spheres. On 5 October, 25-year-old Ahmad Abu Markhiyeh was beheaded in Hebron, allegedly by an acquaintance who was arrested at the crime scene. The victim had escaped his community in Hebron in 2020 reportedly following threats due to his sexual orientation. He entered Israel, where he filed a request for asylum in a third country. The reasons for his return to Hebron are unclear. On 8 October, in a tribal reconciliation ceremony, the family of

[49] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 11 (a).
[50] A/HRC/46/63.
[51] Ibid., para. 27.
[52] https://www.pcbs.gov.ps/Downloads/book2611.pdf, p. 26 (in Arabic).
[53] A/HRC/46/63, para. 27.

the alleged perpetrator agreed to pay 50,000 Jordanian dinars to the victim's family. As at 31 October, the suspect remained under arrest, but no indictment had been filed.

39. LGBTI+ persons have few or no avenues for protection, and limited access to services in the Occupied Palestinian Territory.[54] If they manage to flee to Israel, they are vulnerable to further violence and abuse.[55] The situation of victims of gender-based violence is compounded in Gaza, where vulnerability to such violence is further exacerbated by the ongoing blockade, the high rate of unemployment and the recurrent escalation of hostilities. During the reporting period, OHCHR documented cases of women and LGBTI+ individuals who were trapped in Gaza, unable to leave due to the Israeli blockade. They are forced either to hide or endure violence and other violations as the de facto authorities are unwilling or unable to provide protection due to prevailing patriarchal norms.

F. Arbitrary detention, torture and ill-treatment

40. As at 31 October, Israel held 820 Palestinians in administrative detention (812 men, 5 boys and 3 women) without charge or trial. This is the highest number since 2008, and a dramatic increase from the 500 in the previous reporting period.[56] More than 70 detainees boycotted courts in protest against the Israeli administrative detention policy and several carried out prolonged hunger strikes.[57]

41. Among those held without charge or trial is Palestinian-French human rights defender Salah Hammouri. He was arrested on 7 March and subsequently placed under administrative detention for three months, which was extended twice, based on secret evidence. In July, shortly after Mr. Hammouri wrote to the President of France protesting his detention, Israeli authorities categorized him as an "extremely dangerous prisoner", entailing a number of restrictions, including solitary confinement. Mr. Hammouri's East Jerusalem residency permit was unlawfully revoked in October 2021 for "breach of allegiance" to Israel – explicitly prohibited by international humanitarian law.[58]

42. On 30 August, Mohammad el-Halabi the former head of the World Vision International office in Gaza, was sentenced by an Israeli court to 12 years in prison, after being held in detention for six years; there are credible allegations of torture, incommunicado detention and pressure to confess under duress. He was convicted of 13 counts of terrorism-related crimes, despite serious due process violations, including the lack of evidence against him presented in open court, extensive use of secret evidence and closed-door hearings and restricted access to his lawyer.[59] Despite enormous pressure to accept a plea deal seemingly in the absence of evidence, Mr. el-Halabi maintained his innocence. His lawyers submitted an appeal to the Supreme Court of Israel on 18 October. His continuing deprivation of liberty may amount to arbitrary detention, given the serious due process violations.[60]

43. On 19 June, an Israel Prison Service special committee denied Ahmad Manasrah the possibility of early release, based on retroactive application of a 2016 counter-terrorism law.[61] In 2016, Manasrah, then aged 13, was sentenced to nine and a half years of imprisonment for participation in a knife attack that injured two settlers. Despite serious concerns for his psychological and physical health, the Israel Prison Service parole committee also rejected his early-release motion on medical grounds on 28 June. As at 31 October 2022,

[54] Ibid., para. 40.

[55] https://www.timesofisrael.com/ghastly-murder-lays-bare-the-myriad-perils-for-lgbt-palestinians-fleeing-to-israel/.

[56] https://hamoked.org/prisoners-charts.php.

[57] https://www.ppsmo.ps/home/news/4842?culture=ar-SA, in Arabic.

[58] Fourth Geneva Convention, art. 45. Mr. Hammouri was deported on 18 December (https://www.ohchr.org/en/press-releases/2022/12/comment-un-human-rights-spokesperson-jeremy-laurence-deportation-salah).

[59] https://www.facebook.com/UNHumanRightsOPT/posts/pfbid0SNLV13X1WHQrrfHKRTiASy6hyqiuWknnxwF2kf5p9YXtsdmUBaas6YmWM3bqj9xYl.

[60] A/HRC/40/39, para. 31.

[61] https://www.ohchr.org/en/press-releases/2022/07/un-experts-urge-israel-free-ahmad-manasra.

Mr. Manasrah remains in solitary confinement – since November 2021 – despite his schizophrenia diagnosis, raising serious concerns of torture or ill-treatment.

44. During the reporting period, OHCHR continued to document allegations of ill-treatment, in some cases possibly amounting to torture, in Palestinian detention facilities in the West Bank and Gaza.

45. In the West Bank, the Independent Commission for Human Rights received 220 complaints (from 210 males and 10 females, including 15 children) of torture or ill-treatment in the West Bank. OHCHR monitored several cases of concern. Following an explosion on 6 June in Ramallah, six Palestinian men were arrested by Palestinian security forces for manufacturing explosives. OHCHR detention monitoring indicated that at least two of the six men were subjected to severe beatings in detention, which may amount to torture. The beatings allegedly intensified as a reprisal after they spoke to representatives of OHCHR and other organizations who visited them in detention. In July, eight detainees held in the police detention facility in Bethlehem made credible allegations of torture and ill-treatment during interrogation. Alleged treatment included stress positions, particularly suspension for long hours with hands cuffed behind; flogging with electric cables and sticks; beating, punching, slapping, kicking and stomping on different parts of their bodies, including the head and genitals; sleep deprivation; and deprivation of access to food, water and the toilet for several days. OHCHR documented injuries and marks on the bodies of four of the detainees, consistent with the allegations. These four detainees, who were held in relation to the same incident, consistently stated that they were subjected to this physical violence in order to force them to confess to the crime of robbery, raising serious concerns of torture.

46. In Gaza, the Independent Commission for Human Rights received 223 complaints (from 209 male and 14 female complainants, including 59 children). In one incident, a 52-year-old man died in custody several weeks after his arrest on 2 September by the anti-drug police of the de facto authorities. On 16 October, the Gaza Ministry of the Interior announced that he had died due to a heart attack after being transferred to a hospital two days before. However, he had reportedly complained about ill-treatment and torture and about his ill-health.

G. Death penalty

47. On 4 September, the de facto authorities in Gaza executed two men sentenced to death for collaboration with the enemy and three men convicted of murder. These were the first executions since May 2017 and were condemned by OHCHR.[62] Despite requirements under Palestinian law, the approval of the President was not secured, nor were there opportunities for the men to seek clemency or a pardon. Courts in Gaza also issued 20 death sentences (all men), including 8 by military courts; appeals courts confirmed 16 death sentences and cassation courts, 5. Serious concern remains that criminal proceedings resulting in the imposition of death sentences in Gaza do not meet due process requirements and fair trial guarantees.

48. No death sentences were issued in the West Bank. However, two prisoners apparently have remained under death sentences since 2015,[63] even though the State of Palestine has committed to abolishing the death penalty by its 2019 accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

[62] https://www.ohchr.org/en/statements/2022/09/comment-un-human-rights-office-spokesperson-ravina-shamdasani-execution-five.

[63] Information from Human Rights and Democracy Media Center SHAMS .

III. Update on accountability

A. Violations during the escalation of hostilities in Gaza

49. As at 31 October, OHCHR was not aware of any criminal investigations opened by Israel into the conduct of the Israeli Defense Forces during the August 2022 hostilities. There is also no information on steps taken by the State of Palestine to investigate apparent violations of international humanitarian law by Palestinian armed groups. According to the de facto authorities in Gaza, investigations into allegations of violations by both sides have been initiated, but no outcome was known as at 31 October.

50. Impunity persists. OHCHR is not aware of any steps taken during the reporting period by any party to the conflict to ensure accountability for actual or potential violations of international humanitarian law, including alleged war crimes, perpetrated in the context of previous rounds of hostilities. In April, the Israeli Defense Forces provided information to Yesh Din regarding the May 2021 escalation, showing no significant progress.[64] On 24 April, the Israeli High Court of Justice upheld the decision by the Attorney General to close the investigation into an Israeli attack that killed four Palestinian boys on a Gaza beach on 16 July 2014, notwithstanding serious concerns about the attack and the conduct of the investigation.[65]

51. The High Commissioner has previously expressed concerns with regard to the independence, impartiality, promptness and transparency of the Israeli office of the Military Advocate General,[66] and the consistent failure of all parties to ensure accountability for alleged serious violations of international humanitarian law in the context of hostilities.[67] The Human Rights Committee expressed concern in March that no perpetrator had been brought to justice for violations committed during the May 2021 escalation.[68] It further regretted the lack of updated information on investigation into previous escalations in 2008/09, 2012 and 2014 and their outcomes.[69]

B. Unlawful use of force, and other violations of international human rights law

52. Impunity remained pervasive for incidents of apparent unlawful use of force by Israeli security forces in law enforcement operations, outside the context of hostilities.[70] Between 1 January 2017 – when the High Commissioner began reporting to the Human Rights Council on accountability – and 31 October 2022, 559 Palestinians (including 120 children) were killed by Israeli security forces in law enforcement operations in the Occupied Palestinian Territory.[71] OHCHR is aware of 79 criminal investigations opened in relation to these deaths, of which at least 30 were closed without further action and only 5 resulted in indictments, 3 of which led to convictions. OHCHR is unaware of any indictment made during the reporting period, and the lack of transparency continues.[72]

53. International human rights law requires that all deaths and injuries caused by use of force in law enforcement operations be subject to an independent, impartial, transparent,

[64] https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/Investigating+Themselves/YeshDin+-+Shomer+5.22+-+Eng_01.pdf, pp. 10–11.
[65] A/HRC/28/80/Add.1, para. 36; and https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIGaza/A_HRC_CRP_4.docx, para. 663.
[66] A/HRC/40/43, para. 9; and A/HRC/37/41, para. 11.
[67] A/71/364, para. 40; A/HRC/43/21, para. 17; and A/HRC/46/22, para. 8.
[68] CCPR/C/ISR/CO/5, para. 26.
[69] Ibid., para. 22.
[70] A/71/364, para. 66; A/76/333, paras. 5 and 16; A/HRC/43/21, para. 20; and A/HRC/46/22, para. 11.
[71] This does not include Palestinians killed in the context of hostilities or those killed in unclear circumstances. The total number of Palestinians killed by Israeli security forces in this period is 1,016.
[72] A/HRC/49/25, para. 17.

thorough and effective investigation. The Israeli Defense Forces investigation policy applicable in the West Bank since 2011 requires an immediate investigation into operations that result in the death of a person, except when the incident involves "actual combat".[73] This is understood broadly to include any exchange of fire.[74] It appears that if the office of the Military Advocate General understands the incident to include "actual combat", it applies the rules regulating the conduct of hostilities.[75]

54. Such a "combat" exemption was also claimed by Israeli authorities in the killing of Palestinian-American journalist Shireen Abu Akleh on 11 May, who was shot dead by an Israeli soldier while covering an Israeli security forces operation in the Jenin refugee camp that triggered armed clashes with Palestinians. On 5 September, the Israeli Defense Forces admitted it was highly probable the journalist was killed by an Israeli soldier,[76] but the Military Advocate General stated that no criminal investigation into any soldiers would be opened as it had happened in a situation of combat and there was no suspicion that a criminal offence had been committed.[77]

55. In practice, the Israeli Defense Forces appears to have adopted an even broader interpretation of "actual combat" , as the majority of Palestinian deaths are not investigated – even when they take place in the context of alleged stabbing or ramming attacks, stone throwing or Molotov-cocktail throwing, and in the absence of exchange of fire. For example, on 11 May, Israeli security forces shot dead a 16-year-old boy near his school in Al Bireh – 100 metres away from soldiers and not posing any threat; no criminal investigation was announced. Commonly, instead of a criminal investigation, as required by the policy, only operational military probes are conducted within the Israeli security forces unit involved in the incident, solely based on soldiers' accounts without collecting evidence from other witnesses and sources.[78] Of concern, such overbroad interpretations of "combat exemption" have previously been approved by the High Court of Justice in clear contradiction of international law.[79]

56. The Israeli conflation of two distinct regimes on use of force – law-enforcement operations regulated by international human rights law and hostilities regulated by international humanitarian law rules – is key in ensuring that Palestinian deaths in the West Bank and along the Gaza border are rarely investigated. Such lack of investigation extends to apparent cases of extrajudicial executions or wilful killings. For example, on 2 September, Israeli security forces repeatedly shot and killed a 19-year-old Palestinian attacker, while he was lying injured on the ground in Beit 'Einun, near Hebron, and not presenting any further threat. No criminal investigation was opened.

57. The approach in East Jerusalem appears to be similar, as noted above. On 7 March, Israeli security forces shot and killed a barely conscious Palestinian attacker. No criminal investigation was opened; instead, Israeli political and security leaders reportedly praised the soldiers.[80] Even where investigations are opened, they raise questions of impartiality. For example, on 4 December 2021, Israeli security forces shot and killed a 25-year-old Palestinian stabber near Jerusalem's old city. Despite the man being shot, injured on the ground and no longer posing any apparent threat, Israeli security forces subsequently shot him twice. Such "confirmation of kill" raises serious concerns of extrajudicial execution and may amount to wilful killing, yet the Israeli Ministry of Justice closed the investigation on 9

[73] https://www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_b1-474.pdf, p. 322.

[74] https://embassies.gov.il/MFA/AboutIsrael/state/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx (in Hebrew).

[75] https://www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_b1-474.pdf, p. 377.

[76] https://www.idf.il/76056 (in Hebrew).

[77] https://usms.cellcom.co.il/files/QEIKC4/jdwke0b345.pdf (in Hebrew).

[78] https://www.gov.il/BlobFolder/generalpage/downloads_eng1/en/ENG_turkel_eng_b1-474.pdf, pp. 380 and 384.

[79] A/HRC/46/22, para. 18.

[80] https://www.israelhayom.co.il/news/defense/article/13026997 (in Hebrew).

December, asserting that the officers had acted in self-defence as "there was a real and concrete threat to the lives of the fighters and the civilians in the area".[81]

58. Concerns of impunity also apply to the continuing lack of progress in investigations relating to widespread use by Israeli security forces of lethal force in the context of the Great March of Return demonstrations (2018/19) in Gaza.[82] OHCHR is not aware of any accountability steps taken by Israeli authorities in the reporting period.[83]

59. The duty of the State to investigate potential unlawful deaths is an important element of the protection afforded to the right to life.[84] The Human Rights Committee has highlighted its deep concern at continuing and consistent reports of excessive use of lethal force by Israeli security forces against Palestinians and the lack of accountability for those acts, resulting in a general climate of impunity.[85] The systematic Israeli failure to investigate such incidents furthers impunity, leading invariably to increased Palestinian casualties.

60. While complaint channels exist for Palestinians living under the effective control of the Palestinian Authority and the de facto authorities in Gaza, there is rarely any action towards accountability. The Palestinian Security Forces Justice Commission received six complaints of use of force by Palestinian security forces – one is being investigated and four were closed without charge. One has proceeded to trial; it may relate to the Budrus shooting (see para. 28 above) – according to the complainant's family, one Palestinian security forces member is currently detained while undergoing trial. However, no complaint was registered by the Security Forces Justice Commission with respect to the killing of a bystander in Nablus in September. Although Palestinian security forces denied responsibility, there is no information on an investigation into the death.

61. With regard to the June 2021 killing of opposition activist Nizar Banat, the military court in Ramallah has significantly delayed, with no justification, the trial of the 14 accused Palestinian security forces personnel. On 21 June the military public prosecutor decided to release all 14 from detention. OHCHR is unaware of any legal basis for such release and has serious concerns about the willingness of the Palestinian authorities to ensure accountability for the killing of Mr. Banat. The Security Forces Justice Commission did not respond to the specific query from OHCHR in this regard.

62. In Gaza, the de facto authorities announced that some police officers had been injured in the incident in Beit Lahiya on 9 June (see para. 27 above) and vowed to investigate the incident. However, OHCHR is unaware of any action taken as at 31 October. The de facto authorities also indicated that no investigation was being carried out into the shooting incident on 4 October (see para. 27 above), as it involved exchange of fire with those wanted for drug trafficking and previous violence against the police.

63. Impunity for gender-based violence remains pervasive in both the West Bank and Gaza. In the West Bank, a trial is still ongoing three years after the murder of 21-year-old Israa Ghrayeb.[86] Of 17 likely cases of gender-based killings of women and girls in the West Bank in the reporting period, according to the Attorney General's Office of the Palestinian Authority, three indictments were filed, six cases were closed for lack of criminal suspicion, and seven cases remained under investigation as at 31 October. One case involving a member of the security forces was transferred to the military prosecution. According to the de facto authorities in Gaza, of the six cases there, three were reportedly closed, while in two cases alleged perpetrators were sentenced to death. One case was transferred to the military prosecution as it involved a member of the de facto authorities' forces.

[81] https://www.haaretz.com/israel-news/2021-12-09/ty-article/israel-closes-probe-of-officers-who-shot-palestinian-assailant-in-jerusalem-attack/0000017f-e59d-df5f-a17f-ffdf946b0000.

[82] A/HRC/46/22, para. 12.

[83] A/HRC/43/21, para. 24; and https://www.btselem.org/sites/default/files/publications/202112_unwilling_and_unable_eng.pdf.

[84] Human Rights Committee, general comment No. 36 (2018), para. 27.

[85] CCPR/C/ISR/CO/5, para. 26.

[86] A/HRC/43/70, para. 34.

C. Violations relating to torture and ill-treatment

64. Concerns persisted regarding lack of accountability by relevant Israeli authorities in investigating allegations of torture or ill-treatment of Palestinians, including sexual violence, in Israeli detention facilities. In May, the Israeli Ministry of Justice decided not to open a criminal investigation into alleged torture or ill-treatment by the Israeli Security Agency against Palestinian prisoner Tariq Bargut in February 2019.[87] On 25 August, the Attorney General upheld the decision to close the criminal investigation into apparent sexual assault – two forced genital searches – of a Palestinian woman detainee in 2015.[88] On 1 September, the Israeli Supreme Court upheld the admissibility of confessions given after 36 hours of interrogations, during which Israeli Security Agency investigators had used "special measures", including physical harm and humiliation.[89] These decisions raise serious concern about a lack of respect for the absolute prohibition of torture.[90]

65. The Human Rights Committee has expressed deep concern about reports of a widespread and systematic practice of torture and ill-treatment by the Israel Prison Service and Israeli security forces against Palestinians. It has also noted with concern a low rate of criminal investigations, prosecutions and convictions concerning allegations of such violations.[91]

66. The Palestinian Security Forces Justice Commission reported having received nine complaints alleging torture or ill-treatment by Palestinian security forces. Two cases are undergoing trial, five remain under investigation and two were closed without charge. According to the Commission, "no case or any action has been registered" with respect to the 6 June Ramallah allegations, while the July complaints concerning torture in Bethlehem were dismissed for lack of evidence (see para. 45 above). This raises serious questions about the willingness of the Palestinian authorities to ensure accountability for torture or ill-treatment perpetrated by Palestinian security forces.

67. According to the de facto authorities in Gaza, the 16 October death of a man in custody (see para. 46 above) was investigated and found to be a natural death. A prosecutor who reportedly joined the autopsy also noted no signs of torture or ill-treatment. In July, the Committee against Torture specifically expressed concern about reports that individuals were held in unlawful and incommunicado detention by Palestinian armed groups for collaboration and criticism, and about allegations of torture and ill-treatment in such unofficial places of detention.[92] The Committee observed that there were consistent reports of torture and ill-treatment by persons in custody in both the West Bank and Gaza, in particular during the investigation stage, and highlighted that there was a climate of impunity, as few complaints had led to prosecution and almost none had led to convictions.[93]

D. Civil remedies

68. In October, the Israeli Ministry of Defense reportedly agreed to compensate the family of a 78-year-old Palestinian-American man who had died in Israeli security forces custody.[94] The family reportedly rejected the offer.[95] Palestinians in Gaza continued to face significant

[87] https://www.haaretz.com/israel-news/2022-05-16/ty-article/.premium/shin-bet-deprived-palestinian-of-sleep-during-interrogations-of-up-to-48-hours/00000180-e9ee-dc12-a5b1-fdff738b0000.

[88] Information from the Public Committee against Torture in Israel. See also https://www.haaretz.com/israel-news/2022-11-07/ty-article/.premium/prosecutor-order-to-search-palestinian-womans-private-parts-was-legit/00000184-53bb-d842-a987-dffb5c780000?lts=1676014981883.

[89] https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/20/880/073/j29&fileName=20073880.J29&type=2 (in Hebrew).

[90] A/HRC/49/25, para. 30.

[91] CCPR/C/ISR/CO/5, para. 30.

[92] CAT/C/PSE/CO/1, para. 26.

[93] Ibid., para. 28

[94] https://www.jpost.com/middle-east/article-719237.

[95] https://www.arabnews.com/node/2179436/middle-east.

barriers in seeking civil remedies. During the reporting period, the Israeli Supreme Court rejected two appeals on rulings denying Palestinians compensation. On 24 November 2021, an appeal of Izzeldin Abu El-Eish from Jabalya, whose three daughters and niece were killed by Israeli security forces during the 2008/09 escalation, was rejected. An appeal related to the shooting and serious injury of 15-year-old Palestinian Attiya Nabaheen in November 2014 in Gaza was rejected on 5 July.

IV. Conclusions and recommendations

69. **The human rights situation in the Occupied Palestinian Territory continues its downward spiral. As the occupation continues, Israel – the occupying Power – routinely and systematically disregards its obligations under international humanitarian law and international human rights law. In the West Bank, Israeli use of firearms is endemic and unchecked by rules of engagement, which themselves appear inconsistent with international human rights law. The number of arbitrary administrative detentions is the highest in 15 years, collective punishment is widespread and restrictions on freedom of expression and association have increased, with the very existence of human rights and humanitarian organizations being targeted. In Gaza, the collective punishment of the population continues as the blockade and closures enter a sixteenth year.**

70. **Israeli security forces and authorities are able to act with impunity given the lack of accountability for their actions violating international humanitarian law and international human rights law, whether in the context of law enforcement or during hostilities. Such impunity also extends to unlawful use of force and torture and ill-treatment by Palestinian security forces, as well as the forces of the de facto authorities in Gaza.**

71. **The reporting period included a brief escalation of hostilities in Gaza in August 2022, with all parties failing to respect international humanitarian law rules on the conduct of hostilities. The long-standing pattern of such violations and the failure by all parties to take sufficient steps to prevent their repetition allow for mounting civilian casualties.**[96]

72. **Recalling the comprehensive review of the status of recommendations addressed to all parties since 2009, the High Commissioner calls on Israel to fully comply with its legal obligations, including in particular:**

(a) **To ensure that the rules of engagement of its security forces and their application are fully consistent with international human rights law, including use of firearms in law enforcement activities only in cases of imminent threat of death or serious injury as a measure of last resort;**

(b) **To conduct prompt, thorough, independent, impartial and effective investigations into all incidents of use of force by Israeli forces that have led to the death or injury of Palestinians, and ensure that perpetrators are held accountable and that victims are provided with redress;**

(c) **To end practices of administrative detention and other forms of arbitrary detention and ensure that all detainees are released unless promptly charged and fairly tried;**

(d) **To immediately end all practices of collective punishment, including lifting its blockade and closures of Gaza;**

(e) **To urgently revoke the designations against Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations;**

(f) **To resume cooperation with OHCHR, including by granting visas to OHCHR international staff to access the Occupied Palestinian Territory.**

[96] A/HRC/28/45, para. 16; and A/HRC/49/25, para. 16.

73. **The High Commissioner further calls on:**

(a) **Palestinian authorities to protect the rights of all Palestinians without discrimination, including discrimination based on gender, sexual orientation or gender identity;**

(b) **The de facto authorities in Gaza to implement an immediate moratorium on the use of the death penalty, and the State of Palestine to take robust measures to abolish the death penalty in all its territory;**

(c) **All duty bearers to immediately end all practices that may amount to torture or ill-treatment, including sexual violence;**

(d) **All duty bearers to put an end to impunity and conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations of international human rights law and international humanitarian law, including into allegations of international crimes; and also calls upon them to ensure that all victims and their families have access to effective remedies, gender-responsive reparation and truth;**

(e) **All duty bearers to take measures to prevent all forms of gender-based violence, including in the domestic sphere, and ensure that perpetrators, including of gender-based killings, are prosecuted and appropriately sentenced;**

(f) **All duty bearers to ensure that the rights to freedom of expression and association are respected and protected and that civil society actors, including women human rights defenders, are able to conduct their legitimate activities safely, freely and without harassment;**

(g) **All parties to the conflict to ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precautions in attack, and that they ensure accountability for serious violations;**

(h) **All States to exert their influence, to the degree possible, to stop violations of international humanitarian law by all parties to the conflict.**

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1*

* The present report was submitted late for processing owing to the dates of the mission.

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I. INTRODUCTION

1. At its third special session, held on 15 November 2006, the Human Rights Council adopted resolution S-3/1, in which the Council among other things, called for a high-level fact-finding mission to be established and for the mission to travel to the town of Beit Hanoun in the occupied Palestinian territory of Gaza, following Israeli military operations carried out there around 8 November 2006. The President of the Council appointed Archbishop Desmond Tutu of South Africa to lead the mission, and Professor Christine Chinkin of the United Kingdom of Great Britain and Northern Ireland as the sole other member of the mission. In accordance with the resolution, the Secretary-General and the United Nations High Commissioner for Human Rights provided the administrative, technical and logistical assistance required to enable the mission to fulfil its mandate.

2. The mission has submitted two interim reports to the Council, in which it outlined efforts undertaken to discharge its mandate (A/HRC/5/20). The present report is the final report of the mission, following its trip to Beit Hanoun in May 2008.

II. BACKGROUND

A. Implementation of the mandate

3. On three occasions, the mission attempted to travel to Beit Hanoun via Israel. Each of these attempts was frustrated by the refusal of the Government of Israel to cooperate with the mission (see A/HRC/5/20). The desire of the mission to travel via Israel was motivated by the experts' desire to meet with and hear the views of Israeli actors (Government, military and non-governmental), including individuals living in areas of southern Israel under the threat of rocket attack from Gaza. In the view of the mission, hearing and taking into account the views of these actors would, among other things, go some way towards redressing any imbalance in resolution S-3/1 perceived by the Government of Israel. In view of the unchanging attitude of the Government of Israel, the mission decided in January 2008 to travel to Beit Hanoun via Egypt.

4. The mission travelled to Beit Hanoun from 27 to 29 May 2008. Security considerations and the impact of the visit on day-to-day United Nations operations in Gaza limited the stay of the mission to two days and two nights in Gaza. The mission agenda, including the names of organizations and individuals with whom the mission met, is attached to the present report (see annex).

B. Mandate

5. The mission's core mandate was to travel to Beit Hanoun to assess the situation of victims; address the needs of survivors; and make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults. The experts construed this core mandate taking into account:

(a) The context provided by the resolution as a whole, with particular reference to collective punishment; the killing of civilians as a gross violation of human rights law and international humanitarian law; international humanitarian law applicable to medical personnel; and the destruction of homes, property and infrastructure in Beit Hanoun;

(b) The delay of 18 months before the mission could travel to Beit Hanoun and the changes in the physical and political environment in Beit Hanoun and Gaza in this period, most prominently the tightening of the Israeli blockade of Gaza;

(c) The rights-based definition of “victim”.

C. Methodology

6. In discharging its mandate, the mission employed a methodology under which it:

(a) Worked to ensure that its activities remained within its mandate;

(b) Placed the factual situation under review within a broader context of events in Gaza;

(c) Adopted an inclusive approach to receiving evidence, information and views from concerned parties;

(d) Focused on the direct testimony of witnesses and survivors of the shelling as well as inspection of the site;

(e) Analysed information received from an international law and human rights perspective;

(f) Sought to respect human rights norms in the execution of its mandate;

(g) Sought to keep concerned parties informed of developments in efforts to discharge its mandate.

7. The mission regrets that it received no formal input from the Israeli authorities, despite a number of requests. The mission made specific efforts to gather information in the public domain indicating relevant stances of the Government of Israel (including its military) and facts on which its positions are based. Information was also sought and received from Israeli non-governmental organizations.

8. The mission wishes to underline the importance of its travelling to Beit Hanoun to witness first-hand the situation of victims and survivors of the shelling, in particular to comprehend the deep distress of the victims of the shelling and of the population generated by the ongoing blockade. This depth of human suffering is only partially conveyed through the third-party reports on the situation. The mission felt it had to go to Gaza, even if reluctantly through Egypt, to express through its presence the solidarity of the international community with the suffering people, very much like the prophet Ezekiel sitting dumbfounded with his compatriots in their exile in Babylon, or the friends of Job in his suffering.

9. In line with its decision to receive input from all relevant actors, the mission met with senior members of Hamas while in Gaza. The mission also kept the Palestinian Authority apprised of its efforts through the Permanent Mission in Geneva and the office of the President in Ramallah.

D. Applicable law

10. In construing its mandate and the facts presented to it, the mission applied an international law framework, in particular international human rights law and international humanitarian law (Council resolution S-3/1, paras. 4 and 5).

11. Gaza is under the effective control of Israel and is thus occupied by it.[1] This control, including in the period since the disengagement of Israel in September 2005, has been described in a number of reports to the Council and to the General Assembly (see A/HRC/4/17). The mission was able to witness this control first-hand, not least in its own protracted difficulties in gaining access to the territory without Israeli cooperation. The mission also witnessed the constant surveillance of Gaza by Israeli forces, most strikingly from unmanned aerial drones. It was also able to see how Israel effectively controls basic aspects of the daily life of Gazans, notably through the fuel blockade in force when the mission visited the territory. The situation was described to the mission by one resident in the following terms: "Israel decides what Gazans eat for dinner, whether they walk or drive, whether their children go to school or not."

12. As the occupying force, Israel has obligations towards the population in Gaza under both international human rights law and international humanitarian law, both of which are relevant to the shelling of Beit Hanoun. Israel is a party to six of the nine core international human rights instruments.[2] The long-standing position of United Nations human rights treaty bodies is that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the occupied Palestinian territory, to the extent that it is in effective control.[3] This position is supported by the jurisprudence of the International Court of Justice which, in its advisory opinions on the South West Africa case and the legal consequences of the Construction of a Wall in the Occupied Palestinian Territory case, held that an occupying power remains responsible for fulfilling its obligations under the relevant human rights conventions in occupied territory.

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[1] *Democratic Republic of Congo v. Uganda*, International Court of Justice, 2005, paras. 173-174.

[2] Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979; and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child on 3 October 1991.

[3] See for example the concluding comments on Israel in the report of the Committee on the Elimination of Discrimination against Women (A/60/38), para. 243.

13. In terms of international humanitarian law, Israel, as the occupying power, has responsibilities under, inter alia, the Hague Regulations (accepted as customary international law) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

14. The mission's mandate also encompasses the humanitarian law obligations of other parties to the conflict, the most relevant being militants launching rockets from Gaza into Israel (Council resolution S-3/1, para. 6). Under accepted customary international humanitarian law obligations, armed groups are bound by the obligations of common article 3 of the Geneva Conventions. They must respect and ensure respect of the principles of distinction, proportionality and the obligation to take the necessary precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Aiming rockets at civilian targets is a violation of this obligation, as would be endangering Palestinian civilians by launching rockets from or near civilians (for example in residential areas).

III. THE SHELLING OF BEIT HANOUN ON 8 NOVEMBER 2006 AND ITS CONTEXT

A. Context

15. Beit Hanoun is situated near the north-eastern border of the Gaza Strip, with more than 35,000 inhabitants, of which 70 per cent are registered refugees. As in the case of other Gazan towns and cities, the population density in the town is very high, with houses and apartment buildings of three to five stories predominating and a high number of inhabitants in each building. During its visit to the town, the mission was able to appreciate its dense urban nature, the surrounding fields, olive groves and greenhouses, as well as its proximity to the armistice line with Israel, which surrounds the town to the north, south and east at a distance of around 1,000 metres. The mission witnessed the widespread destruction of houses and property and the devastation of agricultural land in the border area as a result of Israeli incursions.

16. An accurate assessment of the shelling of Beit Hanoun on 8 November 2006 and its aftermath was impossible without considering the series of events which preceded it. These events to a large extent explain the fragile state in which the town and its residents found themselves on the morning of 8 November, as well as the adequacy of the response to those injured in the attack.

17. Following the elections for the Palestinian Legislative Council at the beginning of 2006, political, economic and social conditions deteriorated sharply across the occupied Palestinian territories, but particularly in Gaza. This situation has been described elsewhere in detail, particularly in the reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (see A/HRC/4/17). Suffice it to say here that ordinary Palestinians are the main victims of this crisis. According to the World Bank, poverty (based on household income) has risen to almost 67 per cent of the population, with about 80 per cent relying on some form of United Nations humanitarian assistance.[4]

[4] World Bank, *West Bank and Gaza: Economic Developments and Prospects*, March 2008.

18. Over the same period, increased military activity added a climate of fear for an already fragile population. According to the Office for the Coordination of Humanitarian Affairs, from the disengagement until 9 November 2006, the Israeli military fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 Gazans and injured 1,527.[5] According to Israel, the majority of its military operations in Gaza are aimed at stopping rocket-launching activity.[6] Over the same period, at least 1,700 Kassam rockets were fired into Israel by Palestinian militants, injuring 41 Israelis.[7]

19. Conflict reached a peak in the summer and autumn of 2006 with Israeli military incursions into Gaza, code-named "Summer Rains" and "Autumn Clouds" respectively, the latter focusing on Beit Hanoun in the week immediately prior to 8 November. From the large amount of information, including testimonies, received by the mission, it is clear that this operation traumatized the population of the town, severely weakened medical service delivery and obstructed freedom of movement, in particular in relation to the evacuation of the injured. During the incursion, the Israeli military fired 239 artillery shells and launched 66 air-to-ground missiles into Gaza.[8] Israel enforced a curfew confining residents to their homes that was lifted only every second day for three to four hours. Hundreds of male residents aged between 16 and 40 were ordered from their homes and taken to an Israeli holding centre to the north of the town for questioning.[8] The majority of electricity, water and telephone services in the town were cut; movement, including that of ambulances was restricted to prior authorization of the Israeli military; and Israeli military tanks and bulldozers destroyed scores of homes and other buildings, uprooted orchards and olive groves and dug up roads, water mains and sewage networks. Education services were also disrupted. Schools operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) serving nearly 10,500 pupils were shut down for a week. Estimates indicate that damage caused by the operation at over $23 million, including reconstruction or repair of over 1,000 housing units.[9]

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[5] Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 9 November 2006.

[6] Israeli Ministry of Foreign Affairs communiqué, "Beit Hanoun: a hub of terrorist activity", 5 November 2006.

[7] From November 2001 to the end of November 2007, 2,383 rockets hit southern Israel, killing 10 Israeli civilians and wounding 433, the majority being civilians. Intelligence and Terrorism Information Center at the Israel Intelligence Heritage and Commemoration Center.

[8] Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 9 November 2006.

[9] Ibid., 13 November 2006.

20. Of particular relevance to the shelling on 8 November was the impact of the Autumn Clouds incursion on the health infrastructure of Beit Hanoun. According to the Office for the Coordination of Humanitarian Affairs, the primary health-care system effectively ceased to function during the incursion as staff at the Ministry of Health, UNRWA and local non-governmental organization clinics were unable to reach their places of work.[9] The hospital in Beit Hanoun was inaugurated barely five weeks before the incursion. According to the World Health Organization, it was not fully operational at the time of the incursion and was designed as a centre for primary care and triage.[10] The mission heard testimony from the hospital Director, a surgeon, a nurse and an ambulance driver. They told of the 24-hour work of the hospital during the incursion in conditions without water, telephone and grid electricity. The already grave situation was compounded as up to 1,500 people sought refuge in the hospital on 3 November, putting excessive demands on hospital staff to provide food and sleeping facilities.[11] Access to and from the hospital was restricted by the Israeli military, hampering ambulances from fetching and transferring the injured. Two paramedics were killed during the military operation.[12]

21. During the incursion, Israeli military personnel occupied houses in Beit Hanoun for hours at a time,[13] including the house of the Al-Athamna family, which was occupied twice; first for four hours, the second time for six. “They knew who slept in each room, they knew it was a family home”, reported one witness.

22. Accounts by United Nations relief agencies,[14] international and Palestinian human rights groups[15] put the number of Palestinians killed during the incursion (together with the victims of the 8 November attack) at between 77 and 82, including at least 39 civilians. Around 250 others were reportedly wounded, including at least 67 children and 58 women. One Israeli soldier died during the operation.

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[10] The facility includes 42 beds, 6 emergency beds, 2 operating rooms and a laboratory.

[11] UNRWA, *Flash Appeal*.

[12] WHO, *Situation Report;* Palestinian Centre for Human Rights, “Palestinian medical crews under attack”, May 2007.

[13] UNRWA, *Flash Appeal*; Amnesty International, “Israel and the Occupied Territories: road to nowhere”, December 2006.

[14] Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 13 November 2006; UNRWA, *Flash Appeal*.

[15] “Palestinian human rights groups denounce Beit Hanoun massacre”, statement by 11 Palestinian human rights organizations, 8 November 2006.

23. The mission concludes that the events preceding the shelling on 8 November (in particular the incursion of 1 to 7 November) had a direct and negative impact on the situation of victims and survivors of the shelling. The control exercised by the Israeli military over inhabitants was reaffirmed. Inhabitants of Beit Hanoun lived in a state of constant fear and anxiety and were traumatized by the deaths and injuries they witnessed, the destruction of property and the uncertainty as to what would occur next.

B. The events of 8 November 2006 and immediate aftermath

24. The mission received information about the shelling on 8 November of Beit Hanoun from a number of sources, including the direct testimony of witnesses and survivors, police and hospital staff. From the totality of this information and its corroborative strength, the mission discerned a number of facts, which are set out below. Despite the delay of 18 months, the recollection of witnesses and the depth of their emotion had little diminished. Similarly, the physical evidence of the attack appeared largely intact, as a consequence of both the enormous impact of a 155 mm shell in an urban area and the lack of significant repairs to damaged property. In some ways, the 18-month delay allowed the mission to make a more balanced assessment of the attack. Some victims of the attack who had been hospitalized in Israel or Egypt had returned and were available to meet with the mission. Victims and survivors were able to testify to the impact of the attack on themselves and their families during the 18 months since the shelling. The mission benefited from a number of assessments of the incident made by others, including United Nations agencies in Gaza. The present report cannot recount the stories of all victims and survivors; rather, its purpose is to draw on the accounts given to the mission to bring to the Council as accurate a picture as possible of the shelling and its ongoing impact on victims and survivors.

25. The shelling took place early on the morning of Wednesday, 8 November 2006, some 24 hours after the Israeli military withdrew from the town and concluded operation Autumn Clouds. Residents of Beit Hanoun, including the Al-Athamna family, were returning to normal life after the trauma of the incursion. Those interviewed by the mission spoke of the night of 7 November as being the first time they and their children could again “get a proper night’s sleep”. Another survivor noted that it was the first night she could bake bread. Another noted that it was the first time he could rise and pray at the mosque rather than at home.

26. At approximately 5.35 a.m., the first 155 mm shell from Israeli artillery hit a house in the heavily populated neighbourhood of al-Madakkha in northern Beit Hanoun. Over the following 30 minutes or so, a total of 12 shells struck an area of approximately 1.5 hectares along the western side of Hamad Street, which lies around 800 metres from the armistice line. The shells struck six houses as well as surrounding areas in Hamad Street and lanes between houses. Six shells fell on an area of 50 metres in diameter. The mission saw the extensive damage caused by the shells, including holes blasted through reinforced concrete walls and floors, and blast damage to surrounding buildings. Amateur video footage obtained by the mission shows the last three shells landing with intervals of around one minute and 15 seconds.

27. The victims of the shelling were either asleep in their homes or, as was the case with a number of the men, returning from morning prayer. Following the first shell, which hit a house

killing and injuring people inside, most residents fled to the street. Once in the street, people congregated to assist those who had been injured. More shells then landed in the street and surrounding lanes, killing and injuring dozens more. A number of survivors ran into surrounding fields. Others indicated running towards the nearby Erez crossing, believing that the Israeli installation there would offer safety.

28. The testimony received by the mission paints a horrific scene. Woken by the first shell, families fled their homes and assembled in the street outside, where dead and injured persons already lay. One mother described being faced with one of her children with an open skull wound while trying to help another son as he scooped his intestines back into his abdomen. Another spoke of helping his injured father to the door of the house, only for him to be killed by a direct shell at the door. As people gathered and attempted to provide assistance to the injured, more shells landed in the street. There was, according to one witness, “no one left standing”. The nature of injuries caused by artillery shells meant the street was “strewn with limbs”. Children were decapitated and a mother worries for her surviving son who “saw his brother cut in half”.

29. Some time after the first shell landed, the injured started to arrive by private vehicle at the Beit Hanoun hospital, most having lost limbs or requiring amputation. Within a short amount of time, 30 to 40 injured people arrived at the hospital. The director of the hospital declared an emergency and called for ambulances from across Gaza to assist. The first ambulance to reach the scene of the shelling itself came under fire, the driver and assistant being forced to abandon the vehicle. Footage obtained by the mission of the scene in Beit Hanoun hospital as casualties from the shelling arrived showed an extremely disturbing scene of a small hospital crowded with medical staff, victims with blast injuries and their families. Medical staff interviewed by the mission described not only the trauma in dealing with the onslaught of casualties, but also of their exhaustion following their efforts during the Autumn Clouds incursion, as described above.

30. The shelling resulted in the immediate death or mortal wounding of 19 civilians, including seven children and six women. All but one of the victims were from a single family group, the Al-Athamna. Over 50 others were wounded during the attack.

31. A number of the more seriously injured required treatment that could not be provided in Gaza. Families of the injured ran directly to the Erez crossing to plead for Israeli approval to transport injured people to Israeli hospitals. According to survivors, approval to move some injured to Israeli hospitals was received only some 12 hours after the shelling. Survivors told how significant obstacles were placed in the way of individuals travelling to Israel for emergency treatment, in particular:

(a) The refusal by Israeli authorities in some cases to allow the injured to be accompanied by family members. This was particularly distressing in the case of the elderly and children who travelled without their closest relatives;

(b) The refusal by Israeli ambulances to transport the injured from Erez crossing to Israeli hospitals without an immediate payment of some thousands of shekels. These fees were later reimbursed by the International Committee of the Red Cross.

32. At least five injured victims of the attack on 8 November were referred to different Israeli hospitals for treatment not available in Gaza; three more were transferred to Cairo via an arduous journey across the Sinai.

33. Reactions to the news of the shelling were swift, with condemnations from the Palestinian Authority, the Secretary-General,[16] the United Nations High Commissioner for Human Rights,[17] and aid agencies operating in Gaza,[18] as well as Member States. In addition to the special session of the Council at which resolution S-3/1 was adopted, on 30 November 2006, the General Assembly adopted resolution ES-10/16, in which it deplored Israeli military assaults on the Gaza Strip, in particular the killing of many Palestinian civilians in Beit Hanoun. The Assembly requested the Secretary-General to establish a fact-finding mission on the attack. The fact-finding mission has never been conducted.

C. The Israeli response and explanations for the shelling

34. Following the shelling, the Prime Minister and Minister for Defense of Israel "expressed their regret over the deaths of Palestinian civilians in Beit Hanoun" and offered "urgent humanitarian assistance and immediate medical care for the wounded".[19] The Israeli military similarly expressed regret but stressed that "the responsibility for this rests with the terror organizations, which use the Palestinian civilian population as a 'human shield', carrying out terror attacks and firing Kassam rockets at Israeli population centres from the shelter of populated areas".[20] The Minister for Foreign Affairs said that "unfortunately, in the course of battle, regrettable incidents such as that which occurred this morning do happen".[21]

35. On 8 November 2006, Israel announced an inquiry into the shelling of Beit Hanoun earlier that day, intimating that the shells were not fired on civilian areas of Beit Hanoun intentionally but rather as a result of some technical error.[20] Use of artillery in Gaza was halted pending the outcome of an investigation. It has been reported to the Mission that artillery has not been used in Gaza since 8 November 2006.

36. The Israeli military appointed an internal investigation committee of military staff headed by a senior officer.[20] Some 15 months after the shelling, the committee presented its findings to

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[16] Statement of the Secretary-General, 8 November 2006.

[17] United Nations press release, "In Gaza Strip, UN human rights chief decries 'massive' violations against civilians", 20 November 2006.

[18] BBC, "Aid agencies condemn Gaza carnage", 9 November 2006.

[19] IMFA communiqué, 8 November 2006, "PM Olmert and DM Peretz express regret at death of Palestinian civilians".

[20] Ibid., "Initial reaction to Palestinian claims of civilian casualties in Beit Hanoun".

[21] Ibid., "Beit Hanoun: statement by FM Livni".

the Military Advocate General, who then decided that "no legal action is to be taken against any military official regarding this incident".[22] According to a press communiqué issued by the Israeli Ministry of Foreign Affairs, the reasons for this decision were that:

(a) The shelling of civilians was not intentional;

(b) The error was "directly due to a rare and severe failure in the artillery fire-control system operated at the time of the incident" causing "incorrect range findings that lead, unknowingly, to fire at a different target then planned initially";

(c) The malfunction was so rare that "it is not possible to point to a legal circumstantial connection, between the behaviours of the people involved in the incident and the result of the incident".[22]

37. Neither the report of the committee nor that of the Advocate General has been made public. The mission requested copies of both on a number of occasions, but these requests remain unanswered. The mission finds this lack of transparency for a process that is in effect to date the only means for accountability for the deaths of 19 civilians, highly disturbing.

38. The Israeli military appears to be of the view that, if an error is caused by malfunctioning technology, there can be no causal link (and thus no responsibility) on the part of individuals, be they designing, building or operating the technology.[23] The Mission also notes that press reports of the investigation quote military sources as suggesting that "it would be worthwhile to look into whether the artillery battery team could have nonetheless avoided the incident through more proper performance, and careful monitoring of the equipment". This proposal is strengthened by the reported recommendations of the investigation, one being to require "human tracking of where shells are falling in addition to the radar".[24]

39. According to a number of sources, the Israeli military version of events on 8 November 2006 is as follows. On or at some time prior to 8 November, the military received information that rocket launching would take place from a field near Beit Hanoun. "In an effort to disrupt and thwart the launching of rockets at Israeli population centers", Israeli artillery directed twenty-four 155 mm shells at two targets near Beit Hanoun. In the military's view, artillery shelling of a site of potential rocket launching is an effective deterrent. The first 12 shells landed in the correct location, however 6 of the second round landed 450 metres away from their intended target and resulted in the civilian casualties.[25]

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[22] Ibid., "Military Advocate General concludes investigation of Beit Hanoun shelling".

[23] The allegedly malfunctioning technology is made by an Israeli manufacturer, which reportedly assisted in the investigation.

[24] Haaretz, "Peretz to re-evaluate IDF policy of shelling northern Gaza Strip", 10 November 2006.

[25] Haaretz, "IDF panel: Errant shell in Beit Hanun likely result of human or technical error", 9 November 2006.

40. This view is in conflict with the information received by the mission. Numerous sources show that 12 shells hit the area around Hamad Street, possibly 13. The mission received no evidence of shelling in a field near Beit Hanoun before the shelling, which resulted in casualties. Indeed testimonies indicate that, just before the shelling, the majority of Beit Hanoun residents were sleeping or at prayer, which would have been quite abnormal if heavy artillery fire had been directed just 450 metres away from the residential area. Furthermore, investigations carried out by the explosive ordnance disposal unit of the Palestinian Police and presented to the mission suggest that six 155 mm artillery shells were fired from a location to the east of Beit Hanoun, and another six from a separate location to the south-east, suggesting the attack was not conducted from one single artillery battery, as reported by the Israeli military, but two.

41. Victims and survivors interviewed by the mission are seeking an explanation for the shelling, a common refrain being "why did this happen to us?" Many expressed doubts as to claims that they had been shelled in error. More than one remarked that they "could believe one shell fired in error but not 12". Others indicated that the level of Israeli monitoring of Beit Hanoun (including by unmanned aerial drones as witnessed by the mission) is such that an error of this magnitude is highly unlikely. Yet another survivor juxtaposed the alleged 450-metre error in the Beit Hanoun shelling with the precision with which the Israeli military carry out targeted assassinations in the occupied Palestinian territories. Others noted that an error of 450 metres would have placed Israeli soldiers at the nearby Erez crossing at risk of shelling, a risk survivors felt the Israeli military would not take.

42. The mission strongly endorses the position put forward by others, particularly human rights organizations, that the use of artillery in urban areas, especially in densely populated urban settings such as Gaza, is wholly inappropriate and likely contrary to international humanitarian and human rights law. The risks of this practice were compounded by the reported reduction by the Israeli military of the "safety zone" for artillery shelling from 300 to 100 metres earlier in 2006. The 155 mm artillery shells fired on Beit Hanoun have an expected lethal radius of 50 to 150 metres and a casualty radius of up to 300 metres. Firing such a shell within 100 metres of civilians appears to the mission almost certain to cause casualties at one time or another. In litigation by human rights groups against the safety-zone reduction, it was reported that Israeli military officers "admitted that the new regulations put Palestinian lives at risk but insisted it would help strike back at Palestinian militants launching rockets at Israeli civilians".[26]

IV. VICTIMS AND SURVIVORS

43. The mission's core mandate was to assess the situation of victims and the needs of survivors. While recognizing that all Gazans are victims of the occupation and live with the constant disruptions to life caused by the realities of Israeli control, fear of attack and humiliation, the mission focused on the specific situation of victims of the Beit Hanoun shelling, as required by its mandate. There were many more victims than the 19 killed in the shelling. In identifying victims, the mission was guided by the definition of the Basic Principles and

[26] Haaretz, "IDF accused of 'knowingly risking Palestinian lives'", 17 April 2006. The article quoted an unnamed military officer as saying, "We have no way of ensuring that civilians will not be hurt in the next shelling".

Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[27] The victims of the shelling are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of the shelling; they include the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The mission notes that there has been no systematic follow-up of the situation of victims to assess their progress, their ongoing medical or other needs.

44. During its visit to Gaza, the mission met and talked with as many victims and survivors of the shelling as possible, in particular those of the Al-Athamna family. Key elements of the testimony of the victims, survivors, witnesses and non-governmental organizations, together with the mission's own observations, are given below. Following the mission's methodology outlined above, the situation of victims and needs of survivors was addressed from the perspective of international law in general and human rights in particular. The extremely difficult conditions of life facing all Gazans in many instances constitute gross violations of human rights and international humanitarian law. The mission agrees with the Secretary-General (SG/SM/11429), the previous Special Rapporteur (A/HRC/7/17) and the High Commissioner for Human Rights (A/HRC/7/76) that the blockade amounts to collective punishment contrary to international humanitarian law.[28]

A. The protection of civilians in conflict and the right to life

45. A total of 19 of the Beit Hanoun victims died as a result of the shelling. Two of the greatest needs of the surviving victims are a credible explanation for the attack on the town, and, where appropriate, the holding of individuals to account for the attack. In the mission's view, neither of these needs have been met. As noted by the Israeli Foreign Minister above, "regrettable incidents" do occur in battle; however, such incidents must be assessed in accordance with both the rules regulating recourse to force and international humanitarian law, the applicable *lex specialis*.

46. The mission recognizes that a State has the inherent right to self defence and to protect its citizens from armed attack under Article 51 of the Charter of the United Nations. Israel contends that the shelling of Beit Hanoun, operation Autumn Clouds and indeed the entire blockade of Gaza is in response to the firing of Kassam rockets into its territory by Palestinian militants. While the firing of Kassam rockets constitutes an armed attack against Israel, they are fired by non-State actors. The International Court of Justice in the Wall case concluded that Article 51 was not relevant to that case, noting inter alia that the attacks against which the Wall was being constructed do not emanate from another State.[29] However, the opposite view has been expressed by a number of judges. What is clear is that, if the right to self defence applies against armed

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[27] General Assembly resolution 60/147, para. 8

[28] See also Hague Regulations, article 50; GC IV, art. 33.

[29] ICJ reports 2004, para. 139.

attacks from non-State actors, it is subject to the requirements of necessity and proportionality.[30] This requires a careful examination of all the facts, which, as the mission was not able to visit Israel, it is not in a position to perform. However, the mission saw no evidence of any necessity for the shelling of Beit Hanoun on 8 November and certainly none that the need for such an attack was "instant, overwhelming, leaving no choice of means, and no moment for deliberation". The fact that the Israeli military had been in almost full control of Beit Hanoun in the days prior to the attack only reinforces this argument.

47. The primary rule of international humanitarian law is the protection of civilians. Article 43 of the Hague Regulations require the occupier to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety" in the occupied territory. According to Judge Higgins, President of the International Court of Justice, "the protection of civilians remains an intransgressible obligation of humanitarian law, not only for the occupiers but equally for those seeking to liberate themselves from occupation".[31] Nevertheless, the use of force with an impact on civilians is permissible if it is directed at a legitimate military target and is proportionate to the overall threat faced. The mission received no evidence that the shelled area of Beit Hanoun was a legitimate military target and notes that it had been occupied by Israeli military earlier in the week.

48. Israel has not claimed that the houses around Hamad Street were a military target but that the shelling was caused by technical error. The International Law Commission articles on the responsibility of states for internationally wrongful acts[32] are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. In a commentary on the articles, Crawford and Olleson consider that "if a State deliberately carries out some specific act, there is less room for it to argue that the harmful consequences were unintended and should be disregarded. Everything depends on the specific context and on the content and interpretation of the obligation said to have been breached".[33]

49. The firing of artillery towards Beit Hanoun on the morning of 8 November 2006 was a deliberate act in the context of the long-term occupation of Gaza and of the deaths of civilians and destruction of property in Autumn Clouds. Taken together with further facts (such as the reduction of the safety zone for artillery use referred to above) and the nature of the "intransgressible obligation" to protect civilian life, the mission considers that there is evidence of a disproportionate and reckless disregard for Palestinian civilian life, contrary to the requirements of international humanitarian law and raising legitimate concerns about the possibility of a war crime having been committed.

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[30] Ibid. sep. op., Judge Buergenthal, para. 5.

[31] Ibid. sep. op., Judge Higgins, para. 19.

[32] Annexed to General Assembly resolution 56/83.

[33] J. Crawford and S. Olleson, "The Nature and Forms of International Responsibility", in M. Evans, *International Law* (2003).

50. Human rights law is also applicable in armed conflict and occupation.[34] The mission considers that this reckless disregard for civilian life also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal acts, but also to prevent arbitrary killing by their own security forces.[35] No exception is made for acts during war.

51. The right to life also includes a procedural component that requires adequate investigation of any alleged violation "promptly, thoroughly and effectively through independent and impartial bodies" for "failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant".[36] The investigation of the Israeli military referred to above was not independent (it was carried out by a committee comprised of Israeli military personnel) and the lack of transparency makes it impossible to determine whether or not it was rigorous or effective. The failure of Israel to comply with the procedural requirement adds to the frustration and anger felt by survivors, who have received no credible explanation for what occurred. Survivors have come to perceive the rule of law as having no meaning for them.

B. The situation of victims and the needs of survivors

52. The needs of victims and survivors of the shelling include compliance by Israel with other human rights obligations, especially where failure to do so has an adverse impact on their recovery from the events of 8 November 2006. Relevant human rights obligations include the right to physical and mental health and the right to an adequate standard of living, including work, social assistance and shelter. These economic and social rights are contained in the International Covenant on Economic, Social and Cultural Rights. The International Court of Justice explicitly stated in the Wall case that the obligations of Israel under the Covenant apply in the occupied Palestinian territories.

1. The right to physical and mental health

53. Testimony demonstrated a number of violations of the obligation to respect and protect the right to the enjoyment of the highest attainable standard of physical and mental health.[37] The

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[34] "The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable." Human Rights Committee, general comment No. 31 on the nature of the general legal obligation imposed on States parties to the covenant, 2004, para. 11.

[35] General comment No. 6, 1982, para. 3.

[36] Human Rights Committee, general comment No. 31, para. 15. See also Basic Principles and Guidelines on the Right to a Remedy, para. 3 (b).

[37] International Covenant on Economic, Social and Cultural Rights, art. 12; Convention on the Elimination of All Forms of Discrimination against Women, art. 12; Convention on the Rights of the Child, art. 24.

Special Rapporteur has described the many ways in which the primary obligation to protect the right to physical and mental health has been severely undermined by the economic situation and the blockade of Gaza (see A/HRC/7/17).

54. The situation in Beit Hanoun before and after the shelling has had a significant detrimental impact on the access of victims and survivors to adequate health care. Before the shelling, the health-care infrastructure of the town had already been overwhelmed during the Autumn Clouds incursion. The director of Beit Hanoun hospital told the mission that they had used all their reserves by 8 November; these included physical reserves of strength of medical staff after the demands caused by the severe injuries presented during Autumn Clouds, as well as of essential supplies, such as blood.

55. In the immediate aftermath of the shelling, access to and the availability of health services appropriate to the levels and type of injury was limited by the continued shelling, which impeded ambulances and medical teams from getting to the scene. Subsequently, there were delays in evacuating severely wounded people to hospitals in Israel and Egypt. Despite the promise by the Israeli Prime Minister and the Defense Minister of urgent humanitarian assistance and immediate medical care,[19] the mission was told that it was not until late in the afternoon of 8 November that evacuations were made, and even then with the significant restrictions described above.

56. The fact that the mission was not able to visit Beit Hanoun until May 2008 allowed its members to witness the long-term health consequences of the shelling. The obligation under the Covenant to respect the right to physical and mental health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. Survivors told of the various ways in which Israeli authorities had failed to comply with this obligation, for example by refusing permission to return to hospitals in Israel and Egypt for follow-up treatment that had been prescribed by doctors. Testimonies included the following: “Once a month, I have to go to Israel to follow treatment. I spend a month getting my permit. Since the siege I can’t go for follow-up.” Another survivor could not return to Egypt to have shrapnel removed from wounds, nor could a woman whose foot had been blown off during the shelling return to Egypt to receive a prosthetic foot. As one survivor noted, “there were two attacks, the military attack on 8 November and the second a bureaucratic one”. The mayor reported that there was no physiotherapy facility available in the town, and plans with the Catholic Church to build a psychiatric counselling centre had been stalled because of the blockade. The mission was able to witness the effects of the blockade on Al-Shifa hospital, Gaza’s largest medical facility.

57. The survivors do not suffer from physical injury alone; there are also significant mental health problems. In the words of one survivor, “I am physically healed but am having problems dealing with it.”[38] The number of children with mental health issues is also increasing. The mission was told by survivors of traumatized children who were afraid to sleep because of the bombs, who had reverted to bed wetting, who ask for their dead parents and who do not want to live in Beit Hanoun. The Committee on Economic, Social and Cultural Rights stated that States parties are obliged to fulfil (provide) a specific right contained in the Covenant when individuals

[38] In his report (A/HRC/7/17), the Special Rapporteur also argues that the use of sonic booms is among the means through which the Israeli military exerts control over the Gaza Strip.

or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal".[39] This is the situation of survivors of the Beit Hanoun shelling and these obligations have not been adequately addressed.

58. The mission notes that the Committee on Economic, Social and Cultural Rights has confirmed that States parties have a minimum core obligation with respect to health-care services, which includes the obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.[40] Survivors in Beit Hanoun have been made especially vulnerable by the shelling on 8 November and its aftermath and the mission considers that there has been a failure by Israel to comply with this minimum core obligation.

2. The right to an adequate standard of living

59. The Committee has consistently underlined the interdependence of the right to physical and mental health with other rights, including those to minimum essential food, access to basic housing, sanitation, adequate and safe water, and equitable distribution of health facilities, goods and services. Such conditions also undermine the right to an adequate standard of living.[41]

60. The people of Beit Hanoun, together with all people in Gaza, have experienced a severe undermining of these core requirements during the blockade. For the victims of Beit Hanoun, the impact of these violations has been exacerbated by the consequences of the shelling. For example, where there is such high unemployment, a person with the severe physical or mental injuries suffered by many of the survivors of the shelling is unlikely to be employed, a situation confirmed by witnesses. Some survivors have incurred greater financial obligations by having to undertake the care of orphaned children or other dependants, and their desperate financial situation causes them further stress. Many of the survivors are living on relief handouts, from relief agencies or from family members. This condition is both uncertain and humiliating.

61. The Committee emphasized the essential role of international cooperation under the International Covenant on Economic, Social and Cultural Rights in particular States parties' joint and individual responsibility in providing disaster relief and humanitarian assistance in times of emergency.[42] The mission observed the appalling humanitarian consequences of the blockade, exacerbated in the case of Beit Hanoun. This humanitarian crisis is the result of deliberate policy choices of States that are incompatible with States' obligations under the Covenant. All States parties to the Covenant are reminded of their obligations under it.

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[39] General comment No. 14 on the right to the highest attainable standard of health, 2000, para. 37.

[40] Ibid., para. 43.

[41] International Covenant on Economic, Social and Cultural Rights, art. 11.

[42] General comment No. 14, para. 40.

3. Freedom of movement

62. Freedom of movement is provided for in article 12 of the International Covenant on Civil and Political Rights, including individuals' freedom to leave any country, including their own. Together with other persons living in Gaza, survivors of the Beit Hanoun shelling have had their movements severely restricted by the occupation and the blockade. More directly, during the Autumn Clouds operation, a curfew was imposed on Beit Hanoun, which was thus isolated. The impact of these restrictions on access to health-care services has been discussed above. Being unable to move freely also contributes to feelings of isolation and can undermine mental health.

4. The situation of women

63. The particular position of women and gender-specific harm may be invisible where a whole society is facing gross violations of human rights and of international humanitarian law, as there is a sense of unity that prevents identification of and focus on women's situations. Nevertheless, incursions and artillery strikes and their aftermath such as those in Beit Hanoun have engendered consequences that should be addressed.

64. The mission heard testimony from both women survivors of the shelling and women's groups active in Gaza. Many spoke of the intrusions of the Autumn Clouds incursions on women's sense of privacy within the home. Where women have a more vulnerable social position and only limited freedom of movement in public, the private space of the home is especially important as a "women's space". Intrusion into the home by Israeli military personnel, sometimes for several hours, caused humiliation, loss of dignity, denied privacy and undermined women's sense of belonging and ownership. One woman was ejected from her house with nothing but the clothes she was wearing. Another said that she had been unable to go to the bathroom while the Israeli soldiers were in the house. Incursions into houses also caused humiliation to men through their being beaten in front of their families.

65. Autumn Clouds and the shelling on 8 November led to the destruction of a number of houses. Female victims told the mission that they destroyed "the only thing in the world" and that "life itself was destroyed" with the house. Possessions of special importance to women were destroyed with their houses; one woman said she had gone to her child's school to recover some photos of her child as she had lost all she had in the shelling of the house and this was the only way she could get photos of her own child.

66. One woman told the mission that the sufferings of women "could not be divided" but noted that the particular effects and vulnerable social position of women had been worsened by the blockade and effects of the incursion and shelling; women are "the poorest of the poor" and unemployment is especially high among women, including women graduates. The burden of childcare falls on women, which is made more difficult when children are traumatized. Lack of specialized medical services and limited facilities for counselling mean that women receive little expert assistance. Anecdotal evidence was offered indicating an increase in domestic violence in Gaza as a result of the blockade. The mission considers that this is an area that needs addressing. The blockade also hampers initiatives by women's groups to ameliorate the situation, for example, through law reform and advocacy to support women's claims.

5. Access to justice and right to an effective remedy

67. One of the major needs of survivors is to secure access to justice and redress.[43] The mission was told that survivors "want justice, not sympathy". In the Basic Principles and Guidelines on the Right to a Remedy, the General Assembly recognized that it is through honouring the victims' right to benefit from remedies and reparation that the international community keeps faith with the plight of victims and survivors. The survivors of the Beit Hanoun shelling have not been able to have access to justice. Victims have made recourse to the assistance of an Israeli lawyer for compensation from Israel, at this stage through court proceedings; however, they face many obstacles, including restrictions on their travel to Israel and legal costs. A number of people also spoke of their concerns about measures introduced recently into Israeli law that had the effect of limiting the ability of Palestinians harmed by Israeli military action to seek redress in Israeli courts.[44]

68. The Israeli military internal investigation referred to above concluded that there would be no prosecutions of individuals or other disciplinary action arising from the shelling; therefore, no one has been held to account for the injuries suffered. A further recent example involving the killing of a media cameraman and eight youths reinforces the culture of impunity decried by the mission in its previous report.

69. Article 2 (3) of the International Covenant on Civil and Political Rights guarantees the right to an effective remedy for violations of the Covenant. The Basic Principles state that reparation for harm suffered should be "adequate, effective and prompt", and that victims seeking access to justice should receive proper assistance. These standards were not observed. The mission was told of how the lack of financial resources prevented survivors from seeking further health care and from finding adequate housing where homes had been made uninhabitable. Some family members are living in rented accommodation and others have taken out loans, creating further financial strains. This also means that family members have been separated when they need mutual support.

70. There has been limited monetary assistance offered to some survivors of the Beit Hanoun shelling and immediate humanitarian assistance from UNRWA. The United Arab Emirates and the United Nations have assisted in the rebuilding of houses. To the best of the mission's knowledge, Israel has not paid compensation for the damage and harm caused by its internationally wrongful act. The requirements for reparations for victims of human rights abuses have not been satisfied. Other forms of monetary compensation (for example, for moral damage or lost opportunities) have not been offered.

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[43] General Assembly resolutions 40/34 and 60/147.

[44] An Israeli law preventing Palestinians from claiming compensation from Israel following military operations was partially struck down by the High Court on 12 December 2006. However, the court left standing a provision that bars compensation to Palestinians harmed in combat operations.

71. Other forms of reparation provided for under the Basic Principles include rehabilitation comprising appropriate medical and psychological care and social and legal services, verification of the facts and public disclosure of the truth, and commemorations of and tributes to the victims. Appropriate reparation should include the provision of a range of such facilities and measures, but none have been forthcoming.

V. CONCLUSIONS AND RECOMMENDATIONS

72. **The mission expresses its sympathy to all victims of the shelling on 8 November 2006 of Beit Hanoun. The attack took lives, inflicted horrendous physical and mental injuries, tore families apart, destroyed homes, took away livelihoods and traumatized a population. Its aftermath compounded those ills. The courage of the victims in the face of continuing hardship deserves our admiration. Their recovery is not aided by continuing incursions into Beit Hanoun including on the night after the mission's visit to the town.**

73. **The mission again expresses its regret that the Government of Israel decided to withhold any cooperation with the mission. Israel feels that the mandate of the mission is biased against it. That is a matter for the Council. The mission has, however, gone to great lengths to execute its mandate in as balanced a way as possible. The effective ban on its visiting Israel and meeting with Israeli actors (including victims of Kassam rocket attacks in southern Israel) has itself been an obstacle to the balance that Israel seeks. The mission expresses its sympathy to all those affected by the Kassam rocket attacks in southern Israel.**

74. **The bombing of Beit Hanoun and its aftermath came in the wider context of the conflict in the occupied Palestinian territories and Israel. The occupation remains the root cause of the bleak situation that the mission only briefly sketches in the present report. The cessation of hostilities between Israel and Palestinian militants in June 2008 was a positive development. The mission reiterates that the process towards peace must operate within a framework of international law and be guided by respect for the Charter of the United Nations, international human rights law and international humanitarian law. The mission draws the attention of all parties to the conflict to Security Council resolution 1325 (2000) requiring attention to the special needs of women in the aftermath of conflict and urging women's participation in conflict resolution and sustainable peace.**

75. **The violence in Gaza and southern Israel has led to countless violations of international human rights and international humanitarian law. This lack of respect on both sides for the rules of conflict not only leads to incidents such as that in Beit Hanoun, but also undermines respect for the laws of war and human rights in other conflicts. The people of Gaza must be afforded protection in compliance with international law and, above all, the Fourth Geneva Convention. The Israeli military must place at the centre of its decision-making and activities in the occupied Palestinian territories the consequences of the use of force on civilians. In the absence of a well-founded explanation from the Israeli military (who is in sole possession of the relevant facts), the mission must conclude that there is a possibility that the shelling of Beit Hanoun constituted a war crime as defined in the Rome Statute of the International Criminal Court. Similarly, as the mission made clear to Hamas at the highest level, the firing of rockets on the civilian population in**

Israel must stop. Those in positions of authority in Gaza have not only an international humanitarian law obligation to respect international humanitarian law norms relating to the protection of civilians, but also a responsibility to ensure that these norms are respected by others.

76. **One victim of the Beit Hanoun shelling was the rule of law. There has been no accountability for an act that killed 19 people and injured many more. The Israeli response of a largely secret internal military investigation is absolutely unacceptable from both legal and moral points of view. The mission notes that Israel has adopted a similar response to other killings by its military, with similar results. The mission repeats its position that, regardless of whether the casualties at Beit Hanoun were caused by a mistake, recklessness, criminal negligence or wilful conduct, those responsible must be held accountable. It is not too late for an independent, impartial and transparent investigation of the shelling to be held; indeed, the mission notes other instances in which the courts have ordered the Israeli military to open investigations into the killings of civilians by the military. The mission welcomes this intervention by the courts. Justice cannot wait for peace to be secured. Rather, no credible, lasting peace can be built upon impunity and injustice.**

77. **As the mission has repeatedly stressed (including to representatives of Hamas), those firing rockets on Israeli civilians are no less accountable than the Israeli military for their actions (A/HRC/5/20, para. 19).**

78. **Accountability involves providing a remedy and redress for victims. To date, neither has been forthcoming from Israel, despite its admission of responsibility for the attack. The very clear message from the victims and survivors to the mission and to the Council is that they seek justice before anything else. The present report outlines some of the obstacles put in the way of victims seeking justice. While the mission calls on Israel to remove these obstacles, it is of the view that victims should not be forced to fight for compensation through Israeli courts when all accept that damage was inflicted on individuals by the State. The mission recommends that the State of Israel pay victims adequate compensation without delay. In the light of the magnitude of the attack on a small community, and in addition to compensation to individuals, the mission also recommends that Israel make reparation to the community of Beit Hanoun in the form of a memorial to the victims that constitutes a response to the needs of survivors. Possibilities include a health facility such as a much-needed physiotherapy clinic.**

79. **The situation of victims and survivors of the shelling, as witnessed by the mission, remains grim. Israel, Hamas and the Palestinian Authority have human rights obligations towards the victims. Most of the ongoing violations, however, are caused by Israeli action or inaction. The mission calls on Israel to honour its obligations to the people of Beit Hanoun, and more generally to the people of occupied Gaza, to respect, protect and fulfil their human rights. A major barrier to the enjoyment of human rights is the ongoing blockade that limits individuals' ability to provide an adequate standard of living for themselves and their families and the capacity of local authorities to provide essential services for the population. A central need of victims is access to health services. Israel must desist from obstructing victims' access to health-care services, be it through restricting the flow of medical goods and personnel into Gaza, or through restricting victims' ability to leave Gaza to seek health care elsewhere.**

80. **The Council asked the mission to make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults. Specific recommendations in this regard were made in the mission's previous report, recommendations that the mission reiterates. In the mission's view, one of the most effective and immediate means of protecting Palestinian civilians against any further Israeli assaults is to insist on respect for the rule of law and accountability. We have seen that even the flawed Israeli investigation into the Beit Hanoun shelling resulted in a decision to discontinue use of artillery in Gaza, one of the main causes of civilian death and injury in the territory. The knowledge that their actions will be scrutinized by an independent authority would be a powerful deterrent to members of the Israeli military against taking risks with civilian lives.**

81. **During a press conference at the conclusion of its visit to Gaza, the mission indicated that the international community is failing to fulfil its role in respect of the suffering of the people of Gaza, in particular in its silence which begets complicity. In its efforts to discharge its mandate, the mission witnessed positions based on political objectives rather than on principle by all relevant parties. Addressing human rights violations suffered by individuals in Israel and in the occupied Palestinian territories must be the prime motivating force for members of the Council and others with influence in the region.**

82. **Finally, the mission expresses its thanks to all those who facilitated its visit to Beit Hanoun, in particular the Government of Egypt and UNRWA. It also expresses its thanks and deep admiration to those working with the people of Gaza, specifically non-governmental organizations, human rights defenders and the United Nations.**

Annex

Schedule of the high-level fact-finding mission to Beit Hanoun 27-29 May 2008

Tuesday 27 May 2008

08:00	Travel from Cairo to Gaza via Rafah
16:00	Meeting with UNRWA Commissioner-General and Director of Operations in Gaza
17:00	Meetings with Sabaya project BH, Al Taher Community Centre, Women's Research and Legal Consultation Centre.
18:00	Meeting with Hamas
19:00	Meeting with representatives of OCHA, WHO and the United Nations Food and Agricultural Organization (FAO)

Wednesday 28 May 2008

08:00	Site inspection in Beit Hanoun, meeting with victims and survivors on site
10:00	Meeting with the Mayor of Beit Hanoun
11:00	Taking testimony from victims and survivors (including medical personnel from Beit Hanoun hospital)
16:30	Visit to Al-Shifa hospital
17:30	Meeting with the Palestinian Center for Human Rights (PCHR)
18:15	Meeting with Al Mezan Center for Human Rights
19:30	Meeting with Explosive Ordnance Disposal Unit, Palestinian Police
21:00	Informal meeting with civil society organizations (PCHR, Al Mezan, Ad-Dameer, GCMHP, PICCR, PICESG, PNGO, PARC, Women's Technical Committee)

Thursday 29 May 2008

09:00	Meeting with the United Nations Humanitarian Coordinator/Resident Coordinator and United Nations High Representative for the Alliance of Civilizations
09:30	Press Conference in Gaza
10:30	Travel from Gaza to Cairo via Rafah

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HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the United Nations Fact-Finding Mission on the Gaza Conflict*

* Late submission.

GE.09-15866

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ACRONYMS AND ABBREVIATIONS

ACRI	Association for Civil Rights in Israel
BMC	businessman card
CLA	Coordination and Liaison Administration
CMWU	Coastal Municipalities Water Utility
COGAT	Coordinator of Government Activities in the Territories
DFLP	Democratic Front for the Liberation of Palestine
DIME	dense inert metal explosive
DSS	United Nations Department of Safety and Security
FAO	Food and Agriculture Organization of the United Nations
GIS	General Intelligence Service
HaMoked	Center for the Defense of the Individual
HCC	Humanitarian Coordination Centre
IAF	Israeli air force
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	Independent Commission for Human Rights
ICRC	International Committee of the Red Cross
IDF	Israeli Defense Forces
IED	improvised explosive device
IHL	international humanitarian law
IHRL	international human rights law
ILO	International Labour Organization
IOF	Israeli occupation forces
MADA	Palestinian Center for Development and Media Freedoms
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
PALTRADE	Palestine Trade Center
PCATI	Public Committee against Torture in Israel
PCHR	Palestinian Centre for Human Rights
PFLP	Popular Front for the Liberation of Palestine
PHR-Israel	Physicians for Human Rights – Israel
PLO	Palestine Liberation Organization
PRC	Popular Resistance Committee
PRCS	Palestinian Red Crescent Society
TAWTHEQ	Central Commission for Documentation and Pursuit of Israeli War Criminals
UAV	unmanned aviation vehicle
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research

UNOSAT	Operational Satellite Applications Programme
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WFP	World Food Programme
WHO	World Health Organization

EXECUTIVE SUMMARY

A. Introduction

1. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after."

2. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland's Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

3. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

4. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.

5. The Mission convened for the first time in Geneva between 4 and 8 May 2009. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission's secretariat were deployed in Gaza from 22 May to 4 July 2009 to conduct field investigations.

6. Notes verbales were sent to all Member States of the United Nations and United Nations organs and bodies on 7 May 2009. On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate.

7. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

8. The Mission repeatedly sought to obtain the cooperation of the Government of Israel. After numerous attempts had failed, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter the Gaza Strip through the Rafah crossing.

9. The Mission has enjoyed the support and cooperation of the Palestinian Authority and of the Permanent Observer Mission of Palestine to the United Nations. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the

Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

10. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission is in contact with him and continues to monitor developments.

B. Methodology

11. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

12. With regard to temporal scope, the Mission decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operations, up to 31 July 2009.

13. The Mission also analysed the historical context of the events that led to the military operations in Gaza between 27 December 2008 and 18 January 2009 and the links between these operations and overarching Israeli policies vis-à-vis the Occupied Palestinian Territory.

14. The Mission considered that the reference in its mandate to violations committed “in the context” of the December–January military operations required it to include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

15. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

16. This report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission’s mandate. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. In Gaza, the Mission investigated 36 incidents.

17. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

18. The Mission adopted an inclusive approach to gathering information and seeking views. Information-gathering methods included: (a) the review of reports from different sources; (b) interviews with victims, witnesses and other persons having relevant information; (c) site visits to specific locations in Gaza where incidents had occurred; (d) the analysis of video and photographic images, including satellite imagery; (e) the review of medical reports about injuries to victims; (f) the forensic analysis of weapons and ammunition remnants collected at incident sites; (g) meetings with a variety of interlocutors; (h) invitations to provide information relating to the Mission's investigation requirements; (i) the wide circulation of a public call for written submissions; (j) public hearings in Gaza and in Geneva.

19. The Mission conducted 188 individual interviews. It reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

20. By refusing to cooperate with the Mission, the Government of Israel prevented it from meeting Israeli Government officials, but also from travelling to Israel to meet Israeli victims and to the West Bank to meet Palestinian Authority representatives and Palestinian victims.

21. The Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons.

22. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission gave priority to the participation of victims and people from the affected communities. The 38 public testimonies covered facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

23. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

24. The Mission's final conclusions on the reliability of the information received were based on its own assessment of the credibility and reliability of the witnesses it met, verifying the sources and the methodology used in the reports and documents produced by others, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient credible and reliable information for the Mission to make a finding in fact.

25. On this basis, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done

deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events. The Mission has thus referred in many cases to the relevant fault element (mens rea). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

26. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

C. Facts investigated by the Mission, factual and legal findings

The Occupied Palestinian Territory: the Gaza Strip

1. The blockade

27. The Mission focused (chap. V) on the process of economic and political isolation imposed by Israel on the Gaza Strip, generally referred to as a blockade. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts in the provision of fuel and electricity. Gaza's economy is further severely affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and other public sectors to respond to the emergency created by the military operations.

28. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza Strip without qualification.

2. Overview of Israel's military operations in the Gaza Strip and casualties

29. Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead". The military operations in the Gaza Strip included two main phases, the air phase and the air-land phase, and lasted from 27 December 2008 to 18 January 2009. The Israeli offensive began with a week-long air attack, from 27 December until 3 January 2009. The air force continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009. The army was responsible for the ground invasion, which began on 3 January 2009, when ground troops entered Gaza from the north and the east. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. The navy was used in part to shell the Gaza coast during the operations. Chapter VI also locates the incidents investigated by the Mission, described in chapters VII to XV, in the context of the military operations.

30. Statistics about Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations place the overall number of persons killed between 1,387 and 1,417. The Gaza authorities report 1,444 fatalities. The Government of Israel provides a figure of 1,166. The data provided by non-governmental sources on the percentage of civilians among those killed are generally consistent and raise very serious concerns about the way Israel conducted the military operations in Gaza.

31. According to the Government of Israel, during the military operations there were four Israeli fatalities in southern Israel, of whom three were civilians and one a soldier. They were killed by rocket and mortar attacks by Palestinian armed groups. In addition, nine Israeli soldiers were killed during the fighting inside the Gaza strip, four of whom as a result of friendly fire.

3. Attacks by Israeli forces on government buildings and persons of the Gaza authorities, including police

32. The Israeli armed forces launched numerous attacks against buildings and persons of the Gaza authorities. As far as attacks on buildings are concerned, the Mission examined the Israeli strikes against the Palestinian Legislative Council building and the Gaza main prison (chap. VII). Both buildings were destroyed and can no longer be used. Statements by Israeli Government and armed forces representatives justified the attacks arguing that political and administrative institutions in Gaza are part of the "Hamas terrorist infrastructure". The Mission rejects this position. It finds that there is no evidence that the Legislative Council building and the Gaza main prison made an effective contribution to military action. On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives. These facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.

33. The Mission examined the attacks against six police facilities, four of them during the first minutes of the military operations on 27 December 2008, resulting in the death of 99 policemen and nine members of the public. Overall, the approximately 240 policemen killed by Israeli forces constitute more than one sixth of the Palestinian casualties. The circumstances of the attacks seem to indicate, and the Government of Israel's July 2009 report on the military operations confirm, that the policemen were deliberately targeted and killed on the ground that the police, as an institution or a large part of the policemen individually, are, in the Government of Israel's view, part of the Palestinian military forces in Gaza.

34. To examine whether the attacks against the police were compatible with the principle of distinction between civilian and military objects and persons, the Mission analysed the institutional development of the Gaza police since Hamas took complete control of Gaza in July 2007 and merged the Gaza police with the "Executive Force" it had created after its election victory. The Mission finds that, while a great number of the Gaza policemen were recruited among Hamas supporters or members of Palestinian armed groups, the Gaza police were a civilian law-enforcement agency. The Mission also concludes that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities and thus did not lose their civilian immunity from direct attack as civilians on this basis. The Mission accepts that there may be individual members of the Gaza police that were at the same time members of

Palestinian armed groups and thus combatants. It concludes, however, that the attacks against the police facilities on the first day of the armed operations failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity), and therefore violated international humanitarian law.

4. Obligation on Palestinian armed groups in Gaza to take feasible precautions to protect the civilian population and civilian objects

35. The Mission examined whether and to what extent the Palestinian armed groups violated their obligation to exercise care and take all feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations (chap. VIII). The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups. On the basis of the information gathered, the Mission found that Palestinian armed groups were present in urban areas during the military operations and launched rockets from urban areas. It may be that the Palestinian combatants did not at all times adequately distinguish themselves from the civilian population. The Mission found no evidence, however, to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks.

36. Although the incidents investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, it cannot exclude that this might have occurred in other cases. The Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes. On the basis of its own investigations and the statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot, however, discount the possibility that Palestinian armed groups were active in the vicinity of such United Nations facilities and hospitals. While the conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law, Palestinian armed groups, where they launched attacks close to civilian or protected buildings, unnecessarily exposed the civilian population of Gaza to danger.

5. Obligation on Israel to take feasible precautions to protect the civilian population and civilian objects in Gaza

37. The Mission examined how the Israeli armed forces discharged their obligation to take all feasible precautions to protect the civilian population of Gaza, including particularly the obligation to give effective advance warning of attacks (chap. IX). The Mission acknowledges the significant efforts made by Israel to issue warnings through telephone calls, leaflets and radio broadcasts, and accepts that in some cases, particularly when the warnings were sufficiently specific, they encouraged residents to leave an area and get out of harm's way. However, the Mission also notes factors that significantly undermined the effectiveness of the warnings issued. These include the lack of specificity and thus credibility of many pre-recorded phone messages and leaflets. The credibility of instructions to move to city centres for safety was also diminished by the fact that the city centres themselves had been the subject of intense attacks during the air

phase of the military operations. The Mission also examined the practice of dropping lighter explosives on roofs (so-called roof knocking). It concludes that this technique is not effective as a warning and constitutes a form of attack against the civilians inhabiting the building. Finally, the Mission stresses that the fact that a warning was issued does not relieve commanders and their subordinates of taking all other feasible measures to distinguish between civilians and combatants.

38. The Mission also examined the precautions taken by the Israeli armed forces in the context of three specific attacks they launched. On 15 January 2009, the field office compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Gaza City came under shelling with high explosive and white phosphorous munitions. The Mission notes that the attack was extremely dangerous, as the compound offered shelter to between 600 and 700 civilians and contained a huge fuel depot. The Israeli armed forces continued their attack over several hours despite having been fully alerted to the risks they created. The Mission concludes that the Israeli armed forces violated the requirement under customary international law to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects.

39. The Mission also finds that, on the same day, the Israeli armed forces directly and intentionally attacked al-Quds hospital in Gaza City and the adjacent ambulance depot with white phosphorous shells. The attack caused fires which took a whole day to extinguish and caused panic among the sick and wounded who had to be evacuated. The Mission finds that no warning was given at any point of an imminent strike. On the basis of its investigation, the Mission rejects the allegation that fire was directed at the Israeli armed forces from within the hospital.

40. The Mission also examined the intense artillery attacks, again including white phosphorous munitions, on al-Wafa hospital in eastern Gaza City, a facility for patients receiving long-term care and suffering from particularly serious injuries. On the basis of the information gathered, the Mission found a violation of the prohibition of attacks on civilian hospitals in both cases. The Mission also highlights that the warnings given by leaflets and pre-recorded phone messages in the case of al-Wafa hospital demonstrate the complete ineffectiveness of certain kinds of routine and generic warnings.

6. Indiscriminate attacks by Israeli forces resulting in the loss of life and injury to civilians

41. The Mission examined the mortar shelling of al-Fakhura junction in Jabaliyah next to a UNRWA school, which, at the time, was sheltering more than 1,300 people (chap. X). The Israeli armed forces launched at least four mortar shells. One landed in the courtyard of a family home, killing 11 people assembled there. Three other shells landed on al-Fakhura Street, killing at least a further 24 people and injuring as many as 40. The Mission examined in detail statements by Israeli Government representatives alleging that the attack was launched in response to a mortar attack from an armed Palestinian group. While the Mission does not exclude that this may have been the case, it considers the credibility of Israel's position damaged by the series of inconsistencies, contradictions and factual inaccuracies in the statements justifying the attack.

42. In drawing its legal conclusions on the attack on al-Fakhura junction, the Mission recognizes that, for all armies, decisions on proportionality, weighing the military advantage to be gained against the risk of killing civilians, will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case. The firing of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought. The Mission thus considers the attack to have been indiscriminate, in violation of international law, and to have violated the right to life of the Palestinian civilians killed in these incidents.

7. Deliberate attacks against the civilian population

43. The Mission investigated 11 incidents in which the Israeli armed forces launched direct attacks against civilians with lethal outcome (chap. XI). The facts in all bar one of the attacks indicate no justifiable military objective. The first two are attacks on houses in the al-Samouni neighbourhood south of Gaza City, including the shelling of a house in which Palestinian civilians had been forced to assemble by the Israeli armed forces. The following group of seven incidents concern the shooting of civilians while they were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli forces to do so. The facts gathered by the Mission indicate that all the attacks occurred under circumstances in which the Israeli armed forces were in control of the area and had previously entered into contact with or had at least observed the persons they subsequently attacked, so that they must have been aware of their civilian status. In the majority of these incidents, the consequences of the Israeli attacks against civilians were aggravated by their subsequent refusal to allow the evacuation of the wounded or to permit access to ambulances.

44. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend in the testimonies of Israeli soldiers collected in two publications it reviewed.

45. The Mission further examined an incident in which a mosque was targeted with a missile during early evening prayers, resulting in the death of 15 people, and an attack with flechette munitions on a crowd of family and neighbours at a condolence tent, killing five. The Mission finds that both attacks constitute intentional attacks against the civilian population and civilian objects.

46. From the facts ascertained in all the above cases, the Mission finds that the conduct of the Israeli armed forces constitutes grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and, as such, give rise to individual criminal responsibility. It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation of the right to life.

47. The last incident concerns the bombing of a house resulting in the killing of 22 family members. Israel's position in this case is that there was an "operational error" and that the intended target was a neighbouring house storing weapons. On the basis of its investigation, the Mission expresses significant doubts about the Israeli authorities' account of the incident. The

Mission concludes that, if a mistake was indeed made, there could not be said to be a case of wilful killing. State responsibility of Israel for an internationally wrongful act would, however, remain.

8. The use of certain weapons

48. Based on its investigation of incidents involving the use of certain weapons such as white phosphorous and flechette missiles, the Mission, while accepting that white phosphorous is not at this stage proscribed under international law, finds that the Israeli armed forces were systematically reckless in determining its use in built-up areas. Moreover, doctors who treated patients with white phosphorous wounds spoke about the severity and sometimes untreatable nature of the burns caused by the substance. The Mission believes that serious consideration should be given to banning the use of white phosphorous in built-up areas. As to flechettes, the Mission notes that they are an area weapon incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

49. While the Mission is not in a position to state with certainty that so-called dense inert metal explosive (DIME) munitions were used by the Israeli armed forces, it did receive reports from Palestinian and foreign doctors who had operated in Gaza during the military operations of a high percentage of patients with injuries compatible with their impact. DIME weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands, but do raise specific health concerns. Finally, the Mission received allegations that depleted and non-depleted uranium were used by the Israeli armed forces in Gaza. These allegations were not further investigated by the Mission.

9. Attacks on the foundations of civilian life in Gaza: destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing

50. The Mission investigated several incidents involving the destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing (chap. XIII). Already at the beginning of the military operations, el-Bader flour mill was the only flour mill in the Gaza Strip still operating. The flour mill was hit by a series of air strikes on 9 January 2009, after several false warnings had been issued on previous days. The Mission finds that its destruction had no military justification. The nature of the strikes, in particular the precise targeting of crucial machinery, suggests that the intention was to disable the factory's productive capacity. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity amounts to a war crime. The Mission also finds that the destruction of the mill was carried out to deny sustenance to the civilian population, which is a violation of customary international law and may constitute a war crime. The strike on the flour mill furthermore constitutes a violation of the right to adequate food and means of subsistence.

51. The chicken farms of Mr. Sameh Sawafeary in the Zeytoun neighbourhood south of Gaza City reportedly supplied over 10 per cent of the Gaza egg market. Armoured bulldozers of the Israeli armed forces systematically flattened the chicken coops, killing all 31,000 chickens inside, and destroyed the plant and material necessary for the business. The Mission concludes

that this was a deliberate act of wanton destruction not justified by any military necessity and draws the same legal conclusions as in the case of the destruction of the flour mill.

52. The Israeli armed forces also carried out a strike against a wall of one of the raw sewage lagoons of the Gaza wastewater treatment plant, which caused the outflow of more than 200,000 cubic metres of raw sewage onto neighbouring farmland. The circumstances of the strike suggest that it was deliberate and premeditated. The Namar wells complex in Jabaliyah consisted of two water wells, pumping machines, a generator, fuel storage, a reservoir chlorination unit, buildings and related equipment. All were destroyed by multiple air strikes on the first day of the Israeli aerial attack. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error. It found no grounds to suggest that there was any military advantage to be had by hitting the wells and noted that there was no suggestion that Palestinian armed groups had used the wells for any purpose. Considering that the right to drinking water is part of the right to adequate food, the Mission makes the same legal findings as in the case of the el-Bader flour mill.

53. During its visits to the Gaza Strip, the Mission witnessed the extent of the destruction of residential housing caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. In some cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In others, the facts gathered by the Mission strongly suggest that the destruction of housing was carried out in the absence of any link to combat engagements with Palestinian armed groups or any other effective contribution to military action. Combining the results of its own fact-finding on the ground with UNOSAT satellite imagery and the published testimonies of Israeli soldiers, the Mission concludes that, in addition to the extensive destruction of housing for so-called operational necessity during their advance, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings during the last three days of their presence in Gaza, aware of their imminent withdrawal. The conduct of the Israeli armed forces in this respect violated the principle of distinction between civilian and military objects and amounted to the grave breach of "extensive destruction… of property, not justified by military necessity and carried out unlawfully and wantonly". The Israeli armed forces furthermore violated the right to adequate housing of the families concerned.

54. The attacks on industrial facilities, food production and water infrastructure investigated by the Mission are part of a broader pattern of destruction, which includes the destruction of the only cement-packaging plant in Gaza (the Atta Abu Jubbah plant), the Abu Eida factories for ready-mix concrete, further chicken farms and the al-Wadiyah Group's food and drinks factories. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations.

10. The use of Palestinian civilians as human shields

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations (chap. XIV). The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite

clear orders from Israel's High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime. The Palestinian men used as human shields were questioned under threat of death or injury to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law.

11. Deprivation of liberty: Gazans detained during the Israeli military operations of 27 December 2008 to 18 January 2009

56. During the military operations, the Israeli armed forces rounded up large numbers of civilians and detained them in houses and open spaces in Gaza and, in the case of many Palestinian men, also took them to detention facilities in Israel. In the cases investigated by the Mission, the facts gathered indicate that none of the civilians was armed or posed any apparent threat to the Israeli soldiers. Chapter XV of the report is based on the Mission's interviews with Palestinian men who were detained, as well as on its review of other relevant material, including interviews with relatives and statements from other victims submitted to it.

57. From the facts gathered, the Mission finds that numerous violations of international humanitarian law and human rights law were committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.

58. In the al-Atatra area in north-western Gaza, Israeli troops had dug out sandpits in which Palestinian men, women and children were detained. Israeli tanks and artillery positions were located inside the sandpits and around them and fired from next to the detainees.

59. The Palestinian men who were taken to detention facilities in Israel were subjected to degrading conditions of detention, harsh interrogation, beatings and other physical and mental abuse. Some of them were charged with being unlawful combatants. Those interviewed by the Mission were released after the proceedings against them had apparently been discontinued.

60. In addition to arbitrary deprivation of liberty and violation of due process rights, the cases of the detained Palestinian civilians highlight a common thread of the interaction between Israeli soldiers and Palestinian civilians which also emerged clearly in many cases discussed elsewhere in the report: continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment contrary to fundamental principles of international humanitarian law and human rights law. The Mission concludes that this treatment constitutes the infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.

12. Objectives and strategy of Israel's military operations in Gaza

61. The Mission reviewed available information on the planning of the Israeli military operations in Gaza, on the advanced military technology available to the Israeli armed forces and on their training in international humanitarian law (chap. XVI). According to official Government information, the Israeli armed forces have an elaborate legal advice and training system in place, which seeks to ensure knowledge of the relevant legal obligations and support to commanders for compliance in the field. The Israeli armed forces possess very advanced hardware and are also a market leader in the production of some of the most advanced pieces of military technology available, including unmanned aviation vehicles (UAVs). They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions.

62. The tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.

63. In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas' "supporting infrastructure" is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets. Statements by Israeli political and military leaders prior to and during the military operations in Gaza indicate that the Israeli military conception of what was necessary in a war with Hamas viewed disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve not only military but also political goals.

64. Statements by Israeli leaders to the effect that the destruction of civilian objects would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired") indicate the possibility of resorting to reprisals. The Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

13. The impact of the military operations and of the blockade on the people of Gaza and their human rights

65. The Mission examined the combined impact of the military operations and of the blockade on the Gaza population and its enjoyment of human rights. The economy, employment opportunities and family livelihoods were already severely affected by the blockade when the Israeli offensive began. Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty or deep poverty were rising.

66. In this precarious situation, the military operations destroyed a substantial part of the economic infrastructure. As many factories were targeted and destroyed or damaged, poverty, unemployment and food insecurity further increased dramatically. The agricultural sector similarly suffered from the destruction of farmland, water wells and fishing boats during the military operations. The continuation of the blockade impedes the reconstruction of the economic infrastructure that was destroyed.

67. The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anaemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. The destruction of water and sanitation infrastructure (such as the destruction of the Namar wells and the attack against the water treatment plant described in chapter XIII) aggravated the pre-existing situation. Even before the military operations, 80 per cent of the water supplied in Gaza did not meet the World Health Organization's standards for drinking water. The discharge of untreated or partially treated wastewater into the sea is a further health hazard worsened by the military operations.

68. The military operations and resulting casualties subjected the beleaguered Gaza health sector to additional strain. Hospitals and ambulances were targeted by Israeli attacks. Patients with chronic health conditions could not be given priority in hospitals faced with an influx of patients with life-threatening injuries. Patients injured during the hostilities were often discharged quickly to free beds. The long-term health impact of these early discharges, as well as of weapons containing substances such as tungsten and white phosphorous, remains a source of concern. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.

69. The number of persons suffering from mental health problems is also bound to increase. The Mission investigated a number of incidents in which adults and children witnessed the killing of loved ones. Doctors of the Gaza Community Mental Health Programme gave information to the Mission on psychosomatic disorders, on a widespread state of alienation in the population and on "numbness" as a result of severe loss. They told the Mission that these conditions were in turn likely to increase the readiness to embrace violence and extremism. They also told the Mission that 20 per cent of children in the Gaza Strip suffer from post-traumatic stress disorders.

70. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.

71. The Mission's attention was also drawn to the particular manner in which women were affected by the military operations. The cases of women interviewed by the Mission in Gaza

dramatically illustrate the suffering caused by the feeling of inability to provide children with the care and security they need. Women's responsibility for the household and the children often forces them to conceal their own sufferings, resulting in their issues remaining unaddressed. The number of women who are the sole breadwinners increased, but their employment opportunities remain significantly inferior to men's. The military operations and increased poverty add to the potential for conflicts in the family and between widows and their in-laws.

72. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations was, however, insufficient to meet the needs of the population even before hostilities started, and has again decreased since the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations which it has as the occupying Power and which are spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

73. The Mission also concludes that in the destruction by the Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing. The Mission, moreover, finds violations of specific human rights provisions protecting children, particularly those who are victims of armed conflict, women and the disabled.

74. The conditions of life in Gaza, resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

75. Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

14. The continuing detention of Israeli soldier Gilad Shalit

76. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by a Palestinian armed group. In reaction to his capture, the Israeli Government ordered a number of attacks against infrastructure in the Gaza Strip and Palestinian Authority offices as well as the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council. The Mission heard testimonies indicating that, during the

military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.

77. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. The International Committee of the Red Cross (ICRC) should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

78. The Mission is concerned by declarations made by various Israeli officials who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

15. Internal violence and targeting of Fatah affiliates by security services under the control of the Gaza authorities

79. The Mission obtained information about violence against political opponents by the security services that report to the Gaza authorities. These included the killing of a number of Gaza residents between the beginning of the Israeli military operations and 27 February. Among these were some detainees who had been at al-Saraya detention facility on 28 December and who had fled following the Israeli aerial attack. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest. According to the Gaza authorities, arrests were made only after the end of the Israeli military operations and only in relation to criminal acts and to restore public order.

80. The Mission gathered first-hand information on five cases of Fatah affiliates detained, killed or subject to physical abuse by members of the security forces or armed groups in Gaza. In most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters. The Mission finds that such actions constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law.

The Occupied Palestinian Territory: the West Bank, including East Jerusalem

81. The Mission considered developments in Gaza and the West Bank as closely interrelated, and analysed both to reach an informed understanding of and to report on issues within its mandate.

82. A consequence of Israel's non-cooperation with the Mission was that the Mission was unable to visit the West Bank to investigate alleged violations of international law there. However, the Mission has received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission has met representatives of human rights organizations, members of the Palestinian legislature and community leaders. It heard experts, witnesses and victims at the public hearings, interviewed affected individuals and witnesses, and reviewed video and photographic material.

1. Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

83. Various witnesses and experts informed the Mission of a sharp rise in the use of force by the Israeli security forces against Palestinians in the West Bank from the beginning of the Israeli operations in Gaza (chap. XX). A number of protestors were killed by Israeli forces during Palestinian demonstrations, including in support of the Gaza population under attack, and scores were injured. The level of violence used in the West Bank during the time of the operation in Gaza was sustained also after the operation.

84. Of particular concern to the Mission were allegations of the use of unnecessary, lethal force by Israeli security forces, the use of live ammunitions, and the provision in the Israeli armed forces "open fire regulations" of different rules to deal with disturbances where only Palestinians are present and those where Israelis are present. This raises serious concern with regard to discriminatory policies vis-à-vis Palestinians. Eyewitnesses also reported to the Mission on the use of sniper fire in the context of crowd control. Witnesses spoke of the markedly different atmosphere they encountered in the confrontation with the soldiers and border police during demonstrations in which all checks and balances had been removed. Several witnesses told the Mission that during the operation in Gaza, the sense in the West Bank was one of a "free for all", where anything was permitted.

85. Little if any action is taken by the Israeli authorities to investigate, prosecute and punish violence against Palestinians, including killings, by settlers and members of the security forces, resulting in a situation of impunity. The Mission concludes that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law.

2. Detention of Palestinians in Israeli prisons

86. It is estimated that, since the beginning of the occupation, approximately 700,000 Palestinian men, women and children have been detained by Israel. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and 390 children. Most of these detainees are charged or convicted

by the Israeli military court system that operates for Palestinians in the West Bank and under which due process rights for Palestinians are severely limited. Many are held in administrative detention and some under the Israeli "Unlawful Combatants Law".

87. The Mission focused on a number of issues in relation to Palestinian detainees that in its view are linked to the December-January Israeli military operations in Gaza or their context.

88. Legal measures since Israel's disengagement from Gaza in 2005 have resulted in differential treatment for Gazan detainees. A 2006 law altered due process guarantees and is applied only to Palestinian suspects, the overwhelming majority of whom are from Gaza, according to Israeli Government sources. The ICRC Family Visits Programme in the Gaza Strip was suspended in 2007, barring all means of communication between Gazan prisoners and the outside world.

89. During the Israeli military operations in Gaza, the number of children detained by Israel was higher than in the same period in 2008. Many children were reportedly arrested on the street and/or during demonstrations in the West Bank. The number of child detainees continued to be high in the months following the end of the operations, accompanied by reports of abuses by Israeli security forces.

90. A feature of Israel's detention practice vis-à-vis the Palestinians since 2005 has been the arrest of Hamas affiliates. A few months before the elections for the Palestinian Legislative Council in 2005, Israel arrested numerous persons who had been involved in municipal or Legislative Council elections. Following the capture by Palestinian armed groups of Israeli soldier Gilad Shalit in June 2006, the Israeli armed forces arrested some 65 members of the Legislative Council, mayors and ministers, mostly Hamas members. All were held at least two years, generally in inadequate conditions. Further arrests of Hamas leaders were conducted during the military operations in Gaza. The detention of members of the Legislative Council has meant that it has been unable to function and exercise its legislative and oversight function over the Palestinian executive.

91. The Mission finds that these practices have resulted in violations of international human rights and humanitarian law, including the prohibition of arbitrary detention, the right to equal protection under the law and not to be discriminated based on political beliefs and the special protections to which children are entitled. The Mission also finds that the detention of members of the Legislative Council may amount to collective punishment contrary to international humanitarian law.

3. Restrictions on freedom of movement in the West Bank

92. In the West Bank, Israel has long imposed a system of restrictions on movement. Movement is restricted by a combination of physical obstacles, such as roadblocks, checkpoints and the Wall, and administrative measures, such as identity cards, permits, assigned residence, laws on family reunification, and policies on the right to enter from abroad and the right of return for refugees. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements, buffer zones, military bases and military training zones, and the roads built to connect these places. Many of these roads are "Israeli only" and forbidden for Palestinian use. Tens of thousands of Palestinians today are subject to a travel ban imposed

by Israel, preventing them from travelling abroad. A number of witnesses and experts invited by the Mission to meet in Amman and participate in the hearings in Geneva could not meet the Mission owing to this travel ban.

93. The Mission has received reports that, during the Israeli offensive in Gaza, restrictions on movement in the West Bank were tightened. Israel imposed a "closure" on the West Bank for several days. In addition, there were more checkpoints in the West Bank, including in East Jerusalem, for the duration of the operation. Most of these were so-called flying checkpoints. In January 2009, several areas of the West Bank between the Wall and the Green Line were declared "closed military areas".

94. During and following the operations in Gaza, Israel tightened its hold on the West Bank by increasing expropriations, house demolitions and demolition orders, granting more permits for homes built in settlements and intensifying the exploitation of the natural resources in the West Bank. Following the operations in Gaza, Israel has amended the regulations which determine the ability of persons with "Gaza ID" to move to the West Bank and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

95. Israel's Ministry of Housing and Planning is planning a further 73,000 settlement homes in the West Bank. The building of 15,000 of these homes has already been approved and, if all the plans are realized, the number of settlers in the Occupied Palestinian Territory will double.

96. The Mission believes that the restrictions on movement and access to which Palestinians in the West Bank are subject, in general, and the tighter restrictions during and, to some extent, after the military operations in Gaza, in particular, are disproportionate to any military objective served . In addition, the Mission is concerned about the steps taken recently to formalize the separation between Gaza and the West Bank, and as such between two parts of the Occupied Palestinian Territory.

4. Internal violence and targeting of Hamas supporters by the Palestinian Authority, restrictions on freedom of expression and assembly

97. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the security services, including unlawful arrest and detention. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority security forces in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. There have been a number of deaths in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused. Complaints of such practices have not been investigated.

98. Allegations were also received about the use of excessive force and the suppression of demonstrations by Palestinian security services – particularly those in support of the population of Gaza during the Israeli military operations. On these occasions Palestinian Authority security services have allegedly arrested many individuals and prevented the media from covering the events. The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views.

99. The disabling of the Palestinian Legislative Council following the arrest and detention by Israel of several of its members has effectively curtailed parliamentary oversight over the Palestinian Authority executive. The executive has passed decrees and regulations to enable it to continue its day-to-day operations.

100. Other allegations include the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups or the revocation and non-renewal of their licences, the forcible replacement of board members of Islamic schools and other institutions, and the dismissal of Hamas-affiliated teachers.

101. The Palestinian Authority continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of "non-adherence to the legitimate authority" or "non-obtainment of security approval" on their appointments, which has become a pre-requirement for enrolment in public service. In effect, this measure excludes Hamas supporters or affiliates from public sector employment.

102. The Mission is of the view that the reported measures are inconsistent with the Palestinian Authority's obligations deriving from the Universal Declaration of Human Rights and the Palestinian Basic Law.

Israel

1. Impact on civilians of rocket and mortar attacks by Palestinian armed groups on southern Israel

103. Palestinian armed groups have launched about 8000 rockets and mortars into southern Israel since 2001 (chap. XXIV). While communities such as Sderot and Nir Am kibbutz have been within the range of rocket and mortar fire since the beginning, the range of rocket fire increased to nearly 40 kilometres from the Gaza border, encompassing towns as far north as Ashdod, during the Israeli military operations in Gaza.

104. Between 18 June 2008 and 18 January 2009, rockets fired by Palestinian armed groups in Gaza have killed three civilians inside Israel and two civilians in Gaza when a rocket landed short of the border on 26 December 2008. Reportedly, over 1000 civilians inside Israel were physically injured as a result of rocket and mortar attacks, 918 of whom were injured during the time of the Israeli military operations in Gaza.

105. The Mission has taken particular note of the high level of psychological trauma suffered by the civilian population inside Israel. Data gathered by an Israeli organization in October 2007 found that 28.4 per cent of adults and 72–94 per cent of children in Sderot suffered from post-traumatic stress disorder. During the military operations in Gaza 1596 people were reportedly treated for stress-related injuries while afterwards over 500 people were treated.

106. Rockets and mortars have damaged houses, schools and cars in southern Israel. On 5 March 2009, a rocket struck a synagogue in Netivot. The rocket and mortar fire has adversely affected the right to education of children and adults living in southern Israel. This is a result of school closures and interruptions to classes by alerts and moving to shelters but also the

diminished ability to learn that is witnessed in individuals experiencing symptoms of psychological trauma.

107. The rocket and mortar fire has also had an adverse impact on the economic and social life of the affected communities. For communities such as Ashdod, Yavne, Beersheba, which experienced rocket strikes for the first time during the Israeli military operations in Gaza, there was a brief interruption to their economic and cultural activities brought about by the temporary displacement of some residents. For towns closer to the Gaza border, which have been under rocket and mortar fire since 2001, the recent escalation has added to the exodus of residents.

108. The Mission has determined that the rockets and, to a lesser extent, the mortars fired by the Palestinian armed groups are incapable of being directed towards specific military objectives and have been fired into areas where civilian populations are based. The Mission has further determined that these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity. Given the seeming inability of the Palestinian armed groups to direct the rockets and mortars towards specific targets and given that the attacks have caused very little damage to Israeli military assets, the Mission finds that there is significant evidence to suggest that one of the primary purposes of the rocket and mortar attacks is to spread terror among the Israeli civilian population, a violation of international law.

109. Noting that some of the Palestinian armed groups, among them Hamas, have publicly expressed their intention to target civilians in reprisal for the civilian fatalities in Gaza as a result of Israeli military operations, the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

110. The Mission notes that the relatively few casualties sustained by civilians inside Israel is due in large part to the precautions put into place by Israel. This includes an early warning system, the provision of public shelters and fortifications of schools and other public buildings at great financial cost – a projected US$ 460 million between 2005 and 2011 – to the Government of Israel. The Mission is greatly concerned, however, about the lack of an early warning system and a lack of public shelters and fortifications for the Palestinian Israeli communities living in unrecognized and in some of the recognized villages that are within the range of rocket and mortars being fired by Palestinian armed groups in Gaza.

2. Repression of dissent in Israel, the right of access to information and treatment of human rights defenders

111. The Mission received reports that individuals and groups, viewed as sources of criticism of Israel's military operations were subjected to repression or attempted repression by the Government of Israel. Amidst a high level of support for the Israeli military operations in Gaza from the Israeli Jewish population, there were also widespread protests against the military operations inside Israel. Hundreds of thousands – mainly, but not exclusively, Palestinian citizens of Israel – protested. While, in the main, the protests were permitted to take place, there were occasions when, reportedly, protesters had difficulty in obtaining permits – particularly in areas populated mainly by Palestinian Israelis. In Israel and in occupied East Jerusalem 715

people were arrested during the protests. There appear to have been no arrests of counter-protesters and 34 per cent of those arrested were under 18 years of age. The Mission notes that a relatively small proportion of those protesting were arrested. The Mission urges the Government of Israel to ensure that the police authorities respect the rights of all its citizens, without discrimination, including freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

112. The Mission notes with concern the reported instances of physical violence committed by members of the police against protesters, including the beating of protesters and other inappropriate conduct such as subjecting Palestinian citizens of Israel who were arrested to racial abuse and making sexual comments about female members of their families. Article 10 of the Covenant requires that those deprived of their liberty be treated with humanity and respect for the inherent dignity of the human person.

113. Of the protesters brought before the Israeli courts, the Palestinian Israelis were disproportionately held in detention pending trial. The element of discrimination and differential treatment between Palestinian and Jewish citizens of Israel by the judicial authorities, as indicated in the reports received, is a substantial cause for concern.

114. The interviews of political activists by the Israeli General Security Services were cited as the actions contributing most significantly to a climate of repression inside Israel. The Mission is concerned about activists being compelled to attend interviews with Shabak (also known as Shin Bet), without there being any legal obligation on them to do so, and in general at the alleged interrogation of political activists about their political activities.

115. The Mission received reports concerning the investigation by the Government of Israel into New Profile on allegations that it was inciting draft-dodging, a criminal offence, and reports that the Government was seeking to terminate funding from foreign Governments for Breaking the Silence, following its publication of testimonies of Israeli soldiers concerning the conduct of the Israeli armed forces in Gaza in December 2008 and January 2009. The Mission is concerned that the Government of Israel's action with regard to these organizations may have an intimidating effect on other Israeli human rights organizations. The so-called United Nations Declaration on Human Rights Defenders guarantees the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". If motivated by reaction to the organization's exercise of its freedom of expression, lobbying foreign Governments to terminate funding would be contrary to the spirit of the Declaration.

116. The Government of Israel imposed a ban on media access to Gaza following 5 November 2008. Furthermore, access was denied to human rights organizations and the ban continues for some international and Israeli organizations. The Mission can find no justification for this. The presence of journalists and international human rights monitors aids the investigation and wide public reporting of the conduct of the parties to the conflict, and can inhibit misconduct. The Mission observes that Israel, in its actions against political activists, non-governmental organizations and the media, has attempted to reduce public scrutiny of both its conduct during its military operations in Gaza and the consequences that these operations had for the residents of Gaza, possibly seeking to prevent investigation and public reporting thereon.

D. Accountability

1. Proceedings and responses by Israel to allegations of violations by its armed forces against Palestinians

117. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

118. The Mission reviewed public information and reports from the Government of Israel concerning actions taken to discharge its obligation to investigate alleged violations (chap. XXVI). It addressed to Israel a number of questions on this issue, but it did not receive a reply.

119. In response to allegations of serious violations of human rights law and international humanitarian law, the Military Advocate General ordered some criminal investigations that were closed two weeks later concluding that allegations “were based on hearsay”. The Israeli armed forces also released the results of five special investigations carried out by high-ranking military officers, which concluded that “throughout the fighting in Gaza, the IDF operated in accordance with international law”, but the investigations reportedly revealed a very small number of errors. On 30 July 2009 the media reported that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out or nearly 100 complaints of criminal conduct by soldiers. No details were offered.

120. The Mission reviewed the Israeli internal system of investigation and prosecution according to its national legislation and in the light of practice. The system comprises: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special investigations, performed by a senior officer at the request of the chief of staff; and (d) military police investigations, carried out by the Criminal Investigation Division of the military police. At the heart of the system lies the so-called operational debriefing. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes.

121. International human rights law and humanitarian law require States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel. International law has also established that such investigations should comply with standards of impartiality, independence, promptness and effectiveness. The Mission holds that the Israeli system of investigation does not comply with all those principles. In relation to the “operational debriefing” used by the Israeli armed forces as an investigative tool, the Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of impartiality and promptness in investigations. The fact that proper criminal investigations can start only after the “operational debriefing” is over is a major flaw in the Israeli system of investigation.

122. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult.

2. Proceedings by Palestinian authorities

(a) Proceedings related to actions in the Gaza Strip

123. The Mission found no evidence of any system of public monitoring or accountability for serious violations of international humanitarian law and human rights law set up by the Gaza authorities. The Mission is concerned with the consistent disregard for international humanitarian law with which armed groups in the Gaza Strip conduct their armed activities, through rocket and mortar fire, directed against Israel. Despite some media reports, the Mission remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of international humanitarian law in the conduct of armed activities by militant groups in the Gaza Strip.

124. Notwithstanding statements by the Gaza authorities and any action that they may have taken, of which the Mission is unaware, the Mission also considers that allegations of killings, torture and mistreatment within the Gaza Strip have gone largely without investigation.

(b) Proceedings related to actions in the West Bank

125. With regard to relevant violations identified in the West Bank, it appears that, with few exceptions, there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration.

126. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment

3. Universal jurisdiction

127. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of the grave breach provisions of the Geneva Conventions of 1949, prevent impunity and promote international accountability (chap. XXVIII).

4. Reparations

128. International law also establishes that, whenever a violation of an international obligation occurs, an obligation to provide reparation arises. It is the view of the Mission that the current

constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide for an additional or alternative mechanism of compensation for damage or loss incurred by Palestinian civilians during the military operations (chap. XXIX).

E. Conclusions and recommendations

129. The Mission draws general conclusions on its investigations in chapter XXX, which also includes a summary of its legal findings.

130. The Mission then makes recommendations to a number of United Nations bodies, Israel, the responsible Palestinian authorities and the international community on: (a) accountability for serious violations of international humanitarian law; (b) reparations; (c) serious violations of human rights law; (d) the blockade and reconstruction; (e) the use of weapons and military procedures; (f) the protection of human rights organizations and defenders ; (g) follow-up to the Mission's recommendations. The recommendations are detailed in chapter XXXI.

PART ONE: METHODODOGY, CONTEXT AND APPLICABLE LAW

INTRODUCTION

131. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." The appointment of the Mission followed the adoption on 12 January 2009 of resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, by the United Nations Human Rights Council at the end of its ninth special session.

132. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland's Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

133. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

134. Between the adoption of resolution S-9/1 in January and the establishment of the Mission at the beginning of April, a broad cross section of actors, including domestic and international non-governmental organizations (NGOs) and United Nations agencies and bodies, had already conducted numerous investigations and produced reports on the military operations in Gaza, all of which were taken into account by the Mission in its work of fact-finding and analysis.

135. Bearing in mind that the resolution of the Council had called for the urgent dispatch of the Mission and given the 11-week delay in its establishment, the Mission agreed to be bound by a short time frame (about three months) to complete its work and report to the Council at the earliest opportunity.

136. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law. Accordingly, the Mission has made victims its first priority and it will draw attention to their plight in the context of the events under investigation. The members of the Mission hope that their situation will not be neglected by any political agenda for the region.

137. The Mission considered it crucial for the implementation of its mandate to meet with the widest possible range of stakeholders relevant to the facts under inquiry. During the three months of its work in Geneva, Gaza, Amman and elsewhere, the Mission met representatives of civil

society, including domestic and international NGOs; women's organizations; bar associations; military analysts; medical doctors; mental health experts; representatives of the business/private sector, including agriculture and fishery; representatives of associations of persons with disabilities; journalists and other representatives of domestic and international media outlets; representatives of United Nations organs and bodies as well as other international organizations: the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights; the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Special Coordinator for the Middle East Peace Process, the Head of the United Nations Board of Inquiry into incidents in Gaza; diplomatic representatives of Member States of the United Nations in Geneva and in the Occupied Palestinian Territory; members of the Palestinian Legislative Council from both Gaza and the West Bank; ministers and officials of the Palestinian Authority; senior members of the Gaza authorities;[1] former Government and military officials of the Government of Israel (see annex I).

138. The Mission convened for the first time in Geneva between 4 and 8 May 2009, when it established its methods of work and a three-month programme of activities. It also had initial briefings and consultations with a wide range of stakeholders. The Mission met the diplomatic community in Geneva, including the President of the Human Rights Council, members of the Council and sponsors of resolution S-9/1.

139. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission's secretariat were present in Gaza from 22 May to 4 July 2009.

140. On 7 May, notes verbales were sent to all United Nations organs and bodies and Member States of the United Nations. Egypt, Lebanon, Romania, the United Nations Children's Fund (UNICEF) on behalf of the 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory,[2] the World Health Organization (WHO), and the United Nations Population Fund (UNFPA) replied to the notes verbales. Documentation was also made available by other specialized agencies and other organizations in the United Nations system, including the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), UNRWA, and the Operational Satellite Applications Programme (UNOSAT) of the United Nations Institute for Training and Research (UNITAR). On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate. In response, the Mission received 31 submissions from individuals and organizations. Throughout its work, the Mission received or had access to a variety of documents from multiple sources (see chap. I).

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[1] The term "Gaza authorities" is used to refer to the de facto Hamas-led authorities established in Gaza since June 2007. See chap. II for details.

[2] This Working Group was set up following the adoption by the United Nations Security Council of resolution 1612/2005) establishing a monitoring and reporting mechanism to ensure the protection of children affected by armed conflict.

141. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

142. Upon appointment on 3 April 2009, the Head of the Mission held a press conference in Geneva together with the President of the Human Rights Council. The Mission issued a press release on 8 May, at the end of its first official meeting, and on 29 May, before travelling to Gaza. Additionally, the Mission held press conferences in Gaza on 4 June, at the end of its first visit, and on 7 July 2009, at the end of the public hearings in Geneva. The Head of the Mission was interviewed several times by the international media[3].

Cooperation with the parties

143. Since its inception, the Mission has requested the cooperation of all relevant authorities to enable it to visit and meet victims in Gaza, the West Bank and Israel.

144. Immediately upon appointment, the Head of the Mission sought to consult the Permanent Representative of Israel to the United Nations Office at Geneva, who unfortunately declined to meet him. Following an exchange of letters between 3 and 7 April, the Permanent Representative of Israel informed the Head of the Mission that his Government would not be able to cooperate with the Mission. On 29 April, an additional invitation to the Permanent Representative of Israel to meet the Mission was also unsuccessful. On 4 May, the Mission wrote to the Prime Minister of Israel, reiterating its request for cooperation, in particular by providing access to Gaza, the West Bank, including East Jerusalem, and Israel. During a meeting on 6 May 2009 with the President of Israel, the United Nations Secretary-General referred to and supported the Mission's request for cooperation from the Government of Israel. In a letter dated 20 May 2009, the Mission attempted again to obtain the cooperation of the Israeli Government, especially in view of its planned visit to the Gaza Strip. In view of the refusal of cooperation from the Government of Israel, in order to be able to fulfil the mandate entrusted by the Human Rights Council within the aforementioned time frame, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter Gaza through the Rafah crossing. The Mission had additional written exchanges with the Permanent Representative of Israel in Geneva between 2 and 17 July 2099. (See annex II.)

145. Upon appointment, the Head of the Mission consulted the Permanent Observer of Palestine to the United Nations Office at Geneva, who promptly extended the cooperation of the Palestinian Authority to the Mission. The Mission has remained in contact with the Permanent Observer Mission of Palestine, and has enjoyed the support and cooperation of the Palestinian Authority. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. A Palestinian minister was prevented from travelling to meet the Mission in Amman (see chap. I). During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

[3] The webpage of the Mission can be found at: http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm.

Protection of persons cooperating with the Mission

146. In the implementation of its mandate the Mission has called for the protections that are required under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, better known as the Declaration on Human Rights Defenders, to be accorded to all who gave testimony at the public hearings. The Mission also was guided by Commission on Human Rights resolution 2005/9 which "urges Governments to refrain from all acts of intimidation or reprisal against (a) those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or information to them".

147. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission wrote to the Permanent Representative of Israel in Geneva expressing its concern. In response, the Permanent Representative informed the Mission that the detention of the person concerned was unrelated to his appearance at the public hearing. Mr. Srour was subsequently released on bail. The Mission is in contact with him and continues to monitor developments.

148. The Mission is also concerned about anonymous calls and messages received on private phone numbers and e-mail addresses by some of those who provided information to it or assisted in its work in the Gaza Strip. The contents seemed to imply that the originators of these anonymous calls and messages regarded those who cooperated with the Mission as potentially associated with armed groups. One of the recipients conveyed to the Mission apprehensions about personal safety and a feeling of intimidation. The Mission also wishes to record that there are others who have declined to appear before it or to provide information or, having cooperated with the Mission, have asked that their names should not be disclosed, for fear of reprisal.

Acknowledgments

149. The Mission is deeply grateful to the numerous Palestinians and Israelis, especially victims and witnesses of violations, who have shared with it their stories and views. It is equally grateful to the many Palestinian and Israeli civil society and NGOs, and to the Palestinian Independent Commission for Human Rights. They are at the forefront of the protection and promotion of human rights in the region and carry out their work with courage, professionalism and independence in very difficult circumstances. The Mission is also grateful to all the domestic and international NGOs that have supported its mandate and have provided a vast amount of relevant and well-documented information. Without the support and the assistance of United Nations agencies, programmes and other bodies, and particularly of the United Nations staff in Gaza, the Mission would have not been able to complete its work. Heartfelt thanks go to all of them. The Mission wishes to especially acknowledge the invaluable support received by the dedicated staff of UNRWA. The Mission expresses its gratitude to the United Nations security personnel and interpreters, who have professionally and sensitively accomplished their difficult tasks. In addition to the secretariat of the Mission appointed by OHCHR, a multinational team with a broad range of professional experience, the gratitude of the Mission goes also to the staff of OHCHR in Geneva, the Occupied Palestinian Territory and New York. A particular mention

goes to all those who assisted with the daunting task of organizing at very short notice the public hearings in Gaza and in Geneva. The Mission wishes to formally thank the Government of Egypt and in particular the Permanent Mission of Egypt in Geneva. The Mission wishes to formally thank the Governments of Jordan and of Switzerland for facilitating the issuance of entry visas at short notice. The Mission also wishes to acknowledge the continued support received from the United Nations Secretary-General.

150. Finally, the Mission wishes to thank the people of Gaza for their warm welcome, their humanity and their hospitality in spite of such difficult and painful circumstances.

I. METHODOLOGY

A. Mandate and terms of reference

151. In his letter appointing the members of the Mission, the President of the Council entrusted the Mission with the following mandate: "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after."

152. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

153. With regard to temporal scope, the Mission's broad mandate includes violations before, during and after the military operations that were conducted in Gaza between 27 December 2008 and 18 January 2009. The Mission considered that, while the Gaza events must be seen in the context of the overall conflict and situation in the Occupied Palestinian Territory, in view of the limited time and resources available, it would be beyond its abilities to focus on conduct or actions that took place long before the military operation of December–January. The Mission therefore decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operation, up to 31 July 2009.

154. The Mission considered that the reference in its mandate to violations committed in the context of the December–January military operations required it to go beyond violations that took place directly as part of the operations. Thus violations within its mandate include those that are linked to the December–January military operations in terms of time, objectives and targets, and include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

155. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

B. Methods of work

156. The Mission reviewed all allegations raised in connection with issues under its mandate. The review included analysis of material in the public domain, including the many reports produced after the military operations concluded, information provided to the Mission through additional documentation and a series of meetings with experts who had been to the area or studied matters of interest to the Mission.

157. In view of the time frame within which it had to complete its work, the Mission necessarily had to be selective in the choice of issues and incidents for investigation. The report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission's mandate and especially during the military operations in Gaza. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. The Mission also stresses that the exclusion of issues or incidents from the report in no way reflects on the seriousness of the relevant allegations.

158. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

159. The Mission adopted an inclusive approach to receiving information and views on matters within its mandate. Information-gathering methods included:

(a) The review of reports of international organizations, including the United Nations; reports and other documentation, including affidavits, produced by non-governmental and civil society organizations (Palestinian, Israeli and international); media reports; and writings of academics and analysts on the conflict;

(b) Interviews with victims, witnesses and other persons having relevant information. In keeping with established human rights methodology and in order to ensure both the safety and privacy of the interviewees and the integrity of the information provided, such interviews were conducted in private. The Mission decided not to interview children. The Mission conducted 188 individual interviews. Most interviews were conducted in person. If the Mission was unable to meet the relevant persons, interviews were conducted by telephone. Also in keeping with normal practice for this type of report and to continue to protect their safety and privacy, the names of the victims, witnesses and other sources are generally not explicitly referred to in the report and codes are used instead. The names of individuals who publicly testified at the hearings held by the Mission or who have explicitly agreed to be named (see below) are, however, identified;

(c) Site visits to specific locations in Gaza where incidents had occurred. The Mission investigated 36 incidents in Gaza;

(d) The analysis of video and photographic images, including satellite imagery provided by UNOSAT, and expert analysis of such images;

(e) The review of medical reports about injuries to victims;

(f) The forensic analysis of weapons and ammunition remnants collected at incident sites;

(g) Meetings with a variety of interlocutors, including members of the diplomatic community, representatives of the parties concerned, NGOs, professional associations, military analysts, medical doctors, legal experts, scientists, United Nations staff;

(h) Invitations, through notes verbales, to United Nations Members States and United Nations agencies, departments and bodies to provide information relating to the Mission's investigation requirements;

(i) The wide circulation of a public call for written submissions from NGOs and other organizations and individuals interested in bringing information to the attention of the Mission. As a result, it received numerous submissions from organizations and individuals from Israel, the Occupied Palestinian Territory and elsewhere in the world;

(j) Public hearings in Gaza and in Geneva[4] to hear: (i) victims and witnesses of violations; and (ii) individuals with specialized knowledge and expertise on the context and impact of the hostilities.

160. The Mission reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

161. The methods adopted to gather and verify information and reach conclusions were for the most part guided by best practice methodology developed in the context of United Nations investigations. In the case of Israel and the West Bank, adjustments were required in view of the Mission's inability to access those areas due to lack of cooperation from Israel.

162. The Mission's preferred option would have been to visit all areas covered by its mandate and undertake on-site investigations in all. The Government of Israel, however, refused to cooperate with the Mission at three levels: (a) it refused to meet the Mission and to provide access to Government officials, including military, and documentation; (b) it precluded the Mission from travelling to Israel in order to meet with Israeli victims, witnesses, members of civil society and NGOs; and (c) it prevented the Mission from travelling to the West Bank, including East Jerusalem, to meet members of the Palestinian Authority and Palestinian victims, witnesses, non-governmental or civil society organizations living or located in the West Bank.

163. Accordingly, the Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons. The Mission considered this particularly important to form an understanding of the situation, the context, impact and consequences of the conflict on people, and to assess violations of international law.

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[4] The public hearings are webcast by the United Nations and can be viewed by visiting the webcast archive at: http://www.un.org/webcast/unhrc/archive.asp?go=090628.

164. The Mission gathered first-hand information with regard to the situation in Israel and in the West Bank by conducting telephone interviewees with victims, community representatives, local authorities, members of NGOs and experts; by hearing testimonies from victims, witnesses and experts from Israel and from the West Bank at the public hearings in Geneva; and by holding meetings and private interviews both in Amman and in Geneva.

165. The Mission's efforts in this regard were partially thwarted because of restrictions on the freedom of movement of some of the people that the Mission wished to interview. The Mission was not able to meet as planned the Palestinian Minister of Justice, Dr. Ali al-Khashan, in Amman, as he was not allowed by Israel to leave the West Bank. The Mission was also unable to meet Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, who is subject to a travel ban by Israel (see chap. XXII). It held a teleconference with her. A Palestinian witness at the Geneva public hearings, Mr. Shawan Jabarin, had to be heard by videoconference as he is also subject to a travel ban by Israel.

A note on the public hearings

166. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission is of the view that no written word can replace the voice of victims. While not all issues and incidents under investigation by the Mission were addressed during the hearings, the 38 public testimonies covered a wide range of relevant facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

167. Participants in the hearings were identified in the course of the Mission's investigations, and had either first-hand experience or information or specialized knowledge of the issues under investigation and analysis. In keeping with the objectives of the hearings, the Mission gave priority to the participation of victims and people from the affected communities. Participants took part in the hearings on a voluntary basis. Some individuals declined to participate for fear of reprisal. The Mission received expressions of gratitude from participants, as well as members of the affected communities, for having provided an opportunity to speak publicly of their experiences.

C. Assessment of information

168. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand, including through on-site observations, interviews and meetings with relevant persons. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

169. The section of the report on the Gaza Strip is based on first-hand information gathered and verified by the Mission. To assess the situation in Israel and in the West Bank, the Mission had to make comparatively greater use of information produced by others for the reasons explained above. These sections too, however, include first-hand information directly gathered and verified by the Mission.

170. The Mission met or spoke with witnesses, listened to what they had to say and questioned them wherever necessary. Taking into account the demeanour of witnesses, the plausibility of their accounts and the consistency of these accounts with the circumstances observed by it and with other testimonies, the Mission was able to determine the credibility and reliability of those people it heard. Regarding the large amount of documentary information the Mission received or had access to as documents in the public domain, it tried as far as possible to speak with the authors of the documents in order to ascertain the methodologies used and to clarify any doubts or problems.

171. The final conclusions on the reliability of the information received were made taking all of these matters into consideration, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient information of a credible and reliable nature for the Mission to make a finding in fact.

172. On the basis set out above, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events, that is, the Mission has referred in many cases to the relevant fault element (mens rea). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

D. Consultation with the parties

173. The Mission received documentation related to its mandate from the Palestinian Authority. During its visits in Gaza, the Mission was provided with significant material and documentation by the Gaza authorities. On 29 July, it received, through UN Watch, a paper[5] on the military operations in Gaza that sets out the Government of Israel's position on many issues investigated by the Mission.

174. During its meetings in Gaza, Amman and Geneva, the Mission discussed matters within its mandate with Palestinian counterparts. While no cooperation was received from the Government of Israel, the Mission met a number of Israeli citizens formerly in senior Government positions.

175. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the

[5] "The operation in Gaza: Factual and legal aspects", July 2009, published on the website of the Israeli Ministry of Foreign Affairs, available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

II. CONTEXT

176. The Mission is of the view that the events that it was mandated to investigate should not be considered in isolation. They are part of a broader context, and are deeply rooted in the many years of Israeli occupation of the Palestinian Territory and in the political and violent confrontation that have characterized the history of the region. A review of the historical, political and military developments between the Six-Day War in 1967 and the announcement of the "period of calm" (*Tahdiyah)* in June 2008,[6] and of Israeli policies towards the Occupied Palestinian Territory is necessary to consider and understand the events that fall more directly within the scope of the Mission's mandate.

A. Historical context

177. The West Bank, including East Jerusalem, and the Gaza Strip were captured by Israel following the Six-Day War of June 1967. The two non-contiguous areas had been administered by Jordan and Egypt, respectively, since the establishment of the "Green Line" along the 1949 Armistice demarcation, separating the newly founded State of Israel and its neighbours. After 1967, the two areas were administered directly by military commanders until 1981 and since then through a "Civil Administration" established by the Israeli armed forces. "Military orders" were used to rule the civil affairs of the Palestinian population superimposing and often revoking pre-existing Jordanian laws in the West Bank and Egyptian laws in the Gaza Strip. East Jerusalem was annexed to the Israeli municipality of the city and in 1980 the Knesset passed a law which declared that "Jerusalem, complete and united, is the capital of Israel". With Security Council resolution 478 (1980), the United Nations declared this law "null and void", condemning any attempt to "alter the character and status of Jerusalem".[7] No member of the United Nations, apart from Israel, recognizes the annexation of East Jerusalem.

178. After the Likud party won the 1977 Israeli elections, the establishment of settlements within the occupied territories of the West Bank and the Gaza Strip dramatically accelerated, and the expropriation of Palestinian lands and the construction of settlements have continued unabated to this day. Many years of growing tension and violence concerning the unresolved status of the Palestinian territory occupied by Israel ensued. In 1987 a widespread popular uprising – the intifada – was forcefully repressed by the Israeli security forces but lasted until 1993, when the leadership of the Palestine Liberation Organization (PLO) and the Government

[6] Due to obvious space limitations, the historical context does not make reference to the numerous important events that took place during this period (such as the 1973 War, the Camp David Accords, the peace treaty with Jordan, the 2006 Lebanon War and many others).

[7] Adopted by 14 votes to none, with 1 abstention (United States of America).

of Israel agreed to recognize each other and signed the "Declaration of Principles on Interim Self-Government Arrangements" also known as the "Oslo I Accord".[8]

179. In 1994 the Palestinian Authority was established following the Oslo I Accord and in 1995 "the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip", also known as "Oslo II",[9] detailed practical steps to be implemented by the parties in view of the negotiations on the final status of the territory. The assassination of Israeli Prime Minister Yitzhak Rabin by an Israeli extremist in 1995 dealt a lethal blow to the peace process. Successive Israeli Governments and the Palestinian political leadership failed to reach an agreement on the final status at the United States-sponsored Camp David summit in 2000 and during direct talks in Taba (Egypt) in 2001.

180. A second popular uprising erupted in September 2000, after the then opposition leader Ariel Sharon conducted a controversial visit to the Temple Mount/al-Haram al-Sharif in Jerusalem.[10] This second intifada set off an unprecedented cycle of violence.

181. According to independent sources, while the Israeli-Palestinian conflict claimed the lives of 1,549 Palestinians and 421 Israelis between 1987 and 2000,[11] between September 2000 and December 2008, 5,500 Palestinians were killed (593 as result of intra-Palestinian violence) as well as 1,062 Israelis and 64 foreigners.[12]

182. According to Israel's Ministry of Foreign Affairs, 154 suicide bomb attacks against Israeli civilians and military personnel took place between 1993 and 2007. They killed 542 individuals,

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[8] The Agreement contained a specific provision for the establishment of a "strong police force" to "guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip". See http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DANP?OpenDocument.

[9] The Agreement defined three areas of jurisdiction in Gaza and the West Bank: area "A", in which Palestinians would have full administrative and security responsibilities; area "B", in which Palestinians would have administrative responsibilities, but Israelis would retain security control; and area "C", where Israelis would maintain administrative and security responsibilities. See http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DAP5?OpenDocument.

[10] Situated at the heart of the Old City in East Jerusalem, the site is of religious significance to both Muslims and Jews. The Temple Mount/al-Haram al-Sharif (the Noble Sanctuary) is the location of al-Aqsa and the Dome of the Rock mosques, the third most sacred place in Islam. It is also believed to be the location of the two ancient Jewish temples. The southern section of its western external perimeter is what is known as the Western Wall. Haram al-Sharif is administered by an Islamic trust (Waqf) and religious rituals performed there by non-Muslims are forbidden.

[11] See B'Tselem statistics ("Fatalities in the first Intifada"), available at: http://www.btselem.org/English/Statistics/First_Intifada_Tables.asp.

[12] See B'Tselem statistics ("Fatalities"), available at: http://www.btselem.org/English/Statistics/Casualties.asp

with a peak in 2002 of 220 individuals killed in 55 suicide attacks.[13] The last recorded suicide attack took place in February 2008 in the Israeli city of Dimona.[14]

183. The firing of rockets and mortars from Gaza into Israel began in 2001.[15] Israeli sources report that as many as 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza until mid-June 2008.[16]

184. After his election as Prime Minister in 2001, the Likud leader Ariel Sharon discontinued any direct contacts with the Palestinian leadership, in effect putting an end to talks on the final status.

185. In June 2002, the beginning of the construction of the separation Wall, which encroached on Palestinian land to encompass most Israeli settlement areas in the West Bank as well as East Jerusalem, left almost half a million Palestinians on the western side of the divide, cutting historical, social, cultural and economic ties with the rest of the Palestinians in the West Bank.[17] In 2004, the International Court of Justice issued an advisory opinion on the legality of the Wall being built by Israel, at the request of the United Nations General Assembly. The Court stated that Israel must cease construction of the barrier, dismantle the parts of the barrier that were built inside the West Bank, revoke the orders issued relating to its construction and compensate the Palestinians who suffered losses as a result of the barrier.[18] Israel disregarded the views of the Court and construction of the Wall continued. In 2004 and 2005, the Israeli Supreme Court, sitting as the High Court of Justice (see sect. D below), ruled that some parts of the route of the Wall violated the principle of "proportionality"in both Israeli and international law, causing harm to an "occupied population" and that the construction of the structure should be done in a way to lessen the prejudicial impact on the rights of the resident Palestinians. The Israeli Court

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[13] See website of the Ministry of Foreign Affairs ("Suicide and other bombing attacks in Israel since the Declaration of Principles (Sept. 1993)"), available at: http://www.mfa.gov.il/MFA/Terrorism-%20Obstacle%20to%20Peace/Palestinian%20terror%20since%202000/Suicide%20and%20Other%20Bombing%20Attacks%20in%20Israel%20Since

[14] BBC News, "Israeli killed in suicide bombing", 4 February 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7225775.stm

[15] "The operation in Gaza…" states that the firing of rockets and mortars from Gaza started in 2000. The same sources quoted in the report, however, put the beginning of the firing of rockets and mortars in 2001. The report states that between 2000 and 2008 "Israel was bombarded by some 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008 alone."

[16] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Rocket threat from the Gaza Strip, 2000-2007", December 2007, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/rocket_threat_e.htm; and "Summary of rocket fire and mortar shelling in 2008", January 2009, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf

[17] See B'Tselem statistics (Separation barrier statistics), available at: http://www.btselem.org/English/Separation_Barrier/Statistics.asp.

[18] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004.

ordered the rerouting of different portions of the Wall,[19] but considered the structure legal in principle.[20]

186. In 2002, the so-called Quartet (the United States, the European Union, the Russian Federation and the United Nations) proposed a plan to resolve the Israeli-Palestinian conflict. The plan came to be known as the "road map to peace."[21] The road map envisaged that the Palestinians would engage in democratic reforms and renounce violent means and that Israel would accept a Palestinian Government and cease settlement activities. Fulfilment of the road map's commitments would lead to negotiations on the final status. The road map remains unimplemented. The same year, the League of Arab States adopted a proposal that Saudi Arabia presented at the Beirut Summit in which its members pledged to establish normal relations with Israel in the context of a comprehensive peace that would establish a Palestinian State within the border of 1967.[22]

187. On 6 June 2004, the Israeli Cabinet adopted a "disengagement plan" providing for the unilateral removal from the Gaza Strip of Israeli security forces and Israeli civilians living in settlements. The plan was endorsed by the Knesset on 26 October of the same year. With the evacuation of all Israeli residents and associated security personnel from the Gaza Strip completed on 12 September 2005, Israel declared that "there will be no basis for claiming that the Gaza Strip is occupied territory" (on the continued occupation, see chapter IV). Under the disengagement plan, however, the Israeli armed forces continued to maintain control over Gaza's borders, coastline and airspace, and Israel reserved "its inherent right of self-defence, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip." Israel removed both settlements and military bases protecting the settlers from the Gaza Strip, redeploying on Gaza's southern border and repositioning its forces to other areas just outside the Gaza Strip. In addition to controlling the borders, coastline and airspace, after the implementation of the disengagement plan, Israel continued to control Gaza's telecommunications, water, electricity and sewage networks, as well as the population registry, and the flow of people and goods into and out of the territory while the inhabitants of Gaza continued to rely on the Israeli currency.[23]

188. After years of disassociation from the Oslo process, Hamas changed its position about the legitimacy of the Palestinian Authority and decided to participate in the elections of January

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[19] Many of these rulings have had only a marginal impact on the Palestinian population.

[20] The Court opened its deliberation by stating that "since 1967, Israel has been holding the areas of Judea and Samaria […] in belligerent occupation", see Beit Sourik Village Council v. The Government of Israel and Commander of the IDF Forces in the West Bank, case No. 2056/04, Judgement of 30 June 2004 and Mara'abe et al. v. The Prime Minister of Israel et al., case No. 7957/04, Judgement of 15 September 2005.

[21] "A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict", available at: http://www.un.org/news/dh/mideast/roadmap122002.pdf

[22] Available at: http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/5a7229b652beb9c5c1256b8a0054b62e

[23] See "Disengagement Plan - General Outline", 15 April 2004, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/Disengagement+Plan.htm; and "Overall concept of the Disengagement Plan", 15 April 2004, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/DisengagementPlan.htm.

2006. The List of Change and Reform, of which Hamas represented the main component, won the elections for the Palestinian Legislative Council and formed a Government. Shortly thereafter, the international community redirected international aid from the Palestinian Authority to international organizations and humanitarian agencies, isolating the new Palestinian executive in a stated effort to put pressure on it to accept the so-called Quartet Principles. The Quartet had already announced that, to be recognized by the international community, any Palestinian Government should adhere to three "Principles": (i) recognition of the State of Israel, (ii) recognition of previous agreements and (iii) renunciation of violence.[24] Israel also imposed economic sanctions on the Hamas-led Palestinian Authority Government, including by withholding tax revenues it collected on imports and introducing additional restrictions on the movement of goods to and from the Gaza Strip. Israel declared that sanctions would be lifted only when the new Palestinian Government would abide by the Quartet Principles.[25]

189. In June 2006, a squad drawn from three groups – the Popular Resistance Committees, al-Qassam Brigades and the until then unknown Army of Islam – excavated a tunnel under the Gaza-Israel border and attacked the military base of Kerem Shalom inside Israel, blowing up a tank, killing two soldiers and capturing a third, Corporal Gilad Shalit. In reaction to the capture, the Israeli Government conducted a number of targeted assassinations of alleged militants belonging to Hamas and other groups; arrested Palestinian Authority cabinet ministers, Hamas parliamentarians and other leaders in the West Bank; attacked key civilian infrastructure in the Gaza Strip, such as the main power plant, the main bridge in central Gaza and Palestinian Authority offices; tightened the economic isolation; and carried out major armed thrusts into the Gaza Strip for the first time since August 2005.[26]

190. After the refusal of the politically defeated Fatah movement to cede the control of Palestinian Authority institutions and specifically security institutions to the new Government, armed clashes erupted between the two political groups both in the Gaza Strip and the West Bank. In February 2007, Palestinian leaders assembled in Mecca signed an agreement sponsored by Saudi Arabia that led to the formation of a coalition Government that was approved by the Palestinian Legislative Council in March.[27] The coalition Government was headed by Hamas and included members of other political movements, including Fatah, as well as independents. After only four months, violent clashes erupted again between armed and security forces loyal to Fatah and Hamas. By 14 June 2007, Hamas forces and armed groups had seized all Palestinian

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[24] See "Briefing to the Security Council on the situation in the Middle East", by Ms Angela Kane, Assistant Secretary-General for Political Affairs, 31 January 2006, available at: http://www.unsco.org/Documents/Statements/MSCB/2008/January%2031.pdf

[25] In June 2006, Hamas subscribed to the so-called Prisoners Document, a common political platform shared by Fatah, Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP). An implicit recognition of the State of Israel could be traced to the statement that "the right to establish their independent state with al-Quds al-Sharif as its capital on all territories occupied in 1967". See http://www.miftah.org/Display.cfm?DocId=10371&CategoryId=32.

[26] See International Crisis Group, "Israel/Palestine/Lebanon: Climbing out of the abyss", Middle East Report N° 57, 25 July 2006.

[27] See "Briefing to the Security Council on the situation in the Middle East", by Mr B. Lynn Pascoe, 25 April 2007, available at: http://www.unsco.org/Documents/Statements/MSCB/2007/April%202007.pdf.

Authority security installations and government buildings in the Gaza Strip.[28] The President of the Palestinian Authority dismissed the Hamas-led Government (hereinafter called the Gaza authorities), declared a state of emergency and established an emergency Government based in the West Bank, which was largely recognized by the international community.[29]

191. In November 2007, the United States of America sponsored the organization of a new comprehensive peace conference. At the Conference – held in Annapolis, Maryland, United States of America – the Palestinian President and the Israeli Prime Minister agreed to resume negotiations by the end of 2007. In addition, they agreed to work continuously to reach a two-State solution by the end of 2008.

192. On 19 September 2007, the Government of Israel declared Gaza "hostile territory."[30] This was followed by the imposition of further severe reductions in the transfer of goods and supplies of fuel and electricity to the Strip. Since then, Israel has only sporadically allowed the opening of all the crossings into the Gaza Strip, at times completely closing them.[31] (See also chapter V.)

193. Israeli military operations in Gaza and the West Bank started well before the so-called disengagement of 2005. "Operation Defensive Shield" in 2002 was the largest military operation in the West Bank since the 1967 Six-Day War. It began with an incursion into Ramallah, placing the then President of the Palestinian Authority, Yasser Arafat, under siege in his offices, and was followed by incursions into the six largest cities in the West Bank and their surrounding localities. During the three weeks of the military incursions in areas that were under the direct control of the Palestinian Authority, 497 Palestinians were killed.[32] The siege on the half destroyed Ramallah *Muqataa* compound of President Arafat was lifted only at the end of 2004 when he was flown to Paris to undergo medical treatment. He later died there.

194. "Operation Rainbow" of 2004 targeted the Rafah area of the Gaza Strip and left about 50 Palestinians dead. "Operation Days of Penitence" was carried out between September and October 2004. According to the Israeli Government, it was launched in retaliation for the firing of rockets against the town of Sderot and Israeli settlements inside the Gaza Strip. It targeted the towns of Beit Hanoun and Beit Lahia and the Jabaliyah refugee camp and resulted in the deaths of more than 100 Palestinians and 5 Israelis.

195. From the disengagement until November 2006, the Israeli armed forces fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 people in Gaza. Over the same period, at

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[28] See International Crisis Group, "After Gaza", Middle East Report N°68, 2 August 2007. See also Vanity Fair, "The Gaza bombshell", April 2008, available at: http://www.vanityfair.com/politics/features/2008/04/gaza200804

[29] For reactions in support of the emergency Government by the United States, the European Union and Arab States, see "After Gaza…".

[30] "Security cabinet declares Gaza hostile territory", 19 September 2007, and "Behind the headlines: Israel designates Gaza a 'hostile territory'", 24 September 2007, available from the website of Israel's Ministry of Foreign Affairs at www.mfa.gov.il

[31] A/HRC/7/76.

[32] A/ES-10/186.

least 1,700 rockets and mortars were fired into Israel by Palestinian militants, injuring 41 Israelis. The conflict culminated, in 2006, in the Israeli military incursions into Gaza, codenamed "Summer Rains" and "Autumn Clouds", the latter focusing on the north of the Strip around the town of Beit Hanoun, where shortly after the end of the military operations in November, 19 people, of whom 18 of the same family, were killed by artillery fire in one incident.[33]

196. In February 2008, a rocket attack from Gaza hit the Israeli city of Ashkelon causing light injures. The Israeli armed forced launched an operation codenamed "Hot Winter" during which the air force conducted at least 75 air strikes on different targets within the Gaza Strip. As a result of the military operation, more than 100 Palestinians and 2 Israelis were killed in Gaza.[34]

197. In June 2008, an informal "period of calm" (*Tahdiyah*) of six months was agreed through Egypt's mediation. (For more details, see chapter III.)

B. Overview of Israel's pattern of policies and conduct relevant to the Occupied Palestinian Territory, and links between the situation in Gaza and in the West Bank

198. Since1967, Israel has built hundreds of settlements in the West Bank, including East Jerusalem, and the Gaza Strip. Such settlements were recognized by its Ministry of Interior as Israeli "communities" subjected to Israeli law. The above-mentioned Advisory Opinion by the International Court of Justice advisory opinion and "a number of United Nations resolutions have all affirmed that Israel's practice of constructing settlements – in effect, the transfer by an occupying Power of parts of its own civilian population into the territory it occupies – constitutes a breach of the Fourth Geneva Convention"[35] (on the position of the Israeli High Court of Justice on the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, see chapter IV). Sixteen settlements in the Gaza Strip and three in the northern West Bank were dismantled in 2005 during the implementation of the so-called Israeli disengagement plan, but the establishment of new settlements continued. In 2007, there were more than 450,000 Israeli citizens living in 149 settlements in the West Bank, including East Jerusalem. According to United Nations sources, almost 40 per cent of the West Bank is now taken up by Israeli infrastructure associated with the settlements, including roads, barriers, buffer zones and military bases. Data released by the Israeli Central Bureau of Statistics showed that construction in these settlements has increased in 2008 by a factor of 1.8 in comparison with the same period in 2007. The number of tenders in East Jerusalem has increased by 3,728 per cent (1,761 housing units, compared with 46 in 2007). Until the end of the 1970s, the Government of Israel claimed that the settlements were established on the grounds of military necessity and security, but it has since abandoned this position.[36]

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[33] A/HRC/9/26.

[34] A/HRC/8/17.

[35] A/63/519.

[36] Ibid.

199. It is estimated that 33 per cent of the settlements have been built on private land owned by Palestinians, much of it expropriated by the State of Israel on asserted grounds of military necessity. Following a ruling of the Israeli High Court of Justice in 1979, the Government of Israel changed its policy of land confiscation on the asserted ground of military necessity and started having recourse to civil laws relating to land confiscation in place under Ottoman rule. According to these laws, land may be seized either because no one can prove ownership in accordance with the required standard of evidence or because the area in which it is situated is declared a closed military zone which farmers are prohibited from entering.[37]

200. "Since 1967, the Israeli authorities have demolished thousands of Palestinian-owned structures in the [Occupied Palestinian Territory], including an estimated 2,000 houses in East Jerusalem."[38] During the first quarter of 2008, the Israeli authorities demolished 124 structures in the West Bank, including East Jerusalem, for lack of permits. Of those, 61 were residential buildings whose demolition caused the displacement of many Palestinians, including children. Demolition of structures and residential buildings has been a feature of the Israeli policy that has displaced Palestinians mainly in the Jordan Valley and in East Jerusalem, but also in other areas of the West Bank. The Israeli authorities justify the majority of these demolitions by claiming that the structures or buildings lack the necessary permits. The relevant Israeli authorities rarely issue building permits for Palestinians, frequently refusing them on the basis that the construction is in violation of the mandatory regional outline plans approved by the British Mandate Government of Palestine in the 1940s.[39] Areas in East Jerusalem face the prospect of mass demolitions. Carrying out pending demolition orders would affect a combined total of more than 3,600 persons.[40] The combined effects of the Israeli policies of expanding and establishing new settlements, the demolition of Palestinian-owned properties, including houses, the restrictive and discriminatory housing policies as well as the Wall have been described as a way of "actively pursuing the illegal annexation" of East Jerusalem.[41]

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[37] Ibid.

[38] Office for the Coordination of Humanitarian Affairs (OCHA), "The planning crisis in East Jerusalem: Understanding the phenomenon of 'illegal' construction", Special Focus, April 2009, available at: http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf

[39] A/63/518.

[40] OCHA, Special Focus, April 2009.

[41] The Guardian, "Israel annexing East Jerusalem, says EU", 7 March 2009, available at: http://www.guardian.co.uk/world/2009/mar/07/israel-palestine-eu-report-jerusalem

201. The route of the Wall weaves between Palestinian villages and neighbourhoods and has contributed to the fragmentation of the West Bank into a series of enclaves separated from one another (see map[42] below). The Wall encircles settlements built around Jerusalem and within the West Bank and connects them to Israel. Eighty per cent of Israeli inhabitants of these settlements reside to the west of the Wall. The route of the Wall, which has created a demarcation, is to a great degree determined by the objective of incorporating settlements into the Israeli side and to exclude Palestinians from these areas.[43] If completed, 85 per cent of the Wall will be located inside the West Bank, and 9.5 per cent of West Bank territory, including East Jerusalem, will be cut off from the rest of the West Bank. It is estimated that 385,000 Israeli citizens in 80 settlements out of the total of 450,000 Israeli citizens in 149 settlements and 260,000 Palestinians, including in East Jerusalem, will be located between the Wall and the Green Line. In addition, approximately 125,000 Palestinians in 28 communities will be surrounded on three sides and 26,000 Palestinians in eight communities will be surrounded on four sides.[44] A number of surveys compiled by United Nations agencies[45] found that many Palestinian communities cut off by the Wall do not enjoy full access to emergency health services, posing severe challenges in medical emergencies and for expectant mothers. In addition the Wall cuts off residents in closed areas from schools and universities, also having an impact on social relations and especially on traditional marriage patterns. The Wall isolates the land and water resources of a large number of Palestinians, having a negative impact on agricultural practices and on rural livelihoods.

202. Despite the claim by Israel that restrictions of movement within the West Bank are imposed on Palestinian residents for security purposes, most of those internal restrictions appear to have been designed to guarantee unobstructed travel to the Israeli inhabitants of the settlements. None of these restrictions applies to Israeli citizens travelling throughout the West Bank.[46]

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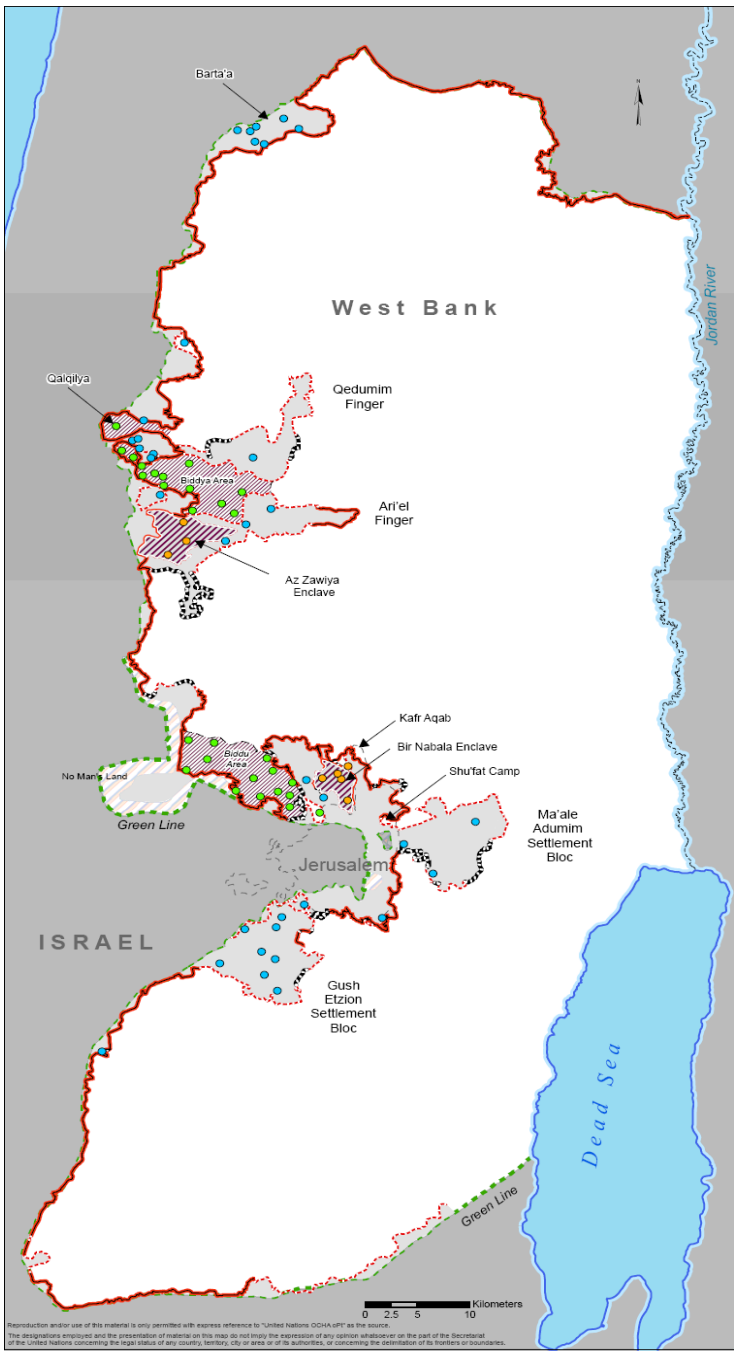
[42] OCHA, "West Bank barrier route projections", July 2008, available at: http://www.ochaopt.org/documents/BarrierRouteProjections_July_2008.pdf

[43] A/63/519.

[44] OCHA, "Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the barrier", July 2009 (Updated August 2009), available at: http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

[45] OCHA and UNRWA surveys quoted in OCHA Special Focus, – "Three years later: The humanitarian impact of the barrier since the International Court of Justice Opinion", 9 July 2007, available at: http://www.ochaopt.org/documents/ICJ4_Special_Focus_July2007.pdf.

[46] A/63/519.



203. A two-tiered road system has been established throughout the West Bank in which main roads are reserved for the exclusive use of Israeli citizens while Palestinians are confined to a different (and inferior) road network. The Israeli-built roads in the West Bank form a network linking Israeli settlements with one another and to Israel proper. Palestinians are denied free access to approximately 1,500 km of roads within the West Bank.[47] Travel on these roads by

[47] Most prohibited roads comprise the major north-south and east-west routes in the West Bank. These are reserved for settlers, Israeli security forces and non-Palestinian international passport holders, including international United Nations staff.

Palestinians is completely forbidden. Partially prohibited roads are those for which a special permit is required, while restricted roads are those on which individuals travelling on such roads who are not from the local area must have a permit.[48]

204. The policy of "closure", i.e. closures of entire areas and restrictions on the movement for goods and people on the basis of alleged security threats to Israeli citizens, has been a characteristic of the Israeli control over the Gaza Strip and the West Bank since 1996 and has dramatically affected the lives of Palestinians. "Perhaps the most devastating effect of the heightened closure has been a dramatic rise in unemployment levels in the West Bank and Gaza Strip. Because the closure restricts the movement of all people (and goods) in and out of the Gaza Strip and West Bank, as well as movement within the West Bank itself, workers from these territories have been unable to reach their places of employment. According to the Palestinian Ministry of Labour, unemployment in Gaza has increased from 50 per cent to 74 per cent (and from 30 per cent to 50 per cent in the West Bank). Before the heightened closure, 22,000 Gazans (down from 80,000 in 1987) and 26,000 West Bankers had permits to work in Israel." "Losses from unemployment amount to $1.04 million daily for the Gaza Strip alone – $750,000 from lost wages in Israel and $290,000 from lost wages in local sectors. The Palestinian Bureau of Statistics (PBS) estimates that from February 25 to April 4, the Gaza Strip and West Bank lost $78.3 million in wages and income."[49] In June 2009, more than 40 United Nations and other humanitarian agencies urged Israel to lift its blockade of Gaza, where nearly everyone depends on international humanitarian assistance, and indiscriminate sanctions are affecting the entire population of 1.5 million[50] (see also chap. V).

205. A number of Israeli policies and measures especially since 1996 have contributed to effectively separating Gaza from the West Bank, despite the commitments contained in the Oslo I Accord by which "the two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period." The imposition of tight closures and limitations on movement has chiefly contributed to this separation.[51] With the implementation of the "disengagement plan" and after Hamas secured control of the Gaza Strip, the imposition of an almost total closure has meant that direct contact is no longer possible with Palestinians from the West Bank. The arrest by Israel of members of the Palestinian Legislative Council and other Palestinian Authority officials has also resulted in the inability of many institutions to function properly and prevented Palestinians from the two areas to work together. In the past few years a new permit system has been imposed on Palestinians of the Gaza Strip living in the West Bank. Without such a permit they can be declared "illegal aliens". In addition, the Israeli authorities – who are in control of the population registry – have stopped updating the addresses of Palestinians who have moved from Gaza to the West Bank. The new requirement

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[48] A/63/519.

[49] Sara Roy, "Economic deterioration in the Gaza Strip", Middle East Report, No. 200 (Summer 2006), available at: http://www.merip.org/mer/mer200/roy.html.

[50] "UN, aid agencies call for end to Israel's two-year blockade of Gaza" (17 June 2009), available at: http://www.un.org/apps/news/story.asp?NewsID=31174&Cr=gaza&Cr1.

[51] "The total separation of the Gaza Strip from the West Bank is one of the greatest achievements of Israeli politics." See Amira Hass, "An Israeli achievement" (20 April 2009), available at: http://www.bitterlemons.org/previous/bl200409ed15.html#isr2.

for a permit is based on a person's registered address, enabling Israel to bar Palestinians whose registered address is in Gaza from moving to the West Bank. This measure has also retroactively turned many Palestinians who already live in the West Bank into illegal residents. These policies have had a devastating impact on many families that were effectively forced to live apart or, in order to live together, move to the Gaza Strip with no possibility of returning to the West Bank.[52] Israel has bureaucratically and logistically effectively split and separated not only Palestinians in the occupied territories and their families in Israel, but also Palestinian residents of Jerusalem and those in the rest of the territory and between Gazans and West Bankers/Jerusalemites.[53]

206. Despite prohibitions under international humanitarian law (IHL),[54] Israel has applied its domestic laws throughout the Occupied Palestinian Territory since 1967. Notably, existing planning and construction laws were annulled and replaced with military orders, and related civil powers transferred from local authorities to Israeli institutions, with ultimate discretion resting with military commanders.[55] The application of Israeli domestic laws has resulted in institutionalized discrimination against Palestinians in the Occupied Palestinian Territory to the benefit of Jewish settlers, both Israeli citizens and others. Exclusive benefits reserved for Jews derive from the two-tiered civil status under Israel's domestic legal regime based on a "Jewish nationality," which entitles "persons of Jewish race or descendency"[56] to superior rights and privileges, particularly in land use, housing, development, immigration and access to natural resources, as affirmed in key legislation.[57] Administrative procedures qualify indigenous inhabitants of the Occupied Palestinian Territory as "alien persons" and, thus, prohibited from building on, or renting, large portions of land designated by the Government of Israel as "State land".[58]

207. The two-tiered civil status under Israeli law, favouring "Jewish nationals" (*le'om yehudi*) over persons holding Israeli citizenship (*ezrahut*), has been a subject of concern under the International Covenant on Economic, Social and Cultural Rights, particularly those forms of discrimination carried out through Israel's parastatal agencies (World Zionist Organization/Jewish Agency, Jewish National Fund and their affiliates), which dominate land use, housing and development.[59] The Committee on Economic, Social and Cultural Rights also

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[52] B'Tselem and Hamoked, "Separated entities - Israel divides Palestinian population of West Bank and Gaza Strip", available at: http://www.btselem.org/Download/200809_Separated%20Entities_Eng.pdf.

[53] Amira Hass, op. cit.

[54] The Hague Regulations (art. 43).

[55] Order regarding the Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 5731-1971 (QMZM 5732 1000; 5736 1422, 1494; 5741 246; 5742 718, 872; 5743, No. 57, at 50; 5744, No. 66, at 30), para. 8.

[56] Jewish National Fund, Memorandum of Association, art. 3 (c).

[57] For those holding "Jewish nationality" (as distinct from Israeli citizenship), special immigration rights and privileges are provided in the Basic Law: Law of Return (1950), as well as development and access to natural resources under the Basic Law: "Israel Lands" (1960).

[58] An alien person is defined as one who falls outside the following categories: (a) an Israeli citizen; (b) a person who has immigrated (to Israel) under the Basic Law: Law of Return; (c) someone who is entitled to the status of immigrant under the Law of Return, i.e. a Jew by descent or religion; (d) a company controlled by (a), (b) or (c).

[59] In 1998, the Committee on Economic, Social and Cultural Rights observed "with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish

has recognized that Israel's application of a "Jewish nationality" distinct from Israeli citizenship institutionalizes discrimination that disadvantages all Palestinians, in particular, refugees.[60]

208. In 2007, the Committee on the Elimination of Racial Discrimination highlighted another discriminatory policy imposed by the Israeli authorities on Palestinian residents of the Occupied Palestinian Territory as well as those who are Israeli citizens (but denied a legal "nationality" status).[61] The "Citizenship and Entry into Israel Law (Temporary Order)" of 31 May 2003 bars the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the Occupied Palestinian Territory. The Committee noted that such measures have a disproportionate impact on Arab Israeli citizens who marry Palestinians from the Occupied Palestinian Territory and wish to live together with their families in Israel. While noting the State party's legitimate objective of guaranteeing the safety of its citizens, the Committee expressed concern about the fact that these "temporary" measures have systematically been renewed and have been expanded to citizens of "enemy States".[62]

209. Since 1967, about 750,000 Palestinians have been detained at some point by the Government of Israel, according to Palestinian human rights organizations. Currently, there are approximately 8,100 Palestinian prisoners in Israeli prisons and detention centres, roughly 550 of whom are administrative detainees.[63] Administrative detention is detention without charge or trial, authorized by an administrative order rather than by judicial decree. The conditions of Palestinians in Israeli detention facilities have been the subject of considerable international criticism, including concerns of torture and other ill-treatment. Palestinian detainees can normally be visited only by first-degree relatives (see chapter XXI). However, following Hamas' seizure of full control in the Gaza Strip in June 2007, the Israeli authorities suspended visits from family members travelling from Gaza to Palestinian detainees in Israel, depriving more than 900 detainees of direct contact with their relatives.[64]

National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. […] large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant." (E/C.12/1/Add.27, para. 11).

[60] In its 2003 review, the Committee on Economic, Social and Cultural Rights also observed with particular concern that "the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees." (E/C.12/1/Add.90, para. 18).

[61] The "Or" Commission, a panel appointed by the Israeli Government in 2000, found that Arab citizens suffer discrimination in Israel and levelled criticism at the Government for failing to give fair and equal attention to the needs of Arab citizens of Israel. See its full report at: http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm (in Hebrew).

[62] CERD/C/ISR/CO/13.

[63] Mission's Public hearings, Geneva (7 July 2009). Testimony of Ms. Sahar Francis, Director of Addameer, available at: http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090707am1-eng.rm?start=00:00:00&end=00:47:46

[64] A/63/518.

C. Relevant political and administrative structures in the Gaza Strip and the West Bank

210. The Palestinian Legislative Council is the legislature of the Palestinian Authority; a unicameral body with 132 members, elected from 16 electoral districts in the West Bank and Gaza. Its initial composition, whose normal cycle is four years, was 88 members. In accordance with the Oslo Accords, the first Palestinian elections took place in 1996 under the supervision of international monitors. In 2000, a second round of planned elections did not take place due to the flaring-up of the second intifada. In January 2006, the second general polls took place. The elections resulted in a majority for the List of Change and Reform.[65] On 29 June, days after the capture of Gilad Shalit, the Israeli armed forces in the West Bank arrested eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council.[66] The Council has been unable to operate since, as the continued detention of its members means it cannot achieve a quorum.

211. The Palestinian Basic Law was developed to function as a temporary constitution for the Palestinian Authority until the establishment of an independent State and a permanent constitution for Palestine can be drawn up. The Basic Law was passed by the Palestinian Legislative Council in 1997 and ratified by the President of the Palestinian Authority in 2002. It has been amended twice: in 2003, the political system was changed to introduce a prime minister and, in 2005, it was amended to conform to the new Election Law.[67] The legal system comprises a body of laws and decrees which include those remaining from previous centuries – Ottoman, British, Jordanian (in the West Bank), Egyptian (in the Gaza Strip) and Israeli – and legislation introduced by presidential decrees and laws passed by the Palestinian Legislative Council.[68]

212. In the jurisdiction of the Palestinian Authority, the court system comprises Magistrate Courts, dealing with misdemeanours; Courts of First Instance, dealing with more serious crimes and appeals against judgements handed down by Magistrate Courts; Appeal Courts, which hear appeals against judgements of the Courts of First Instance; and the High Court, which provides the highest level of appeal. A Supreme Criminal Court was set up in 2006 to try crimes such as murder, abduction, rape, so-called honour crimes and attacks on national security. Military Courts hear cases involving members of the security forces and apply the 1979 PLO Revolutionary Code. The Attorney General and the prosecutors investigate and prosecute crimes, oversee the legality of detentions and investigate complaints by detainees. The Attorney General and the judges are nominated by the Higher Judicial Council, which is headed by the President of the High Court, but appointed by the Palestinian Authority's President.[69] Since June 2007, the Gaza authorities have restructured the judiciary in violation of Palestinian laws. To replace

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[65] The name of the list on which Hamas representatives ran for election.

[66] See chap. XXI.

[67] The Palestinian Basic Law: http://www.palestinianbasiclaw.org

[68] Amnesty International, "Occupied Palestinian Territories torn apart by factional strife", available at: http://www.amnesty.org/en/library/asset/MDE21/020/2007/en/dom-MDE210202007en.html.

[69] Ibid.

officials who had left their jobs under instruction of the Palestinian Authority, the Gaza authorities appointed judges and prosecutors generally lacking experience and independence.[70]

213. Before June 2007, there were about 12,600 Palestinian police officers in Gaza and 6,500 in the West Bank under a unified command. Palestinian civil police were operating from 10 district headquarters (including the one in Ramallah, which is also its main central command). After Hamas seized full control of the Gaza Strip, official data about police numbers are available only for the West Bank, where there are 78 police facilities, including district headquarters, general stations and posts, public order compounds, prisons and detention centres, training centres and stations for border police, tourist police, criminal investigation police and traffic police.[71]

214. In 2005 various security forces were consolidated into three branches: National Security, Internal Security and General Intelligence, each comprising several forces. General Intelligence includes Military Intelligence and the Military Police, and is under the direct control of the Palestinian Authority's President, as is the Presidential Guard/Force 17. National Security and Internal Security are under the jurisdiction of the Ministers of National Security and the Interior, respectively, but their heads are appointed by the Palestinian Authority's President. In 2006, the then Hamas Interior Minister established the Executive Force, mainly composed of members of al-Qassam Brigades and Hamas supporters.[72] Since Hamas seized control in June 2007, law and order and other security functions have been performed by Hamas security organizations.[73] The Gaza authorities announced a series of new bodies or mechanisms to replace the Palestinian Authority's security forces and judicial institutions that have refused to operate under or alongside the Hamas administration.[74] In September 2007, the Internal Security Force was established with most of its personnel coming from al-Qassam Brigades. In October 2007, Hamas dissolved the Executive Force and absorbed its personnel into the police. Both the Internal Security Force and the police report to the minister of interior.[75] (See chapter X.)

215. Most Palestinian political parties have an armed wing or armed groups affiliated to them.[76] The two largest armed groups are al-Aqsa Brigades, the armed wing of Fatah, and al-Qassam Brigades, the armed wing of Hamas. Al-Aqsa Brigades were established by Fatah activists, including members of the Palestinian Authority's security forces, shortly after the

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[70] Human Rights Watch, Internal Fight: Palestinian Abuses in Gaza and the West Bank (July 2008), available at: http://www.hrw.org/en/reports/2008/07/29/internal-fight-0.

[71] The European Union's police mission for the Palestinian Territories (2008), available at: http://www.consilium.europa.eu/uedocs/cmsUpload/EUPOL%20COPPS%20booklet.pdf.

[72] See chap. VII.

[73] Central Intelligence Agency, The World Fact Book 2009 (Gaza Strip), available at: https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html.

[74] "Occupied Palestinian Territories torn apart…".

[75] Internal Fight...

[76] The armed wings of the Islamic Jihad, the Popular Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine. There are also other smaller splinter groups.

outbreak of the second intifada. Al-Qassam Brigades were established in the early 1990s with the stated aim of conducting armed resistance to Israeli occupation.[77]

D. Relevant political and administrative structures in Israel

216. In Israel, a largely ceremonial President is elected by the 120-seat Knesset for a seven-year, non-renewable term. The Prime Minister is usually the leader of the largest party or coalition in the Knesset, whose members are elected by party-list, proportional representation for four-year terms. The three main parties are the centre-left Labour Party, the centrist Kadima and the right-wing Likud.[78]

217. Following legislative elections, the President assigns a Knesset member – traditionally the leader of the largest party – the task of forming a governing coalition.

218. Israel has no formal constitution; some of the functions of a constitution are fulfilled by the Declaration of Establishment (1948), the Basic Laws of the parliament (Knesset) and the Israeli Citizenship Law.

219. The court system comprises Magistrates' Courts, which are courts of first instance in criminal and civil matters; District Courts, which are courts of first instance with jurisdiction over serious criminal offences which carry the death penalty or more than seven years' imprisonment and act as appellate courts for the judgments of the Magistrates' Court; and the Supreme Court, which is the highest judicial instance of the country.[79] The Supreme Court hears direct petitions from Israeli citizens. It also hears cases related to Palestinian residents of the West Bank and Gaza Strip sitting as the High Court of Justice.[80] Palestinian civilians charged with security-related and other criminal offences are, however, commonly tried in the Israeli military court system. Since 1967, more than 200,000 cases have been brought before military courts, where Palestinian civilians have been prosecuted and judged by the military authorities. About half the prisoners currently being held in Israel have been sentenced to prison terms by military courts.[81]

220. The Israeli police is a civilian force mandated to fight crime, control traffic and maintain public safety. The border police (*Magav*) is the military branch of the Israeli police, with combat, counter-terrorism and riot-control units.

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[77] "Occupied Palestinian Territories torn apart…".

[78] Freedom House. Country report: Israel (2009), available at: http://www.freedomhouse.org/template.cfm?page=22&country=7630&year=2009.

[79] The State of Israel – The Judicial Authority, at: http://elyon1.court.gov.il/eng/home/index.html.

[80] "As the High Court of Justice, the Supreme Court rules as a court of first instance, primarily in matters regarding the legality of decisions of State authorities: Government decisions, those of local authorities and other bodies and persons performing public functions under the law. It rules on matters in which it considers it necessary to grant relief in the interests of justice, and which are not within the jurisdiction of another court or tribunal." See The State of Israel – Judicial Authority (The Supreme Court), at: http://elyon1.court.gov.il/eng/rashut/maarechet.html.

[81] See Yesh Din – Volunteers for Human Rights, Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories (December 2007), available at: http://www.yesh-din.org/site/images/BackyardProceedingsEng.pdf.

221. Branches of the military are the Israeli Defense Forces (IDF), Israeli Naval Forces (INF) and the Israeli Air Force (IAF). The Israeli military is headed by the Chief of General Staff under the Minister of Defense. The structure of the Israeli army comprises four regional commands: (a) the Northern Command; (b) the Central Command; (c) the Southern Command; and (d) the Home Front Command. The Coordinator of Government Activities in the Territories (COGAT) – formerly known as the "Civil Administration" – is a unit in the Israeli Ministry of Defense that administers areas of the West Bank and coordinates with international organizations operating in the West Bank and the Gaza Strip.

222. The Israeli intelligence services are: (a) the Institute for Intelligence and Special Operations (*Mossad*); (b) the Israeli Security Agency (formerly the General Security Services) or the Israeli internal security service (*Shin Bet* or *Shabak*); and (c) the Military Intelligence (*Aman*).

III. EVENTS OCCURRING BETWEEN THE "CEASEFIRE" OF 18 JUNE 2008 BETWEEN ISRAEL AND THE GAZA AUTHORITIES AND THE START OF ISRAEL'S MILITARY OPERATIONS IN GAZA ON 27 DECEMBER 2008

223. As mentioned in chapter I, in order to implement its mandate the Mission decided to focus primarily on events, actions or circumstances that had occurred since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. Accordingly, both in the context of its mandate and in order to be informed about the environment in which the Israeli military operations in the Gaza Strip took place, the Mission reviewed incidents relevant to the ceasefire that were reported to have taken place between 19 June 2008 and the start of Israel's military operations in the Gaza Strip. Information about these incidents, which are recorded in chronological order, was gathered primarily from documents in the public domain and may not represent all incidents that occurred during this period.[82]

224. On 18 June 2008, the Gaza authorities and Israel announced a six-month ceasefire in an agreement brokered by Egypt.[83] The ceasefire came into effect on 19 June 2008 at 6 a.m.[84]

225. The terms of the ceasefire agreement were not set out in any formal, written document and, according to recent analysis, the Gaza authorities' and Israel's understanding of the terms

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[82] Sources include public statements issued by the Gaza authorities, Palestinian armed groups and Israel, reports of the United Nations, national and international NGOs and the media.

[83] The ceasefire was officially termed "a period of calm" (Tahdiyah in Arabic). It has also been referred to as "security calm" and "lull".

[84] Prime Minister Olmert's comments on the calm in the south, Press Release, 18 June 2008, Prime Minister's Office, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2008/06/spokecalm180608.htm; Al Ahram Weekly, "Calm for now", 19 June 2008, available at: http://weekly.ahram.org.eg/2008/902/eg2.htm; Felesteen Newspaper, "Gaza: Hamas: the Tahdiyah is the fruit of the resilience and resistance of the (resistance) groups and its unity", 18 June 2009, available at: http://www.felesteen.ps/file/pdf/2008/06/18/1.pdf; 19 June 2009; Felesteen Newspaper, Gaza, Tahdiya starts today accompanied with international and popular welcoming, http://www.felesteen.ps/file/pdf/2008/06/19/1.pdf. See chap. II.

differed substantially.[85] According to information reported by OCHA, the agreement included a commitment by the Gaza authorities to halt attacks by Palestinian armed groups against Israel immediately and a commitment by Israel to cease its military operations in Gaza. Israel also reportedly agreed to ease its blockade of Gaza and gradually lift its ban on the import of a large number of commodities.[86] According to Egyptian sources quoted by the International Crisis Group,[87] after three weeks the two sides were to commence negotiations for a prisoner exchange and the opening of the Rafah crossing.

226. The agreement was made in respect to the territory of the Gaza Strip only, but Egypt reportedly undertook to work to expand the ceasefire to the West Bank after the initial six-month ceasefire had elapsed.[88]

227. The first incident relevant to the ceasefire reportedly took place on 23 June 2008, when a 67-year-old Palestinian civilian was injured when the Israeli military stationed at the border north-west of Beit Lahia opened fire on a group of Palestinians trying to collect fire wood near the border. Also on 23 June, two mortar shells were reportedly fired from central Gaza. One landed near the Nahal Oz crossing and the other in the Negev desert; no injuries were reported.[89]

228. Between 18 and 24 June 2008, the Karni (al-Mintar) crossing conveyor belt was opened for four days for wheat and animal feed but was closed to all other imports and exports. The Erez crossing was open for six days to allow the movement of diplomats, international humanitarian workers and critical medical cases. OCHA indicated that senior Palestinian businessmen were also allowed to cross. The Sufa crossing was open for five days during the week ending 24 June 2008, while the Kerem Shalom and Rafah crossings remained closed. The Nahal Oz energy pipelines were open on the six scheduled operating days.[90]

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[85] See International Crisis Group, "Ending the war in Gaza", Middle East Briefing No. 26, 5 January 2009, p. 3, available at: http://www.crisisgroup.org/library/documents/middle_east___north_africa/arab_israeli_conflict/b26_ending_the_war_in_gaza.pdf.

[86] OCHA, Protection of Civilians Weekly Report (18–24 June 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_265_English.pdf; see also "Ending the war…", which also notes that crossing points were to be opened after 72 hours (6 a.m. on 22 June 2008) to allow 30 per cent more goods into Gaza and, on 1 July 2009, all crossings were to be opened to allow for the transfer of goods into Gaza (footnote 1). It is the Mission's understanding that, in relation to the transfer of goods, the agreement did not include materials that could be used to make explosives or projectiles.

[87] See "Ending the war…".

[88] "Ending the war…", footnote 1. See also The Jerusalem Post, "End of truce? 3 Kassams hit w. Negev", 24 June 2008, available at http://www.jpost.com/servlet/Satellite?cid=1214132667653&pagename=JPost%2FJPArticle%2FShowFull.

[89] OCHA, Protection of Civilians Weekly Report (18–24 June 2008).

[90] Ibid.

229. Shortly after midnight on 24 June 2008, a mortar fired from Gaza landed in the Negev near the Karni checkpoint, causing no injuries or damage.[91] No group claimed responsibility for the attack.[92]

230. At dawn on 24 June 2008, the Israeli armed forces launched a raid in the West Bank town of Nablus in which an Islamic Jihad activist and another Palestinian man were killed.[93] According to statements reportedly made by the Palestinian armed group Islamic Jihad, it responded by firing three Qassam rockets into Israel, which landed in the western Negev desert.[94] It added: "We cannot keep our hands tied when this is happening to our brothers in the West Bank", while a Gaza authorities spokesman was quoted as saying that the rocket attack came as a result of "Israeli provocation" but that Hamas, as the Gaza authorities, was "committed to the security calm".[95] In Israel, the Foreign Ministry spokesperson termed the rocket attacks "a grave violation of the ceasefire"[96] and said it would consider reimposing economic sanctions.[97]

231. On 26 June 2008, Israel's Defense Ministry ordered the reclosure of the Gaza border crossings, save for special humanitarian cases, in response to the rocket attacks two days previously.[98] The Gaza authorities accused Israel of violating the ceasefire, stating "if the crossings remain closed, the truce will collapse".[99]

232. Later on 26 June 2008, one rocket was fired from Gaza into Israel for which the Palestinian armed group al-Aqsa Martyrs' Brigades claimed responsibility.[100] As reported by the Xinhua news agency, the armed group stated that "the truce must include the West Bank and all

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[91] Rianovosti, "Mortar attack from Gaza hit Israel", 24 June 2008, available at: http://en.rian.ru/world/20080624/111867958.html; "End of truce?...".

[92] "Mortar attack…".

[93] "End of truce?..."; The New York Times, "Rockets hit Israel, breaking Hamas truce", 25 June 2008, available at http://www.nytimes.com/2008/06/25/world/middleeast/25mideast.html

[94] "End of truce?...".

[95] Ibid.

[96] Ibid.

[97] BBC News, "Rockets 'violated Gaza ceasefire'", 24 June 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7470530.stm

[98] Xinhua News, "Israeli FM calls for immediate military response to Qassam attacks", 26 June 2008.

[99] Gaza authorities, "The Government: Closing the crossings is an infringement of truce, and we call Egypt to interpose", press statement (25 June 2008), available at: http://www.moi.gov.ps/en/?page=633167343250594025&Nid=4702; see also "Israeli FM calls for immediate military response…".

[100] OCHA, Protection of Civilians Weekly Report (25 June–1 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_266.pdf.

sorts of aggression must stop".[101] The Israeli Foreign Minister commented, "I do not care which organization fired the rocket, Israel must respond militarily and immediately."[102]

233. On 27 June 2008, the al-Aqsa Martyrs' Brigades claimed responsibility for firing mortar shells into Israel, one of which landed near Sderot. The head of the Gaza authorities, Ismail Haniyah, called on all the Palestinian factions to adhere to the ceasefire, stating that "the factions and the people accepted the lull in order to secure two interests – an end to aggression and the lifting of the siege". A spokesman for the Gaza authorities was quoted as saying that it considered the rocket attacks to be "unpatriotic" and that Hamas was considering the possibility of taking action against those perpetrating the attacks against Israel.[103]

234. On 28 June 2008, mortar shells were reportedly fired at the Karni crossing but no group claimed responsibility. On 29 June 2008, the crossings into Gaza were closed, [104] save for the delivery of fuel.

235. On 30 June 2008, Israel reported that a rocket fired from Gaza fell near the kibbutz of Miflasim. No group claimed responsibility and Israel confirmed that as of 1 July 2008 no rocket fragments had been located. Israel closed the crossings which had been reopened the day before. The Gaza authorities rejected the assertion that a rocket had in fact been fired and called the closure of the crossings "unjustified".[105]

236. On several occasions during the last two weeks of June, the Israeli navy fired at Palestinian fishermen off the Gaza coast, forcing them to return to shore.[106]

237. During the month of June, the number of truckloads of goods allowed into Gaza represented only 17 per cent of the number that entered Gaza in May 2007, before Hamas seized control of the Gaza Strip. No exports had been allowed out of Gaza by Israel since December 2007.[107]

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[101] Xinhua News, "Israeli FM calls for immediate military response …".

[102] Israel Ministry of Foreign Affairs: "FM Livni: Israel will not tolerate violations of the calm", press release (26 June 2008), available at: http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2008/Israel%20will%20not%20tolerate%20violations%20of%20the%20calm%2026-Jun-2008.

[103] Ynet News, "Haniyeh: All Palestinian factions should honor truce", 27 June 2008; http://www.ynetnews.com/articles/0,7340,L-3561133,00.html.

[104] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "The six months of the lull arrangement", December 2008.

[105] The Guardian, "Israel closes Gaza crossing after reported rocket attack", 1 July 2008, available at: http://www.guardian.co.uk/world/2008/jul/01/israelandthepalestinians.middleeast.

[106] OCHA, Protection of Civilians Weekly Report (18–24 June 2008) and Protection of Civilians Weekly Report (25 June–1 July 2008).

[107] OCHA, The Humanitarian Monitor, No. 26 (June 2008), available at http://www.ochaopt.org/documents/HM_June_2008.pdf.

238. On 1 July 2008, a spokesman for the Gaza authorities accused the Israeli armed forces of shooting a 65-year-old Palestinian woman who was living near the border. Israel said that it was investigating the claim.[108]

239. On 2 July 2008, Israel reopened the Sufa and Karni crossings to allow passage of goods into Gaza, while 45 medical evacuations were allowed through the Erez crossing.[109]

240. Also on 2 July 2008, several thousand Palestinians attempted to break into the Rafah terminal and cross into Egypt. Egyptian security forces responded with water cannons and tear gas to force them back into Gaza.[110]

241. On 3 July 2008, a rocket launched from Gaza struck north of Sderot and Israel closed the crossings into Gaza for the day on 4 July 2008 in response.[111]

242. On 7 July 2008, a mortar shell fired from Gaza landed near the Karni crossing, on the Gaza side.[112] On the same day, Israeli forces began raids on institutions in Nablus that it believed to be linked to Hamas. Over the following four days, a mosque, a newspaper and other offices were raided, and a medical centre and the Nafha Prisoners' Association were closed down.[113]

243. On 8 July 2008, two mortars were fired from Gaza, [114] one landing at the Sufa crossing and the other inside the Gaza Strip. Israel closed the crossings briefly. Following the firing of another mortar shell into Israel, the crossing was again closed.

244. On 9 July 2008, Israeli forces shot dead a Hamas member near the West Bank city of Jenin. This led Palestinian Authority Prime Minister Salam Fayyad to warn that the Israeli military actions in the West Bank were undermining the Palestinian Authority and its efforts to improve security.[115]

245. On 10 July 2008, the Israeli armed forces shot and killed a member of al-Aqsa Martyrs' Brigades near the Kissufim crossing. The Israeli armed forces stated that warning shots had been fired. In response, the al-Aqsa Martyrs' Brigades fired two rockets into Israel which landed in an open area. Sources inside Gaza said that the Gaza authorities had arrested those responsible for

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[108] "Israel closes Gaza crossings after reported rocket…".

[109] Government of Israel Ministry of Foreign Affairs, "Humanitarian Assistance to Gaza during the period of calm (19 June – Dec 18, 2009)", 26 December 2008, available at http://www.mfa.gov.il/MFA/Government/Communiques/2008/Humanitarian_assistance%20_to_Gaza_since_June_19_calm_understanding_18_Nov_2008.

[110] OCHA, Protection of Civilians Weekly Report (2–8 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_267.pdf.

[111] "The six months…".

[112] OCHA, Protection of Civilians Weekly Report (2–8 July 2008).

[113] PCHR, "PCHR condemns IOF measures against Nablus charities", press release (8 July 2009), available at:http://www.pchrgaza.org/files/PressR/English/2008/62-2008.html; BBC News, "Gaza militants fire two rockets", 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm

[114] "The six months…".

[115] "Gaza militants fire…".

firing the rockets and the al-Aqsa Martyrs' Brigades stated that its members had been "abducted" by Hamas.[116]

246. According to Israeli sources, on 12 July 2008 a rocket launched from the Gaza Strip struck an open area in Sha'ar Hanegev and on 13 July 2008 two mortar shells fired fell short inside the Gaza border. This led to Israel closing the Nahal Oz and Sufa crossings. On 15 July 2008, a mortar shell struck territory inside Israel, while three rockets misfired and landed inside the Gaza Strip, in separate incidents on 25, 29 and 31 July 2008.[117]

247. On 29 July, a 10-year-old boy was shot in the head and killed by the Israeli Border Police during a demonstration against the wall in Ni'lin in the West Bank. During a clash with Israeli Border Police the following day, after the funeral in Ni'lin, a 17 year-old boy was shot in the head and died on 4 August.[118]

248. During July 2008, the amount of commodities allowed into Gaza by Israel was assessed by OCHA as remaining "far below the actual needs" and was "restricted to certain selected essential humanitarian items". The imports were 46 per cent of those entering Gaza in May 2007, prior to the Hamas' seizing control of the Gaza Strip. As a result of the restriction on imports and total ban on exports, 95 per cent of Gaza's industries remained closed.[119]

249. In August 2008, according to Israeli sources, three mortars and eight rockets were fired into Israel from the Gaza Strip. They included a rocket which struck Sderot on 11 August 2008,[120] prompting Israel's closure of the crossings, as well as a rocket fired on 20 August 2008, which once again led to the closure of the border crossings.[121]

250. During August, there was a reduction in the number of truckloads carrying goods into Gaza. August imports represented 70 per cent of the July 2008 imports and 23 per cent of the May 2007 level.[122]

251. In September 2008, three mortars and one rocket were fired into Israel from the Gaza Strip, according to Israeli sources.[123]

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[116] Ibid.; Reuters, "Hamas arrests first rocket squads since truce", 10 July 2008, available at: http://www.reuters.com/article/latestCrisis/idUSL10355564.

[117] "The six months…".

[118] Al-Haq, "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", press release (7 August 2008), available at: http://www.alhaq.org/etemplate.php?id=387.

[119] OCHA, The Humanitarian Monitor, No. 27 (July 2008), available at: http://www.ochaopt.org/documents/Humanitarian_Monitor_July_2008.pdf.

[120] "The six months…".

[121] Office of the United Nations High Commissioner for Refugees (UNHCR), "Israel-Occupied Palestine Territories: Rocket attack throws Gaza crossing plan into jeopardy", 20 August 2008, available at: http://www.unhcr.org/refworld/topic,45a5199f2,4874797e3b,48ae79b81e,0.html.

[122] OCHA, The Humanitarian Monitor, No. 28 (August 2008), available at http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_08_2008_english.pdf.

252. During September, the movement of goods and people in and out of Gaza through the crossing increased, with levels of imports at 37 per cent of the May 2007 level. The Sufa crossing closed on 13 September 2008 and goods were redirected through Kerem Shalom, as Israel stated that it intended to have only one goods crossing open at any one time.[124]

253. In October 2008, Israeli sources stated that only one rocket and one mortar were fired into Israel from the Gaza Strip.[125] There was a 30 per cent decline in imports allowed into Gaza by Israel as compared to September 2008, partly due to the closure of the crossings during the Jewish holidays. Imports were at 26 per cent of the level of May 2007. Tunnels under the Rafah border reportedly proliferated during this period and allowed the entry of otherwise unavailable goods. Collapsing tunnels continued to cause casualties.[126]

254. After two months in which few incidents were reported, the ceasefire began to founder on 4 November 2008 following an incursion by Israeli soldiers into the Gaza Strip, which Israel stated was to close a cross-border tunnel that in Israel's view was intended to be used by Palestinian fighters to kidnap Israeli soldiers. The soldiers attacked a house in the Wadi al-Salqa village, east of Deir al-Balah, which was alleged to be the starting point of the tunnel, killing a member of the al-Qassam Brigades. Several Israeli soldiers were wounded. In response, the al-Qassam Brigades fired more than 30 Qassam rockets into Israel. Israel responded with an air strike that left a further five members of the al-Qassam Brigades dead. Both sides blamed the other for the escalation of violence. Hamas also accused Israel of trying to disrupt talks between Hamas and Fatah that were scheduled for the following week in Cairo.[127] Israel closed the crossings into the Gaza Strip on 5 November 2008 and they remained closed until 24 November 2008, when they were opened briefly to allow humanitarian supplies to enter.[128]

255. According to the Israeli internal intelligence service (known as *Shin Bet* or *Shabak*), 22 rockets and nine mortars were fired into Israel between 5 and 12 November 2008.[129] The crossings into the Gaza Strip remained closed during this time. On 14 November 2008, Amnesty

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[123] "The six months…".

[124] OCHA, The Humanitarian Monitor, No. 29 (September 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_10_1_english.pdf.

[125] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008", January 2009.

[126] OCHA, The Humanitarian Monitor, No. 30 (October 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_oct_2008_10_english.pdf.

[127] The Guardian, "Gaza truce broken as Israeli raid kills six Hamas gunmen", 5 November 2008, available at: http://www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians; The Times, "Six die in Israeli attack over Hamas 'tunnel under border to kidnap soldier'", 6 November 2008, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article5089940.ece. A Hamas spokesman was quoted as saying "The Israelis began this tension and they must pay an expensive price" while an Israeli spokesman stated "this operation was in response to a Hamas intrusion of the quiet".

[128] JTA, "Israel closes Gaza crossings after attack", 25 November 2008, available at http://jta.org/news/article-print/2008/11/25/1001205/israel-closes-gaza-crossings-after-attack?TB_iframe=true&width=750&height=500.

[129] Israel Security Agency, "Weekly update, November 5-12, 2008", available at http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/weekly-update-12-11-08-En.pdf.

International issued a press release calling on Israel to allow humanitarian aid and medical supplies to enter.[130]

256. On 17 November 2008, Amnesty International issued another press release, noting that on that day Israel had allowed a limited number of trucks carrying humanitarian assistance to enter Gaza. Amnesty International also noted that an additional ten members of Palestinian armed groups had been killed by Israeli air strikes since the killing of six members of Palestinian armed groups by Israel on 4 November 2008.[131]

257. Palestinian armed groups fired rockets and mortars into Israel throughout November 2008. According to Israeli sources, 125 rockets were fired into Israel during November 2008 (compared to one in October) and 68 mortars shells were fired (also compared to one in October).[132] On 14 November 2008, a resident of Sderot was lightly injured by shrapnel.

258. Israel closed the crossings into Gaza for most of November 2008, although 42 trucks of humanitarian aid were permitted to cross on 24 November 2008 and about 60 on 26 November 2008.[133] According to OCHA, the number of trucks allowed into Gaza in November 2008 was 81 per cent lower than in October 2008. Shortages forced most of Gaza's bakeries to close and UNRWA suspended food distribution for five days to 750,000 Gazans owing to a lack of food supplies.[134]

259. Rocket and mortar fire by Palestinian armed groups continued unabated throughout December 2008.[135] According to Israeli sources, 71 rockets and 59 mortars were fired into Israel between 1 and 18 December.[136] The number of rockets and mortars fired from the Gaza Strip into Israel spiked,[137] following the killing by the Israeli armed forces of an Islamic Jihad

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[130] Amnesty International, "Israel blocks deliveries to Gaza", 14 November 2008, available at http://www.amnesty.org/en/news-and-updates/news/israeli-army-blocks-deliveries-gaza-20081114.

[131] Amnesty International, "Israeli Army relaxes restrictions on humanitarian aid to Gaza", 17 November 2008, available at http://www.amnesty.org/en/news/news-and-updates/israeli-army-relaxes-restrictions-humanitarian-aid-gaza-20081117.

[132] "Summary of rocket fire…".

[133] JTA, "Israel closes Gaza crossings after attack…" and "Kassams continue to strike Negev", 27 November 2008, available at http://jta.org/news/article-print/2008/11/27/1001233/kassams-continue-to-strike-negev?TB_iframe=true&width=750&height=500.

[134] OCHA The Humanitarian Monitor, No. 31 (November 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_11_1_english.pdf.

[135] See, for example, JTA, "Kassams fired again from Gaza", 3 December 2008, available at: http://jta.org/news/article-print/2008/12/03/1001316/attacks-from-gaza-increase?TB_iframe=true&width=750&height=500; JTA, "Rockets barrage Israel over weekend", 7 December 2008, available at: http://jta.org/news/article-print/2008/12/07/1001377/rockets-barrage-israel-over-weekend?TB_iframe=true&width=750&height=500; JTA, "Three injured in Kassam attack", 17 December 2008, available at: http://jta.org/news/article/2008/12/17/1001621/more-kassams-rain-on-israel#comment_72450; and JTA, "Kassam rocket hits Sderot home", 21 December 2008, available at: http://jta.org/news/article/2008/12/21/1001713/kassam-rocket-hits-sderot-home.

[136] "Summary of rocket fire…".

[137] Ibid.

commander in the West Bank on 15 December 2008.[138] One of the rockets launched from the Gaza Strip on 17 December 2008 struck the car park of a shopping centre in Sderot, injuring three people and causing significant damage to property.[139]

260. On 2 December 2008, the Israeli air force killed two Palestinian children and seriously injured two others when one of its aircraft fired a missile at a group of Palestinian children who were sitting in a street near Rafah. An Israeli military spokesman admitted responsibility for the attack and claimed that it was targeting members of Palestinian armed groups. Eyewitnesses informed the Palestinian Centre for Human Rights (PCHR) that the victims were civilians.[140]

261. On 5 December 2008, an Israeli aircraft fired a missile at members of what PCHR described as "activists of the Palestinian resistance" in Jabaliyah refugee camp in the northern Gaza Strip, seriously wounding one person.[141] On 18 December, an Israeli air strike killed a man in Beit Lahia.[142] The same day, Israeli aircraft attacked a car maintenance workshop in the city of Khan Yunis in the southern Gaza Strip. The workshop was destroyed and a number of nearby houses were damaged.[143]

262. On 18 December 2008, the Gaza authorities declared that the truce was at an end and would not be renewed on the grounds that Israel had not abided by its obligations to end the blockade on Gaza.[144]

263. On 21 December 2008, a rocket hit a house in Sderot and a foreign worker was injured as a result of a rocket striking Ashkelon.[145] Israel responded with air strikes into Gaza City, wounding a Palestinian infant in her home.[146] Israel's Prime Minister and Defense Minister stated that Israel would no longer practise restraint following the rocket attacks.[147]

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[138] JTA, "Kassams hit Israel after terrorist killed", 16 December 2008, available at: http://jta.org/news/article-print/2008/12/16/1001575/kassams-hit-israel-after-terrorist-killed?TB_iframe=true&width=750&height=500.

[139] "Three injured…".

[140] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 48/2008 (24 November – 3 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/04-12-2008.htm.

[141] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 49/2008 (4-17 December), available at: http://www.pchrgaza.org/files/W_report/English/2008/18-12-2008.htm. The Mission notes the lack of clarity as to whether these were armed members of the Palestinian armed groups or civilians.

[142] Al-Jazeera, "Israeli missile kills Gaza man", 18 December 2008, available at: http://english.aljazeera.net/news/middleeast/2008/12/20081217214283404 60.html.

[143] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 50/2008 (18–23 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/24-12-2008.htm.

[144] Reuters, "Hamas declares end to ceasefire with Israel in Gaza", 18 December 2008, available at: http://www.reuters.com/article/topNews/idUSLI75623220081218.

[145] "Kassam rocket…".

[146] "Weekly report…", No. 50/2008.

[147] "Kassam rocket…".

264. On 22 December 2008, a 24-hour ceasefire was declared at Egypt's request. Three rockets and one mortar were launched from Gaza that day. Israel opened the border to allow a limited amount of humanitarian aid to enter Gaza.[148]

265. By 23 December 2008, rocket and mortar fire was again increasing significantly; 30 rockets and 30 mortars were fired into Israel on 24 December 2008.[149] The Israeli armed forces continued to conduct air strikes on positions inside Gaza and the crossings into Israel remained closed. On 26 December 2008, a rocket launched from Gaza fell short and hit a house in northern Gaza killing two girls, aged 5 and 12.[150]

266. The intensified closure regime on the Gaza crossings which began in November continued in December, with imports restricted to very basic food items and limited amounts of fuel, animal feed and medical supplies. According to OCHA, many basic food items were no longer available and negligible amounts of fuel were allowed to enter Gaza. This resulted in the health sector in Gaza deteriorating further into a critical condition, with hospitals continuing to face problems as a result of power cuts, low stocks of fuel to operate back-up generators, lack of spare parts for medical equipment and shortages of consumables and medical supplies.[151] On 18 December 2008, UNRWA once again suspended its food distribution programme for the rest of the month, owing to shortages.[152]

267. On 27 December 2008, Israel started its military operations in Gaza.[153]

IV. APPLICABLE LAW

268. The Mission's mandate covers all violations of international human rights law (IHRL) and international humanitarian law (IHL) that might have been committed at any time, whether before, during or after, in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 to 18 January 2009. The Mission has therefore carried out its task within the framework of general international law, in particular IHRL and IHL.

A. Self-determination

269. A fundamental element in the legal framework is the principle of self-determination of peoples, derived from the Charter of the United Nations, Article 1, accepted as constituting

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[148] JTA, "Hamas curtails launching rockets for 24 hours", 22 December 2008, available at: http://jta.org/news/article-print/2008/12/22/1001726/hamas-stops-lauching-rockets-for-24-hours?TB_iframe=true&width=750&height=500; "Summary of rocket fire…".

[149] "Summary of rocket fire…".

[150] Fox News, "Palestinian rockets kill 2 schoolgirls in Gaza", 26 December 2008, available at http://www.foxnews.com/story/0,2933,473066,00.html.

[151] OCHA, The Humanitarian Monitor, No. 32 (December 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_12_1_15_english.pdf.

[152] UNRWA, "UNRWA suspends food distribution in Gaza", press release (18 December 2008), available at: http://www.un.org/unrwa/news/releases/pr-2008/gaz_18dec08.html.

[153] The New York Times, "Israelis say strikes against Hamas will continue", 28 December 2008, available at: http://www.nytimes.com/2008/12/28/world/middleeast/28mideast.html?_r=2&hp.

customary international law, and set out as a right of peoples in the two International Covenants on Human Rights (common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)). The right of the Palestinian people to self-determination has been affirmed by the General Assembly and the International Court of Justice in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.[154] Self-determination has special prominence in the context of the recent events and military hostilities in the region, because they are but one episode in the long occupation of the Palestinian territory. The right to self-determination has an *erga omnes* character whereby all States have the duty to promote its realization. This is also recognized by the United Nations General Assembly, which has declared that peoples who resist forcible action depriving them of their right to self-determination have the right to seek and receive support from third parties.[155] Those who take action amounting to military force must comply with IHL.

B. International humanitarian law

270. All parties to the armed conflict are bound by relevant rules of IHL, whether of conventional or customary character. International humanitarian law comprises principles and rules applicable to the conduct of military hostilities and provides for restraints upon the conduct of military action so as to protect civilians and those that are *hors de combat.* It also applies to situations of belligerent occupation.

271. Israel is a party to the four Geneva Conventions of 12 August 1949, but has not ratified their Additional Protocols I or II on the protection of victims of armed conflict. In addition, Israel is a party to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, as well as its Protocol I on Non-Detectable Fragments, both of 10 October 1980.

272. Many of the rules contained in the Fourth Hague Convention respecting the Laws and Customs of War on Land and the Regulations annexed to it, and the four Geneva Conventions and their Additional Protocols are now part of customary international law. Israel's High Court of Justice has confirmed that Israel must adhere to those rules and principles reflected in the Fourth Geneva Convention, the Regulations annexed to the Fourth Hague Convention and the customary international law principles reflected in certain provisions of Additional Protocol I to the Geneva Conventions of 1949. The Government of Israel accepts that, although it is not a party to the Additional Protocol I, some of its provisions accurately reflect customary international law.[156] Under the rules of State responsibility, Israel is responsible for any violations of international law attributable to it. Specifically, under the Fourth Geneva

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[154] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, p. 135, paras. 149, 155 and 159.

[155] Ibid., para. 156; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970).

[156] "The operation in Gaza…", para. 31.

Convention, article 29, "the Party to a conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred."

273. The legal framework applicable to situations of occupation includes provisions contained in the Hague Regulations (especially articles 42–56), the Fourth Geneva Convention (especially articles 47–78) and Additional Protocol I, and customary international law. The successive steps in the development of that legal framework represent attempts by the international community to protect human beings better from the effects of war while giving due account to military necessity.

274. Article 42 of the Hague Regulations, regarded as customary international law,[157] prescribes that "territory is considered occupied when it is actually placed under the authority of the hostile army". The occupying authority so established shall take all measures in its power "to restore, and ensure, as far as possible, public order and safety" in the occupied area (art. 43). These provisions call for an examination of whether there was exercise of authority by Israel in the Gaza Strip during the period under investigation.

275. While the drafters of the Hague Regulations were as much concerned with protecting the rights of the State whose territory is occupied as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians ("protected persons"[158]) in times of war regardless of the status of the occupied territories.[159] That the Fourth Geneva Convention contains requirements in many respects more flexible than the Hague Regulations and thus offering greater protections was recognized by the International Criminal Tribunal for the former Yugoslavia in the Naletelic case, where the Trial Chamber applied the test contained in article 6 of the Fourth Geneva Convention: the protections provided for in the Fourth Geneva Convention become operative as soon as the protected persons fall "in the hands" of a hostile army or an occupying Power, this being understood not in its physical sense but in the broader sense of being "in the power" of a hostile army. The Trial Chamber concluded that: "the application of the law of occupation as it effects 'individuals' as civilians protected under Geneva Convention IV does not require that the occupying Power have actual authority".[160]

276. Israel has without doubt at all times relevant to the mandate of the Mission exercised effective control over the Gaza Strip. The Mission is of the view that the circumstances of this control establish that the Gaza Strip remains occupied by Israel. The provisions of the Fourth Geneva Convention therefore apply at all relevant times with regard to the obligations of Israel towards the population of the Gaza Strip.

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[157] Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, I.C.J. Reports 2005, para. 172; Legal Consequences…, para. 78.

[158] Under the Fourth Geneva Convention, protected persons are those who, at a given moment and in any manner whatsoever, find themselves in the hands of a party to the conflict or occupying Power of which they are not nationals.

[159] Legal Consequences…, para. 95.

[160] *Prosecutor* v. *Naletilić*, case No. IT-98-34-T, Decision of 31 March 2003, paras. 219-222.

277. Despite Israel's declared intention to relinquish its position as an occupying Power by evacuating troops and settlers from the Gaza Strip during its 2005 "disengagement",[161] the international community continues to regard it as the occupying Power.[162]

278. Given the specific geopolitical configuration of the Gaza Strip, the powers that Israel exercises from the borders enable it to determine the conditions of life within the Gaza Strip. Israel controls the border crossings (including to a significant degree the Rafah crossing to Egypt, under the terms of the Agreement on Movement and Access[163]) and decides what and who gets in or out of the Gaza Strip. It also controls the territorial sea adjacent to the Gaza Strip and has declared a virtual blockade and limits to the fishing zone, thereby regulating economic activity in that zone. It also keeps complete control of the airspace of the Gaza Strip, inter alia, through continuous surveillance by aircraft and unmanned aviation vehicles (UAVs) or drones. It makes military incursions and from time to time hit targets within the Gaza Strip. No-go areas are declared within the Gaza Strip near the border where Israeli settlements used to be and enforced by the Israeli armed forces. Furthermore, Israel regulates the local monetary market based on the Israeli currency (the new sheqel) and controls taxes and custom duties.

279. The ultimate authority over the Occupied Palestinian Territory still lies with Israel. Under the law and practice of occupation, the establishment by the occupying Power of a temporary administration over an occupied territory is not an essential requirement for occupation, although it could be one element among others that indicates the existence of such occupation.[164] In fact, as shown in the case of Denmark during the Second World War, the occupier can leave in place an existing local administration or allow a new one to be installed for as long as it preserves for itself the ultimate authority. Although Israel has transferred to the Palestinian Authority a series of functions within designated zones, it has done so by agreement, through the Oslo Accords and related understandings, keeping for itself "powers and responsibilities not so transferred".[165] When Israel unilaterally evacuated troops and settlements from the Gaza Strip, it left in place a Palestinian local administration. There is no local governing body to which full authority has been transferred. In this regard, the Mission recalls that the International Court of Justice, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, regards the transfer of powers and responsibilities by Israel under various agreements with the Palestine Liberation Organization (PLO) as having "done nothing" to alter the character of Israel as an occupying Power.[166]

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[161] Disengagement Plan – General Outline, Prime Minister's Office, 15 April 2004, para. 2 (i)(3), available at www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan.

[162] Security Council resolution 1860 (2009) and Human Rights Council resolution S-9/1.

[163] This Agreement of November 2005 represents the commitments of the Government of Israel and the Palestinian Authority. Its implementation and further elaboration will be assisted by the Quartet Special Envoy for Disengagement and his staff and/or the United States Security Coordinator and his staff. It is available at http://unispal.un.org/unispal.nsf/b987b5db9bee37bf85256d0a00549525/c9a5aa5245d910bb852570bb0051711c/$FILE/Rafah%20agreement.pdf.

[164] Prosecutor v. Naletilić, para. 217.

[165] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 1995, art. I (1).

[166] Legal Consequences…, paras. 76–78.

280. Although the essential elements of occupation are present in the Gaza Strip, account must be taken of the fact that inside Gaza there is a de facto local administration, which carries out the functions and responsibilities in various areas transferred to the Palestine Authority under the Oslo Accords, to the extent that it is able to do so in the light of the closures and blockade imposed by Israel.

281. The developments that have taken place in the past two decades, in particular through the jurisprudence of international tribunals, have led to the conclusion that the substantive rules applicable to either international or non-international armed conflicts are converging. The Mission nonetheless recognizes that certain differences exist in relation to the regime of enforcement established by treaty law, in particular the regime of "grave breaches" contained in the Geneva Conventions.

282. Military hostilities took place between the Israeli armed forces and the military wing of Hamas (al-Qassam Brigades) and of other Palestinian factions, including the al-Aqsa Martyrs' Brigades, loosely affiliated with the Fatah movement in control of the Palestine Authority. The Israeli Supreme Court has seen the confrontation between Israeli armed forces and what it calls "terrorist organizations" active in the Occupied Palestinian Territory as an international armed conflict on two grounds: the existing context of the occupation and the cross-border nature of the confrontation.[167] Nonetheless, as the Government of Israel suggests, the classification of the armed conflict in question as international or non-international, may not be too important as "many similar norms and principles govern both types of conflicts".[168]

283. It is common for armed conflicts to present elements of an international as well as of a non-international character. The rules contained in article 3 common to the four Geneva Conventions, regarded as customary international law, are the baseline rules applicable to all conflicts.[169] The concern for the protection of civilians and those *hors de combat* in all kinds of conflicts has led to an increasing convergence in the principles and rules applicable to international and non-international armed conflicts, as was authoritatively held by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case. Indeed, "what is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife."[170] This relates not only to the protection of civilians but also to both methods and means of warfare.

284. A convergence between human rights protections and humanitarian law protections is also in operation. The rules contained in article 75 of Additional Protocol I, which reflect customary law, define a series of fundamental guarantees and protections, such as the prohibitions against torture, murder and inhuman conditions of detention, recognized also under human rights law.

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[167] The Public Committee against Torture in Israel v. The Government of Israel (Targeted Killings case).

[168] "The operation in Gaza…", para. 30.

[169] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p.14.

[170] Prosecutor v. Tadić, case No. IT-94-1-AR72, Decision on the defence motion for interlocutory appeal on jurisdiction of 2 October 1995, para. 119. See also para. 96 ff.

These protections apply to all persons in the power of a party to the conflict "who do not benefit from more favourable treatment" under the Geneva Conventions and its Protocols.

285. The foregoing customary and conventional humanitarian rules are relevant to the investigation of the events that occurred in connection with the military operations of December 2008 and January 2009.

C. International criminal law

286. International criminal law has become a necessary instrument for the enforcement of IHL and IHRL. Criminal proceedings and sanctions have a deterrent function and offer a measure of justice for the victims of violations. The international community increasingly looks to criminal justice as an effective mechanism of accountability and justice in the face of abuse and impunity. The Mission regards the rules and definitions of international criminal law as crucial to the fulfilment of its mandate to look at all violations of IHL and IHRL by all parties to the conflict.

287. Crimes under international law are defined in treaties and also in customary international law. Violations of fundamental humanitarian rules applicable in all types of conflict entail individual criminal responsibility under customary law.[171] They encompass crimes against humanity, war crimes and genocide. Other crimes not necessarily committed as a war crime or crime against humanity are torture and enforced disappearance.

288. The four Geneva Conventions of 1949 establish a regime of enforcement through the definition of grave breaches of some of their provisions relating to protected persons. Grave breaches are premised on the importance of the value under attack and the seriousness of the act or omission that constitutes the breach. Article 147 of the Fourth Geneva Convention defines grave breaches as:

> … those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

289. Article 146 requires States parties to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the listed grave breaches. They are under the obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

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[171] Ibid., paras. 128 ff. In paragraph 134, the Appeals Chamber stated: "All of these factors confirm that customary international law imposes criminal liability for serious violations of common article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife."

290. These and other crimes are also listed in the Rome Statute of the International Criminal Court, article 8 (2) (a) ("grave breaches") and 8 (2) (b) ("other serious violations of the laws and customs applicable in international armed conflict").[172]

291. War crimes are serious breaches of international humanitarian law that apply to armed conflicts and entail individual criminal responsibility under treaty or customary law. War crimes can be committed in the context of armed conflicts of an international character as well as those of a non-international character. This category of crimes includes and/or overlaps with the grave breaches as defined in the four Geneva Conventions.

292. War crimes comprise crimes against protected persons (including wilful killing, torture or other inhuman acts, taking hostages, and collective punishments); crimes against property (including extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, destroying or seizing property of the enemy, pillaging, and declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party); crimes relating to the use of prohibited methods and means of warfare (including directing an attack against civilians or civilian objects, launching an attack directed against legitimate targets if such attack causes excessive incidental civilian casualties or damage to the environment, improper use of the protective emblems, the use of starvation of civilians as a method of warfare, use of human shields and acts of terror). In addition, article 8 (2) (b) (iii) of the Rome Statute defines as a war crime the direct attack against protected personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission.

293. Crimes against humanity are crimes that shock the conscience of humanity. The Statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Tribunal for Rwanda provided for the prosecution of crimes against humanity. These crimes comprise murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions and other inhuman acts when they are part of a widespread or systematic attack against any civilian population.[173] Although under the Statute of the International Criminal Tribunal for the former Yugoslavia crimes against humanity must be committed in armed conflict, such a requirement is not part of the customary law definition of the crime.

D. International human rights law

294. Israel has ratified several of the most important international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, ICCPR, ICESCR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

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[172] The possible application of the Rome Statute to the conflict in Gaza is still being discussed. The validity under its article 12 (3) of the Palestinian declaration accepting the International Criminal Court's jurisdiction is being evaluated by the Office of the Tribunal's Prosecutor.

[173] See International Criminal Tribunal for the former Yugoslavia, *Prosecutor* v. *Kunarac*, case No. IT-96-23, Judgement of 12 June 2002, para. 85.

295. It is now widely accepted that human rights treaties continue to apply in situations of armed conflict. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice considered that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation…."[174]

296. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice held that, in the context of armed conflict, IHL is *lex specialis* in relation to human rights. It is today commonly understood that human rights law would continue to apply as long as it is not modified or set aside by IHL. In any case, the general rule of human rights law does not lose its effectiveness and will remain in the background to inform the application and interpretation of the relevant humanitarian law rule. For instance, the preamble to Additional Protocol II to the Geneva Conventions recalls the protection of international human rights for the human person, supporting the view that IHL and IHRL are operative in situations of conflict.

297. The human rights treaties ratified by Israel are also binding in relation to Israeli conduct in the Occupied Palestinian Territory. Article 2 of ICCPR obliges each State party to respect and to ensure to all individuals "within its territory and subject to its jurisdiction" the rights recognized within it. In the words of the Human Rights Committee, "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party".[175]

298. The International Court of Justice has also held that ICCPR applies "in respect of acts done by a State in the exercise of its jurisdiction outside its own territory".[176] Accordingly, the Human Rights Committee has considered that ICCPR also applies to the benefit of people within the Occupied Palestinian Territory.[177] The Committees established to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women by their States parties have equally determined that Israel's human rights obligations extend to the population of the Occupied Palestinian Territory.[178]

299. The Mission also notes that Israel has not derogated from its obligations under article 4 of ICCPR. Israel's declaration made upon ratification of the Covenant only concerns derogations to article 9 of ICCPR, regarding deprivation of liberty. The state of emergency in Israel has been in force ever since it was proclaimed in 1948. ICESCR does not explicitly allow for derogations in time of public emergency or war.

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[174] Legal Consequences…, para. 106; see also Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, p. 226, para. 25.

[175] General comment No. 31 (2004), para. 10.

[176] Legal Consequences…, para. 111; see also Case concerning Armed Activities…, para. 216.

[177] "Concluding observations of the Human Rights Committee" (CCPR/CO/78/ISR).

[178] See, for instance, "Concluding observations of the Committee on Economic, Social and Cultural Rights" (E/C.12/1/Add.90).

300. Contemporary interpretation of the Hague Regulations has taken a progressive view on the scope of their application. The International Court of Justice, when concluding that Uganda was the occupying Power in the Ituri region in the Democratic Republic of the Congo, also held that Uganda's obligation to "restore, and ensure, as far as possible, public order and safety" included "the duty to secure respect for the applicable rules of international human rights law and international humanitarian law".[179]

301. In relation to the application of human rights law during the military operations and to the connected events, the Mission wishes to briefly address four issues of legal significance.

302. The first is the impact of the inauguration in 1995 of limited Palestinian self-government and the evacuation of the Gaza Strip by Israel in 2005 on Israel's international obligations. United Nations human rights treaty bodies have continued to hold Israel responsible for implementing its human rights treaty obligations in the Occupied Palestinian Territory after the establishment of Palestinian self-government bodies.[180] Those bodies have not drawn any distinction between Gaza and the West Bank in this regard, the Occupied Palestinian Territory being regarded as a single unit. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice succinctly addressed the question by noting that, under the International Covenant on Economic, Social and Cultural Rights, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[181] In a recent report about Gaza, nine special procedures of the Human Rights Council considered that the unilateral disengagement from the Gaza Strip does not relieve Israel "from complying with its human rights obligations towards the population of that territory; Israel remains bound to the extent that the measures it adopts affect the enjoyment of human rights of the residents of the Gaza Strip."[182]

303. Israel most recently argued before the Committee against Torture that it no longer had human rights obligations under the Convention with regard to Gaza due to the effect of the 2005 "disengagement". In rejecting the argument, the Committee stated "the State party maintains control and jurisdiction in many aspects on the occupied Palestinian territories."[183] The Mission agrees that transferring powers and functions to self-governing bodies does not exempt Israel from its obligations to guarantee human rights to people within its jurisdiction or under its effective control. Israel would also have a duty to refrain from actions that obstruct efforts by Palestinian self-governing bodies to guarantee the enjoyment of human rights in the Occupied Palestinian Territory and should facilitate that action.

304. A second issue relates to the human rights obligations of the Palestinian Authority, the de facto authority in the Gaza Strip and other political and military actors. As non-State actors, the

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[179] Case concerning Armed Activities…, para. 178.

[180] For instance, in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights reiterated "its regret at the State party's refusal to report on the occupied territories" (E/C.12/1/Add.90, para. 15).

[181] Legal Consequences…, para. 112.

[182] A/HRC/10/22, para. 20.

[183] "Concluding observations of the Committee against Torture" (CAT/C/ISR/CO/4, para. 11).

question of their human rights obligations must be addressed. It should be noted that the same issue does not arise with regard to IHL obligations, the question being settled some time ago. As the Special Court for Sierra Leone held, "it is well settled that *all* parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties."[184]

305. The relationship between IHL and IHRL is rapidly evolving, in particular in relation to non-State actors' obligations, with the ultimate goal of enhancing the protection of people and to enable them to enjoy their human rights in all circumstances. In the context of the matter within the Mission's mandate, it is clear that non-State actors that exercise government-like functions over a territory have a duty to respect human rights.

306. The Mission notes that the Palestinian Authority, through its public undertakings as well as those of the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council, has declared its commitment to respect international human rights law in several instances, including in the context of international agreements. This commitment is also contained in the Palestinian Basic Law.[185]

307. The obligations of the Gaza authorities may be viewed through a different lens but leading to the same result. The Gaza authorities also reiterated to the Mission their commitments to respect human rights. Hamas has also made a series of unilateral declarations of respect for human rights. Furthermore, the Palestinian Basic Law with its many human rights provisions also applies in the Gaza Strip.[186]

308. A third issue to be addressed here relates to the right to self-determination and its application to the definition of combatant status and its impact on the principle of distinction. Armed conflicts opposing national liberation movements and/or resistance movements against colonialism and occupation are regarded as international armed conflicts by Additional Protocol I, article 1 (4). Under international law, notably Additional Protocol I to the Geneva Conventions, any action of resistance pursuant to the right to self-determination should be exercised with full respect of other human rights and IHL.

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[184] See for instance, Prosecutor v. Sam Hinga Norman, case SCSL-2004-14-AR72(E), Decision on preliminary motion based on lack of jurisdiction (child recruitment) (31 May 2004), para. 22.

[185] Legal Consequences…, para. 91; A/HRC/10/22, para. 21; Barcelona Declaration, 27-28 November 1995, available at: http://www.euromedrights.net/281. The Palestinian Basic Law can be found at http://www.palestinianbasiclaw.org/2002-basic-law. See also "Report of the High Commissioner for Human Rights on the implementation on Human Rights Council resolution 7/1" (A/HRC/8/17, para. 8).

[186] Meeting and correspondence with the Mission. In this respect nine special procedures mandate holders have stated: "non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control" (A/HRC/10/22, para. 21). This view follows the statement in the same line by four other special procedures mandate holders who visited Lebanon in the aftermath of the 2006 war: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights … It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure." (A/HRC/2/7, para. 19). See also A/HRC/10/22, para. 9.

309. Finally, it is also useful to briefly recall that States not party to an armed conflict have responsibilities and a crucial role to play for the protection of civilians and those *hors de combat* and for the protection of their rights. Under article 1 common to the Geneva Conventions 1949, the "High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This provision entails obligations not only in relation to actors and conduct within the jurisdiction of each State but also in relation to the international enforcement of the Conventions. States parties to the Geneva Conventions also have the obligation to facilitate the passage of humanitarian relief and a role to play in the provision of such assistance for the protected population in case of need (articles 23 and 59 of the Fourth Geneva Convention).

310. To conclude, the Mission wishes to emphasize that all parties to an armed conflict have the obligation to respect the enjoyment of human rights by all.



PART TWO: OCCUPIED PALESTINIAN TERRITORY

THE GAZA STRIP

SECTION A: MILITARY OPERATIONS

V. THE BLOCKADE: INTRODUCTION AND OVERVIEW

311. The military operations of 28 December to 19 January 2009 and their impact cannot be fully evaluated without taking account of the context and the prevailing living conditions at the time they began. In material respects, the military hostilities were a culmination of the long process of economic and political isolation imposed on the Gaza Strip by Israel, which is generally described as a blockade. This chapter provides an overview of the blockade, while chapter XVII provides a detailed analysis of the cumulative impact of the blockade and the military operations on the people in Gaza and their human rights.

312. The series of economic and political measures imposed against the Gaza Strip began around February 2006 with the Hamas electoral victory in the legislative elections. This was also accompanied by the withholding of financial support for the Gaza Strip by some donor countries and actions of other countries that amounted to open or tacit support of the Israeli blockade. Hamas took over effective power in the Gaza Strip on 15 June 2007. Shortly thereafter Israel declared the Gaza Strip a "hostile territory,"[187] enacting a series of economic, social and military measures purportedly designed to isolate and strangle Hamas. These have made a deep impact on the population's living standards.

313. The blockade comprises measures such as the closure of border crossings, sometimes completely for a number of days, for people, goods and services, and for the provision of fuel and electricity. The closure has had severe effects on trade and general business activity, agriculture and industry in the Gaza Strip. Electricity and fuel that are provided from Israel are essential for a broad range of activities from business to education, health services, industry and agriculture. Further limits to the fishing area in the sea adjacent to the Gaza Strip were fixed and enforced by Israel, negatively impacting on fishing activities and the livelihood of the fishing community. Israel also established a buffer zone of variable and uncertain width along the border, together with a sizeable no-go area in the northern part of the Gaza Strip where some Israeli settlements used to be situated. This no-go area is in practice an enlarged buffer zone in the northern part of the Gaza Strip where people cannot go. The creation of the buffer zone has forced the relocation of a number of factories from this area closer to Gaza City, causing serious environmental concerns and potential health hazards for the population. People's movements have also been drastically restricted, with only a few businesspeople allowed to cross on a very irregular and unpredictable basis.

314. Because of the occupation, which created so many ties of dependence, and for other geographic, political and historical reasons, the availability of goods and services as well as the carrying-on of daily life in the Gaza Strip are highly dependent on Israel and its policies

[187] http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm.

regarding the area. Food and other consumable items as well as fuel, electricity, construction materials and other items are traded from or through Israel. Israel also serves as the communication channel for the population of Gaza with the rest of the Occupied Palestinian Territory and the world, including for purposes of education and exchange programmes. There are five crossing points between Israel and the Gaza Strip: Erez (basically dedicated to the transit of people), Nahal Oz (for fuel), Karni (for grains), Kerem Shalom (for goods) and Sufa (for goods). Israeli control of these crossings has always been restrictive for the Gaza population. Since the beginning of the blockade, and particularly during and after the military operation, not only has the measure of restriction increased, but control has been exercised arbitrarily, resulting in uncertainty of access even for those items purportedly allowed entry by Israel.

315. Movement of people through the Erez crossing to Israel and the Rafah crossing to Egypt has been almost completely blocked. Exceptions include unpredictable and irregular permission for emergency medical evacuations, access to diplomats and international humanitarian staff and only limited access to some businesspeople.

316. The movement of goods has been restricted to imports of basic humanitarian supplies through the Kerem Shalom crossing point as well as to a limited quantity of fuel. The quantities of goods allowed into the Gaza Strip have not only been insufficient to meet local demands, they also exclude several items essential for the manufacturing of goods and the processing of food products, as well as many other goods that are needed. This is compounded by the unpredictable way in which crossings are managed. Neither the list of items allowed into the Gaza Strip nor the criteria for their selection are made known to the public.

317. Before the military operation, the blockade had resulted in a significant reduction in the number of trucks allowed through the crossings. The number of trucks is considered a fair measure of the amount of imports into or exports from the Gaza Strip. This number increased slightly during the period of calm between June and November 2008, but declined sharply again in November, due to the resumption of hostilities following the Israeli military incursion. The daily average of truckloads crossing the border in November–December 2008 was between 23 and 30, but it increased after the start of military hostilities to up to five times that number during January 2009.[188] However, at no time was it close to what it had been prior to June 2007 or to the amount actually necessary to meet the needs of the population.

318. The 2005 Agreement of Movement and Access called for a daily flow of some 400 trucks in and out of Gaza by the end of 2006, which was already lower than before the second intifada, but not even that level was ever reached.[189] Information supplied to the Mission reveals that imports into and exports from the Gaza Strip before the closure in 2007 reached a monthly average of 10,400 and 1,380 truckloads, respectively. This declined to about 2,834 truckloads of imports and no exports after the recent military operations. Immediately after the operations, there was only one isolated instance in which exports of flowers were allowed from the Gaza

[188] OCHA, The Humanitarian Monitor, No. 33 (January 2009).

[189] International Labour Office, "The situation of workers in the occupied Arab territories", Report of the Director-General to the International Labour Conference, 98th session, 2009, appendix, para. 24.

Strip in March 2009. Some 134 truckloads of cash crops were exported in total between June 2007 and May 2009.[190]

319. In effect, economic activity in the Gaza Strip was severely affected because of the blockade. Since the military operation, the economy has almost come to a standstill. The private sector, particularly the manufacturing industry, has suffered irreparable damage.

320. The blockade and freeze on the movement of goods imposed by Israel have spurred a black market economy in the Gaza Strip that provides basic consumables but is unreliable and unaffordable for the majority of the people. The tunnels built under the Gaza-Egypt border have become a lifeline for the Gaza economy and the people. Increasing amounts of fuel (benzine and diesel) come through those tunnels as well as consumables. While for the Gaza population this is a necessary means of survival in the circumstances, the black market is likely to hold back economic recovery and sustainability, even when the blockade is lifted.

321. The blockade has also included measures relating to access to the sea and airspace. Under the Oslo Accords, the fishing zone limit was set at 20 nautical miles. However, Israel set the limit unilaterally at 6 nautical miles and maintained this limit from October 2006 to January 2009, when it further restricted it to 3 nautical miles. The only airfield in Gaza has been closed and a project to rebuild the small airport was suspended after the seizure of power by Hamas. Israel keeps total control over Gaza's airspace.

322. In mid-December 2008, following an Israeli military incursion into the Gaza Strip and rockets fired into Israel by Hamas, all the crossings were totally closed for eight days.[191] Other military or militant activities in areas near the crossings have also led to total closures over certain periods of time. Total and partial closures have significantly contributed to an emergency situation that became a full-fledged humanitarian crisis after the military operations of December 2008–January 2009. During December 2008, UNRWA had to suspend its delivery of food assistance due to the total depletion of its food stocks. Other humanitarian agencies had to reduce or postpone delivery of food and other forms of assistance. The unavailability of banknotes as a result of an Israeli prohibition also prevented humanitarian agencies from implementing "cash for work" or similar programmes over lengthy periods of time.[192]

323. The implementation of the restrictive measures as part of the blockade of the Gaza Strip created not only an emergency situation but also significantly weakened the capacities of the health, water and emergency sectors in Gaza to adequately respond to a worsening situation.[193] The impact on the local economy further reduced the resilience and coping capacities of the local population and has aggravated the effects of the war on livelihoods and living standards (see below, chap. XVII).

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[190] Information submitted by PalTrade, "Gaza private sector status", 18 June 2009. The Mission also acknowledges the information provided by the Palestinian Authority in its reply to questions from the Mission, 5 august 2009.

[191] The Humanitarian Monitor, No. 32.

[192] The Humanitarian Monitor, No. 32, p. 5.

[193] This impact was noted and analysed in "Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1" (A/HRC/9/26, paras. 55 ff).

324. The Mission asked the Government of Israel to provide information in relation to the blockade on the Gaza Strip. It requested information on the criteria applied to determine which good are or are not allowed to enter the Gaza Strip, the reasons for restricting or preventing cash and bank transfers, the reasons for imposing restrictions on the ability of Gazans to leave the Gaza Strip, including for urgent medical reasons, the reasons for the highly restrictive policy permit applied to international donors, humanitarian and human rights organizations wishing to enter the Gaza Strip, and the reasons and legal basis for establishing a limited fishing zone. No reply was received on any of these questions.

325. The legality of some of the measures imposed by the Government of Israel (the reduction in the supply of electricity and fuel) was the subject of a petition to the Supreme Court of Israel.[194] The petitioners comprised a group of NGOs operating within Israel together with Palestinian citizens and groups who argued that the planned cuts in the supply of fuel and electricity were inconsistent with the obligations of Israel under the Fourth Geneva Convention relating to the protection of civilians.[195] The Court's ruling recognizes that Israel has obligations under humanitarian law vis-à-vis the Gaza Strip under which the intended supply of fuel and electricity was considered "capable of satisfying the essential humanitarian needs of the Gaza Strip at the present". The Court, however, did not indicate what would constitute "essential humanitarian needs" and appears to have left those details for the authorities to determine.

326. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and others to meet the humanitarian needs of the population of the Gaza Strip without qualification. Furthermore, the Mission notes the information it received regarding the lack of compliance by the Government of Israel even with the minimum levels set by the Israeli Court, and in this regard observes that the Government retains wide discretion about the timing and manner of delivering fuel and electricity supplies to the Gaza Strip, and that this discretion appears to have been exercised capriciously and arbitrarily.

VI. OVERVIEW OF MILITARY OPERATIONS CONDUCTED BY ISRAEL IN GAZA BETWEEN 27 DECEMBER 2008 AND 18 JANUARY 2009 AND DATA ON CASUALTIES

327. This chapter provides an overview for the purposes of identifying the key parties in the conduct of the military operations and their dynamics, and to indicate which incidents occurred during those phases which are the subject of detailed analysis in this report. The focus is on the Israeli military operations in Gaza.

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[194] Jaber Al-Bassiouni Ahmed et al. v. Prime Minister and Minister of Defense, case No. 9132/07, Judgement of 30 January 2008, available at http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf.

[195] Petition to stop electricity and fuel cuts to the Gaza Strip, 28 November 2007. The petition, related affidavits, excerpts from the State's answers and excerpts from the Court's decision are all available at: http://www.gisha.org/index.php?intLanguage=2&intSiteSN=110&intItemId=742.

A. The parties relevant to the conduct of military activities in Gaza between 27 December 2008 and 18 January 2009

1. The Israeli armed forces

328. The information available shows that Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead".

329. The navy was used in part to shell the Gaza coast during the military operations.

330. The air force was also used throughout the military operations in a way that appears in its own view to have been innovative. Having been responsible for the vast majority of operational activities in the first week, it continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009.[196]

331. The army was responsible for the ground invasion, which began on 3 January 2009. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. Assaults on three fronts with combined armour and infantry brigades were also augmented by specialist Arabic-language, intelligence and, in particular, combat engineer troops. The engineer troops equipped with armoured D-9 bulldozers were also trained in operations to counter improvised explosive devices (IEDs). Forward elements of these attack formations could rely on direct support from the air force to call air strikes or to direct them, to call in helicopter missile attacks and to direct their own attached missile-mounted UAVs.[197]

2. Palestinian armed groups

332. The Palestinian armed factions operating in the Gaza Strip, and claiming responsibility for the majority of the rocket and mortar launchings, are the Hamas' Izz ad-Din al-Qassam Brigades,[198] the al-Aqsa Martyrs' Brigades, the Islamic Jihad, the Abu Ali Mustafa Brigades,[199] which are the military wing of the Popular Front for the Liberation of Palestine (PFLP), and al-Naser Salah ad-Din Brigades, which are the military wing of the Popular Resistance Committees (PRC).[200] PRC is a coalition of different armed factions that oppose what they perceive as the Palestinian Authority's and Fatah's conciliatory approach towards Israel.

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[196] See Anthony H. Cordesman, "The 'Gaza war': A strategic analysis", Centre for Strategic and International Studies (2009), p. 41.

[197] Alon Ben-David, "Israeli offensive seeks 'new security reality' in Gaza", Jane's Defence Weekly, 8 January 2009; Jane's 'Sentinel' Services, "Country Risk Assessments – Israel", 4 February 2009.

[198] Named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the 1936–39 Palestinian revolt.

[199] The Abu Ali Mustafa Brigades claimed responsibility for launching 177 rockets and 115 mortars on several towns and villages inside Israel during the period of the military operations in Gaza.

See http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm.

[200] During the period of the military operations in Gaza, al-Naser Salah ad-Din Brigades claimed responsibility for the launching of 132 rockets and 88 mortars. See http://www.moqawmh.com/moqa/view.php?view=1&id=300.

B. The phases of the hostilities

1. Air phase[201]

333. The Israeli armed forces began the military operations with a week-long air attack, from 27 December until 3 January 2009. One study suggests that they had drawn up a list of 603 targets to be hit as they belonged to Hamas suspects or were part of what Israel viewed as the Hamas infrastructure. The study claims that a senior Israeli officer reported that all 603 targets had been hit before the end of the fourth day of the aerial operations in the first week. Officially, the spokesman of the Israeli forces claimed that 526 targets had been hit by 31 December 2008.[202]

334. An analysis of the strikes in a report of the Palestinian Centre for Human Rights gives the following breakdown.

335. "IOF [Israeli occupation forces] have launched at least 300 air and sea strikes against the Gaza Strip. These strikes have targeted 37 houses; 67 security and training sites; 20 workshops; 25 public and private institutions; seven mosques; and three educational institutions. The public institutions that have been bombarded are: the compound of ministries, the building of the Palestinian Legislative Council, the building of the cabinet in Gaza City; the buildings of the agricultural control department and the Municipality of Bani Suhaila in Khan Yunis; the buildings of Rafah Municipality and Governorate. The air strikes have targeted also four money exchange shops, a clinic, three fishing harbours, the Islamic University and two schools."[203]

336. Of the incidents addressed in detail in this report, the following occurred during this phase:

- The attack on Arafat City Police Station;
- Attacks on four other police stations, one in Deir al-Balah and three in Gaza City;
- The attack on the Palestinian Legislative Council building and the Ministry of Justice;
- The attack on Gaza main prison in the al-Sarayah complex, Gaza City.

337. Israeli air force activities continued throughout the military operations. In total, it has been suggested that between 2,300 and 3,000 sorties were flown.[204]

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[201] Although principally recognized as an aerial phase, there was a significant contribution from the Israeli navy not only in the first week.

[202] Cordesman, op. cit., p. 30.

[203] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 51/2008 (24–31 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/pdf/weekly%20report%2051.pdf.

[204] Cordesman, op. cit., p. 41. He cites Lt. Gen. Ashkenazi saying that the air force flew 2,300 successful air strikes but notes other senior officials told him the real number was closer to 3,000.

2. The air-land phase

338. Around 3 January 2009 Israeli ground troops entered Gaza from the north and east. One study suggests that "the war was fought largely by the southern Command using brigade teams that operated with a high degree of independence and freedom to adapt and innovate".[205]

339. One of the key initial objectives described by one soldier involved was to divide the Gaza Strip into two parts, i.e. to split and fragment it, with Nitzarim constituting the midpoint.[206] The division therefore ran from the Karni crossing point to the coast in a south-westerly direction. After creating the split, the Israeli armed forces concentrated all of their ground forces in the north. Targets in the south were hit from the air, such as in Rafah.

340. At least in the initial phase it appears forces from the Givati Brigade entered from the east and approached Gaza City from the south. It is understood that forces from the Armoured

341. Corps Brigade also operated in this area but probably at a later stage.[207] Zeytoun, on the southern outskirts of Gaza, took the brunt of these brigade operations, with incidents of attacks on the civilian population.

342. It appears that those with primary responsibility in the north of Gaza, especially around Beit Lahia and al-Atatra, included forces from the Golani Brigade.

343. The forces focusing on the area between Gaza City and the northern section, especially in Jabaliyah, appear to have been drawn largely from the Paratrooper Brigade.

344. The movement into the south of Gaza City reached at least as far as Zeytoun on 3 January 2009. Some of the troops entering there on that day appear to have been brought in by helicopter rather than arriving by land. Israeli armed forces maintained a presence in Zeytoun until the final withdrawal.[208] It is understood that the original forces that entered Zeytoun were at least partially replaced by other troops at some point, but it is not known if any of the original forces remained in the area throughout the period.[209]

345. In the other brigade areas regular troops were augmented or replaced by reservists who were called up after the initial ground attacks.

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[205] Ibid., p. 39.

[206] Breaking the Silence, *Soldiers' Testimonies from Operation Cast Lead, Gaza 2009*, testimony 20, p. 48, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf.

[207] *Soldiers' Testimonies* ..., testimony 2, p. 9.

[208] See accounts of the attack on the Sawafeary chicken farm attack in chapter XIII and the taking of the Juha house in Zaytoun in chapter IX.

[209] *Soldiers' Testimonies* ..., testimony 2, p. 9.

346. Zeytoun was an area of particularly intense action by Israeli forces, yet there are almost no indications of armed resistance in the area at the time.[210]

347. Among the issues of particular concern to the Mission in Zeytoun are the killings of the Samouni family, the mass destruction in the area, including the systematic demolition of the Sawafeary chicken farms, and the air strike that killed 22 members of the al-Daya family.

348. The forces in Zeytoun also appear to have been responsible for the push towards the area around Tal el-Hawa and Rimal in the south-west of Gaza City, about three kilometres from Zeytoun. The Mission has information that indicates that tanks took up positions in and around Tal el-Hawa around 4 and 5 January. Sources indicate that there was a presence there throughout the hostilities, as also evidenced by the artillery fire from around this area on 14 and 15 January on the compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and al-Quds hospital, both of which the Mission addresses in detail.

349. The forces responsible for the execution of the Israeli plan in the north-east of the Gaza Strip included the Golani Brigade. Among the areas of special concern in this regard are al-Atatra and Beit Lahia. Various witnesses indicate that in the past there has at times been some armed presence in the area. Information taken from websites apparently belonging to Palestinian armed groups indicates that these were areas of some resistance. The Mission heard from several witnesses about the scale of the destruction that occurred there as a result of artillery fire after the ground phase began on 3 January. Information indicates a sustained attack with aerial and artillery fire from 3 to 8 January. The Mission addresses a number of particular cases that occurred in this context, such as the alleged use of human shields, the alleged widespread mistreatment of civilians, including detentions, and transfers of large numbers to Israeli prisons in unlawful circumstances.

350. In the Jabaliyah area, located between Beit Lahia and Gaza City, the Mission understands that at least for part of the time there was a significant presence of the Paratrooper Brigade.[211] At the beginning of the ground phase it is noted that an Israeli projectile struck the al-Maqadmah mosque, killing at least 15 civilians. A few days later the al-Fakhura Street incident occurred in the same area when a series of mortars fired by the Israeli armed forces killed at least 35 people.

351. Around 15 January the Israeli armed forces began withdrawing from their positions in the main areas described above. As they did so, there appeared to be a practice of systematically demolishing a large number of structures, including houses, water installations, such as tanks on the roofs of houses, and of agricultural land. A renewed aerial phase in Rafah was also conducted in the last few days of the military operations. Whereas the strikes in the first week appear to have been relatively selective, the last few days saw an increase in the number of

[210] See Jerusalem Center for Public Affairs, "The hidden dimension of Palestinian war casualties in operation 'cast lead': Hamas fire on Palestinian areas", by Lt. Col. (res.) Jonathan Dahoah Halevi.

[211] See, for example, Haartez, "IDF investigation shows errant mortar hit UN building in Gaza", 11 January 2009, available at: http://www.haaretz.com/hasen/spages/1054284.html.

strikes with several hundred targets hit, causing not only very substantial damage to buildings but also, according to some, underground structural damage.[212]

C. Data on casualties during the Israeli military operations in Gaza from 28 December 2008 to 17 January 2009

1. Palestinian casualties

352. The Mission received statistics on the fatalities of the military operations from the Gaza authorities, specifically from the Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ),[213] as well as from PCHR,[214] Al Mezan[215] and B'Tselem.[216] The first three also provided lists of all the persons killed in the military operations, with their names, sex, age, address, occupation, and place and date of the fatal attack. Another NGO, Defence for Children International – Palestine Section,[217] provided a list of all the children killed.

353. The three lists give different numbers. According to TAWTHEQ, 1,444 persons were killed. The two Palestinian NGOs provide a lower number, 1,417 victims according to PCHR and 1,409 according to Al Mezan, while B'Tselem mentions 1,387 victims. The Mission has not cross-checked the three lists. TAWTHEQ, PCHR, Al Mezan and B'Tselem also provide disaggregated data.

354. TAWTHEQ reports that 341 of those killed were children (under 18), 248 members of the police, 11 members of the Internal Security Service and 5 members of the National Security Service. It provides no figures for the number of combatants killed.

355. PCHR divides the overall 1,417 victims into 926 civilians, 255 police[218] and 236 combatants.[219] It reports that 313 of the dead were children and 116 women.

356. Al Mezan reports that overall 1,409 persons were killed during the military operations, of whom 237 were combatants (including 13 under-age combatants) and 1,172 non-combatants, including 342 children, 111 women and 136 members of the police.[220] Thus, according to PCHR

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[212] UNOSAT Report.

[213] These lists were prepared by the Gaza authorities' Ministry of Justice, TAWTHEQ, The Central Commission for Documentation and Pursuit of Israeli War Criminals and submitted to the Mission.

[214] The list is available at: http://www.pchrgaza.org/files/PressR/English/2008/list.pdf.

[215] Al Mezan Center for Human Rights, "Cast lead offensive in numbers", available at: http://www.mezan.org/upload/8941.pdf. In September 2009 Al Mezan published an updated list of victims with 1,412 names.

[216] B'Tselem, "B'Tselem publishes complete fatality figures from operation cast lead", press release, 9 September 2009, available at: http://www.btselem.org/English/Press_Releases/20090909.asp.

[217] The list is available at http://www.dci-pal.org/english/display.cfm?DocId=917&CategoryId=1.

[218] In the PCHR list of victims the police officers are classified as civilians.

[219] PCHR, "Confirmed figures reveal the true extent of the destruction inflicted upon the Gaza Strip; Israel's offensive resulted in 1,417 dead, including 926 civilians, 255 police officers, and 236 fighters", press release, 12 March 2009, available at: http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html

[220] "Cast lead offensive in numbers…", p. 7.

and Al Mezan, fewer than 17 per cent of the Palestinians killed during the military operations were combatants.

357. B'Tselem states that, of the 1,387 Palestinians who were killed, 773 did not take part in the hostilities, including 320 minors and 109 women over the age of 18. Of those killed, 330 took part in the hostilities and 248 were Palestinian police officers, most of whom were killed in aerial bombings of police stations on the first day of the operations. For 36 people B'Tselem could not determine whether they had participated in the hostilities or not.

358. According to Defence for Children International, 348 children were killed during the military operations.[221]

359. The Israeli armed forces claim that 1,166 Palestinians were killed during the military operations "according to the data gathered by the Research Department of the Israel Defense Intelligence". They allege that "709 of them are identified as Hamas terror operatives", 295 are "uninvolved Palestinians", while the remaining 162 are "men that have not yet been attributed to any organization".[222] Of the 295 "uninvolved Palestinians", 89 were children under the age of 16 and 49 women. According to these figures, at least 60 per cent, and possibly as many as three out of four, of those killed were combatants. The Mission notes, however, that the Israeli Government has not published a list of victims or other data supporting its assertions, nor has it, to the Mission's knowledge, explained the divergence between its statistics and those published by three Palestinian sources, except insofar as the classification of policemen as combatants is concerned.[223]

360. The Mission, not having investigated all incidents involving loss of life in the Gaza Strip, will not make findings regarding the overall number of persons killed nor regarding the percentage of civilians among those killed. The incidents it did investigate, and on which it will make findings based on the information it gathered, involve the death of more than 220 persons, at least 47 of them children and 19 adult women.

361. The Mission notes that the statistics from non-governmental sources are generally consistent. Statistics alleging that fewer than one out of five persons killed in an armed conflict was a combatant, such as those provided by PCHR and Al Mezan as a result of months of field research,[224] raise very serious concerns about the way Israel conducted the military operations in Gaza. The counterclaims published by the Government of Israel fall far short of international law standards.

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[221] Defence for Children International confirmed the deaths of another five children caused indirectly by the military operations.

[222] IDF spokesperson, "Majority of Palestinians killed in operation cast lead: Terror operatives", 26 March 2009, available at http://dover.idf.il/IDF/English/News/today/09/03/2602.htm; see also *The Jerusalem Post*, "IDF releases cast lead casualty number", 26 March 2009.

[223] On the question of whether Gaza policemen were civilians or combatants, see chap. VII.

[224] The Mission notes that the figures from B'Tselem, which distinguish between casualties who took part in the hostilities and those who did not, lead to similar results. If the policemen were added to those who did not take part in hostilities (as Al Mezan and PCHR do in adding the policemen to the civilians killed), the B'Tselem statistics would indicate that approximately one in four Palestinians killed was taking part in hostilities.

362. The Mission also notes that – as the Government of Israel argues at length[225] – there are circumstances under international humanitarian law in which military actions resulting in the loss of civilian life would not be unlawful. These include attacks directed against military objectives that comply with the principles of discrimination and proportionality, but nonetheless kill civilians. They also include the killing of persons who, though not members of an armed group, participate directly in the hostilities. The reportedly exceedingly high percentage of civilians among those killed raises concerns about the precautions taken by Israel in launching attacks as well as the legality of many of the attacks, as elaborated further in this report with regard to the specific incidents investigated by the Mission.

363. The Mission finally notes that it cannot entirely discount the possibility that Palestinian civilians may have been killed as a result of fire by Palestinian armed groups in encounters with the Israeli armed forces, as argued in a submission to the Mission,[226] although it has not encountered any information suggesting that this was the case.[227]

2. Israeli casualties

364. The Israeli Ministry of Foreign Affairs reported that, during the military operations from 27 December 2008 to 18 January 2009, there were four Israeli casualties[228] in southern Israel (all adults), of whom three were civilians and one was a soldier.[229] In addition, nine Israeli soldiers were killed during the fighting inside the Gaza Strip, four of whom by friendly fire.[230] B'Teslem[231] confirmed these numbers, stating that during the operations Palestinians killed nine Israelis, of whom three civilians, who were reportedly killed by Qassam and Grad rocket fire, and six members of the security forces, while another four soldiers were killed by friendly fire.[232]

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[225] "The operation in Gaza…", paras. 89–141.

[226] "The hidden dimension of Palestinian war casualties…". This submission is examined in chapter VIII below.

[227] The Mission has, however, investigated cases of alleged extrajudicial executions of Palestinians by Palestinian armed groups during the military operations (see chap. XIX).

[228] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm.

[229] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Victims_Hamas_rocket_fire_Hamas_ends_calm_Dec-2008.htm.

[230] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/IDF_soldiers_killed_Operation_Cast_Lead.htm.

[231] B'Tselem, "B'Tselem's investigation of fatalities in Operation Cast Lead", p. 2, available at: http://www.btselem.org/Download/20090909_Cast_Lead_Fatalities_Eng.pdf.

[232] Al-Qassam Brigades' website reports that, during the conflict, they killed 102 Israeli soldiers ("The outcome of al-Qassam operations during the Battle of *al-Furqan*" (in Arabic), available at: http://www.alqassam.ps/arabic/special_files/al-furqan/30.pdf). On 19 January 2009, Abu Obeida, a spokesperson for the group, stated that "Israel lost 'at least 80 soldiers' in the fighting". See al-Arabiya News Channel, "Hamas says only 48 fighters slain in Israel war", 19 January 2009, available at: http://www.alarabiya.net/articles/2009/01/19/64513.html. The large discrepancy in the data confirms the Mission's observations below in the report about the reliability of the information about the Gaza military operations posted on websites of al-Qassam and other Palestinian armed groups.

VII. ATTACKS ON GOVERNMENT BUILDINGS AND POLICE

A. Deliberate attacks on Gaza government infrastructure

1. Overview of damage to Gaza government buildings

365. In its early recovery and reconstruction plan for Gaza, the Palestinian Authority states that "seven government institutions were either completely or partially levelled (including the Government Palace, the Archives building, the General Personnel Council, and the Presidential Compound), and the Ministries of Interior, Justice and Culture were either partially or entirely destroyed, along with their associated compounds. In addition, 19 municipal facilities were damaged and 11 were totally destroyed, including commercial centres such as markets, slaughterhouses and stores."[233]

2. The Israeli air strikes on the Gaza main prison and on the Palestinian Legislative Council building

366. The Mission visited two locations where government buildings were destroyed by Israeli air strikes: the Palestinian Legislative Council building and the main prison in the al-Saraya complex in Gaza City. In addition, the Mission visited six police stations, which will be discussed separately below.

367. The Mission visited the remains of the Gaza City main prison and interviewed two senior police officers who were, according to their testimony, eyewitnesses to the attack. The Mission also reviewed reports on the attack from other sources based on the testimony of prisoners. It furthermore addressed questions to the Government of Israel regarding the military advantage pursued in attacking the Palestinian Legislative Council building and the main prison in Gaza City, but received no reply.

368. The main prison was located in a densely built-up area of Gaza City in the al-Saraya complex of buildings occupied by government departments, including the Ministries of Education, Transport and the Interior. The prison itself was an old building, several stories high, reportedly used as a prison by successive authorities in charge of Gaza during the previous and present centuries. It held both common offenders and political detainees.

369. While there were some discrepancies in the different accounts of this incident, the Mission was able to ascertain that the complex was attacked at 11 a.m. on 28 December 2008, on the second day of the air strikes by Israel. At the time of the attack between 200 and 300 prisoners were held in the facility, most of the almost 700 prisoners having been released in the days before the strike.[234] The accounts given by officials regarding the number of fatalities and injured

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[233] Palestinian National Authority, Palestinian National Early Recovery and Reconstruction Plan for Gaza 2009-2010, March 2009, p. 41.

[234] According to statements by the police to the Mission, around 400 minor offenders had been released by the authorities to reduce overcrowding, so that when the hostilities started about 300 prisoners remained there. According to a NGO report based on the testimony of prisoners, "authorities released about 580 of the prisoners after the bombings started [i.e. on 27 December 2008], but kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had

among the prisoners are contradicted by NGO reports and the Mission heard allegations of extrajudicial executions of escaping prisoners by, or at the behest of, the Gaza authorities, which the Mission deals with in chapter XIX. Police officials told the Mission that one prison guard was killed and several injured by the Israeli strike, as the first missile hit the guards' quarters, and that no prisoners were seriously injured. The guards had opened the prison doors immediately after the first strike. Others reported that "some prisoners were killed in the bombing, while others escaped the destroyed building."[235] A number of prisoners injured in the attack went to al-Shifa hospital in Gaza City for treatment after escaping from the prison.

370. Despite the limited number of casualties that may have occurred, the high probability of more serious loss of life and of injuries in an attack on a populated prison facility could not have been discounted by the Israeli forces. The Mission has taken note of the assessment of the Israeli air force that 99 per cent of the strikes it carried out were accurate.[236] In the light of this claim and in the absence of explanations to the contrary from the Israeli Government, it can only be concluded that the prison was the intended target of the strike. There is no indication from the information gathered on the incident and an inspection of the site that there was any cause for considering the prison building a "military objective".

371. The Palestinian Legislative Council building in central Gaza City was, according to information provided by the Israeli armed forces on their official web site, attacked on 31 December 2008. Mr. Ahmad Bahr, then Acting Speaker of the Palestinian Legislative Council in Gaza, stated to the Mission that it was hit by three missiles launched from fighter planes. The Mission visited the damaged assembly room. It also saw the rubble of the severely damaged three-storey building of the Parliament, which had been completed two years before. It was explained to the Mission that the new building contained a videoconferencing room which allowed the Gazan parliamentarians to hold joint sessions with the members of Parliament based in Ramallah. No casualties as a result of the strike on the Legislative Council building were reported to the Mission.

372. The Mission notes that the Israeli armed forces acknowledged in their "Summary of overnight events" of 1 January 2009 that:

> The IAF and Israel Naval Forces struck around 20 Hamas targets throughout the Gaza Strip during late night and early morning hours (Dec. 31).
>
> Among the sites targeted were.
>
> The buildings housing Hamas' Ministry of Justice and Legislative Assembly, both located in the Tel El-Hawwa government complex. Hamas Government sites serve as a critical component of the terrorist groups' infrastructure in Gaza.[237]

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been sentenced to death." See Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza (April 2009), p. 11.

[235] "Ending the war…", footnote 62.

[236] See also chapter XVI.

[237] http://dover.idf.il/IDF/English/opcast/op/press/0101.htm.

373. The Israeli army spokesperson further elaborated: "The attack on strategic government objectives, which constitute part of Hamas's mechanism of control, is a direct response to the continued firing on communities in southern Israel by the Hamas terrorist organization."[238]

3. The position of the Government of Israel

374. The Mission observes that the Government of Israel is not alleging that any Hamas military activity, such as launching of rockets, storage of weapons or planning of operations, was carried out in the Legislative Council building, the Ministry of Justice or the main prison. The justification of the Government of Israel for the strike on the Palestinian Legislative Council is that it is a "Hamas Government site", and that such sites "serve as a critical component of the terrorist groups' infrastructure in Gaza" and "constitute part of Hamas's mechanism of control".

375. This explanation posted on the Israeli armed forces' official website is integrated and elaborated on by numerous statements made by current and former senior Government officials to the media. Major Avital Leibovich, a spokesperson of the Israeli armed forces, reportedly argued "anything affiliated with Hamas is a legitimate target."[239] The deputy chief of staff, Maj. Gen. Dan Harel, reportedly told a meeting with heads of local authorities in southern Israel that:

> This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings. […] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.[240]

376. Israeli armed forces' spokesman Captain Benjamin Rutland reportedly stated: "Our definition is that anyone who is involved with terrorism within Hamas is a valid target. This ranges from the strictly military institutions and includes the political institutions that provide the logistical funding and human resources for the terrorist arm."[241]

377. Mr. Matti Steinberg, a former senior adviser to the Israeli General Security Services, argued that "Hamas's civilian infrastructure is a very, very sensitive target. If you want to put pressure on them, this is how".[242] Less than three months before the hostilities in Gaza began, Col. Gabriel Siboni similarly argued that:

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[238] Official statement by an Israeli military spokesman, 1 January 2009, available at: http://dover.idf.il/IDF/News_Channels/art_mivzaim/09/01/0101.htm (in Hebrew).

[239] *The Washington Post*, "All-out war declared on Hamas", 30 December 2008.

[240] *Ynet*, "Deputy chief of staff: worst still ahead", 29 December 2008.

[241] BBC News, "Gaza conflict: who is a civilian?", 5 January 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7811386.stm.

[242] "All-out war…".

> … the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.[243]

378. The Mission understands all these statements to imply that, in the view of their authors, in order to be effective, military operations have to be directed not only against military targets but also against the non-military infrastructure.

379. The Israeli Government's discussion of the "targeting of Hamas terrorist infrastructure" asserts that, "consistent with the principle of distinction, IDF forces attacked military targets directly connected to Hamas and other terrorist organizations' military activities against Israel." This statement is followed by a list of examples of objectives, such as command posts of al-Qassam Brigades, alleged weapons storage sites and training camps, rocket and mortar launch sites, and tunnels. The list also refers twice to a location identified as the office of Ismail Haniyah, "head of the Hamas administration". This list is followed, however, by a statement reiterating and elaborating the argument that there is really no distinction to be made between military and civilian objectives as far as government and public administration in Gaza are concerned:

> While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.[244]

4. Factual findings

380. From the facts gathered by it, the Mission finds that Israel launched direct attacks against the main prison in Gaza City on 28 December 2008 and against the Palestinian Legislative Council building in Gaza City on 31 December 2008. The attacks substantially damaged the buildings, making them unfit for use. At least one person was killed in the attack on the prison, while there were apparently no casualties in the attack on the Legislative Council building.

381. The factual question of whether these two institutions and their buildings served a military purpose must be considered with regard to the legal definition of military objectives. It is addressed in the following section.

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[243] Gabriel Siboni, "Disproportionate force: Israel's concept of response in light of the second Lebanon war", *Institute for National Security Studies Insight*, No. 74 (2 October 2008), available at: http://www.inss.org.il/publications.php?cat=21&incat=&read=2222.

[244] "The operation in Gaza…", paras. 233-235.

5. Legal analysis

382. In assessing the Israeli strikes against the Legislative Council building and the main prison, the Mission first of all notes that Hamas is an organization with distinct political, military and social welfare components.[245]

383. Since July 2007 Hamas has been the de facto government authority in Gaza. As recognized by the Israeli Government,[246] the Hamas-led authorities in Gaza have been responsible for the civilian administration of Gaza. For instance, they employ civil servants and workers, run schools, hospitals, traffic police and the administration of justice. The fact that these institutions and the buildings housing them have been administered by authorities led by Hamas since July 2007, and no longer by a government composed of both Hamas and Fatah members has, in the view of the Mission, no bearing on the continued civilian character of these institutions. Regarding the prison, the Mission finds the consequences of the attack aptly described in the answer to its questions received from the Gaza authorities: "As a result of this targeting, great numbers of those who were detained pending trial in criminal cases and of those convicted of major crimes such as murder escaped. This has caused disorder and chaos, encouraged 'family revenge' cases and people taking the law into their own hands."[247] As far as the Palestinian Legislative Council building is concerned, it served representatives from all Palestinian parties who won seats in the 2006 elections (which were recognized as free and fair by international observers).

384. The Mission met with Gaza-based Legislative Council members belonging to Hamas, to Fatah and to the Popular Front for the Liberation of Palestine.[248] While Hamas constitutes the de facto authority in Gaza, the buildings attacked and destroyed served a public purpose that cannot be regarded as "promoting Hamas terrorist activity".

385. The fundamental rule of international humanitarian law applicable to attacks against buildings and infrastructure is enshrined in article 52 of Additional Protocol I ("General Protection of civilian objects"). This provision is generally recognized as codifying customary law applicable to both international and non-international armed conflicts:[249]

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[245] This situation is recognized also by Governments which have listed Hamas' military component as "terrorist". The Australian Government's listing of al-Qassam Brigades as a terrorist organization (last updated 14 September 2007), for instance, explains: "The functions of the Hamas organization, which has distinct civilian and military wings, include legitimate political and social activities. Its welfare and mosque networks act as a base for its recruitment and propaganda activities. Its terrorist operations are conducted by its military wing, the Izz ad-Din al-Qassam Brigades."

[246] "The operation in Gaza…", para. 235.

[247] Reply from the Gaza authorities to the Mission's list of questions (July 2009).

[248] The Mission also spoke with West Bank-based Legislative Council members.

[249] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, Jean-Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rules of customary law 7–9. The Israeli Government recognizes this principle. See "The operation in Gaza…", para. 95.

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

386. The statement by the Israeli Government concerning the attack on the Legislative Council building and the Ministry of Justice does not suggest any "effective contribution to military action" that the buildings might have been making. No reference is made to any "definite military advantage" that their destruction would offer. Instead, the explanation is that government buildings constitute "part of Hamas's mechanism of control", that they "serve as a critical component of the terrorist groups' infrastructure in Gaza" and that "ostensibly civilian elements of [the Hamas] regime are in reality active components of its terrorist and military efforts."

387. The Mission observes that there is nothing unique in the fact that in Gaza ministries and prisons are part of the government's "mechanism of control" and that the legislature's assembly hall and administrative buildings are a critical component of the government infrastructure. That is not, however, the test applied by international humanitarian law and accepted State practice to distinguish between civilian and military objects. The Mission reviewed, for instance, the tentative list of military objectives drawn up by Major General A.P.V. Rogers, a former Director of the British Army Legal Services, and a proposed list of military objectives drawn up by the International Committee of the Red Cross (ICRC). There is nothing in this comprehensive list of military objectives that comes close to a legislative assembly's building or a prison. As far as ministries are concerned, both lists limit the definition of military objective to "war ministries".[250]

388. The Mission further notes that international humanitarian law also recognizes a category of civilian objects which may nonetheless be targeted in the course of armed conflict to the extent that they have a "dual use". Examples often made for such dual-use objects, which serve both civilian and military purposes, are civilian infrastructures such as telecommunications, power-generating stations or bridges, *in so far as they are used by the military in addition to their civilian use*. There is no indication, nor any allegation of any such dual use of the Legislative Council building or of the Gaza main prison.

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[250] "Final report to the Prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia", paras. 38–39, available at: http://www.un.org/icty/pressreal/nato061300.htm#IVA64d.

389. There is an absence of evidence or, indeed, any allegation from the Israeli Government and armed forces that the Legislative Council building, the Ministry of Justice or the Gaza main prison "made an effective contribution to military action." On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

390. In the Mission's view these facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as defined in article 147 of the Fourth Geneva Convention.

391. The Mission rejects the analysis of present and former senior Israeli officials that, because of the alleged nature of the Hamas government in Gaza, the distinction between civilian and military parts of the government infrastructure is no longer relevant in relation to Israel's conflict with Hamas. This analysis is accompanied, in the statements of Col. Gabriel Siboni and Mr. Matti Steinberg, by an explicit argument that Israel should "put pressure" on Hamas by targeting civilian infrastructure to attain its war aims.

392. The Mission is of the view that this is a dangerous argument that should be vigorously rejected as incompatible with the cardinal principle of distinction. International humanitarian law prohibits attacks against targets that do not make an effective contribution to military action. Attacks that are not directed against military (or dual use) objectives are violations of the laws of war, no matter how promising the attacker considers them from a strategic or political point of view. As a recent academic contribution to the discussion on whether "new wars" require "new laws" has noted, "if this argument [that attacks against political, financial or psychological targets may prove more effective than those against military or dual-use objectives] was decisive, in some societies – in particular in democracies – it may be hospital maternity wards, kindergartens, religious shrines, or homes for the elderly whose destruction would most affect the willingness of the military or of the government to continue the war."[251]

B. Deliberate attacks on the Gaza police

393. Information received by the Mission indicates that 248 members of the Gaza police were killed in the course of Israel's military operations.[252] In other words, more than one out of every six casualties was a member of the Gaza police.

394. The Mission visited the "Arafat City" police headquarters in Gaza City and five police stations: the Abbas police station (central Gaza City), three police stations in neighbourhoods in the east and south of Gaza City (Zeytoun, al-Shujaeiyah and al-Tuffah) and the Deir al-Balah investigative police station. The Mission interviewed the Director of Police, the police spokesman, station commanders at the stations visited and other persons knowledgeable about

[251] Marco Sassoli, "Targeting: the scope and utility of the concept of "military objectives" for the protection of civilians in contemporary armed conflicts", *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, D. Wippman and M. Evangelista, eds. (Ardsley, New York; Transnational Publishers; 2005), p. 196.

[252] The Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ), established by the Gaza authorities' Ministry of Justice.

the Gaza police. The Mission also reviewed allegations about the Gaza internal security forces made by the Israeli Government and also mentioned in a report (in Hebrew) by the Orient Research Group Ltd., an Israeli organization commissioned by the then Israeli Prime Minister Ehud Olmert to produce this report.[253]

395. The attacks investigated by the Mission were all directed against facilities used by the police force called *shurta* (police) in official documents of the Gaza authorities and referred to as "civil police" in many English reports.

396. The Arafat City police headquarters and three of the five police stations visited were attacked during the first minutes of the Israeli military operations in Gaza, between 11.20 and 11.35 a.m. on 27 December 2009. According to witnesses, the attacks were carried out primarily with bombs and missiles launched from fighter jets. Missiles launched by naval forces might also have been used.

397. According to the information received by the Mission from TAWTHEQ, 29 other police stations were targeted by the Israeli armed forces in addition to the five police stations visited by the Mission. Twenty-four were targeted on 27 December 2008 (mostly during the first minutes of the attack), the first day of the military operations, nine on the following day and one on 14 January 2009.

1. Information regarding the attacks on the police headquarters and police stations visited by the Mission

398. Arafat City police headquarters occupy a large compound in central Gaza. They are used by the civil police (*shurta*), one of the police forces operating in Gaza, as office space and for training courses. The Mission visited three sites in the compound in which missiles or bombs had struck. In one large yard, three missiles struck the participants of a police training course. Forty-eight policemen were killed on the spot, five more were wounded, two of whom subsequently succumbed to their injuries.

399. While it appears that all the policemen killed in this location were taking part in a training course, there is conflicting information on the details. Most reports by NGOs are to the effect that these were police "cadets" in the midst of a graduation ceremony. The Gaza police spokesperson, however, told the Mission that they were serving policemen, who had been taking a three-week course and who were, at the time of the strike, doing "morning sport exercise".[254] The contents of the training course reportedly were "protocol", i.e. how to deal with

[253] See Lt. Col. (res.) Jonathan Dahoah-Halevi, "Fatal casualties of the Palestinian security forces – Myth vs. Reality" (Orient Research Group Ltd., 2009). Its author is a former adviser to the Policy Planning Division of the Israel Ministry of Foreign Affairs and current researcher at the Jerusalem Center for Public Affairs and co-founder of the Orient Research Group Ltd. In a letter to the Mission, the author stated that the report had been commissioned "to identify the police officers killed and the extent of their affiliation with Hamas, Palestinian Islamic Jihad and other terrorist organizations." As to the sources and methodology employed, he explained that he had examined materials in the public domain, including official lists of policemen who were killed published by the Palestinian Police and the Gaza authorities, NGO reports and material published by Palestinian armed groups. "The operation in Gaza…" relies on this report, referring to it as "a recent study" (para. 247).

[254] Mission phone interview with Mr. Shahwan, Gaza police spokesperson, 12 July 2009.

representatives of foreign Governments and international delegations, and rescue operations. An obituary of one of the policemen killed, published on the website of al-Qassam Brigades, claims that he was attending "a military refreshing course."[255]

400. The police gave the Mission small cube-shaped (4x4x4 mm^3 and 2x4x4 mm^3) metal fragments allegedly from the missiles fired at this location. Information provided by NGOs that visited the site soon after the strike and collected samples of the munitions fragments confirm that they were found there. Laboratory analysis of the cubes establishes that they are made of tungsten.[256]

401. In a second location at Arafat City police headquarters, two projectiles fired by Israeli fighter jets left two craters. No one was present in the area at the time of the strike. The third location visited by the Mission was near the north gate of the police headquarters where a projectile, most likely a missile, killed police chief Tawfiq Jabr. Reports indicate that other sites at the police headquarters, not visited by the Mission, were also targeted.

402. A second police training course targeted was reportedly attended by around 50 policemen. Twenty-eight of them were killed in the strike. According to the police spokesperson, the training course was designed to instruct police officers on how to deal with police officers who abused their power as well as on cultural and economic issues relevant to police work.[257] Moreover, as the survivors were trying to flee through the western gate of the police city, they were reportedly targeted by two anti-personnel missiles, which caused deaths and injuries. While the Mission did not receive official information from the Gaza authorities on the number of policemen killed at the police headquarters on 27 December 2008, a report by an NGO submitted to the Mission states that 89 policemen died as a result of this attack.

403. Abbas police station in central Gaza City was, according to the station commander, hit by three missiles on 27 December 2008 at 11.35 a.m.[258] Officials at the police station had just been informed of the attack on Arafat City police a few minutes earlier and immediate evacuation of the station had begun. Nine policemen were killed, 20 more reportedly injured. There were, according to the station commander, five detainees (common criminal suspects) in the police cells, who were released before the attack. There were members of the public going about their normal business at the police station at the time of the strike, including women and children. TAWTHEQ estimates the material damage caused by the attack at US$ 80,000.

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[255] See http://www.alqassam.ps/arabic/sohdaa5.php?id=1342.

[256] Laboratory analysis was carried out under the supervision of Lt. Col. Lane of Ireland's Defence Forces, an expert witness of the Mission. In his report to the Mission he notes that "the IDF have deployed newly developed high-precision low-collateral damage missile systems…. In mid-2004 Rafael noted that a new warhead for the Spike had been developed for operations in urban areas." See also Human Rights Watch, Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles (June 2009), where it is stated that the fragments are likely to have been from drone-launched "Spike" missiles produced by the Israeli firm Rafael Advanced Defense Systems (pp. 6-7, 11-12).

[257] Mission phone interview with Mr. Shahwan, Gaza Police Spokesperson, 12 July 2009.

[258] Interview with station commander, Maj. Iyad Jabr el Horani, 9 June 2009.

404. The police station in the al-Tuffah neighbourhood of Gaza City, a recently completed three-storey building, was struck by three missiles around 11.30 a.m. on 27 December 2009.[259] Also according to the station commander, no policemen were killed, as it had been possible to evacuate the police station very rapidly after another target in the neighbourhood had been hit. Many civilian bystanders were, however, allegedly injured. The station was hit again in the course of the hostilities. TAWTHEQ estimates the material damage caused by the attack at US$ 150,000.

405. The Deir al-Balah investigative police station was attacked between 11.30 and 11.45 a.m. on 27 December 2008. According to a police officer interviewed by the Mission,[260] the police station was hit by a missile fired from an F-16. Other witnesses interviewed by the Mission recalled several explosions, the first of them most likely on a plot adjacent to the police station. Police officers who were inside the station at the time of the attack[261] reported that routine police activities were taking place. Suspects were being interrogated (there were four or five persons held in the station's jail) and residents of the area were filing complaints. One police officer, Ashraf Hamadah Abu Kuwaik, was killed in the strike, and five other officers and one civilian were also injured.

406. The attack on the Deir al-Balah investigative police station cost the lives of six members of the public, who were in the vicinity. As a result of the explosions at the police station and of the debris, walls at the house of the al-Burdini family next to the police station collapsed, killing the 10-year-old Kamelia al-Burdini[262] and injuring several other members of the family. At a wholesale fruit and vegetable market next to the police station on Salah ad-Din Street, where between 50 and 100 persons were trading at the time, debris from the police station killed five persons, among them Abd al-Hakim Rajab Muhammad Mansi, 32, and his son, Uday Hakim Mansi, and injured many others.[263]

407. The strikes on al-Shujaeiyah and Zeytoun police stations, on 28 December 2008 and 14 January 2009, did not result in the deaths of any policemen, as after the 27 December attacks the police stations had been evacuated.[264] In the attack on al-Shujaeiyah police station, however, two women, a man and a child, standing on the opposite side of the road, were reportedly killed by debris. TAWTHEQ estimates the material damage caused by the attacks on al-Shujaeiyah and Zeytoun police stations at US$ 210,000 and US$ 900,000, respectively.

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[259] Interview with Tuffah station commander, Maj. Aymal el-Batniji, 9 June 2009.

[260] Interview with First Lieutenant Samih Sabbah, 30 June 2009.

[261] Interviews with First Lieutenant Samih Sabbah and criminal investigation officer Ahmad Abu Slimya, 30 June 2009.

[262] Interview with Refaet al-Burdini, 30 June 2009.

[263] Interview with Muhammad Ibrahim Khalid. The names of two of the persons killed are on the PCHR list of child victims of the hostilities.

[264] Interviews with Zeytoun station commander, Maj. Mahmoud Kehael, and Lt. Mahmoud Idallo of al-Shujaeiyah station.

2. Conflicting characterizations of the Gaza security forces

(a) The approach of the Government of Israel

408. The position of the Government of Israel is that "due to their military functions, these internal security forces were not accorded the immunity from attack generally granted to civilians." It alleges that, in May 2006, Hamas formed the Executive Force as a loyal militia, "[drawing] this paramilitary force largely from its military wing, the Izz al-Din al-Qassam Brigades, and armed the members with anti-tank missiles, mortars, machine guns and grenades. The newly recruited commanders and subordinates were not obliged to give up their military wing affiliation, and continued to operate simultaneously in both functions." It further alleges that after the June 2007 seizure of full control over Gaza, Hamas restructured the Executive Force and subdivided it into several units, including the police, who "assumed many traditional law enforcement functions". It goes on to say that its members, however, remained members of Hamas' military wing and their weaponry continued to include machine guns and anti-tank weapons. "[…] the former Executive Force continued to be closely integrated with — although not formally part of — the al-Qassam Brigades. […] many members of the internal security services also served directly in the al-Qassam Brigades." Regarding the military operations, the Israeli Government alleges that "Hamas intended to, and did, in fact, employ its internal security forces for military activities during the Gaza Operation." It further alleges that the "collective role of the Gaza 'police' as an integral part of Hamas armed forces is further evidenced by the fact that many Gaza 'policemen' were also members of the al-Qassam Brigades." To support this allegation, an Israeli Government paper shows pictures of four men killed during the military operations. Each of the men is shown in two pictures purportedly downloaded from Palestinian websites, one identifying the man as a policeman, the other as a member of al-Qassam Brigades. Finally, the paper refers to the above-mentioned study of the Orient Research Group Ltd., stating that it found that "more than nine out of every ten alleged 'civilian police' were found to be armed terrorist activists and combatants directly engaged in hostilities against Israel."[265]

(b) The approach of the Gaza authorities

409. The characterization of the Gaza internal security forces by the Government of Israel differs sharply from the tasks of the police as they are described on the official website of the Gaza Ministry of Interior, in orders to the police issued by the Minister of Interior which the Mission has reviewed, and in the interviews with the Director of Police and the police spokesman conducted by the Mission.

410. The Director of Police, Gen. Jamal al-Jarrah, also known as Abu Obeidah, stated that "the role of the police is to solve problems of the population, combat drug trafficking, arrest criminals." He reported that they are equipped with Kalashnikov firearms and batons, as the authorities have not been able to obtain other police equipment, such as tear gas and small guns. Gen. Abu Obeidah acknowledged that there were complaints about the "harsh" methods of the

[265] "The operation in Gaza…", paras. 237, 239, 241-242 and 245-247.

Gaza police, but showed pride in their success in reducing lawlessness in the Gaza Strip.[266] This assessment was shared by many whom the Mission interviewed in the course of its investigations. The police orders and the Ministry's website similarly describe the police as a law-enforcement agency. As to allegations that the police and al-Qassam Brigades were "interchangeable", the Director of Police asserted that they were "absolutely not true".

411. According to the police spokesperson, during the military operations the mandate of the police was firstly to "protect the internal front", i.e. ensure that the relationship between the civilian population and the authorities stayed "intact". Secondly, the police were to monitor the distribution of humanitarian goods to the civilian population. Thirdly, they were to continue regular law-enforcement duties, with a particular focus on combating looting and speculation on prices.[267]

3. The Mission's assessment of the role and composition of the police

412. In order to shed some light on where the truth might lie between these two conflicting descriptions of the police, the Mission finds it necessary to examine the development of the security forces linked to Hamas after its election victory in January 2006. When Mr. Said Seyam, a senior Hamas representative,[268] took office as the Palestinian Authority's Minister of Interior in April 2006, he found that he had little or no control over the Palestinian Authority's security forces, which were put under the control of the President of the Palestinian Authority and of officials loyal to him.[269] On 20 April 2006, he announced the formation of a new security force reporting directly to him. This was the Security Forces Support Unit, also known as the Executive Force (*al-Quwwa al-Tanfiziyya*). The new security force appears to have had a double function as both a law-enforcement agency and, at least potentially, a military force. It was officially charged with enforcing public security and protecting property. At the same time, he appointed Mr. Jamal Abu Samhadana, commander of the Popular Resistance Committees, as the head of the Executive Force[270] and announced that it would be composed of 3,000 new recruits

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[266] Mission meeting with the Gaza authorities' Director of Police, 4 June 2009. On both successes in restoring order and violations of human rights by the Gaza police after June 2007, see also International Crisis Group, "Ruling Palestine I: Gaza under Hamas", Middle East Report No. 73, 19 March 2008, p. 10.

[267] Mission meeting with Gaza authorities' police spokesperson, 9 June 2009. According to the International Crisis Group, during the hostilities, "the Qassam Brigades and some civil police members (still referred to locally as the "Executive Forces") patrolled streets in civilian clothes; some wore badges to establish their official status. They continued to arrest lawbreakers, detaining them in ordinary apartments since prisons have been destroyed; this helps explain why thus far there has been no report of looting or increase in crime. Likewise, security personnel maintained order in breadlines that sometimes stretched to hundreds of people and prevented unrest at the overburdened hospitals, where tempers easily flare." "Ending the war…", p. 8).

[268] Said Seyam was killed by an Israeli air strike on 15 January 2009 together with several members of his family (TAWTHEQ documents submitted to the Mission; see also International Crisis Group, "Gaza's unfinished business", Middle East Report N°85, 23 April 2009, p. 5.)

[269] See, for instance, International Crisis Group, "Palestinians, Israel, and the Quartet: Pulling back from the brink", Middle East Report N°54, 13 June 2006, p. 12.

[270] Ibid., pp. 13 and 20; "Fatal casualties…". Abu Samhadana and three other members of the Popular Resistance Committees were killed by an Israeli air strike on 8 or 9 June 2006.

from various Palestinian armed groups, including al-Qassam Brigades.[271] The newly appointed commander reportedly declared: "[The Executive Force] will be the nucleus of the future Palestinian army. The resistance must continue. We have only one enemy. … I will continue to carry the rifle and pull the trigger whenever required to defend my people. We are also a force against corruption. We are against thieves, corrupt officials and law breakers." [272]

413. In August 2007, following the June 2007 Hamas seizure of full control over Gaza, the current Director of the Gaza authorities' civil police, then head of the Executive Force, Gen. Abu Obeidah, described the planned reorganization of the security services in Gaza. Executive Force members were to be integrated into the civil police. He reportedly stated that Hamas was "working hard to retrain Executive Force members to perform police duties" and that the "Force will be in charge of chasing drug dealers and lawless residents". At the same time, he stated that "members of the Force are religious, and are resistance fighters."[273]

414. In October 2007, the security services operating in Gaza were reorganized. The previous Palestinian Authority's police agencies in Gaza were merged with the Executive Force.[274] The security forces under the control of the Ministry of Interior emerging from this reorganization comprise the Civil Police, the Civil Defence, the Internal Security (an intelligence agency) and the National Security. Their mandates, according to the Gaza authorities' Ministry of Interior's website,[275] are differentiated.

415. The National Security force is given specific military tasks, such as "the protection of the State from any foreign aggression" and "responsibility for the defence of the Palestinian homeland in the face of external and internal threats". It is thus plainly a military force whose members are, under international humanitarian law, combatants.[276] The functions of the police have been outlined above.

416. On 1 January 2009, during the Israeli military operations in Gaza, the police spokesperson, Mr. Islam Shahwan, informed the media that the police commanders had managed to hold three meetings at secret locations since the beginning of the armed operations. He added that "an action plan has been put forward, and we have conducted an assessment of the situation

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[271] "Palestinians, Israel, and the Quartet…", p. 13. The "Executive Force consisted in summer of 2007 of some estimated 6,800 members of the armed wings of Hamas and the Popular Resistance Committees", R. Friedrich and A. Luethold, eds., Entry-Points to Palestinian Security Sector Reform (Geneva Centre for the Democratic Control of Armed Forces, 2007), p. 162.

[272] "Palestinians, Israel, and the Quartet…", footnote 105.

[273] International Middle East Media Center, "Interview with the leader of the Hamas-formed Executive Force", 17 August 2007, available at: http://www.imemc.org/article/49939.

[274] See, e.g., Xinhua, "Hamas Executive Force merged into police force in Gaza: official", 2 October: "Ihab al-Ghusein, a spokesman with the Interior Ministry, made the remarks during a news conference in Gaza. Al-Ghusein said the mission of the Executive Force 'is now over, and it is time to include the force into the official police force that belongs to the ministry of interior.'"

[275] See the Arabic-language website of the Gaza Ministry of Interior: http://www.moi.gov.ps/?page=633734043174687500.

[276] See the Arabic-language website of the National Security Forces: http://www.nsf.gov.ps.

and a general alert has been declared by the police and among the security forces in case of any emergency or a ground invasion. Police officers received clear orders from the leadership to face ("يواجه _" in Arabic) the enemy, if the Gaza Strip were to be invaded."[277] Confirming to the Mission that he had been correctly quoted, Mr. Shahwan stated that the instructions given at that meeting were to the effect that in the event of a ground invasion, and particularly if the Israeli armed forces were to enter urban settlements in Gaza, the police was to continue its work of ensuring that basic food stuffs reached the population, of directing the population to safe places, and of upholding public order in the face of the invasion. Mr. Shahwan further stated that not a single policeman had been killed in combat during the armed operations, proving that the instructions had been strictly obeyed by the policemen.

417. The Mission notes that there are no allegations that the police as an organized force took part in combat during the armed operations. On the basis of the information provided by the Gaza authorities and of the above-mentioned study of the Orient Research Group Ltd., it would appear that 75 per cent of its members killed in the course of the military operations died as a result of the air strikes carried out during the first minutes of the Israeli attack. These men had not engaged in combat with the Israeli armed forces.[278]

418. The Mission also notes that while the then commander of the Executive Forces and now Director of Police did reportedly say in August 2007 that members of the Executive Force were "resistance fighters", he stressed in the same interview the authorities' intention to develop it into a law enforcement force. The Mission notes that a situation in which a recently constituted civilian police force integrates former members of armed groups would not be unique to Gaza. That prior membership in itself would not be sufficient to establish that the police in Gaza is a part of al-Qassam Brigades or other armed groups.

419. Except for the statements of the police spokesperson, the Israel Government has presented no other basis on which a presumption can be made against the overall civilian nature of the police in Gaza. It is true that the police and the security forces created by Hamas in Gaza may have their origins in the Executive Force. However, while the Mission would not rule out the possibility that there might be individuals in the police force who retain their links to the armed groups, it believes that the assertion on the part of the Government of Israel that "an overwhelming majority of the police forces were also members of the Hamas military wing or

[277] His statements are reported in the Arabic original on a website of the Egyptian Muslim Brotherhood, at http://www.ikhwanonline.com/Article.asp?ArtID=43756&SecID=450. The journalist states that in spite of the Israeli air attacks against police stations, the police continued to do law enforcement work and to direct the traffic: "members of the Criminal Investigation and the Internal Security caught a quantity of drugs in some of the targeted areas, and at the entrances of some of the crossroads and cities within the Strip, where one can observes members of the police in civilian clothes monitoring the traffic".

[278] In "Fatal casualties…", the Orient Research Group Ltd, however, identifies 31 policemen who it alleges were killed in combat in Gaza during the period from 3 to 18 January. In a few cases the information is rather specific, such as "killed on 4 January in Jabalya after launching rockets" or "killed on 6 January while fighting the IDF in Deir al-Balah". In other cases it is more generic, such as "killed while fighting the IDF". The Mission accepts that this might indicate that some individual members of the Gaza police were at the same time members of armed groups. The Mission is also mindful, as explained below, that the claims of armed groups that a person killed during the armed operations was one of their members have to be treated with care.

activists of Hamas or other terrorist organizations",[279] appears to be an overstatement that has led to prejudicial presumptions against the nature of the police force that may not be justified.

420. In his meeting with the Mission, the Director of Police was very open in acknowledging that many of his men were Hamas supporters, but insisted at the same time there are others who supported other Palestinian factions.[280] Police station commanders interviewed by the Mission stated that most of their men (70 per cent according to the estimates of one station commander, 95 per cent in another station) had joined the police after June 2007.[281] The Mission understands that most, if not all, of the post-June 2007 recruits into the civil police, will have been recruited from the Executive Force, which was strongly loyal to Hamas.

421. The Mission also notes, however, that in senior positions in the police, the representation of non-Hamas men appears to have been broader. The Director of Police killed on 27 December 2008, Mr. Tawfiq Jabr, was generally known as not being affiliated with Hamas. Several of the station commanders interviewed by the Mission were also not Hamas affiliates but men who had joined the Palestinian Authority's police after the Oslo Accords allowed the Palestinians to constitute their own law-enforcement agencies. They had thus served in the Palestinian police in Gaza for more than 10 years before Hamas seized control of it in June 2007.

422. The Mission further notes that the study conducted by the Orient Research Group Ltd. names policemen killed during the attack, whom it identifies as members of Hamas, al-Qassam Brigades, other armed Palestinian groups or "terror operatives" whose affiliation is not known. In 78 out of 178 cases the policemen are alleged to be members of al-Qassam Brigades on the sole basis that they were allegedly Hamas members.

423. Furthermore, it appears from the response to the Mission from the Orient Research Group Ltd. describing its methodology that its information on police members' alleged affiliation with armed groups was based to a large extent on the websites of the armed groups. In this respect, the Mission is mindful of a recent report by a Palestinian human rights NGO drawing attention to the "issue of the 'adoption' of killed persons by resistance groups; i.e. declaration by a political or armed group that the person killed was one of their members. Often, when persons, including children, are killed by actions of the Israeli armed forces , political and/or armed groups 'adopt' them as 'martyrs' placing their photographs on their websites and commending their contribution to resisting occupation. This does not mean that those persons killed were involved in resistance activities in any way. The families accept this 'adoption' of deceased family members for various reasons including the willingness of resistance groups to provide financial support to the families and pay for funeral costs of the persons killed." As the NGO concludes, "these cases require in-depth investigation on a case-by-case basis in order to determine every person's status according to his actual affiliation".[282]

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[279] "The operation in Gaza…", para. 247.

[280] Mission meeting with Director of Police, 4 June 2009.

[281] Mission interviews with Gaza City police station commanders, 9 June 2009.

[282] Al Mezan Center for Human Rights, "Cast lead offensive in numbers", p. 5.

4. Factual findings

424. From the facts gathered by it, the Mission estimates that 99 policemen and nine members of the public were killed in the attacks on the police headquarters and the five police stations inspected by the Mission. The Gaza authorities state that overall 248 policemen were killed by the Israeli armed forces during the military operations. The study by the Orient Research Group Ltd. identifies 345 men allegedly belonging to the Gaza internal security forces killed by Israeli attacks during the military operations. It identifies 240 of the 345 alleged members of the internal security forces as members of the police. This is very close to the number provided by the Gaza authorities.[283]

425. The facts gathered by the Mission indicate that the policemen were the intended targets of the attacks. The Israeli Government[284] is quite clear on this, and has not suggested that the attacks on the police were not intended. The type of ammunition used at the Arafat City police headquarters is designed to kill or incapacitate people in the area of impact and has little or no effect on buildings or other infrastructure. In other locations at the civil police headquarters in Gaza City the munitions used were such that the damage to infrastructure was minimal compared to the cost in lives among the policemen. With regard to the other police stations visited by the Mission, damage to the buildings was extensive but the number of policemen killed was limited, with the exception of Abbas police station in central Gaza City, where nine policemen were killed. There is no question that the approximately 100 policemen who died in the attacks on the stations visited by the Mission were deliberately targeted and killed by the Israeli armed forces.

426. The attacks on the police headquarters and five police stations visited by the Mission were carried out during the first minutes of the surprise air bombing campaign launched by the Israeli armed forces against Gaza shortly before 11.30 a.m. on 27 December.

427. From the facts gathered by it, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been "incorporated" into the armed forces of the Gaza authorities. The statement by the police spokesperson on 1 January 2009 (after the attacks of 27 December 2008 had been carried out) cannot, on its own, justify the assertion that the police were part and parcel of the armed forces.

428. The Mission could not verify the allegations of membership of armed groups of policemen. In half the cases, moreover, the allegations appear to be based merely on an equation of membership in Hamas (in itself alleged on the basis of unverifiable information) with membership in al-Qassam Brigades, which in the view of the Mission is not justified. Finally, even according to the study referred to by the Israeli Government, 34 policemen without any affiliation to Hamas or a Palestinian armed group were killed in the armed operations, the great majority of them in the bombardment of police stations on the first day of the military operations.

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[283] "Fatal casualties…" assigns the remaining victims to national security (5), civil defence (11) and internal security (2), with the remaining 85 identified as belonging to security forces without being able to state which one.

[284] "The operation in Gaza…", pp. 89-95.

429. An "obituary" published on a website of al-Qassam Brigades states that one of the training courses at the police headquarters in Gaza on 27 December 2008 was a "military refresher course". That is, however, contradicted by the police spokesperson and a number of the reports received by the Mission from NGOs. It is also not suggested by the Israeli Government that that was a reason for attacking it. As a distinct probability, the Mission finds that the policemen killed there were neither engaged in any military activity at the time of the attacks nor carrying out preparations for combat. At the other police stations, the police were engaged in a range of routine tasks, including questioning detainees and handling issues for members of the public who were present in police facilities in the middle of an ordinary day.

5. Legal analysis

(a) The applicable rules of international humanitarian law

430. The general rule of international humanitarian law is that members of law-enforcement agencies are considered part of the civilian population, unless they have been incorporated into the armed forces of a party to the conflict.[285] This principle is accepted by the Israeli Government.[286] The obligation to distinguish at all times between the civilian population and combatants and to direct attacks only against military objectives[287] (the principle of distinction) therefore generally prohibits attacks against members of the law-enforcement agencies. In its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice recognized the principle of distinction as an "intransgressible" principle of customary international law.

431. There are three situations in which direct attacks against members of police forces would not constitute a violation of the principle of distinction. First, if the law-enforcement agency or the unit to which the policeman belongs has been "incorporated" into the armed forces, thus conferring combatant status upon its members. Second, if individual members of the law-enforcement agency are at the same time members of an armed group, they would be combatants.[288] Thirdly, individual members of the law-enforcement agency, like any civilians,

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[285] Article 43 (3) of Additional Protocol I provides: "Whenever a party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other parties to the conflict."

[286] "The operation in Gaza…" (para. 238) states that "whereas members of a civilian police force that is solely a civilian police force, who have no combat function are not considered combatants under the Law of Armed Conflict, international law recognizes that this principle does not apply where police are part of the armed forces of a party."

[287] Article 48 of Additional Protocol I expresses the principle in the following terms:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

[288] The ICRC Commentary to Additional Protocol I argues that "any interpretation which would allow combatants as meant in article 43 to "demobilize" at will in order to return to their status as civilians and to take up their status as combatants once again, as the situation changes or as military operations may require, would have the effect of cancelling any progress that this article has achieved. … [Article 44] does not allow this combatant to have the status of a combatant while he is in action, and the status of a civilian at other times" (pp. 515-516).

may not be targeted "unless and for such time as they take a direct part in hostilities."[289] Finally, as with civilians generally, policemen might be indirectly injured or killed in an attack which is directed at a military objective, as long as the attack complies with the principle of proportionality.

(b) Conclusion

432. The Mission will now draw conclusions with regard to each of these grounds potentially justifying the attacks against the police.

433. First, as already noted above, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been "incorporated" into the armed forces of the Gaza authorities. Accordingly, the policemen killed cannot be considered to have been combatants by virtue of their membership in the police.

434. Second, the Mission finds that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities. Thus, they did not lose their civilian immunity from direct attack as civilians on this ground.[290]

435. Third, the Mission examined whether the attacks on the police stations could be justified on the basis that there were, allegedly, members of Palestinian armed groups among the policemen. The question would thus be one of proportionality. The principle of proportionality is reflected in Additional Protocol I, which prohibits launching attacks "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[291]

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[289] Pursuant to article 51 (3) of Additional Protocol I, civilians enjoy immunity from attack "unless and for such time as they take a direct part in hostilities." According to ICRC, this rule also reflects customary international law: "Civilians are protected against attack unless and for such time as they take a direct part in hostilities" (rule 6). *Customary International Humanitarian Law*…. The Mission is aware that Israel is not a party to Additional Protocol I and reportedly does not accept the qualifying phrase "and for such time" as reflective of customary law (see Y. Dinstein, "The ICRC customary international humanitarian law study", *Israel Yearbook on Human Rights*, vol. 36 (2006), p. 11). In its report on the military operations, the Government of Israel refers to a definition of direct participation in hostilities by Israel's High Court of Justice as "involving all persons that perform the function of combatants, including "a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it," as well as "a person who collected intelligence on the army, whether on issues regarding the hostilities … or beyond those issues…; a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may." ("The operation in Gaza…", para. 120).

The Mission is of the view that, for the purposes of the legal analysis of the attacks on the police stations considered here, it is not decisive whether the rule binding Israel is that "civilians are protected against attack unless and for such time as they take a direct part in hostilities" or only "unless they take direct part in hostilities".

[290] This finding does not apply to those policemen who were members of al-Qassam Brigades, who were therefore combatants and not civilians.

[291] Israel recognizes that "customary international law bars military attacks that are anticipated to harm civilians excessively in relation to the expected military advantage." "The operation in Gaza…", para. 120.

436. The Mission has earlier accepted that there may be individual members of the Gaza police that were at the same time members of al-Qassam Brigades or other Palestinian armed groups and thus combatants. Even if the Israeli armed forces had reliable information that some individual members of the police were also members of armed groups, this did not deprive the whole police force of its status as a civilian law-enforcement agency.[292]

437. From the facts available to it, the Mission finds that the deliberate killing of 99 members of the police at the police headquarters and three police stations[293] during the first minutes of the military operations, while they were engaged in civilian tasks inside civilian police facilities, constitutes an attack which failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity). The attacks on the Arafat City police headquarters and the Abbas Street police station, al-Tuffah police station and the Deir al-Balah investigative police station constituted disproportionate attacks in violation of customary international humanitarian law.

438. From the facts available to it, the Mission further believes that there has been a violation of the inherent right to life of those members of the police killed in the attacks of 27 December 2007 who were not members of armed groups by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

VIII. OBLIGATION ON PALESTINIAN ARMED GROUPS IN GAZA TO TAKE FEASIBLE PRECAUTIONS TO PROTECT THE CIVILIAN POPULATION

439. An assessment of the events occurring during the military operations in Gaza in December 2008 - January 2009 requires an investigation of the tactics used both by the Israeli armed forces and by the Palestinian armed groups in the context of their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population and to civilian objects. The Mission examines the extent to which the Israeli armed forces took all feasible precautions in chapter IX, as well as in the examination of individual incidents. In this chapter, the Mission examines allegations that the conduct of the Palestinian armed groups placed the civilian population of Gaza and civilian objects at risk of attack.

440. In its efforts to gather more direct information on the subject, during its investigations in Gaza and in interviews with victims and witnesses of incidents and other informed individuals, the Mission raised questions regarding the conduct of Palestinian armed groups during the hostilities in Gaza. The Mission notes that those interviewed in Gaza appeared reluctant to speak about the presence of or conduct of hostilities by the Palestinian armed groups. Whatever the

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[292] "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character" (Additional Protocol I, art. 50 (3)).

[293] These are the policemen killed at the police headquarters and police stations visited by the Mission. The overall number of policemen killed on 27 December 2008 is around 180, according to the Orient Research Group Ltd. See "Fatal casualties…".

reasons for their reluctance, the Mission does not discount that the interviewees' reluctance may have stemmed from a fear of reprisals.[294]

441. The Mission also addressed questions regarding the tactics used by Palestinian armed groups to the Gaza authorities. They responded that they had nothing to do, directly or indirectly, with al-Qassam Brigades or other armed groups and had no knowledge of their tactics.[295] To gather first-hand information on the matter, the Mission requested a meeting with representatives of armed groups. However, the groups were not agreeable to such a meeting. The Mission, consequently, had little option but to rely upon indirect sources to a greater extent than for other parts of its investigation.

442. In forming an opinion on the subject, the Mission did use information it had gathered in the course of investigating certain incidents during the December-January military operations. However, the Mission mostly reviewed the allegations made in reports by the Government of Israel, by private individuals and organizations,[296] and by NGOs.[297]

443. The Mission focused on allegations that Palestinian fighters had launched attacks from within civilian areas and from protected sites (such as schools, mosques and medical units); used civilian and protected sites as bases for military activity; misused medical facilities and ambulances; stored weapons in mosques; failed to distinguish themselves from the civilian population and, in so doing, used the Gazan civilian population as a shield against Israeli attack. The Mission further sought information concerning allegations that Palestinian armed groups had booby-trapped civilian property.[298]

444. The significance of these allegations is twofold. First, the alleged conduct might constitute a violation by the Palestinian armed groups of their obligation of care to prevent harm to the civilian population or the prohibition against the deliberate use of civilians to shield from military activity. Second, the Government of Israel and others argue that certain attacks by Israeli armed forces on civilian objects or protected sites were justified by the unlawful use that Palestinian armed groups made of them. In the words of a report by the Israeli armed forces on its shelling of a United Nations compound in which at least 600 Palestinian civilians had taken refuge, such attacks were "the unfortunate result of the type of warfare that Hamas forced upon

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[294] See chap. XX.

[295] Response of the Gaza authorities to the Mission.

[296] Submissions to the Mission by the Jerusalem Center for Public Affairs, B'nai Brith International, Take A Pen, the National Lawyers Guild, Mr. Maurice Ostroff , Ms. Yvonne Green and Mr. Peter Wertheim on behalf of a group of Australian lawyers.

[297] For example, Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction*, (London, 2009); International Crisis Group, "Gaza's unfinished business", Middle East Report, No. 85, 23 April 2009; Human Rights Watch, *Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks*, (August 2009).

[298] "The operation in Gaza…", pp. 55-76. The Mission understands the criticisms made by the Government of Israel to Hamas' tactics to apply also to other Palestinian armed groups.

the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations."[299]

445. The Mission will address the justifications put forward by the Government of Israel for attacks on protected sites that it alleged were being used by Palestinian armed groups and that are investigated in this report.

A. Launching attacks from within civilian areas and from within or in the immediate vicinity of protected sites

446. The Mission investigated two incidents in which the Government of Israel alleged that Palestinian combatants had fired on the Israeli armed forces from within a United Nations protected site or its immediate vicinity in densely populated urban areas. In the case of the shelling in al-Fakhura Street by the Israeli armed forces on 6 January 2009 (chap. X), the Mission accepted, on the basis of information in the reports it had seen, the possibility of mortar attacks from Palestinian combatants in the vicinity of the school.

447. In the incident at the UNRWA compound in the neighbourhood of Rimal, in the centre of Gaza City, senior international UNRWA staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas (chap. IX). In that case the Mission was unable to make a finding as to whether any combat activity was being conducted by Palestinian armed groups against the Israeli armed forces in that area at that time.

448. The Mission spoke with two witnesses who testified to the launching of rockets from urban areas. One witness stated seeing rockets being launched from a narrow street and from a square in Gaza City without providing further details as to when this occurred.[300] A second witness told the Mission that rockets may have been fired from within the Sheikh Radwan neighbourhood north of Gaza City during the military operations in Gaza.[301]

449. The Mission found corroboration of these witness accounts in a number of reports from international NGOs. In reports issued following Israel's military operations in Gaza, Amnesty International, the International Crisis Group and Human Rights Watch each determined that the rocket units of the Palestinian armed groups operated from within populated areas.[302] Human Rights Watch and the International Crisis Group gathered reports from civilians about instances in which armed groups had launched or had attempted to launch rockets near residential areas. Human Rights Watch quoted a resident of northern Gaza as stating that, on 1 January 2009, residents of the area prevented Palestinian fighters, who they believed were preparing to launch

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[299] http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm. According to the Israeli Government, "when a party to an armed conflict uses civilian and protected spaces for military purposes, those spaces become legitimate targets for the opposing side, thereby placing civilian lives and infrastructure in great danger" ("The operation in Gaza…", para. 153).

[300] Mission interview with RA/01, June 2009.

[301] Mission interview with RA/02, June 2009.

[302] Israel/Gaza: Operation "Cast Lead": 22 days…, pp.74–75; "Gaza's unfinished business…", p. 3; Rockets from Gaza..., p. 21.

rockets, from entering a garden next to the building in which they lived.[303] The International Crisis Group interviewed a resident of Beit Lahia who stated that fighters used his land to fire rockets, which he did not dare to resist, as his father had previously been shot in the leg by a member of such an armed group when he had tried to prevent them from using his land as a rocket launching site.[304] Amnesty International conducted interviews with residents of Gaza who stated that they had observed Palestinian fighters firing a rocket from a courtyard of a Government school in Gaza City at a time when the schools were closed. In another area of Gaza City, another resident reportedly showed an Amnesty International researcher a place from which a rocket had been launched, 50 metres from a residential building.[305] Amnesty International also reported, however, that it had seen no evidence that rockets had been launched from residential houses or buildings while civilians were still in them.

450. Both the International Crisis Group and Human Rights Watch found that the practice of firing close to or within populated areas became more prevalent as the Israeli armed forces took control of the more open or outlying areas.[306]

451. The Mission reviewed the pictures allegedly showing the launching of rockets "from within or near residential buildings, including schools, mosques and hospitals" in the Israeli Government's paper[307] and in several of the submissions it received.[308] The Mission notes that it is not reasonably possible to determine whether those photographs show what is alleged. As the Israeli Government concedes,[309] many of them refer not to the December 2008-January 2009 period, but to previous alleged instances of firing of rockets from Gaza.[310]

452. In view of the information communicated to it and the material it was able to review, the Mission believes that there are indications that Palestinian armed groups launched rockets from urban areas. In those instances in which Palestinian armed groups did indeed fire rockets or mortars from urban areas the question remains whether this was done with the specific intent of shielding the combatants from counter-attack. The Mission has not been able to obtain any direct evidence on this question; nor do reports from other observers provide a clear answer.

453. According to the International Crisis Group, for instance, a fighter for Islamic Jihad stated in an interview that "the most important thing is achieving our military goals. We stay away from the houses if we can, but that's often impossible", which suggests the absence of intent. The same NGO also reports an interview with three Palestinian combatants in January 2009 in

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[303] Rockets from Gaza…, p. 22.

[304] "Gaza's unfinished business…", p. 3, footnote 29.

[305] Israel/Gaza: Operation "Cast Lead": 22 days…, p. 74.

[306] *Rockets from Gaza*..., p. 21; "Gaza's unfinished business…", p. 3.

[307] "The operation in Gaza…", para. 155.

[308] See, for instance, submission to the Mission by Mr. Maurice Ostroff.

[309] "The operation in Gaza…", para. 155.

[310] The following video, referred to in a submission to the Mission by B'nai B'rith International, appears to show the launching of rockets from within an urban area, allegedly from within a school, on 8 January 2009: http://www.youtube.com/watch?v=UN9WzUc7iB0

which the fighters reportedly stated that rockets and mortars were launched in close proximity to homes and alleyways "in the hope that nearby civilians would deter Israel from responding".[311]

454. The Mission now turns to the related but distinct question of whether and to what extent Palestinian armed groups made use of residential housing and of protected sites, such as schools, hospitals, mosques and United Nations facilities, in their engagements with Israeli ground forces.

455. The Mission also examined the question of the presence and activities of members of Palestinian armed groups in chapter XI. As already mentioned, Palestinian witnesses were generally reluctant to speak to the Mission about the activity of Palestinian armed groups in their neighbourhoods. For the present purposes, it suffices to say that, in some of the cases, there was evidence of the presence of Palestinian armed groups in residential areas.[312]

456. The Mission received a submission from a colonel of the reserve of the Israeli armed forces that seeks to illuminate the "combat principles" of Palestinian armed groups. His report is based on material published by Palestinian armed groups on their websites. The report describes alleged tactics such as "seizing houses as military positions for the purpose of staging ambushes against IDF forces" and "deploying explosive charges of various types (IEDs, penetrating, bounding, anti personnel etc.) in the vicinity of residences and detonating them", "booby-trapping houses … and detonating the charges", and "conducting fighting and sniper fire at IDF forces operating in the built-up areas".[313]

457. This submission provides useful information. It tends to show, for instance, that ground engagements between Israeli forces and Palestinian armed groups were most intense in areas of mixed urban-rural character on the outskirts of Gaza City, Jabaliyah and Beit Lahia.

458. The Mission notes, however, that the one incident described in the submission which it has investigated itself illustrates the unreliability of some of the sources the report relies on. In this incident, the source claimed that three Palestinian combatants had laid an ambush in a house in Izbat Abd Rabbo, hurled explosives at the Israeli armed forces and managed to drag a wounded Israeli soldier into the house. From the facts it has itself gathered, the Mission can exclude that in this incident the Palestinian combatants managed to capture an Israeli soldier. This example suggests that some websites of Palestinian armed groups might magnify the extent to which Palestinians successfully attacked Israeli forces in urban areas.

459. Other sources reviewed by the Mission confirm scepticism about the intensity of attacks on the Israeli armed forces by Palestinian armed groups in built-up areas. The Mission notes that a thread running through many of the Israeli soldiers' testimonies collected by the Israeli NGO Breaking the Silence is that they had no encounters with Palestinian combatants.[314] According to another NGO report, "Hamas fighters plainly were frustrated by their inability to engage in street

[311] "Gaza's unfinished business…", p. 3.

[312] See the case of Majdi Abd Rabbo in chapter XIV.

[313] "The hidden dimension of Palestinian war casualties…", pp. 1-2 and 20.

[314] *Soldiers' Testimonies…* , testimony 34, p. 76, and Rabin Academy testimonies.

battles".[315] Generally, the Mission received relatively few reports of actual crossfire between the Israeli armed forces and Palestinian armed groups. This would also appear to be reflected in the low number of Israeli soldiers killed or injured during the ground offensive.[316] The Mission also notes that in none of the incidents it investigated was there any indication that civilians were killed in crossfire between Palestinian armed groups and the Israeli armed forces.

460. While the Mission is unable to form an opinion on the exact nature or the intensity of combat activities carried out by the armed groups in urban residential areas that would have placed the civilian population and civilian objects at risk of attack, their presence in these areas as combatants is established from the information that has come to the attention of the Mission.

B. Booby-trapping of civilian houses

461. In chapter XIV the Mission will report on different incidents in which witnesses have described the circumstances in which they had been used by the Israeli armed forces during house searches and forced at gunpoint to enter houses ahead of the Israeli soldiers. These witnesses testified that they had been used in this way to enter several houses. None of them encountered a booby trap or other improvised explosive devices during the house searches. The Mission is also mindful of other incidents it has investigated that involved entry into civilian houses by Israeli soldiers in different areas in Gaza. None of these incidents showed the use of booby traps.

462. The Mission, however, recalls the allegations levelled in the reports that it has reviewed. The Government of Israel alleges that Hamas planted booby traps in "homes, roads, schools and even entire neighbourhoods". It adds, "in essence, the Hamas strategy was to transform the urban areas of the Gaza Strip into a massive death trap for IDF forces, in gross disregard for the safety of the civilian population."[317] The Mission notes that the existence of booby-trapped houses is mentioned in testimonies of Israeli soldiers collected by Breaking the Silence. One soldier recounts witnessing the detonation of a powerful explosion inside a house as a bulldozer approached it. A second soldier stated "many explosive charges were found, they also blew up, no one was hurt. Tank Corps or Corps of Engineers units blew them up. Usually they did not explode because most of the ones we found were wired and had to be detonated, but whoever was supposed to detonate them had run off. It was live, however, ready…".[318] Also the reports published by Palestinian armed groups, on which the submission to the Mission on the tactics of Palestinian combatants by the Jerusalem Centre for Public Affairs is based, suggest that booby-

[315] According to the International Crisis Group, Hamas "tried to draw Israeli troops into densely populated urban areas, especially Hamas strongholds that had been prepared for counter-attack. A fighter described battles as a lethal 'game of hide and seek' in which Israel sought to lure fighters into open space, while Hamas attempted to bring Israeli troops onto their preferred terrain. The soldiers refused the bait, Hamas fighters plainly were frustrated by their inability to engage in street battles." ("Gaza's unfinished business…", p. 3).

[316] Israeli armed forces reportedly lost 10 soldiers in combat between 27 December 2008 and 18 January 2009, with dozens of soldiers wounded. Four of the Israeli dead appear to have been killed by friendly fire (Cordesman, op. cit., p. 57).

[317] "The operation in Gaza…", paras 181.

[318] *Soldiers' testimonies…*, testimony 20, p. 48, and testimony 23, p. 54.

trapped civilian houses were a frequently used tactic.[319] According to the Israeli Government, "because roads and buildings were often mined, IDF forces had to target them to protect themselves".[320]

463. While, in the light of the above reports, the Mission does not discount the use of booby traps by the Palestinian armed groups, it has no basis to conclude that civilian lives were put at risk, as none of the reports record the presence of civilians in or near the houses in which booby traps are alleged to have been set.

C. Use of mosques to launch attacks against the Israeli armed forces or to store weapons

464. The Israeli Government alleges that "Hamas abused the protection accorded to places of worship, making a practice of storing weapons in mosques". This assertion is supported by pictures of Israeli soldiers in a room amid weaponry, including anti-tank weapons, which are alleged to have been taken upon discovery of a weapons cache in a Jabaliyah mosque during the military operations.[321] The Mission notes that Israeli soldiers speaking at the Rabin Academy "Fighters' Talk" recount coming under fire from Palestinian combatants positioned in a mosque.[322]

465. Although the Mission was not able to investigate the allegation of the use of mosques generally by Palestinian groups for storing weapons, it did investigate the incident of a missile attack by the Israeli armed forces against al-Maqadmah mosque on the outskirts of Jabaliyah camp, in which at least 15 people were killed and 40 injured on 3 January 2009 (see chap. XI). The Mission found no evidence that this mosque was used for the storage of weapons or any military activity by Palestinian armed groups. As far as this mosque is concerned, therefore, the Mission found no basis for such an allegation. However, the Mission is unable to make a determination regarding the allegation in general nor with respect to any other mosque that was attacked by the Israeli armed forces during the military operations.

D. Misuse of medical facilities and ambulances

1. Use of hospitals for military purposes

466. The Government of Israel alleges that

> Hamas systematically used medical facilities, vehicles and uniforms as cover for terrorist operations, in clear violation of the Law of Armed Conflict. This included the extensive use of ambulances bearing the protective emblems of the Red Cross and

[319] See "The hidden dimension of Palestinian war casualties…".

[320] "The operation in Gaza…", paras 184. On the destruction of civilian houses by the Israeli armed forces, see chap. XIII.

[321] "The operation in Gaza…", para. 164. The Mission notes that there is no mention of which mosque in Jabaliyah the pictures allegedly refer to nor of the date on which the weapons cache was found and the pictures taken.

[322] "Fighters' Talk" testimonies, pp. 4-5.

> Crescent … and the use of hospitals and medical infrastructure as headquarters, situation rooms, command centres and hiding places.[323]

467. As described in detail in chapter IX, the Mission investigated the attacks against al-Quds hospital in Tal el-Hawa, one of the hospitals which were allegedly used for military purposes by Palestinian armed groups. This hospital was directly hit by white phosphorous shells and at least one high explosive shell on 15 January 2009. The Mission conducted extensive interviews with al-Quds hospital staff and others who were in the area at the time of the attack and concluded that it was unlikely that there was any armed presence in any of the hospital buildings at that time. The Mission also investigated the attacks against al-Wafa Hospital in eastern Gaza City. As in the case of al-Quds hospital, after hearing credible testimony from doctors at that hospital, the Mission excluded the possibility that there were combatants inside the hospital at the time of the attack. However, the Mission did not make any findings with respect to the possible presence of Palestinian combatants in the surroundings of the hospital.

468. In its report, the Government of Israel states that Hamas used two units and a ground-floor wing of al-Shifa hospital, the largest in the Gaza Strip, as a military base.[324] As its sources, it cites an interview with a "Hamas activist" captured by Israel and an Italian newspaper article,[325] which in turn bases this assertion on a single anonymous source. The Mission did not investigate the case of al-Shifa hospital and is not in a position to make any finding with regard to these allegations.

469. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations made by the Israeli Government.

2. Ambulances

470. The Government of Israel alleges that "Hamas made particular use of ambulances, which frequently served as an escape route out of a heated battle with IDF forces."[326]

471. The Mission investigated cases in which ambulances were denied access to wounded Palestinians. Three cases in particular are described in chapter XI: the attempts of the Palestinian Red Crescent Society (PRCS) to evacuate the wounded from the al-Samouni neighbourhood south of Gaza City after the attack on the house of Ateya al-Samouni and after the shelling of the house of Wa'el al-Samouni; the attempt of an ambulance driver to rescue the daughters of Khalid and Kawthar Abd Rabbo in Izbat Abd Rabbo; and the attempt of an ambulance driver to evacuate Rouhiyah al-Najjar after she had been hit by an Israeli sniper. In all three cases the Mission found, on the facts it gathered, that the Israeli armed forces must have known that there were no combatants among the people to be rescued or in the immediate vicinity.

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[323] "The operation in Gaza…", para. 171.

[324] Ibid., para. 172. "Ismail Haniyeh, the head of Hamas in the Gaza Strip, located his Southern Command centre in one of the Shifa Hospital units, while the senior leaders of Hamas stationed themselves in another unit."

[325] *Corriere della Serra*, "Così i ragazzini di Hamas ci hanno utilizzato come bersagli", 21 January 2009.

[326] "The operation in Gaza…", para. 176.

472. The Mission is aware of an interview reportedly given by an ambulance driver to an Australian newspaper, in which he describes how Palestinian combatants unsuccessfully tried to force him to evacuate them from a house in which they were apparently trapped. The same driver reportedly told the journalist that "Hamas made several attempts to hijack the ambulance fleet of al-Quds Hospital". He also describes how the PRCS ambulance teams managed to avert this misuse of ambulances. According to this report, relied on by the Israeli Government, the attempts of Palestinian combatants to exploit ambulances as shield for military operations were not successful in the face of the courageous resistance of the PRCS staff members.[327]

473. This is consistent with the statements of representatives of the Palestinian Red Crescent Society in Gaza who, in interviews with the Mission, denied that their ambulances were used at any time by Palestinian combatants. Finally, in a submission to the Mission, Magen David Adom stated that "there was no use of PRCS ambulances for the transport of weapons or ammunition … [and] there was no misuse of the emblem by PRCS."[328]

474. While it is not possible to say that no attempts were ever made by any armed groups to use ambulances during the military operations, the Mission has substantial material from the investigations it conducted and the enquiries it made to convince it that, if any ambulances were used by Palestinian armed groups, it would have been the exception, not the rule. None of the ambulance drivers that were directly interviewed by the Mission reported any attempt by the armed groups to use the ambulances for any ulterior purpose. Moreover, of the ambulance staff members and their volunteer assistants that were killed or injured in the course of their duties, none was a member of any armed groups, so far as the Mission is aware.

E. Forcing civilians to remain in an area for the specific purpose of sheltering that area or forces in that area from attack

475. As discussed in more detail in other parts of the report, the Mission asked numerous witnesses in Gaza why they had stayed in their homes in spite of the shelling, bombing and Israeli ground invasion. They stated that they had decided to stay put either because they had experienced previous incursions and, based on past experience, did not think they would be at risk as long as they remained indoors[329] or because they had no safe place to go.[330] In additional, some witnesses stated that they had chosen to stay because they wished to watch over their homes and property.[331] The Mission did not find any evidence of civilians being forced to remain in their houses by Palestinian armed groups.

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[327] Ibid., para. 177-179.

[328] Communication by Magen David Adom to the Mission, 9 August 2009. Magen David Adom is Israel's national emergency medical, disaster, ambulance and blood bank service. It is a member of the International Federation of Red Cross and Red Crescent Societies and has a long-standing cooperation with the Palestinian Red Crescent Society. That no PRCS ambulances had been used to transport weapons or fighters was also stated forcefully by a Magen David Adom representative to representatives of the Mission in Geneva on 22 July 2009.

[329] Mission interview with Khaled Abd Rabbo.

[330] See chap. IX.

[331] Interview with Abbas Ahmad Ibrahim Halawa, 3 June 2009 (see chap. XIV on the case of Abbas Ahmad Ibrahim Halawa).

476. The Mission's attention has been drawn to a well-known incident in which women and children followed calls to gather on the roof of the house of a Palestinian man who had been informed by the Israeli authorities that his house would be targeted. This incident has been documented in video footage in the public domain[332] and is referred to in submissions received by the Mission as evidence of the use of human shields. The Mission notes, however, that the incident occurred in 2007. No such incidents are alleged by the Israeli Government with regard to the military operations that began on 27 December 2008. The Mission received no reports of such incidents from other sources. On the contrary, in one case investigated by the Mission,[333] a Hamas official received a phone call from the Israeli armed forces to the effect that his house would soon be targeted. He evacuated the house with his family and alerted the neighbours to the imminent threat so that they, too, were able to leave their homes before the missile did indeed strike.

477. The Mission is also aware of the public statement by Mr. Fathi Hammad, a Hamas member of the Palestinian Legislative Council, on 29 February 2009, which is adduced as evidence of Hamas' use of human shields. Mr. Hammad reportedly stated that

> … the Palestinian people has developed its [methods] of death seeking. For the Palestinian people, death became an industry, at which women excel and so do all people on this land: the elderly excel, the mujahideen excel and the children excel. Accordingly, [Hamas] created a human shield of women, children, the elderly and the mujahideen, against the Zionist bombing machine.[334]

478. Although the Mission finds this statement morally repugnant, it does not consider it to constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack. The Government of Israel has not identified any such cases.

F. Mingling with the civilian population to shield combatants against attack

479. When military operations take place in areas in which civilians are present, the importance of military dress and distinctive signs to distinguish combatants from civilians is all the greater. The Mission notes that only one of the incidents it investigated clearly involved the presence of Palestinian combatants. In that incident, the witness told the Mission that three fighters trapped in his neighbour's house were "wearing military camouflage and headbands of the al-Qassam Brigades".[335]

480. Reports on the military operations by NGOs suggest that in general members of Palestinian armed groups did not wear military uniforms. One report states that after the destruction caused by the Israeli air strikes at the start of the military operations, members of al-

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[332] See http://switch3.castup.net/cunet/gm.asp?ai=58&ar=StandingOnRoof-V&ak=null.

[333] See the case of Mr. Abu Askar in chapter X.

[334] "The operation in Gaza…", para. 186. A video recording of this speech is available at http://www.youtube.com/watch?v=ArJbn-lUCh4.

[335] See the case of Mr. Majdi Abd Rabbo in chapter XIV.

Qassam Brigades abandoned military dress and patrolled streets "in civilian clothes".[336] A second report states that members of the Palestinian armed groups "also mixed with the civilian population, although this would be difficult to avoid in the small and overcrowded Gaza Strip, and there is no evidence that they did so with the intent of shielding themselves".[337]

481. Finally, on this issue, it is relevant to mention that the Israeli Government has produced no visual or other evidence to support its allegation that Palestinian combatants "mingle routinely with civilians in order to cover their movements".[338]

G. Factual findings

482. On the basis of the information it gathered, the Mission finds that there are indications that Palestinian armed groups launched rockets from urban areas. The Mission has not been able to obtain any direct evidence that this was done with the specific intent of shielding the rocket launchers from counterstrokes by the Israeli armed forces. The Mission also notes, however, that Palestinian armed groups do not appear to have given Gaza residents sufficient warning of their intention to launch rockets from their neighbourhoods to allow them to leave and protect themselves against Israeli strikes at the rocket launching sites. The Mission notes that, in any event, given the densely populated character of the northern half of the Gaza Strip, once Israeli forces gained control of the more open or outlying areas during the first days of the ground invasion, most -- if not all -- locations still accessible to Palestinian armed groups were in urban areas.

483. The Mission finds that the presence of Palestinian armed fighters in urban residential areas during the military operations is established. On the basis of the information it gathered, the Mission is unable to form an opinion on the exact nature or the intensity of their combat activities in urban residential areas that would have placed the civilian population and civilian objects at risk of attack. While reports reviewed by the Mission credibly indicate that members of Palestinian armed groups were not always dressed in a way that distinguished them from civilians, the Mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from attack.[339]

484. From the information it gathered, the Mission does not discount the use of booby traps by the Palestinian armed groups. The Mission has no basis to conclude that civilian lives were put at risk, since none of the reports records the presence of civilians in or near the houses that were allegedly booby-trapped.

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[336] "Gaza's unfinished business…", p. 8. This report also appears to suggest that members of al-Qassam Brigades were at least in part engaged in law enforcement and internal security functions rather than in combat with the Israeli armed forces.

[337] *Israel/Gaza: Operation "Cast Lead": 22 days…*

[338] "The operation in Gaza…", para. 186.

[339] It has also been reported that specialist Israeli troops operated in Gaza during the military operations in civilian attire to liaise with informants and as *francs-tireurs;* Jane's Sentinel Services, Country Risk Assessments – Israel, 30 January 2009.

485. On the basis of its own investigations and statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot discount the possibility that Palestinian armed groups were active in the vicinity of such facilities.

486. The Mission is unable to make any determination on the general allegation that Palestinian armed groups used mosques for military purposes. It notes that, in the one incident it investigated of an Israeli attack on a mosque, it found no indication that the mosque was so used.

487. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities and that ambulances were used to transport combatants or for other military purposes.

488. On the basis of the information it gathered, the Mission found no indication that the civilian population was forced by Hamas or Palestinian armed groups to remain in areas under attack from the Israeli armed forces.

H. Legal findings

489. Customary international humanitarian law establishes that all "parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."[340]

490. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.[341] Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.[342]

491. These rules of customary international law are reflected in article 57 (1) of Additional Protocol I: "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects." The following paragraphs of article 57 set forth the specific precautions to be taken by a party launching an attack.[343]

492. In addition to the general duty to take constant care to spare the civilian population in the conduct of military operations, international humanitarian law establishes a specific prohibition against the use of civilians as human shields. Article 28 of the Fourth Geneva Convention specifically addresses this issue: "The presence of a protected person may not be used to render certain points or areas immune from military operations". This is reinforced by article 51 (7) of Additional Protocol I:

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[340] *Customary International Humanitarian Law…*, rule 22.

[341] Ibid., rule 23.

[342] Ibid., rule 24.

[343] See chap. IX.

> The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

These provisions reflect rules of customary law.[344]

493. The Mission finds it useful to clarify what is meant, from a legal perspective, by using civilians or a civilian population as a human shield. Parties to a conflict are not permitted to use a civilian population or individual civilians in order to render certain points or areas immune from military operations. It is not in dispute that both Palestinian armed groups and Israeli forces were fighting within an area populated by civilians. Fighting within civilian areas is not, by itself, sufficient for a finding that a party is using the civilian population living in the area of the fighting as a human shield. As the words of article 57 (1) show ("shall not be used to render", "in order to attempt to shield"), an intention to use the civilian population in order to shield an area from military attack is required.

494. From the information available to it, the Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or forced civilians to remain within the vicinity of the attacks.

495. The reports received by the Mission suggest that it is likely that the Palestinian armed groups did not at all times adequately distinguish themselves from the civilian population among whom the hostilities were being conducted. Their failure to distinguish themselves from the civilian population by distinctive signs is not a violation of international law in itself, but would have denied them some of the legal privileges afforded to combatants. What international law demands, however, is that those engaged in combat take all feasible precautions to protect civilians in the conduct of their hostilities. The Mission found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. It can, therefore, not find a violation of the obligation not to endanger the civilian population in this respect.

496. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks - whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza - close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. This would have constituted a violation of the customary rules of international humanitarian law referred to above. It would also have constituted a violation of the right to life and physical integrity of the civilians thereby endangered.

497. Although the situations investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, the Mission cannot exclude that this might

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[344] *Customary International Humanitarian Law…*, rule 97.

have occurred in other cases. As far as hospitals and United Nations facilities are concerned, the Mission found that it could not exclude that Palestinian armed groups engaged in combat activities in the vicinity of these protected sites. The Mission wishes to emphasize that the launching of attacks from or in the vicinity of civilian buildings and protected areas are serious violations of the obligation on the armed groups to take constant care to protect civilians from the inherent dangers created by military operations.

498. The Mission asked the Gaza authorities to provide information on the sites from where the Palestinian armed groups had launched attacks against Israel and against the Israeli armed forces in Gaza. The Mission similarly asked whether, to their knowledge, civilian buildings and mosques had been used to store weapons. In their response, the Gaza authorities stated that they had no information on the activities of the Palestinian armed groups or about the storage of weapons in mosques and civilian buildings. The Mission does not find this response to be entirely plausible. The Mission notes, more importantly, that, whether the answer reflects the reality or not, the Gaza authorities are obliged under international law to control the activities of armed groups operating on the territory under their control.[345] If they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population by conducting hostilities in a manner incompatible with international humanitarian law, they would bear responsibility for the damage done to the civilians living in Gaza.

IX. OBLIGATION ON ISRAEL TO TAKE FEASIBLE PRECAUTIONS TO PROTECT CIVILIAN POPULATION AND CIVILIAN OBJECTS IN GAZA

499. This chapter focuses on incidents where the Mission considered compliance by Israel with its obligations under the Fourth Geneva Convention and customary rules of international law in relation to taking feasible precautions. In particular, it considers whether everything feasible was done to verify that objectives to be attacked were neither civilians nor civilian objects and were not subject to special protection, whether all feasible precautions were taken in respect of the choice of weapons used and whether the military advantage sought was excessive in relation to the expected loss of civilian life or civilian objects. Before entering into specific incidents, it considers the obligation to provide warnings in relation to attacks.

A. Warnings

500. The Israeli Government has stated that it took the following steps to warn the civilian population of Gaza:[346]

- The Israeli armed forces made 20,000 calls on 27 December and 10,000 on 29 December 2008;
- 300,000 warning notes were dropped over the whole of the Gaza Strip on 28 December;
- 80,000 leaflets were dropped in Rafah on 29 December;

[345] See chap. IV.

[346] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

- In the context of the beginning of ground operations on 3 January, 300,000 leaflets were dropped in the entire Gaza Strip, especially in the northern and eastern parts;

- On 5 January, 300,000 leaflets were dropped in Gaza City, Khan Yunis and Rafah;

- In total some 165,000 telephone calls were made throughout the military operations;[347]

- In total some 2,500,000 leaflets were dropped.[348]

501. In addition to these measures, the Israeli Ministry of Foreign Affairs explains that the telephone calls were both direct calls and pre-recorded messages, that it made radio broadcasts, and that it developed a practice of dropping apparently light explosives on rooftops (referred to by some as "roof-knocking").[349]

502. The Mission has reviewed the text of several of the leaflets dropped by the Israeli armed forces and listened to all of the messages recorded on the website of the Israeli Ministry of Foreign Affairs.[350] It accepts that Israel dropped leaflets, made phone calls, left recorded messages and dropped smaller explosives on roofs as stated by the Israeli Government.

1. Telephone calls

503. The Mission received first-hand information about some of these methods in its interviews with witnesses in Gaza. In the report on the attack at al-Fakhura Street junction (see chap. X), the Mission notes the credible account of Mr. Abu Askar of the telephone warning he received as a result of which he was able to evacuate up to 40 people from his and other houses. He received that call at around 1.45 a.m. and Israeli forces destroyed his house with a missile strike seven minutes later.

504. The Mission is also aware of circumstances in which telephone warnings may have caused fear and confusion. Al-Bader Flour Mills Co. (see chap. XIII) received two recorded messages indicating the mill was to be destroyed, but neither of these was acted upon. Five days later the mill was struck in the early hours of the morning with no warning whatsoever. The owners of the business and their staff suffered anxiety by having to evacuate the premises on two occasions as a result of receiving such messages when no strikes took place.

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[347] "The operation in Gaza…", para. 264.

[348] Ibid.

[349] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm .With regard to roof-knocking, see, for instance, Cordesman, op. cit., p. 13 (the Israeli armed forces "developed small 10-20 kilogram bombs that could be used as both warning shots – sometimes referred to as knocking on the roof"…).

[350] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

505. Israel's Ministry of Foreign Affairs states that more than 165,000 telephone calls were made issuing warnings. The Mission has received information that there were at least two types of telephone calls. One was a direct and specific warning, as was received by Mr. Abu Askar. The other was a more generic, recorded message, such as the type received by al-Bader Flour Mills. The Mission does not know and, as far as it can determine, Israel has not indicated what proportion of the 30,000 telephone calls was pre-recorded and more generic and what proportion was specific.

2. Roof-knocking

506. The Israeli Government describes that in certain circumstances its armed forces fired "warning shots from light weapons that hit the roofs of the designated targets"—a practice referred to as roof-knocking. The Israeli Government indicates that this practice was used when it appeared that people had remained in their houses despite being given some previous warning.[351] It is not clear whether this was the only circumstance in which this method was employed. The Mission heard that in the al-Daya incident (see chap. XI) the Israeli Government claims to have made such a warning shot, albeit to the wrong house.[352] The Mission also saw in the Sawafeary house (see chap. XIII) that a missile had penetrated the rear of the house on the wall near the ceiling, gone through an internal wall and exited through the wall at the front of the house near the windows. At the time (around 10 p.m. on 3 January 2009) there were several family members in the house, who happened to be lying down. The Mission cannot say what size of weapon was used on this occasion, although it was sufficiently powerful to penetrate three walls, or whether it was intended as a warning.

3. Radio broadcasts and leaflet dropping

507. The radio broadcasts that the Mission listened to appeared to be generic. For example, on 3 January 2009 a radio broadcast made the following points:

- Gaza residents are welcome to receive food and medical supplies, delivered via the Rafah, Karni and Kerem Shalom passages, at the UNRWA centres throughout the Gaza Strip;

- Israel calls on the population to move to city centres for its own safety.[353]

This warning preceded the ground phase of the military operations. Its language clearly indicates that UNRWA centres should be regarded as places of safety and civilians may collect food from them.

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[351] "The operation in Gaza…", para. 264.

[352] Note that a witness has indicated that an elderly man was killed when struck by a missile some 10 minutes before the al-Daya house was struck. The Mission has also noted significant doubts on the version of events presented by the Israeli Government on this case, including on the issue of the warning shot.

[353] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

508. Leaflets dropped appear to fall into a number of categories. One leaflet did not deal with attacks on a particular place but on the storage of weapons and ammunition:

> To the residents of the Gaza Strip;
>
> - The IDF will act against any movements and elements conducting terrorist activities against the residents of the State of Israel;
> - The IDF will hit and destroy any building or site containing ammunition and weapons;
> - As of the publication of this announcement, anyone having ammunition and/or weapons in his home is risking his life and must leave the place for the safety of his own life and that of his family;
> - You have been warned.[354]

509. In some areas specific warnings were sometimes given. One example of a sufficiently specific warning is that issued to the residents of Rafah:

> Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defense Forces (IDF) will attack the areas between Sea Street and till the Egyptian border…
>
> All the Residents of the following neighbourhoods: Block O – al-Barazil neighbourhood – al-Shu'ara'- Keshta- al-Salam neighbourhood should evacuate their houses till beyond Sea Street. The evacuation enters into force from now till tomorrow at 8 a.m.
>
> For your safety and for the safety of your children, apply this notice.[355]

4. Factual findings

510. Whether a warning is deemed to be effective is a complex matter depending on the facts and circumstances prevailing at the time, the availability of the means for providing the warning and the evaluation of the costs to the purported military advantage.

511. Israel was in a strong position to prepare and issue effective warnings. The preparations for its military operations were "extensive and thorough."[356] Israel had intimate knowledge and

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[354] Ibid.

[355] "No safe place", report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States (30 April 2009), p. 241. Note a similarly specific kind of warning issued to the residents of al-Shujaeiyah ("The operation in Gaza…", footnote 225).

[356] Prime Minister Olmert, press conference on 27 December 2008, available at: http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/PM_Olmert_press_briefing_IDF_operation_Gaza_Strip_27-Dec-2008.htm.

sophisticated up-to-date intelligence in its planning. It had the means to use the landlines and mobile telephone networks. It had complete domination of Gaza's airspace. In terms of the practical capabilities of issuing warnings, it is perhaps difficult to imagine more propitious circumstances.

512. The Mission accepts that the element of surprise that was sought in the initial strikes might well have provided a degree of justification for not giving any advance notice of the time the strikes would take place or the buildings that would be struck.[357]

(a) The question of whether civilians could be expected to respond to the warnings to leave their homes

513. The Mission recognizes that leaflets dropped from the air can have some direct benefit in assisting the civilian population to get out of harm's way. The effectiveness will depend on three considerations: the clarity of the message, the credibility of the threat and the possibility of those receiving the warning taking action to escape the threat.

514. The Mission has already cited one kind of leaflet which referred to the likelihood of attacks on locations storing weapons and ammunitions. At the beginning of the land-air phase of the operations, the Israeli armed forces also dropped leaflets and made broadcasts advising people to move towards city centres.

515. There had been an intense aerial campaign from 27 December 2008 until 3 January 2009 that had seen hundreds of buildings destroyed in built-up areas of city centres. Civilians not living in city centres were being asked to leave their homes to go to places that as far as they could reasonably assess were already in much more danger than they were in their own homes. In order for the warning to be effective there had to be an objective basis to believe that they would be safer elsewhere. The Mission does not consider that such an objective evaluation could reasonably have been made by civilians in the Gaza Strip.

516. During its meetings with people in Gaza the Mission was told on several occasions of the sense that there was "nowhere to go". The nature of the attacks in the first week had caused deep shock. The widespread attacks created a dilemma not only about where to go but about whether it was safe to leave at all.

517. Even if in the minds of the Israeli armed forces it would have been safer, from 3 January onwards, for civilians to go to city centres, nothing that had happened in the preceding week could lead those civilians to the same conclusion given the widespread destruction of areas and buildings. The events that occurred in those locations after 3 January appear to support the view that going to the city centres offered little guarantee of safety.

[357] The recognition of a legitimate element of surprise does not necessarily mean that the Mission accepts the targets chosen were legally justifiable in the circumstances. That matter is dealt with in different parts of this report.

(b) Events in the city centre after the warning to go there was issued

518. On 3 January 2009 the attack on al-Maqadmah mosque took place in a built-up area in central Jabaliyah. Three days after the 3 January warning was given to move to central locations and attend United Nations centres there was the Israeli mortar attack immediately outside a large United Nations shelter killing at least 35 people in Jabaliyah at al-Fakhura Street.[358]

519. Following the attack in al-Fakhura Street, the Director of Operations in Gaza of UNRWA, John Ging, stated in a press conference on 7 January 2009: "There is nowhere safe in Gaza. Everyone here is terrorized and traumatized."[359]

520. On 15 January the UNRWA compound in Tal el-Hawa (Gaza City) was seriously damaged when it was struck by white phosphorous. Between 600 and 700 civilians were sheltering there at the time and were put in grave danger. The same day the nearby al-Quds hospital was struck directly by a number of missiles, including white phosphorous shells, again putting staff and patients in great danger (see sect. C below).

521. The day after the UNRWA compound was hit, John Ging repeated that what had happened there had happened throughout Gaza. He said that the United Nations and the civilian population were "all in the same boat" and that nobody could be said to be safe in Gaza.[360]

(c) The inference that those who did not go to the city centres must be combatants

522. The warning to go to city centres came at the start of the ground invasion. In the Mission's view it was unreasonable to assume, in the circumstances, that civilians would indeed leave their homes. As a consequence, the conclusion that allegedly formed part of the logic of soldiers on the ground that those who had stayed put had to be combatants was wholly unwarranted.[361] There are many reasons why people may not have responded. In several cases the Mission heard from witnesses about people who were physically disabled, too frail or deaf so that it was difficult or impossible to respond to the warning. In other cases, as outlined above, civilians who

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[358] The Mission concludes elsewhere that this attack was indiscriminate in nature (see chap. X).

[359] *The Daily Mail*, "Gaza's darkest day: 40 die as Israel bombs 'safe haven' UN school", 7 January 2009.

[360] Press conference on humanitarian situation in Gaza (16 January 2009), available at http://www.un.org/News/briefings/docs/2009/090116_Gaza.doc.htm. See also "No safe place", p. 74.

[361] See, for example, statements made by soldiers in a seminar in Tel Aviv: "At first we were told to break into a house… Go upstairs and shoot every person we see… The upper echelons said this was allowed because anyone remaining in this area, inside Gaza City, is incriminated, a terrorist, who did not escape."

Transcript of seminar from Channel 10 News on file with Mission. See also Breaking the Silence, *Soldiers' Testimonies from Operation Cast Lead, Gaza 2009*, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf. Throughout the report soldiers indicate that the rules of engagement employed meant that no consideration was given to the idea that there may be "innocents" and that in the case of any doubt whatsoever soldiers were to shoot. ("That too was mentioned, that if we see something suspect and shoot, better to hit an innocent that hesitate to target an enemy", p. 50; "if anything arouses our suspicion, we mustn't hesitate because the enemy hides among civilians", p. 51.) Note also the discussion on "wet entry" and "dry entry" (pp. 14-15. This discussion indicates that, in approaching a house, missiles, tank fire, grenades and machine gun fire would be used. This method of approach is borne out in the case of the Juha family. Family members were fired upon when congregating in a room downstairs in their house in Zeytoun. See chap. XI.

could have responded may have had legitimate reasons not to do so. The issuance of warning is one measure that should be taken wherever possible. The fact that a warning was issued does not, however, relieve a commander or his subordinates from taking all other feasible measures to distinguish between civilians and combatants.[362]

523. Israeli armed forces had created the circumstances in which civilians could not reasonably believe the city centres were safe. An effective warning had to make clear why, even in those circumstances, it was better for civilians to leave than to stay in their homes.

5. Israel's review

524. According to press reports,[363] military sources, including representatives from the military prosecution's international law department, have agreed that more specific information, such as more accurate timetables for strikes to be carried out and escape routes, should be given in warnings. The press report goes on to say: "Fliers distributed by the IDF from now on will also be more detailed in order to make it clear to civilians that their lives are in danger and give them a chance to flee. It was also determined in the hearing that the military made multiple efforts to prevent civilian casualties in January's offensive."

525. The Mission cannot confirm if such press reports are accurate but notes two things. Firstly, any improvements in practice in this regard are to be welcomed. Secondly, the changes, if reported correctly, appear to address the matters that have been touched on in this section. Those were matters that could not be considered in any way as unforeseeable in the circumstances at the time the warnings were in fact issued. While improvements are welcome in this case, it would also appear to indicate that circumstances almost certainly permitted much better warnings to be given than was the case.

6. Legal findings

526. Chapter IV of Additional Protocol I to the Geneva Conventions addresses the issue of precautionary measures that must be taken. Article 57 (1) states that "in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects."

527. Article 57 (2) (c) requires that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

528. The Mission regards both these provisions to be norms of customary international law.[364] In addition, Israel appears to consider itself bound by the obligation to provide effective warnings under customary law.

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[362] Note in particular the testimony of Prof. Michael Newton to the Mission at the Geneva public hearings on 7 July 2009. See http://www.un.org/webcast/unhrc/archive.asp?go=090707.

[363] See *Ynetnews*, "IDF to give better warnings before attacks", 29 September 2007.

[364] According to ICRC, article 57 (1) codifies the principle of precautions in attack and article 57 (2) (c) is a rule of customary international law applicable to international and non-international armed conflict. *Customary International Humanitarian Law*..., pp. 51 and 62.

529. The determination of whether the circumstances permit a warning must be made in the context of a good-faith attempt to adhere to the underlying duty to minimize death and injury to civilians or damage to civilian objects. The key limitation on the application of the rule is if the military advantage of surprise would be undermined by giving a warning. The same calculation of proportionality has to be made here as in other circumstances. The question is whether the injury or damage done to civilians or civilian objects by not giving a warning is excessive in relation to the advantage to be gained by the element of surprise for the particular operation. There may be other circumstances when a warning is simply not possible.

530. Article 57 (2) (c) requires the warning to be effective. The Mission understands by this that it must reach those who are likely to be in danger from the planned attack, it must give them sufficient time to react to the warning, it must clearly explain what they should do to avoid harm and it must be a credible warning. The warning also has to be clear so that the civilians are not in doubt that it is indeed addressed to them. As far as possible, warnings should state the location to be affected and where the civilians should seek safety. A credible warning means that civilians should be in no doubt that it is intended to be acted upon, as a false alarm of hoax may undermine future warnings, putting civilians at risk.

(a) Pre-recorded generic telephone calls

531. As regards the generic nature of some pre-recorded phone messages, the Mission finds that these lacked credibility and clarity, and generated fear and uncertainty. In substance, there is little difference between telephone messages and leaflets that are not specific. The Mission takes the view that pre-recorded messages with generic information may not be considered generally effective.

(b) Warning shots delivered to roofs

532. The Mission is doubtful whether roof-knocking should be understood as a warning as such.[365] In the context of a large-scale military operation including aerial attacks, civilians cannot be expected to know whether a small explosion is a warning of an impending attack or part of an actual attack. In relation to the incident at the Sawafeary house recounted above, the Mission cannot say for certain if this missile was meant to warn or to kill. It notes that, if this was meant as a warning shot, it has to be deemed reckless in the extreme.

533. The legal requirement is for an effective warning to be given. This means that it should not require civilians to guess the meaning of the warning. The technique of using small explosives to frighten civilians into evacuation, even if the intent is to warn, may cause terror and confuse the affected civilians.

534. The Mission does not have sufficient information to assess the accuracy of the Israeli Government's claim that the warning shot method was used only when previous warnings (leaflets, broadcasts or telephone calls) had not been acted upon. However, in many circumstances it is not clear why another call could not be made if it had already been possible to

[365] The Mission notes and agrees with a similar position set out by Diakonia in its report on Operation Cast Lead of 30 June 2009, p. 9.

call the inhabitants of a house. The Mission notes that these warnings all took place in situations where the view appears to have been reached that those in the house are civilians or predominantly civilians. If the choice is between making another call or firing a light missile that carries with it a significant risk of killing those civilians, the Mission is not convinced that it would not have been feasible to make another call to confirm that a strike was about to be made.

535. Finally, apart from the issue of fear and ambiguity, there is the question of danger. The idea that an attack, however limited in itself, can be understood as an effective warning in the meaning of article 57 (2) (c) is rejected by the Mission.

(c) Leaflets

536. The leaflets and radio broadcasts that told people to leave their homes and head towards city centres were in most cases lacking in specificity and clarity: people could not be certain that the warnings were directed at them in particular, since they were being issued as far as they could tell to almost everyone, and they could not tell when they should leave since there was rarely an indication of when attacks would take place. Furthermore, in the circumstances created by the Israeli armed forces, people could not reasonably be expected to flee to what appeared to be even less safe places on the basis of such non-specific warnings. Therefore, the Mission does not consider such warnings to have been the most effective possible in the circumstances and, indeed, doubts that many were effective at all.

7. Conclusions

537. While noting the statements of the significant efforts made by the Israeli armed forces to issue warnings, the sole question for the Mission to consider at this point is whether the different kinds of warnings issued can be considered as sufficiently effective in the circumstances to constitute compliance with article 57 (2) (c).

538. The Mission accepts that the warnings issued by the Israeli armed forces in some cases encouraged numbers of people to flee and get out of harm's way in respect of the ground invasion, but this is not sufficient to consider them as generally effective.

539. The Mission considers that some of the leaflets with specific warnings, such as those that Israel indicates were issued in Rafah and al-Shujaeiyah, may be regarded as effective. However, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of this military campaign, meet the threshold of effectiveness.

540. The Mission regards some specific telephone calls to have provided effective warnings but treats with caution the figure of 165,000 calls made. Without sufficient information to know how many of these were specific, it cannot say to what extent such efforts might be regarded as effective.

541. The Mission does not consider the technique of firing missiles into or on top of buildings as capable of being described as a warning, much less an effective warning. It is a dangerous practice and in essence constitutes a form of attack rather than a warning.

542. The Mission is also mindful of several incidents it has investigated where civilians were killed or otherwise harmed and met with humiliation and degrading treatment by Israeli soldiers, while fleeing from locations about which some form of warning was issued. The effectiveness of the warnings has to be assessed in the light of the overall circumstances that prevailed and the subjective view of conditions that the civilians concerned would take in deciding upon their response to the warning.

B. UNRWA compound, Gaza City

543. The field office compound of UNRWA is situated in the southern Rimal area of Gaza City. On the morning of 15 January 2009 it came under sustained shelling from the Israeli armed forces. At least three high explosive shells and seven white phosphorous container shells struck the workshop and warehouse area of the compound causing massive damage as a result of ensuing fires. Five of the shells exploded in the compound including all three high explosive shells. Two complete container shells of white phosphorous were retrieved. Five additional white phosphorous shells were retrieved but not in their complete form. These five shells deposited large amounts of the phosphorus wedges contained in the shells into the compound, if not in fact all of the wedges. At least three shells hit the Gaza Training Centre and caused light injuries to one staff member. At the time of the attack there were between 600 and 700 civilians sheltering in the compound. The remaining shells hit the area in and around the fuel depot and workshop.

544. The Mission has inspected the site and interviewed several of the people who were present at the time. It has also had access to detailed written materials produced by the UNRWA office in relation to its inquiries into the incident. It has furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions to strike within the UNRWA compound and the direct military advantage pursued by their use under the circumstances, but has received no reply.

545. The Mission will not here repeat all of the details of the attack that are recounted accurately in a number of other reports.[366] It will, however, join with others in noting the bravery of two staff members in particular in dealing with the white phosphorous in close proximity to thousands of litres of fuel stored in tankers. Had the fuel depot exploded, it would have caused untold deaths and damage. The swift and courageous actions of these two people at huge personal risk may have prevented a disaster of gigantic proportions and their efforts should be so recognized.

546. In this particular case, the Mission's interest lay in what was known by the Israeli armed forces at the time, what steps were feasible to reduce the massive risk to civilian life and why were these steps not taken.

[366] For instance, Secretary-General's summary of the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 and reports by Human Rights Watch (*Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 41 ff) and Amnesty International (*Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction* (London, 2009), p. 31).

1. The immediate context

547. Shelling had been ongoing since the night of 14 January. The areas of Tal el-Hawa and southern Rimal had come under attack. There had been shelling close to the UNRWA compound at various points during the night. In the morning of 15 January staff in the UNRWA compound were instructed to remain inside as much as possible.

2. The risks

548. The UNRWA compound contained, among other things, a substantial fuel depot. The depot has an underground storage facility, which at the time had about 120,000 litres of fuel. Fuel tankers parked above ground had around 49,000 litres of fuel in them. In addition to the obvious and immediate risk of fire in these circumstances, the compound also stored large quantities of medical supplies, food, clothing and blankets in the warehouses.

549. Conservative estimates suggest that between 600 and 700 civilians were taking shelter in the compound at that time.

550. The principal and immediate risk was, therefore, of what might have been a catastrophic fire caused by the ignition of the fuel in the direct vicinity of the site where hundreds of civilians had sought shelter directly in response to the Israeli warnings of 3 January 2009.

3. The strikes

551. The Mission considers the witnesses it interviewed about this incident to be reliable and credible. After careful analysis of the information it received, the Mission finds that the following can be established with a high degree of certainty:

552. Three high explosive shells hit the compound. Two landed on the Gaza Training Centre and one landed in the car park. Complete or substantial parts of seven white phosphorous container shells landed in the compound. The wedges in these container shells were either discharged totally or very substantially in the compound. One shell, which was seen directly by a senior international staff member with many years' of active military service, detonated on impact or only a very short distance from the ground.

553. One high explosive shell struck the Gaza Training Centre's yard and was witnessed by at least two guards and left a crater.

554. Two high explosive shells landed on the roof of the education building. There are two large holes in the roof and shrapnel all around.

555. A white phosphorous container shell struck the Project and Logistics Division Building.

556. One white phosphorous container shell hit the back of a vehicle in the spare parts store, coming through a wall on the south side at a high point. This is believed to have caused the fire to start in the workshop area.

557. One white phosphorous container shell or a substantial part thereof came through a wire fence at the top of the southern boundary of the compound near the spare parts and workshop area, causing damage to a vehicle there.

558. One white phosphorous container shell landed in the workshop embedding itself in the concrete.

559. One white phosphorous container shell or a substantial part thereof came through the roof of the painting bay.

560. One white phosphorous container shell or a substantial part thereof struck a manhole cover near small warehouses storing food.

561. One white phosphorous container shell struck near a generator on concrete ground.

562. Seven of the ten strikes occurred in an area smaller than a standard football pitch. The whole area, including the three other strikes on or near the Gaza Training Centre, would be no more than two football pitches.

563. The precise moment when each of the strikes occurred cannot be stated with certainty but all occurred between 8 a.m. and 12 noon.

4. Communications and responses

564. For the purposes of liaison with the Israeli authorities, the counterpart of the United Nations Department of Safety and Security (DSS) is the Coordinator of Government Activities in the Territories (COGAT). This is a unit within the Israeli Ministry of Defense. In Gaza the day-to-day liaison and coordination activity with COGAT is carried out by the Coordination and Liaison Administration (CLA), located on the Israeli side of the Erez crossing. CLA is the military unit responsible for the coordination of access to and from Gaza in connection with the facilitation of civilian and humanitarian needs. DSS at the time routinely liaised with COGAT through CLA.

565. From 27 December until 2 January DSS communicated with COGAT/CLA by telephone and by e-mail. The Mission is in possession of the names of the Israeli officers with whom such contact was established and maintained. In the second phase of the conflict, COGAT intervention increased and new personnel added to their capacity. Two new contacts were added to those already established.

566. The most comprehensive list of relevant data was forwarded to COGAT/CLA on 3 April 2008, including all United Nations installations. As of 29 December 2008 COGAT/CLA had been provided with an updated list of the coordinates of all United Nations offices, international residences and pre-identified possible emergency shelters. Throughout the military operations DSS was in almost daily communication, providing detailed information on coordinates of relevant emergency shelters and distributions centres. The Mission has been shown the relevant log of all such communications.

567. On the day in question DSS made at least seven phone calls to COGAT/CLA counterparts between 8.14 a.m. and 1.45 p.m. These conversations addressed, for instance, the proximity of

Israeli fire, the damage done to UNRWA installations, requests that fire be redirected or withdrawn, and coordination for the removal of fuel tankers.

568. Despite calls beginning at 8.14 a.m., it does not appear that COGAT/CLA was able to confirm that contact had been established with the relevant brigade until 11.06 a.m.

569. Other information available to the Mission shows that the Deputy Director of Operations of UNRWA, who was in Jerusalem at the time was engaged in frequent calls to senior Israeli officials. He had received a call at 9 a.m. from John Ging, the Director of Operations at UNRWA, advising him of the shelling near the compound and had been asked to demand that the shelling be stopped by calling the Israeli armed forces' Humanitarian Coordination Centre (HCC) in Tel Aviv. He made a total of 26 calls to the head of HCC or to his assistant as well as to members of COGAT/CLA. He was assured on a number of occasions by the head of HCC that shelling had stopped, but it was clear when he relayed this message back to Gaza that shelling was continuing. The Deputy Director had warned of the immediate risk to the fuel depot and those seeking shelter.

5. Weapons used

570. Analysis of the shells used in the strikes that hit the UNRWA compound indicates clearly that at least seven shells were white phosphorous shells, three of which were complete and four of which were very substantial components of the shells. Military experts indicate that in all probability these shells were fired from a 155 mm Howitzer.

571. Three other missiles were determined clearly by UNRWA military experts to have been high explosive missiles.

6. The Israeli response

572. On 15 January the Israeli Defence Minister, Ehud Barak, said the attack had been a "grave error" and apologized, according to the United Nations Secretary–General, who had spoken with him earlier in a meeting in Tel Aviv. The same day the Israeli Prime Minister said that it was "absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it". The Israeli Welfare and Social Services Minister made subsequent statements suggesting there had been gunfire directed at Israeli troops from adjacent premises. He said it was shrapnel from the return fire that entered the UNRWA compound causing the blaze.[367]

573. On 22 April the summary of the conclusions of the Israeli armed forces' investigations reported as follows:

> … the IDF deployed a smoke screen in order to protect a tank force operating in the neighbourhood from Hamas anti-tank crews who had positioned themselves adjacent to the UNRWA headquarters. The smoke screen was intended to block the terrorists' field of view. Information received by the IDF shows that the smoke screen did assist in protecting the force and prevented precise anti-tank fire against

[367] http://www.jpost.com/servlet/Satellite?cid=1232292898771&pagename=JPArticle%2FShowFull.

> IDF forces. The smoke projectiles were fired at an area a considerable distance from the UNRWA headquarters, and were not intended to cause damage to either person or property. However, it appears that fragments of the smoke projectiles did hit a warehouse located in the headquarters, causing it to catch fire.
>
> During the incident, claims were also made that an explosive shell or shrapnel hit the UNRWA headquarters. The investigation showed that these were shells, or shell fragments that were fired at military targets within the battle zone.
>
> The damage caused to the UNRWA headquarters during the fighting in the Tel El-Hawwa neighbourhood is the unfortunate result of the type of warfare that Hamas forced upon the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations. These results could not be predicted.
>
> Nevertheless, it is clear that the forces did not intend, at any stage, to hit a UN facility. Following UN complaints that an explosive shell had hit the headquarters, the forces were ordered to cease firing explosive shells in the region in question. Following the receipt of reports about the fire in the warehouse, all firing in the area was stopped. The entry of fire-fighting trucks to the area was coordinated with the IDF in order to assist in extinguishing the fire.[368]

574. In its report of July 2009 on the military operations, the Israeli Government explains that the "primary rationale" for firing white phosphorous was to "produce a smokescreen to protect Israeli forces from the Hamas anti-tank crews operating adjacent to the UNRWA headquarters". The report goes on to assert:

> The IDF sought to maintain a safety distance of several hundred metres from sensitive sites, including the UNRWA compound. Despite the maintenance of a safety distance, some felt wedges and other components of the projectiles apparently landed in the compound after the release of felt wedges in the air. The IDF neither anticipated not intended this outcome.[369]

575. The Mission has a number of observations about the conclusions of the Israeli Government. First, it does not share the circumspect or indeed understated representation of the nature and extent of the strikes in the compound. There were ten strikes: three high explosive shells landed and exploded in the compound; seven white phosphorous container shells discharged completely or very substantially in the confines of a very limited space around particularly vulnerable areas of the UNRWA compound. This is not a matter of a limited number of wedges falling inside the compound or shrapnel or parts of shells landing in the compound as the shells exploded elsewhere. It is important to emphasize that we are dealing with shells exploding or discharging inside the compound in areas where hazardous material was stored.

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[368] http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm.

[369] "The operation in Gaza…", paras. 344 and 346.

576. Secondly, the claim that this result was neither intended nor anticipated has to be reviewed carefully. In the first place the Mission affirms the result to be reviewed is not fragments and wedges landing in the compound but ten shells landing and exploding inside the compound. It is difficult to accept that the consequences were not appreciated and foreseen by the Israeli armed forces.

577. Those in the Israeli army who deploy white phosphorous, or indeed any artillery shells, are expertly trained to factor in the relevant complexities of targeting, including wind force and the earth's curvature. They have to know the area they are firing at, possible obstacles in hitting the target and the other environmental factors necessary to ensure an effective strike. It is also clear that, having determined that it was necessary to establish a safety distance, the presence of the UNWRA installations was a factor present in the minds of those carrying out the shelling.

578. The question then becomes how specialists expertly trained in the complex issue of artillery deployment and aware of the presence of an extremely sensitive site can strike that site ten times while apparently trying to avoid it.

579. The Mission's scepticism that the result was not anticipated is confirmed by the fact that from around 8 a.m. on 15 January UNRWA officials began a series of calls to a number of officials explaining precisely what was going on. These calls were made to the appropriate people at COGAT/CLA as a result of prearranged coordination and further reinforced by the numerous calls by the Deputy Director of UNRWA to senior Israeli military officials in Tel Aviv.

580. In particular, the Israeli military officials were informed that shells had indeed struck inside the compound by the series of phone calls made by UNRWA officials.

581. The Mission is in possession of information that indicates a senior UNRWA official called the head of HCC in Tel Aviv and a number of his immediate subordinates several times. In particular a call was made at 10.31 a.m. by the official to the Israeli armed forces to explain that white phosphorous had landed in the compound and had set fire to the warehouse. He was told "by Tel Aviv" that the firing had stopped. To be clear, this means that by 10.30 a.m. at the latest channels of communication had been opened between Tel Aviv and those on the ground in Gaza City responsible for the firing of the shells, albeit not necessarily directly, but sufficient to be receiving reports of what was going on from Israeli troops on the ground.

582. At 10.30 a.m. staff at the UNRWA compound noted five white phosphorous container shells had discharged in the confines of the compound. At 10.40 a.m. the UNRWA official was again in direct communication with Tel Aviv explaining specifically that "the targeting is taking place in the vicinity of the workshop" and requiring that the Israeli armed forces desist immediately. In particular, he pointed out that what was required was a cessation of the firing for a sustained period of time to allow staff to bring the fire under control.

583. At 11.17 a.m. the same senior UNRWA official was informed in a phone call from UNRWA staff in the compound that a further two rounds had impacted "within the last ten minutes".

584. At 11.53 a.m., in a further telephone call, the senior UNRWA official indicated to the COGAT/CLA contact person that the firing had been unforgivable and unacceptable. He noted that efforts had been made since 09.30 a.m. to get the firing to stop and that UNRWA had been told in several calls that the firing had been ordered to be stopped at higher levels, yet it continued. The UNRWA official noted that it was incomprehensible that, with the amount of surveillance and geographic positioning system (GPS) information, the most vulnerable part of the compound had been repeatedly struck.

585. In all the circumstances the Mission rejects the Israeli armed forces' assertion to the effect that it was not anticipated that the shells would land in the compound. The Israeli armed forces were told what was happening. It no longer had to anticipate it. The Israeli armed forces' responses in Tel Aviv and in COGAT/CLA indicate quite clearly that they understood the nature and scale of what was happening. Their responses in particular indicate that orders had been given to stop the firing.

7. Factual and legal findings

586. The Mission considers that Israeli armed forces had all of the information necessary to appreciate the danger they were creating as a result of their firing at the UNRWA installations, in particular the fuel depot, and to the civilians gathered there. Orders were said to have been issued to cease firing in the vicinity of the UNWRA premises.

587. The Israeli Government's report cites with approval a passage from the report to the Prosecutor of the International Criminal Tribunal for the former Yugoslavia in relation to the bombing of the Federal Republic of Yugoslavia by the North Atlantic Treaty Organization (NATO) in 1998. The Mission has also considered that report. On the issue of intent it states:

> Attacks which are not directed against military objectives (particularly attacks directed against the civilian population) and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the actus reus for the offence of unlawful attack under article 3 of the ICTY Statute. The mens rea for the offence is intention or recklessness, not simple negligence. In determining whether or not the mens rea requirement has been met, it should be borne in mind that commanders deciding on an attack have duties:
>
> (a) To do everything practicable to verify that the objectives to be attacked are military objectives;
>
> (b) To take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or in any event to minimizing incidental civilian casualties or civilian property damage; and
>
> (c) To refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.[370]

[370] "Final report to the Prosecutor…", para. 28.

588. The Mission agrees that this passage correctly reflects both the nature of the intent required and the relevant duties of a commander.

589. Even if the Israeli armed forces were under fire from anti-tank missiles from Palestinian armed groups at the time, all of the information referred to above indicates that the commanders in question did not take all feasible precautions in the choice of methods and means of warfare with a view to avoiding or, in any event, to minimizing incidental civilian casualties or civilian property damage.

590. The Mission is not attempting to second-guess with hindsight the decisions of commanders. The fact is that the events in question continued over a period of some three hours. In these circumstances the Israeli armed forces were not confronted by surprise fire to which they had to respond with whatever materiel was available to them at the time. If they were faced with anti-tank missiles, that was hardly something of which they had been unaware for an appreciable time.

591. Statements made to the Mission by senior UNRWA international staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas. The Mission notes that official statements made on 15 January by Israel's Prime Minister had indicated with complete certainty that firing by Palestinian armed groups had occurred from within the UNRWA compound.[371] This was later contradicted and corrected to state that the armed groups occupied positions near to but outside the compound.[372] The Mission considers it important to record that the initial allegation was incorrect and this appears now to be accepted as such by the Israeli.

592. The Mission concludes that the Israeli commanders knew of the location of the UNRWA premises and indeed of the layout of the compound in terms of the most vulnerable areas and especially the fuel depot before the shelling took place around 8 a.m.

593. Even if the Israeli Government's position regarding the position of Palestinian armed groups is taken at face value, the Mission concludes that, given the evident threat of substantial damage to several hundred civilian lives and to civilian property in using white phosphorous in that particular line of fire, the advantage gained from using white phosphorous to screen Israeli armed forces' tanks from anti-tank fire from armed opposition groups could not be deemed proportionate.

594. Having been fully alerted not to the risks but to the actual consequences of the course of action, Israeli armed forces continued with precisely the same conduct as a result of which further shells hit the compound. Such conduct, in the Mission's view, reflects a reckless disregard for the consequences of the choice of the means adopted in combating the anti-tank fire

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[371] Israel's Prime Minister, Ehud Olmert, told the United Nations Secretary-General that troops shelled the building in response to Hamas gunfire coming from within, but nonetheless said it should not have happened. Israeli troops "were attacked from there and the response was harsh", Olmert said. "It is absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it", he added. See http://www.guardian.co.uk/world/2009/jan/15/israel-gaza-offensive-truce-talks. The same quotation is reported in multiple sources.

[372] "The operation in Gaza…", para. 347.

the Israeli authorities claim they were facing. The decision to continue using the same means in the face of such knowledge compounds that recklessness. It deprived the UNRWA staff of the ability to contain the fires that had been caused and led to millions of dollars worth of damage that could have been avoided. It also put in danger some 700 lives, including staff and sheltering civilians.

595. The Mission, therefore, concludes on the basis of the information it received and in the absence of any credible refuting evidence that Israeli armed forces violated the customary international law requirement to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects as reflected in article 57 (2) (a) (ii) of Additional Protocol I to the Geneva Conventions.

C. Al-Quds hospital, Tal el-Hawa, Gaza City

596. Al-Quds hospital belongs to the Palestinian Red Crescent Society (PRCS). It consists of three buildings facing west towards the sea and occupying the corner of Jami'at ad-Duwal al-Arabiyah Street and al-Abraj Street in the area of Tal el-Hawa. The building nearest the corner is seven storeys high. Its principal purposes were administrative and cultural rather than medical. It stored a huge quantity of PRCS archives. The middle building contains the accident and emergency treatment area as well as other offices. The building furthest from the corner is the main medical building with operating theatres in the basement. About 200 metres eastwards on al-Abraj Street is the Palestinian Red Crescent ambulance depot. These buildings all suffered significant damage in the course of an Israeli bombardment on 15 January 2009, which included the use of white phosphorous. The attacks endangered the lives of the staff and more than 50 patients in the hospital. There was no warning given for any of the attacks.

597. The Mission met staff from the hospital on six separate occasions, three of them on site visits. Two extended site visits included inspections not only of the hospital premises, but also of the ambulance depot, of the damage done to apartment buildings on that street and of the area opposite the hospital to assess the damage done by fighting in that area. Three long interviews were carried out with one doctor individually, another was carried out with two doctors together and there were two group meetings with four and five doctors, respectively. The Mission also received a considerable body of photographs and digital video footage of the events of the day in question. It furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions against al-Quds hospital and the direct military advantage pursued by their use under the circumstances, but received no reply.

598. The doctors with whom the Mission spoke all occupied senior positions but also witnessed the events that occurred throughout that day. The Mission was impressed with their objectivity and the genuine distress several of them showed at being unable to help or protect the sick and wounded who had come to the hospital. Throughout that day many of the staff, including the doctors, took exceptional risks to stop fire spreading, including by removing white phosphorous wedges from near diesel tanks. One doctor in particular showed remarkable courage. He left the hospital to drive an ambulance through artillery shelling as he sought to bring an eight-year-old girl to al-Shifa hospital for treatment which he was no longer able to provide in al-Quds. Having taken the girl there, he drove back to the hospital in the same conditions to continue assisting the efforts to fight the fires.

1. The facts

599. When the Israeli air offensive began on 27 December a government building opposite the al-Quds administrative building on al-Abraj Street was almost totally destroyed. The building had previously served as a criminal detention centre and is still referred to locally by that designation although it had recently been used for other purposes, including customs administration. The same building was reportedly struck on a number of other occasions after 27 December. When the Mission visited in June 2009, the site was completely demolished.

600. Diagonally opposite al-Quds Hospital on Jami'at ad-Duwal al-Arabiyah Street was another building rented to the Government and used primarily for public registry functions. Today only the ground floor of the building remains. Witnesses indicate that the upper floors had been destroyed, probably by artillery fire, around 6 and 7 January.

601. Three senior doctors at the hospital and two residents from al-Abraj Street indicated that at some point between 3 and 6 January several tanks were stationed several hundred metres east of al-Quds hospital, visible from the ambulance depot. Throughout the days of 5, 6, 7 and 8 January there was significant artillery fire on a number of civilian apartment buildings on al-Abraj Street. On 8 January 2009 the seventh-floor apartment of Dr. Jaber Abu al-Naja was struck. His wife and son-in-law were killed immediately as they sat on the balcony of the apartment eating pastries. His wife was cut in half by the explosion and his son-in-law was thrown from the balcony on to the street below. His daughter, Ihsan, was seriously injured and taken to al-Quds hospital for treatment. Dr. Jaber Abu al-Naja is the former Ambassador of the PLO to Senegal and a well-known Fatah politician.[373]

602. By 15 January the area immediately to the south of al-Quds hospital (the customs building and the registry building) had been totally or very substantially destroyed. The area to the east on al-Abraj Street had been significantly attacked by artillery fire.

603. By this time a large number of civilians (several hundreds) had also gathered in the hospital buildings seeking safety.

604. During the night of 14 January Israeli armed forces began an extended barrage of artillery fire over the area. It continued into the morning of 15 January. Between 8 and 9 a.m. doctors in the main building were in the principal meeting room when shells landed on either side of the building. They saw white phosphorous wedges burning near a container of diesel and efforts were successfully made to move those away. The initial explosions had blown out the office windows. At about the same time it became apparent that the administrative building on the corner had also been hit. The hospital building next to it has a large timber-built component. The risk of fire spreading was immense and a witness described how hospital staff, including senior doctors, all sought to break, by hand, the wooden bridge way that linked the administrative building to the hospital building to prevent the fire from spreading.

605. Shortly after the initial explosions and fire were observed, a tank shell directly penetrated the rear of the middle hospital building. That part of the building is made of corrugated iron and

[373] Interview with Dr. Jaber Abu al-Naja, 4 July 2009.

the entry point of the shell is easily detectable. The shell then penetrated the inner concrete wall of the hospital where the pharmacy was located. The pharmacy was completely destroyed as a result. An eyewitness described that, through the holes made in the corrugated iron, he observed a tank on a road between two buildings about 400 metres eastwards. Although he could not say whether it was this tank that had struck the hospital directly, it was in a direct line in relation to the entry point of the shell.

606. Throughout the day the hospital was unable to procure the assistance of civil defence forces or other fire-fighting support. As a result, the staff of the hospital were almost entirely consumed with the task of saving the buildings and ensuring the safety of patients.

607. It was not until around 4 p.m. that it was possible to coordinate an evacuation of hospital patients with the assistance of ICRC, which made clear upon arrival that it would be able to carry out this procedure only once. Those not evacuated at this point were relocated to the operating theatres of the hospital.

608. At around 8 p.m. another fire broke out causing serious damage to the main hospital building. As a result of this fire it was decided to carry out a total evacuation of the remaining patients as well as a number of local residents who had sought refuge in the hospital. It was at this stage that one of the senior doctors took an eight-year-old girl who had been struck by a bullet in the jaw and was critically ill to al-Shifa hospital, where she later died. At that point he says he felt that there was very heavy fire in the area and that there appeared to be some attempts to aim directly at or near to the ambulance.

609. Meanwhile, 200 metres to the east in al-Abraj Street the PRCS ambulance depot had also been severely damaged. One of its principal buildings was entirely destroyed. The Mission also saw the remnants of three PRCS ambulances that had been parked at the entrance to the depot. Two had been crushed by tanks but not burned out. The other ambulance showed signs of having been struck directly in the front below the windscreen by a missile of some description and having been burned out.

610. The devastation caused to both the hospital buildings, including the loss of all archives in the administrative building, and the ambulance depot was immense, as was the risk to the safety of the patients.

611. The Mission examined a number of the shells retrieved by the hospital staff and reviewed footage taken at the time as well as still photographs.

2. The Israeli position

612. The Israeli authorities did not specifically mention the incident at al-Quds hospital in the conclusions of their investigations on 22 April 2009.[374]

[374] Annex B addresses some allegations regarding the use of ambulances, but not the attack on the hospital. See http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm.

613. In its report of July 2009 (para. 173) the Israeli Government quotes part of an article from *Newsweek* magazine:

> One of the most notorious incidents during the war was the Jan. 15 shelling of the Palestinian Red Crescent Society buildings in the downtown Tal-al Hawa part of Gaza City, followed by a shell hitting their Al Quds Hospital next door; the subsequent fire forced all 500 patients to be evacuated. Asked if there were any militants firing from the hospital or the Red Crescent buildings, hospital director general Dr. Khalid Judah chose his words carefully. 'I am not able to say if anyone was using the PRCS buildings [the two Palestine Red Crescent Society buildings adjacent to the hospital], but I know for a fact that no one was using the hospital.' In the Tal-al Hawa neighborhood nearby, however, Talal Safadi, an official in the leftist Palestinian People's Party, said that resistance fighters were firing from positions all around the hospital. He shrugged that off, having a bigger beef with Hamas. 'They failed to win the battle.' Or as his fellow PPP official, Walid al Awad, put it: 'It was a mistake to give Israel the excuse to come in.'[375]

While the Israeli Government does not comment further on the specific attack, it would appear to invoke these comments to justify the strikes on the hospital and surrounding area.

614. The Mission understands that the Israeli Government may consider relying on journalists' reporting as likely to be treated as more impartial than reliance on its own intelligence information. The Mission is nonetheless struck by the lack of any suggestion in Israel's report of July 2009 that there were members of armed groups present in the hospital at the time.

3. Factual findings

615. The Mission finds that on the morning of 15 January the hospital building and the administrative building were struck by a number of shells containing white phosphorous and by at least one high explosive shell. The fires these caused led to panic and chaos among the sick and wounded, necessitated two evacuations in extremely perilous conditions, caused huge financial losses as a result of the damage and put the lives of several hundred civilians including medical staff at very great risk.

616. The Mission also notes that, as a result of the conditions the attack created, the hospital was unable to provide the necessary care for an eight-year-old girl. Despite heroic attempts to save her, she died later in another hospital. The girl had been shot by an Israeli sniper. The Mission finds the Israeli armed forces responsible for her death.

617. On the issue of armed groups being present in the hospital buildings, the Mission does not agree that anything in the extract cited above from *Newsweek* magazine justifies the conclusion that the hospital premises were being used by armed groups. The fact that Dr. Judah spoke with certainty about matters within his knowledge cannot be presumed to mean that he believed other

[375] "Hamas and its discontents", 20 January 2009.

parts of the hospital premises were being used by armed groups. That may be journalistic gloss and is tantamount to putting words in the mouth of Dr. Judah. The comments attributed to Mr. Safadi that "resistance fighters were firing from positions all around the hospital" can mean either that people were inside the hospital firing or were in positions outside but near to the hospital. The journalist did not clarify precisely what was meant.

618. The Mission, having carried out over eight hours of interviews with senior and junior staff, and having sought to verify the matter with others, including journalists who were in the area at that time, has concluded that it is unlikely there was any armed presence in any of the hospital buildings at the time of the attack.

619. The Mission finds that no warning was given at any point of an imminent strike and at no time has the Israeli Government suggested such a warning was given.[376]

620. Reviewing the scene at the time of the strikes on al-Quds hospital, it is important to bear in mind that a great deal of destruction had already occurred and that buildings with an apparent connection to the local government had been attacked and largely destroyed. As such, Israeli tanks had a relatively clear view of the area immediately to the south of the hospital. The Mission also notes that as a result of the attacks on al-Abraj Street by tanks for several days, the scope for resistance, if any, from that particular quarter had been significantly reduced.

621. The Mission is aware of reports that there was significant resistance from Palestinian armed groups in the Tal el-Hawa area on the night of 14January.[377] Information available alleges that on the night of 14 January Israeli troops had entered buildings on al-Abraj Street, used human shields to check if there was any presence of enemy combatants or explosive devices and found none. Reports do not specify the nature, scale or precise location of resistance in Tal el-Hawa. The Mission notes that in the buildings directly opposite al-Quds hospital on Jami'at ad-Duwal al-Arabiyah Street there is very little sign of damage to any of the buildings on that side of the street, and certainly nothing that compares to the damage to the buildings on al-Abraj Street.

622. The Mission takes into account the damage that had already occurred between 27 December and 8 January on al-Abraj and Jami'at ad-Duwal al-Arabiyah Streets, and the lack of apparent damage to the buildings directly opposite the hospital on Jami'at ad-Duwal al-Arabiyah Street. It also takes account of the sighting of at least one tank whose direct line of fire, bearing in mind that it was surrounded by tall buildings on both sides, was the hospital itself. It also notes the credible sightings of Israeli aircraft in the area at various points throughout the day. It further notes the extensive damage to the ambulance depot at the same time as the strikes

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[376] In its conclusions of its investigations published on 22 April, the Israeli armed forces highlight the fact, in connection with its investigation into allegations of attacks on medical services, that they gave warnings. One related to an ambulance and another to a clinic. There is no mention of al-Quds hospital. See http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm.

[377] The Mission has noted a witness account in relation to Israeli armed forces' use of human shields on al-Abraj Street on the night of 14 January, thus indicating that there was indeed a very active Israeli presence on the ground. See Al Mezan Center for Human Rights, "Hiding behind civilians: April 2009 update report", p. 8.

on the hospital occurred and the apparently unexplainable crushing of ambulances parked outside the depot.

623. In the light of all these considerations, the Mission finds that there are reasonable grounds to believe that the hospital and the ambulance depot, as well as the ambulances themselves, were the object of a direct attack by the Israeli armed forces in the area at the time and that the hospital could not be described in any respect at that time as a military objective.

4. Legal findings

624. Article 18 of the Fourth Geneva Convention provides that civilian hospitals may in no circumstances be the object of attack but shall at all times be respected and protected by the parties to the conflict.

625. Article 19 provides that the protection to which civilian hospitals are entitled shall cease "only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded."

626. Even in the unlikely event that there was any armed group present on hospital premises, there is no suggestion even by the Israeli authorities that a warning was given to the hospital of an intention to strike it. As such the Mission finds on the information before it that Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention.

627. On considering the information before it, the Mission takes the view that there was intent to strike the hospital, as evidenced in particular by the high explosive artillery shell that penetrated the rear of the hospital and destroyed the pharmacy.

628. Even if it is suggested that there was no intent to directly strike the hospital but that Palestinian armed groups had taken up positions near al-Quds hospital, the Israeli armed forces would still have been bound to ensure that risk of death, injury or damage to the people in the hospital or the hospital itself would not be excessive in relation to the military advantage anticipated in attacking the hospital.

629. Taking into account the weapons used, and in particular the use of white phosphorous in and around a hospital that the Israeli armed forces knew was not only dealing with scores of injured and wounded but also giving shelter to several hundred civilians, the Mission finds, based on all the information available to it, that in directly striking the hospital and the ambulance depot the Israeli armed forces in these circumstances violated article 18 of the Fourth Geneva Convention and violated customary international law in relation to proportionality.

D. Attacks on al-Wafa hospital, 5 and 16 January 2009

630. The Mission interviewed three senior doctors of al-Wafa hospital. One was Dr. Khamis el-Essi, its Director. The two other doctors do not wish to be identified. The Mission has also reviewed information in the public domain in relation to the various alleged attacks on the hospital.

631. Al-Wafa hospital is located at the eastern part of al-Shujaeiyah (east Gaza City), very close to the Israel-Gaza eastern border. It was founded in 1996 and provides long-term care to

those suffering from head and spinal injuries. Many patients are elderly. It can accommodate over 50 patients.

632. The hospital consists of three buildings. From south to north these are the administrative building (three floors), the hospital buildings (rooms of patients and surgeries, seven floors) and the building for the elderly (reception and rehabilitation, three floors).

1. The facts

633. The hospital was the object of a significant attack on 16 April 2008. Tanks fired in and around the hospital area, damaging a large number of patient rooms and causing significant destruction of the building for rehabilitative care for the elderly. Hospital staff indicate there was no armed presence inside the hospital at that time but cannot say whether there may have been a presence outside.

634. During the military operations, the hospital was attacked again. Despite media reports that a warning had been given, hospital staff deny that any specific warning was received. Leaflets had been dropped in the area with general indications that support of Hamas would be punished. The hospital had also received a number of telephone warnings with recorded messages but with no specific indication that the hospital itself would be the object of an attack, much less with an indication of when that would occur. One doctor indicated that the hospital had received around four such messages each day since 27 December 2008.

635. On 5 January, the hospital was attacked with intensive artillery fire, including white phosphorous shells. Senior doctors indicate that generic recorded telephone warnings were actually received during the shelling. The latest warning the hospital received on 5 January was at 4.30 p.m. Following this, at around 12.30-1 a.m. on 6 January, white phosphorous shells landed in the area surrounding the administrative building and on its roof.

636. The white phosphorous caused damage to the administrative building only, destroying the roof.

637. All three witnesses of the senior medical staff confirm absolutely that there was no presence of any armed resistance inside the hospital. They are not able to confirm or deny the presence of such elements outside of the hospital.

638. The hospital was attacked again with artillery fire on 16 January 2009 at 2 a.m. No specific warning was given. Again a general recorded message had been received saying that people located in the border areas should leave and threatening punitive measures to those who stayed. Again doctors confirm there was no armed presence inside the hospital but cannot say what was occurring outside it.

639. The attack damaged the building for elderly patients on the ground and third floors as well as the roof. It damaged the third and fourth floors of the central hospital building.

640. Doctors estimate that the tanks were as close as 70 metres from the hospital.

641. The damage to the hospital (as a result of the two attacks) is estimated at US$ 550,000.

642. As to why the hospital was the subject of these attacks, doctors speculate that its location close to the border is one possible reason. Another relates to the rumour that Israel believes that Muhammad al-Deif, a well-known Hamas militant, is treated inside the hospital.

643. According to one witness in the hospital, Israeli armed forces tried to assassinate Mr. al-Deif on 12 July 2006. Although he survived the assassination attempt, he was badly hurt and, according to some rumours, his legs were amputated and he became blind. It seems that Israel believes that he receives some rehabilitation and medical treatment at al-Wafa hospital.

644. On 5 February 2003, for instance, Israeli snipers shot and killed two staff nurses who were on duty inside the hospital (Abd al-Karim Lubad and Omar Hassan, both aged 21).[378]

2. Factual findings

645. The Mission notes that the three witnesses interviewed are senior doctors in the hospital. The Mission found them to be credible and reliable. They clarified a number of apparently inaccurate statements that have appeared in press reports, especially regarding the nature of the warnings given.

646. The Mission considers that the warnings given cannot be considered as a warning within the meaning of article 19 of the Fourth Geneva Convention. It was not specific and no indication was given about when the attack would take place or how much time there was to evacuate the hospital.

647. As to the reasons for the multiple attacks on the hospital in 2003, 2008 and 2009, the Mission is not in a position to comment.

3. Legal findings

648. The Mission finds that the choice of deploying white phosphorous shells in and around such a building, where patients receiving long-term care and suffering from particularly serious injuries were especially vulnerable, was not acceptable in the circumstances. The Mission is particularly concerned about the attack on the hospital on 16 January from such close proximity. Even if there was some degree of armed resistance in the area (which the Mission cannot confirm), commanders in deploying such weaponry must take into account all the facts and circumstances.

649. The Mission considers the use of white phosphorous in such an area as reckless and not justifiable in relation to any military advantage sought in the particular circumstances.

650. The Mission considers that the general protection given to hospitals indicates the need for particular consideration to be given to the use of such especially hazardous materials. The failure to provide sufficient warning indicates in the Mission's view a wilful failure to consider seriously the consequences of using such weapons in those circumstances.

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[378] See http://www.hrea.org/lists/hr-health-professionals/markup/msg00099.html.

651. The Mission notes that the case of al-Wafa hospital demonstrates the complete ineffectiveness of certain kinds of warnings. The information the Mission has received points towards a kind of repetition and routine warning system taking no account at all of the realities of the hospital.

652. As such the Mission considers that, from all the information available to it, the Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention as well as customary international law as reflected in Additional Protocol I, articles 57 (2) (b) and (c).

X. INDISCRIMINATE ATTACKS BY ISRAELI ARMED FORCES RESULTING IN THE LOSS OF LIFE AND INJURY TO CIVILIANS

A. The shelling in al-Fakhura Street by Israeli armed forces

653. In the afternoon of 6 January at least four mortar bombs fired by Israeli armed forces exploded near the al-Fakhura junction in the al-Fakhura area of the Jabaliyah camp in northern Gaza.[379]

654. The Mission interviewed Mr. Muhammed Fouad Abu Askar on three occasions. His brother and two sons were killed in the attack.[380] It also met surviving members of the al-Deeb family on two occasions.[381] The Mission interviewed four men who had lost family members in the attack, the Director of the UNRWA premises that were being used as a shelter for civilians and a number of journalists who covered the story. In addition, the Mission has seen a number of statements provided to organizations in Gaza in the form of affidavits. The Mission has also considered to the degree possible the information available from Israeli sources on the circumstances of the strike.

B. The facts surrounding the Israeli armed forces' mortar shelling

655. On 5 January 2009 UNRWA had opened the elementary school on al-Fakhura Street to provide shelter to civilians fleeing the areas where the Israeli armed forces had entered.

656. The Mission spoke on two occasions with the Director of the shelter about its management. He said that about 90 per cent of those in the shelter had come from outside of Jabaliyah camp, largely from the al-Atatra area. He explained that the shelter was guarded by

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[379] Interviewees' statements vary, asserting between four and six shells landed. The Mission saw for itself what it assessed to be the effects of mortars that landed. The crater in the orchard beside the al-Deeb house may have been caused by a mortar, but given the nature of the surroundings it is less easy to tell in terms of shrapnel patterns. The Mission does not reject the possibility that more landed but was not able to inspect those sites or to come to a firm view confirming the additional shells.

[380] Mr. Abu Askar is a Hamas member. He also provided testimony at the public hearings in Gaza. He was detained on the charge of being a member of Hamas in 1992. He is the Director-General for Religious Affairs (a voluntary position) and is on the Dialogue Committee, organizing the pilgrimage to Mecca (Saudi Arabia). He is in charge of the Hamas Follow-Up Committee in North Gaza related to the settlement of disputes between Hamas and other groups in the Occupied Palestinian Territory. He has a master's degree in education and is currently pursuing a PhD in the Syrian Arab Republic. He denies any involvement in armed militant activities.

[381] Two of the members of the family also presented their testimony at the public hearings in Gaza.

security staff at its entry points and that all people coming in were registered by name and searched to ensure no weapons were being taken into the premises.

657. UNRWA has confirmed to the Mission that the Israeli armed forces were fully aware that the school was being used as a shelter from 5 January 2005. UNRWA materials indicate that there were 1,368 people in the shelter at the time.

658. About 16 hours prior to the shelling on the afternoon of 6 January 2009, Israeli armed forces had already carried out at least one strike, destroying the house of Mr. Abu Askar. At around 1.45 a.m. on 6 January 2009, Mr. Abu Askar received a personal telephone call from the Israeli armed forces advising him that he should evacuate the house and everyone in it because it was going to be destroyed by an air strike. The building housed not only his immediate family but a large number of his extended family, about 40 in all. Mr. Abu Askar responded quickly, evacuating not only his own extended family but also advising neighbours of the imminent strike. The survivors of the al-Deeb family confirm they were advised at this time by Mr. Abu Askar of the call he had received.

659. The house was struck by a missile from an F-16 according to Mr. Abu Askar about seven minutes after the call was received. Several hours later, at around 6 a.m., he returned to the site of the house with members of his family hoping to retrieve some items of furniture. There he noticed that a number of other houses in the area also appeared to have been hit at some time in the intervening four hours. In the course of that day Mr. Abu Askar and members of his family took various steps to prepare the move of the family to rented accommodation nearby.

660. Mr. Abu Askar was in the street at around 4 p.m., when several mortars landed. He believes that there were about 150 people in the street at the time. The Director of the shelter confirmed that the street outside the school was generally busy. It had become busier than usual due to the large influx of people into the school looking for shelter. Some relatives were coming to the school to visit those who had recently arrived and new people were arriving to seek shelter, including with belongings on donkey carts.

661. Witnesses indicate that all of the explosions were over within around two minutes. One shell landed directly in the courtyard outside the al-Deeb house, where most of the family was gathered. Surviving family members interviewed by the Mission explained that nine members of the family were killed immediately. Ziyad Samir al-Deeb lost both legs as a result of the blast.[382] Surviving family members and neighbours carried the dead and injured one after another to hospital. Ambulances came, but most casualties were transported in private cars. Alaa Deeb, a daughter of Mo'in Deeb, was taken to al-Shifa hospital and thereafter to Egypt, where she died of her injuries. In total, 11 members of the family died, including four women and four girls.

662. Apart from the shell that landed in the al-Deeb courtyard, three other shells landed in the street outside. The total spread of the four mortars was a little over 100 metres. The Mission cannot specify in which order the mortars fell, but proceeding southwards from the al-Deeb house along al-Fakhura Street, the Mission saw the impact of another mortar, 45 metres away, a third was seen a further 50 metres south and a fourth a further 10 metres south.

[382] Ziyad al-Deeb testified before the Mission at the public hearings in Gaza along with his uncle.

663. The three other shells that the Mission could identify as having landed at different places on al-Fakhura Street killed at least 24 people. The witnesses estimate that up to another 40 were injured by the blasts.[383] The Mission has not been able to verify those figures, but having inspected the site and viewed the footage, it does not consider these numbers to be exaggerated.

664. Among those killed immediately were two sons of Mr. Abu Askar, Imad, aged 13, and Khaled Abu Askar, aged 19. Mr. Abu Askar's brother Arafat was also killed.

665. The Director of the UNRWA school shelter confirmed to the Mission that the blasts had damaged the part of the school building facing onto al-Fakhura Street. Up to nine people were injured. One boy of 16, who was sheltering in the school but was in the street at the time, was killed. No one inside the school was killed. He confirmed that no shell had directly hit the United Nations premises either inside or outside.

666. Witnesses have described the scene of chaos and carnage caused by the bombs. They indicate that people were ferried to hospitals in private cars because of the difficulties in reaching ambulance services at the time, although some ambulances did arrive.

C. The Israeli position

667. Contradictory accounts emerge from official Israeli statements. The initial position accepted that Israeli forces had struck inside the UNRWA school, claiming to be in response to Hamas fire. A later response accepted that Hamas had not been in the UNRWA school but had allegedly fired from 80 metres away from the school. Finally, the Israeli Government claimed that in fact Hamas operatives were launching mortars at Israeli armed forces for around one hour, firing every few minutes until the Israeli armed forces identified them and returned fire, killing a number of them.

668. On 6 January the Israeli armed forces posted the following statement on their website:

> An initial inquiry by forces on operating in the area of the incident indicates that a number of mortar shells were fired at IDF forces from within the Jebaliya school. In response to the incoming enemy fire, the forces returned mortar fire to the source.
>
> This is not the first time that Hamas has fired mortars and rockets from schools, in such a way deliberately using civilians as human shields in their acts of terror against Israel. This was already proven several months ago by footage from an unmanned plane showing rockets and mortars being fired from the yard of an UNRWA school.
>
> Again, we emphasize that this announcement is based on an initial inquiry.
>
> After an investigation that took place over the past hour it has been found that among the dead at the Jebaliya school were Hamas terror operatives and a mortar

[383] A number of reports put the total figure of deaths at 42 or 43, including the al-Deeb family deaths. The Mission has not been able to contact all the relatives of those reported to have died.

battery squad who were firing on IDF forces in the area. Hamas operatives Immad Abu Iskar and Hassan Abu Iskar were among terrorists identified killed.[384]

669. Further statements from spokespersons for the Prime Minister,[385] the Foreign Ministry and the Israeli armed forces all adhered to the position set out in the statement cited above. In two interviews the Prime Minister's spokesman, Mr. Regev, emphasized that he considered Hamas were mounting a cover-up in relation to the fact the senior operatives had been killed by the Israeli armed forces in its strike and in particular that two persons, Imad and Hassan Abu Askar, were "well-known members of the Hamas military machine – part of the rocket network".[386]

670. The position set out on 6 January was repeated again in comments to the press on 12 January by an Israeli armed forces' spokesman.[387]

671. On 15 and 19 February 2009 *The Jerusalem Post* published reports quoting Colonel Moshe Levi of CLA. He indicated that the stories of 40 or more dying as a result of the attack were the result of distortions and that in fact the Israeli armed forces had killed 12 people, including nine Hamas operatives and three non-combatants. The report of 19 February lists 7 of the 12 he said were killed. He also pointed out that the Israeli surveillance footage showed only a "few stretchers were brought in to evacuate people".

672. On 22 April 2009 the Israeli armed forces published the results of their preliminary investigations, stating a completely different position from that previously expressed:

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[384] http://www.mfa.gov.il/MFA/Government/Communiques/2009/Initial_inquiry_school_incident_6-Jan-2009.htm.

[385] On 7 January in a television interview on the British Broadcasting Corporation's programme Newsnight, Mr. Regev indicated that he believed that the Israeli armed forces had attacked the school because they had come under fire, that the school was occupied by Hamas operatives and that those Hamas operatives had committed a war crime by using the premises for the purpose of launching mortars. See http://www.youtube.com/watch?gl=GB&hl=en-GB&v=9wv0giW1elo&feature=PlayList&p=9277810AA376DF8D&playnext=1&index=5.

In another interview he indicated the Israeli armed forces' patrol returned fire having received mortar fire, that he assumed the school had been taken by force by Hamas "with guns" and held the people in the school as "hostages". See https://www.csidonline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page.

On the same day Major Avital Leibovich, spokeswoman of the Israeli armed forces, in an interview with Channel 4 news said that Hamas had fired from "the vicinity of the school" but later asserted that the two Hamas militants were inside the school firing at the Israeli armed forces. See http://link.brightcove.com/services/player/bcpid1184614595?bctid=6539745001

On the same day Israeli armed forces' spokesman Captain Benjamin Rutland made a presentation posted on YouTube. He indicated that it had transpired later that the mortar fire had come from within a United Nations school, that this was a crime on the part of Hamas and that civilians had been killed. He noted, however, that Hamas terror operatives had been killed including the well-known Abu Askar brothers. Another Israeli armed forces spokesperson confirmed on 12 January that it was adhering to the same positions as had been expressed on 6 and 7 January. See http://dover.idf.il/IDF/English/News/today/09/4/2201.htm.

[386] See https://www.csidonline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page

[387] The statement of Captain Ishai David in The Jerusalem Post on 12 January 2009.

> Regarding the UNRWA school in Jabaliya, the Fahoura school, the investigation concluded that the IDF used minimal and proportionate retaliatory fire, using the most precise weapons available to them. Hamas made this necessary, as it fired mortar shells at Israeli forces 80 metres from the school. Additionally, it was concluded that all of the shells fired by IDF forces landed outside of the school grounds.[388]

673. In July 2009 the Israeli Government stated:

> Soon after the source of fire was detected, a scouting unit was dispatched to confirm the location. Approximately 50 minutes after the mortar attack had begun, two independent sources cross-verified the location of the mortars. Only subsequent to this, and after verification of a safety margin of at least 50 metres between the target (i.e. the identified source of the mortar fire) and the UNRWA school, did the force respond to the ongoing barrage, by using the most accurate weapon available to it – 120-mm mortars.[389]

D. Other reports

674. The Mission carried out nine interviews with people who were present in al-Fakhura Street, in the al-Deeb yard or in the UNRWA school. No witness stated that he had heard any firing prior to the Israeli armed forces' mortars landing. On the other hand, the Mission is aware of at least two reports that indicate local residents had heard such fire in the area.[390]

675. The Mission notes that the statement of the Israeli armed forces on 22 April did not indicate where the Hamas fire came from, only stating it was 80 metres away. The Mission finds it difficult to understand how the Israeli armed forces could have come to this view without having the information at the same time that Hamas operatives had been firing mortars for almost one hour. It regards these new allegations as lacking credibility. However, the Mission accepts, for the purposes of this report, that some firing may have occurred that gave rise to the Israeli armed forces' response.

676. It seems clear to the Mission that Israel's Government developed a position justifying the striking of an UNRWA school as a result of the immediate outcry generated by initial erroneous reports that the school had been hit. That effort included a number of statements, in particular those by Mr. Regev and Major Leibovich, which turned out to be erroneous.

677. The Mission notes the comment of Colonel Moshe Levi in *The Jerusalem Post* on 15 February 2009 casting doubt on the numbers of dead noting that Israeli surveillance saw only

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[388] http://dover.idf.il/IDF/English/News/today/09/4/2201.htm.

[389] "The operation in Gaza…", para. 338.

[390] One report comes from the Associated Press, whose sources insisted on anonymity. The other is by a correspondent of the British Channel 4 News programme who reports that locals told him "militants had been firing rockets" at the Israeli armed forces and were running down the street to get away. See Jonathan Miller, "Why UN 'reversal' over Gaza school should be treated with caution". Channel 4, 5 February 2009, available at: http://www.channel4.com/news/articles/world/middle_east/why+un+reversal+over+gaza+school+should+be+treated+with+caution/2924657.

a few stretchers being used to lift the dead and injured. If Israel had that capacity of surveillance in the immediate aftermath of the shelling, it must have been able to see that the shells had hit on the street outside the school and not inside the school. Furthermore, if such surveillance was recorded, in the face of serious allegations levelled against the Israeli armed forces by several sources after the military operation in Gaza, the Government could have made this footage public in order to establish the truth of its claims regarding this incident.

678. Finally, the Mission comes to the repeated assertion of the Israeli authorities as to the identities of those killed in the strikes. The most detailed attempt to name these come in Col. Levi's statement of the 12 dead, including nine militants and three non-combatants. On 19 February *The Jerusalem Post* published seven of the names given to them by CLA. The Mission notes that CLA did not provide any information to explain where the information on the dead came from. None of the seven names corresponds with any the Mission has so far established died in the attack.

679. The position assumed by Colonel Levi of CLA is problematic in the light of the relatively uncomplicated case of the al-Deeb family, of whom nine members died immediately and two died later. Four of these were women and four were children. Given these figures alone, and the relative ease with which the victims could be identified, the Mission considers the CLA assertions as to the total numbers and identities of those killed in the Israeli armed forces' mortar strikes to be unreliable. Even if the Israeli authorities were to be correct in saying that nine combatants were killed, they are, in the considered view of the Mission, incorrect in stating that only three non-combatants were killed.

680. A further assertion made several times by Israeli spokespersons on 6 and 7 January and confirmed again on 12 January was that the strikes had not only managed to hit the militant rocket launchers but had also killed two senior Hamas militants, namely Imad Abu Askar and Hassan Abu Askar.[391] Again, for the most part these early assertions indicated that both had been killed in the UNRWA school. It is noticeable that the Israeli armed forces' summary of their own preliminary investigations does not repeat this claim.

681. What is now clear is that, if any Hamas operatives were killed by the Israeli strike, they were not killed in the school premises. It is difficult for the Mission to understand how the Israeli authorities could establish with such certainty within a matter of hours the identities of two of the Hamas operatives it had killed but could not establish within a week that the alleged firing had not come from the school and that the Israeli armed forces had not hit the school.

682. The Mission is satisfied that three Abu Askar family members were killed: Imad, aged 13, his brother Khaled, aged 19, and their uncle, Arafat, aged 33. Mr. Mark Regev indicated that Imad Abu Askar was a well-known member of Hamas's militant operation and of some significance in the rocket-launching operations. Major Leibovich and Captain Rutland also named Imad as one of the two operatives killed.

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[391] In her interview with Channel 4 News, Major Leibovich in fact appears to say "Amr Abu Askar" after some hesitation but in the light of the other statements the Mission considers this to have been an error on her part and that in all likelihood she intended to say "Imad".

683. The Mission does not deny the possibility of children being recruited by Palestinian armed groups. However, in the case of Imad Abu Askar, the Mission is satisfied that he was not a Hamas operative. Apart from his father's vehement and, in the Mission's view, credible rejection of any such claim, two other factors appear relevant. Firstly, since it has become clear that Imad was a 13-year-old boy it is noticeable that Israel has not commented further on the allegation of his alleged Hamas activity in general or the allegation in particular that on the day in question he had launched mortars at Israel.

684. Secondly, the Israeli armed forces directly called Mr. Abu Askar early in the morning of 6 January notifying him that his house would be attacked imminently. If Imad Abu Askar was as notorious and important as alleged, despite his young age, the Mission presumes that the Israeli authorities would have known where he lived and, in particular, that he lived in the very house they were about to destroy. It is extremely doubtful that the Israeli armed forces, having identified the house where alleged Hamas militants of some significance lived, would warn them so that they may escape and then bomb the house.

685. There is no indication that anyone of the name of Hassan Abu Askar was killed in the attacks as far as the Mission can determine. The Mission notes that the two Hamas operatives Israeli reports refer to were at least on one occasion referred to as brothers. Mr. Abu Askar confirms that there is no one of such a name in his family.

686. It would appear that shortly after the attack the Israeli armed forces received some information that two Abu Askar brothers had been killed. That much is indeed true. However, the use made of that information appears to the Mission to have been knowingly distorted. The brothers were Imad and Khaled, not Imad and Hassan as asserted. One was a 13-year-old boy, the other was a recently married 19-year-old. The certainty and specificity with which the Israeli authorities spoke at the time make it very difficult for them to suggest now that they had simply mixed up the names.

E. Factual findings

687. The facts gathered by the Mission indicate that on 6 January 2006 at around 1.45 a.m. the Israeli forces called Mr. Abu Askar's house, alerted him to the imminent strike on his house and proceeded to destroy it with an aerial strike about seven minutes later. As a result of the warning, Mr. Abu Askar was able to save himself and his family. The Mission finds that the Israeli forces did not seek to kill Mr. Abu Askar or the members of his family with this strike.

688. The Mission also finds that at around 4 p.m. Israeli forces launched at least four mortar shells. One landed in the al-Deeb courtyard, killing nine people immediately and two later on.

689. Three other shells landed on al-Fakhura Street, which was busy at the time, killing at least a further 24 people and injuring as many as 40.

690. The Mission notes that the attack may have been in response to a mortar attack from an armed Palestinian group but considers the credibility of Israel's position damaged by the series of inconsistencies and factual inaccuracies.

F. Legal findings

691. Elements of article 50 of Additional Protocol I reflect customary international law and provide the following:

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

692. Article 57 is relevant in relation to the following provisions:

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) Those who plan or decide upon an attack shall:

(i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

693. The Mission considers there are two key issues to be considered in the present case: the issue of proportionality in relation to the military advantage to be gained and the choice of weapons used.

694. A detailed discussion of the difficulties of assessing military advantage is presented in the analysis of the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia in 1998.[392] According to that Committee, the following are some of the relevant questions to be asked:

(a) What are the relative values to be assigned to the military advantage gained and the injury to non-combatants and or the damage to civilian objects?

(b) What do you include or exclude in totalling your sums?

(c) What is the standard of measurement in time or space? And

(d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?

695. The Committee reflected further:

> The answers to these questions are not simple. It may be necessary to resolve them on a case-by-case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to non-combatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases. It is suggested that the determination of relative values must be that of the "reasonable military commander". Although there will be room for argument in close cases, there will be many cases where reasonable military commanders will agree that the injury to non-combatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.

696. Accepting that these views are helpful to inform the present discussion, the Mission finds the following:

(a) The military advantage to be gained was to stop the alleged firing of mortars that posed a risk to the lives of Israeli armed forces;

(b) Even if there were people firing mortars near al-Fakhura Street, the calculation of the military advantage had to be assessed bearing in mind the chances of success in killing the targets as against the risk of firing into a street full of civilians and very near a shelter with 1,368 civilians and of which the Israeli authorities had been informed.

697. The Mission recognizes that for all armies proportionality decisions will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case.

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[392] "Final report to the Prosecutor…", paras. 47-50.

698. The Mission does not say that the Israeli armed forces had to accept the risk to themselves at all cost, but in addressing that risk it appears to the Mission that they had ample opportunity to make a choice of weapons that would have significantly limited the risk to civilians in the area. According to the position the Government has itself taken, Israeli forces had a full 50 minutes to respond to this threat – or at least they took a full 50 minutes to respond to it. Given the mobilization speeds of helicopters and fighter jets in the context of the military operations in Gaza, the Mission finds it difficult to believe that mortars were the most accurate weapons available at the time. The time in question is almost 1 hour. The decision is difficult to justify.

699. The choice of weapon – mortars – appears to have been a reckless one. Mortars are area weapons. They kill or maim whoever is within the impact zone after detonation and they are incapable of distinguishing between combatants and civilians. A decision to deploy them in a location filled with civilians is a decision that a commander knows will result in the death and injuries of some of those civilians.

700. Even if the version of events presented now by Israel is to be believed, the Mission does not consider that the choice of deploying mortar weapons in a busy street with around 150 civilians in it (not to mention those within the school) can be justified. The Mission does not consider that in these circumstances it was a choice that any reasonable commander would have made.

701. From the facts available to it, the Mission believes that there has been a violation of:

- Additional Protocol I, articles 57 (2) (a) (ii) and (iii) as set out above;

- The inherent right to life of the Palestinian civilians killed in the above incidents by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

702. The Mission views as being unreliable the versions given by the Israeli authorities. The confusion as to what was hit, the erroneous allegations of who was specifically hit and where the armed groups were firing from, the indication that Israeli surveillance watched the scene but nonetheless could not detect where the strikes occurred, all combine to give the impression of either profound confusion or obfuscation.

703. Whatever the truth, the Mission is of the view that the deployment of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought.

XI. DELIBERATE ATTACKS AGAINST THE CIVILIAN POPULATION

704. According to the Israeli Government, the Israeli armed forces' rules of engagement for the military operation in Gaza emphasized the principle of distinction as one of four "guiding principles that applied in an integrated and cumulative manner: military necessity, distinction, proportionality and humanity". It defines the principle of distinction in the following terms: "Strikes shall be directed against military objectives and combatants only. It is absolutely

prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm)."[393]

705. The Mission investigated 11 incidents in which serious allegations of direct attacks with lethal outcome were made against civilians. There appears to have been no justifiable military objective pursued in any of them. The first two incidents concern alleged attacks by Israeli armed forces against houses in the al-Samouni neighbourhood of Gaza during the initial phase of the ground invasion. The following group of seven incidents concern the alleged shooting of civilians who were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli armed forces to do so. In the last of these seven cases, a house was allegedly shelled with white phosphorous, killing five and injuring others. Two further members of the family were allegedly shot by Israeli troops as they tried to evacuate the wounded to a hospital. In the following incident, a mosque was targeted during the early evening prayer, resulting in the death of 15. In many of the incidents, the Israeli armed forces allegedly obstructed emergency medical help to the wounded. A further incident concerns the bombing of a family house, killing 22 family members. In the last of the incidents described, a crowd of family and neighbours at a condolence tent was attacked with flechettes.

A. Attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni in Zeytoun, resulting in the death of 23 members of the al-Samouni family

706. To investigate the attacks on the houses of Ateya and Wa'el al-Samouni, which killed 23 members of the extended al-Samouni family, the Mission visited the site of the incidents.[394] It interviewed five members of the al-Samouni family and several of their neighbours on site.[395] Two members of the extended al-Samouni family, who were eyewitnesses to the incident, Messrs. Wa'el and Saleh al-Samouni, testified at the public hearing in Gaza. The Mission also interviewed PRCS ambulance drivers who went to the area on 4, 7 and 18 January 2009, and obtained copies of PRCS records. The Mission finally reviewed material on this incident submitted to it by TAWTHEQ as well as by NGOs.

707. The so-called al-Samouni area is part of Zeytoun, south of Gaza City, bordered to the east by al-Sekka Street, which in that part of Gaza runs parallel and very close to Salah ad-Din Street. It is inhabited by members of the extended al-Samouni family, which gives its name to the area, as well as by other families, such as the Arafats and the Hajjis. Al-Samouni area is more rural than urban, houses used to stand next to small olive and fig groves, chicken coops and other small plots of agricultural land. A small mosque stood in the centre of the neighbourhood. These no longer existed at the time of the Mission's visit in June 2009. The Mission saw very few

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[393] "The operation in Gaza…", para. 222.

[394] Graffiti left by Israeli soldiers in the house of Talal al-Samouni, which were photographed by the Mission, included (a) in Hebrew, under the Star of David: "The Jewish people are alive" and, above a capital "T" [referring to the army (*Tsahal*)], "This [the letter T] was written with blood"; (b) on a drawing of a grave, in English and Arabic, "Arabs 1948-2008 "; and (c) in English: "You can run but you can not hide", "Die you all", " 1 is down, 999,999 to go", "Arabs need to die" and "Make war not peace".

[395] Testimony to the Mission by Saleh al-Samouni, Talal al-Samouni, Wa'el Faris al-Samouni, Muhammad Asaad al-Samouni, Ms. Massouda Sobhia al-Samouni, Mr. Faraj Ata al-Samouni, Mrs. Abir Muhammad Hajji and Mr. Fawzi Arafat, 3 June 2009.

buildings left and a few tents standing amidst the rubble of collapsed houses and bulldozed land.[396]

708. The Israeli ground offensive from the east reached al-Samouni neighbourhood around 4 a.m. on 4 January 2009. In addition to the ground forces moving in from the east, there were, in all likelihood, heliborne[397] troops that landed on the roofs of several houses in the area. Residents told the Mission that there was shooting in the neighbourhood in the night of 3 to 4 January and again the following night, but denied having seen any Palestinian fighters.

1. The killing of Ateya al-Samouni and his son Ahmad

709. During the morning of 4 January 2009, Israeli soldiers entered many of the houses in al-Samouni area. One of the first, around 5 a.m., was the house of Ateya Helmi al-Samouni, a 45-year-old man. Faraj, his 22-year-old son, had already met Israeli soldiers some minutes earlier as he stepped outside the house to warn his neighbours that their roof was burning. The soldiers entered Ateya al-Samouni's house by force, throwing some explosive device, possibly a grenade. In the midst of the smoke, fire and loud noise, Ateya al-Samouni stepped forward, his arms raised, and declared that he was the owner of the house. The soldiers shot him while he was still holding his ID and an Israeli driving licence in his hands. The soldiers then opened gunfire inside the room in which all the approximately 20 family members were gathered. Several were injured, Ahmad, a boy of four, particularly seriously. Soldiers with night vision equipment entered the room and closely inspected each of those present. The soldiers then moved to the next room and set fire to it. The smoke from that room soon started to suffocate the family. A witness speaking to the Mission recalled seeing "white stuff" coming out of the mouth of his 17-month-old nephew and helping him to breathe.

710. At about 6.30 a.m. the soldiers ordered the family to leave the house. They had to leave Ateya's body behind but were carrying Ahmad, who was still breathing. The family tried to enter the house of an uncle next door, but were not allowed to do so by the soldiers. The soldiers told them to take the road and leave the area, but a few metres further a different group of soldiers stopped them and ordered the men to undress completely. Faraj al-Samouni, who was carrying the severely injured Ahmad, pleaded with them to be allowed to take the injured to Gaza. The soldiers allegedly replied using abusive language. They also said "You are bad Arabs". "You go to Nitzarim".

711. Faraj al-Samouni, his mother and others entered the house of an uncle in the neighbourhood. From there, they called PRCS. As described below, at around 4 p.m. that day a PRCS ambulance managed to come in the vicinity of the house where Ahmad was lying wounded, but was prevented by the Israeli armed forces from rescuing him. Ahmad died at

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[396] The UNOSAT report (p. 21) counts "114 … destroyed or severely damaged buildings, … 27 damaged greenhouse complexes, and 17 impact craters along roads or in cultivated fields" in the area of al-Samouni Street. A soldier stationed in Zeytoun during the military operations recalled that he observed through his binoculars "increasing devastation. Houses that disappear with time, farm land ploughed over time." (*Soldiers' testimonies…*, testimony 37, p. 82).

[397] One witness told the Mission that on 5 January 2009, walking on Salah ad-Din Street towards Gaza, he saw by the roadside parachutes Israeli troops had used to land in the area.

around 2 a.m. during the night of 4 to 5 January.[398] The following morning those present in the house, about 45 persons, decided to leave. They made themselves white flags and walked in the direction of Salah ad-Din Street. A group of soldiers on the street told them to go back to the house, but the witness said that they walked on in the direction of Gaza. The soldiers shot at their feet, without injuring anyone, however. Two kilometres further north on Salah ad-Din Street, they found ambulances which took the injured to al-Shifa hospital in Gaza.

2. The attack on the house of Wa'el al-Samouni

712. In other cases, the entry of soldiers was less violent than in Ateya al-Samouni's home. In one instance, the soldiers landed on the roof and descended the stairs to the ground floor, separated men from women, searched and handcuffed the men.[399] In another case they broke into a house by knocking a hole in the wall with a sledgehammer.[400] At the house of Saleh al-Samouni, the Israeli soldiers knocked on the door and ordered those inside to open it. All the persons inside the house stepped out one by one and Saleh's father identified each of the family members in Hebrew for the soldiers. According to Saleh al-Samouni, they asked to be allowed to go to Gaza City, but the soldiers refused and instead ordered them to go to Wa'el al-Samouni's house across the street.

713. The Israeli soldiers also ordered those in other houses to move to Wa'el al-Samouni's house. As a result, around 100 members of the extended al-Samouni family, the majority women and children, were assembled in that house by noon on 4 January. There was hardly any water and no milk for the babies. Around 5 p.m. on 4 January, one of the women went outside to fetch firewood. There was some flour in the house and she made bread, one piece for each of those present.

714. In the morning of 5 January 2009, around 6.30 – 7 a.m., Wa'el al-Samouni, Saleh al-Samouni, Hamdi Maher al-Samouni, Muhammad Ibrahim al-Samouni and Iyad al-Samouni, stepped outside the house to collect firewood. Rashad Helmi al-Samouni remained standing next to the door of the house. Saleh al-Samouni has pointed out to the Mission that from where the Israeli soldiers were positioned on the roofs of the houses they could see the men clearly. Suddenly, a projectile struck next to the five men, close to the door of Wa'el's house and killed Muhammad Ibrahim al-Samouni and, probably, Hamdi Maher al-Samouni.[401] The other men managed to retreat to the house. Within about five minutes, two or three more projectiles had struck the house directly. Saleh and Wa'el al-Samouni stated at the public hearing that these were missiles launched from Apache helicopters. The Mission has not been able to determine the type of munition used.

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[398] Faraj al-Samouni also told the Mission that, at the time of Ahmad's death, another relative gave birth to a baby in the same house. The following day the mother, who had to be transported in a wheelchair because she had broken her leg doing household chores, and the baby were among the group that managed to evacuate to Gaza City. Mother and child are in good health.

[399] Testimony of Muhammad Asaad al-Samouni, 3 June 2009.

[400] Testimony of Saleh al-Samouni, 3 June 2009.

[401] The Mission notes that while all testimonies agree that Muhammad Ibrahim al-Samouni died on the spot, there are some discrepancies as to whether Hamdi Maher al-Samouni was killed by the first strike or died subsequently inside the house.

715. Saleh al-Samouni stated that overall 21 family members were killed and 19 injured in the attack on Wa'el al-Samouni's house. The dead include Saleh al-Samouni's father, Talal Helmi al-Samouni, his mother, Rahma Muhammad al-Samouni, and his two-year-old daughter Azza. Three of his sons, aged five, three and less than one year (Mahmoud, Omar and Ahmad), were injured, but survived. Of Wa'el's immediate family, a daughter and a son (Rezqa, 14, and Fares, 12) were killed, while two smaller children (Abdullah and Muhammad) were injured.[402] The photographs of all the dead victims were shown to the Mission at the home of the al-Samouni family and displayed at the public hearing in Gaza.

716. After the shelling of Wa'el al-Samouni's house, most of those inside decided to leave immediately and walk to Gaza City, leaving behind the dead and some of the wounded. The women waved their scarves. Soldiers, however, ordered the al-Samounis to return to the house. When family members replied that there were many injured among them, the soldiers' reaction was, according to Saleh al-Samouni, "go back to death". They decided not to follow this injunction and walked in the direction of Gaza City. Once in Gaza, they went to PRCS and told them about the injured that had remained behind.

3. The attempts of PRCS and ICRC to rescue the civilians in the al-Samouni area

717. PRCS had made its first attempt to evacuate the injured from the al-Samouni area on 4 January 2009 around 4 p.m. after receiving a call from the family of Ateya al-Samouni. PRCS had called ICRC, asking it to coordinate its entry into the area with the Israeli armed forces. A PRCS ambulance from al-Quds hospital managed to reach the al-Samouni area. The ambulance had turned west off Salah ad-Din Street when, at one of the first houses in the area, Israeli soldiers on the ground and on the roof of one of the houses directed their guns at it and ordered it to stop. The driver and the nurse were ordered to get out of the vehicle, raise their hands, take off their clothes and lie on the ground. Israeli soldiers then searched them and the vehicle for 5 to 10 minutes. Having found nothing, the soldiers ordered the ambulance team to return to Gaza City, in spite of their pleas to be allowed to pick up some wounded. In his statement to the Mission, the ambulance driver recalled seeing women and children huddling under the staircase in a house, but not being allowed to take them with him.[403]

718. As soon as the first evacuees from the al-Samouni family arrived in Gaza City on 5 January, PRCS and ICRC requested permission from the Israeli armed forces to go into the al Samouni neighbourhood to evacuate the wounded. These requests were denied. On 6 January around 6.45 p.m., one ICRC car and four PRCS ambulances drove towards the al-Samouni area

[402] The names of the other 15 members of the extended al-Samouni family killed in the attack on Wa'el al-Samouni's house are: Rabab Izaat (female, aged 37); Tawfiq Rashad (male, aged 22); Layla Nabeeh (female, aged 44); Ismaeil Ibrahim (male, aged 16); Ishaq Ibrahim (male, aged 14); Maha Muhammad (female, aged 20); Muhammad Hilmi Talal (the six-year-old son of Maha); Hanan Khamis Sa'di (female, aged 36); Huda Naiel (female, aged 17); Rezqa Muhammad Mahmoud (female, aged 56); Safaa Sobhi (female, aged 24); al-Moa'tasim Bilah Muhammad (male, aged six months); Hamdi Maher (male, aged 24); Rashad Helmi (male, aged 42); Nassar Ibrahim Hilmi (male, aged 6).

[403] Mission interview with PRCS driver W2, 10 June 2009.

in spite of the lack of coordination with the Israeli armed forces, but were not allowed to enter the area and evacuate the wounded.

719. On 7 January 2009, the Israeli armed forces finally authorized ICRC and PRCS to go to the al-Samouni area during the "temporary ceasefire" declared from 1 to 4 p.m. on that day.[404] Three PRCS ambulances, an ICRC car and another car used to transport bodies drove down Salah ad-Din Street from Gaza City until, 1.5 km north of the al-Samouni area, they found it closed by sand mounds. ICRC tried to coordinate with the Israeli armed forces to have the road opened, but they refused and asked the ambulance staff to walk the remaining 1.5 km.

720. Once in the al-Samouni neighbourhood, PRCS looked for survivors in the houses. An ambulance driver who was part of the team told the Mission that in Wa'el al-Samouni's house they found 15 dead bodies and two seriously injured children.[405] One of the children had a deep wound in the shoulder, which was infected and giving off a foul odour. The children were dehydrated and scared of the PRCS staff member. In a house close by, they found 11 persons in one room, including a dead woman.

721. The rescue teams had only three hours for the entire operation and the evacuees were physically weak and emotionally very unstable. The road had been damaged by the impact of shells and the movement of Israeli armed forces, including tanks and bulldozers. The rescuers put all the elderly on a cart and pulled it themselves for 1.5 kilometres to the place where they had been forced to leave the ambulances. The dead bodies lying in the street or under the rubble, among them women and children, as well as the dead they had found in the houses had to be left behind. On the way back to the cars, PRCS staff entered one house where they found a man with two broken legs. While they were carrying the man out of the house, the Israeli armed forces started firing at the house, probably to warn that the three-hour "temporary ceasefire" were about to expire. PRCS was not able to return to the area until 18 January.

722. On 18 January 2009, members of the al-Samouni family were finally able to return to their neighbourhood. They found that Wa'el al-Samouni's house, as most other houses in the neighbourhood and the small mosque, had been demolished. The Israeli armed forces had destroyed the building on top of the bodies of those who died in the attack. Pictures taken on 18 January show feet and legs sticking out from under the rubble and sand, and rescuers pulling out the bodies of women, men and children. A witness described to the Mission family members taking away the corpses on horse carts, a young man sitting in shock beside the ruins of his house and, above all, the extremely strong smell of death.[406]

4. Factual findings

723. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt their testimony.

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[404] Mission interview with PRCS driver W1, 10 June 2009.

[405] Ibid.

[406] Mission interview with witness W2, 7 June 2009.

724. With regard to the context in which the attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni took place, the Mission notes that there is some indication that there might have been a presence of Palestinian combatants in the al-Samouni neighbourhood during the first hours of the Israeli ground attack. A witness told the Mission that when he heard the first shots in the vicinity of his house in the night of 3 to 4 January, he at first thought it was Palestinian fighters. An NGO report submitted to the Mission states that a Palestinian combatant, reportedly a member of the Islamic Jihad, was killed in the al-Samouni area around midnight between 3 and 4 January.[407]

725. The Mission considers, however, that the testimonies of the witnesses strongly suggest that already before daybreak on 4 January 2009 the Israeli armed forces were in full control of the al-Samouni neighbourhood. The Israeli soldiers had taken up position on the roofs of the houses in the area. According to several witnesses, the soldiers on the street spoke to residents who had ventured out of their houses.[408] In some cases (for instance, at the house of Saleh al-Samouni and at the house Iyad al-Samouni was in, see below), they entered the houses non-violently after knocking on the door. According to Saleh al-Samouni, the prolonged identification of all the persons present in his house (his father identifying each family member in Hebrew for the soldiers) took place outside. The soldiers appear to have been confident that they were not at immediate risk of being attacked.

726. The Mission also reviewed the submission it received from an Israeli researcher, arguing generally that statements from Palestinian residents claiming that no fighting took place in their neighbourhood are disproved by the accounts Palestinian armed groups give of the armed operations. The Mission notes that, as far as the al-Samouni neighbourhood is concerned, this report would appear to support the statements of the witnesses that there was no combat.[409]

727. Regarding the attack on Ateya al-Samouni's house, the Mission finds that the account given to it by Faraj al-Samouni is corroborated by the soldiers' testimonies published by the Israeli NGO Breaking the Silence. The assault on Ateya al-Samouni's house appears to be the procedure of the Israeli armed forces referred to as a "wet entry". A "wet entry" is, according to the soldier's explanation, "missiles, tank fire, machine-gun fire into the house, grenades. Shoot as we enter a room. The idea was that when we enter a house, no one there could fire at us." This procedure was, according to the soldier, thoroughly practised during recent Israeli armed forces manoeuvres.[410]

728. The Mission notes that considering the generally calm circumstances that appear to have prevailed in the al-Samouni neighbourhood at the time (as evidenced by the way the soldiers

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[407] Al Mezan's table of children killed during the military operations in Gaza.

[408] Testimonies of Saleh al-Samouni and Faraj al-Samouni.

[409] "The hidden dimension of Palestinian war casualties…". Only 4 of the more than 100 entries in the submission refer to combat action in Zeytoun, the much larger part of Gaza City of which al-Samouni neighbourhood is a part. The incidents in Zeytoun that are mentioned reportedly occurred on 6, 7, 11 and 13 January 2009, and consist of Palestinian combatants opening fire against Israeli troops with rocket-propelled grenades, a mortar (in one case) and detonating an explosive device.

[410] *Soldiers' Testimonies…*, testimony 4, p. 14; see also testimony 37, p. 82.

entered other houses after knocking on the door) and the fact that the soldiers had already spoken to Faraj al-Samouni, one of the persons in Ateya al-Samouni's house, the Mission cannot see any circumstance justifying the violent entry into the house.

729. With regard to the attack on the five men who stepped out of Wa'el al-Samouni's house to fetch firewood in the early morning of 5 January 2009 and to the subsequent shelling of the house, the Mission notes that the members of the other families who had been moved by the Israeli forces into Wa'el al-Samouni's house had been searched by Israeli soldiers, as recounted by Saleh al-Samouni. Everything indicates that the Israeli forces knew that there were about 100 civilians in the house. Indeed, the families had asked to be allowed to leave the area towards a safer place, but had been ordered to stay in Wa'el al-Samouni's house. The house must have been under constant observation by the Israeli soldiers, who had complete control over the area at the time.

730. The Mission was not able to determine whether the attack was carried out by missiles launched from Apache helicopters, as Saleh and Wa'el al-Samouni told the Mission at the public hearing in Gaza, or by other munitions. Nevertheless, the fact that a first projectile struck next to the five men soon after they had left the house (at a time at which there was no combat in the area) and two or three projectiles struck the house after the survivors had retreated into the house, indicates that the weaponry used allowed a high degree of precision with a short response time and that the five men and then the house were the intended targets of the attack.

731. The Mission notes that, four days later, the Israeli armed forces denied that the attack on the house of Wa'el al-Samouni had taken place. On 9 January 2009, an Israeli army spokesman, Jacob Dallal, reportedly told the Reuters news agency that "the IDF did not mass people into any specific building. […] Furthermore, we checked with regard to IDF fire on the 5th. The IDF did not target any building in or near Zeitun on the 5th."[411] The Mission is not aware of any subsequent statement from the Israeli Government which would contradict this blanket denial or suggest that the allegations have been the subject of further investigation.

732. With regard to the obstruction of emergency medical access to the wounded in the al-Samouni neighbourhood, the Mission notes that four-year-old Ahmad al-Samouni was still alive at 4 p.m. on 4 January 2009, when the PRCS ambulance called by his relatives managed to arrive within what the Mission estimates to be 100 to 200 metres from the house where he was. In fact, he died about 10 hours later, which suggests that he might have had a good chance of survival. Israeli soldiers stopped the ambulance and thoroughly searched the driver, nurse and vehicle.[412] Although they did not find anything indicating that the ambulance staff was not on a genuine emergency mission to evacuate a wounded civilian, they forced the ambulance to return to Gaza City without the injured Ahmad.

733. On 5 and 6 January 2009, following the arrival in Gaza City hospitals of survivors of the attack on Wa'el al-Samouni's house, PRCS and ICRC requested permission from the Israeli

[411] http://www.javno.com/en-world/gaza-boy-recounts-house-of-death_222451.

[412] In addition to searching the ambulance driver and the nurse, the Israeli soldiers also appear to have intended to humiliate them by forcing them to lie down on the street in their underwear for 5 to 10 minutes, in the cold of an early January late afternoon.

armed forces to go into the al-Samouni neighbourhood to evacuate the wounded. These requests were denied. According to the information available to PRCS, the Israeli armed forces told ICRC that there were combat operations going on in the area. A PRCS ambulance driver who was part of the PRCS convoy which went to the area in spite of the refusal of the Israeli armed forces to grant permission, reported that there were no clashes at the time.[413] PRCS and ICRC were not able to evacuate the wounded from the area until 7 January in the afternoon.

734. The information before it leads the Mission to believe that the Israeli armed forces arbitrarily prevented the evacuation of the wounded from the al-Samouni area, thereby causing at least one additional death, worsening of the injuries in others, and severe psychological trauma in at least some of the victims, particularly children.

735. These findings are corroborated by the press release ICRC issued on 8 January 2008:

> The ICRC had requested safe passage for ambulances to access this neighbourhood [the al-Samouni area in Zeytoun] since 3 January but it only received permission to do so from the Israel Defense Forces during the afternoon of 7 January.
>
> The ICRC/PRCS team found four small children next to their dead mothers in one of the houses. They were too weak to stand up on their own. One man was also found alive, too weak to stand up. In all there were at least 12 corpses lying on mattresses.
>
> In another house, the ICRC/PRCS rescue team found 15 other survivors of this attack including several wounded. In yet another house, they found an additional three corpses. Israeli soldiers posted at a military position some 80 metres away from this house ordered the rescue team to leave the area which they refused to do. There were several other positions of the Israel Defense Forces nearby as well as two tanks.[414]

B. Killing of civilians attempting to leave their homes to walk to safer areas

1. The shooting of Iyad al-Samouni

736. The Mission received testimony on the death of Iyad al-Samouni from Muhammad Asaad al-Samouni and Fawzi Arafat, as well as from a PRCS staff member. In the night of 3 to 4 January 2009, Iyad al-Samouni, his wife and five children were, together with about 40 other members of their extended family in Asaad al-Samouni's house, very close to the houses of Wa'el al-Samouni and Ateya al-Samouni (the scenes of the incidents described above). At 1 a.m. on 4 January 2009 they heard noise on the roof. At around 5 a.m. Israeli soldiers walked down the stairs from the roof, knocked on the door and entered the house. They asked for Hamas fighters. The residents replied that there were none. The soldiers then separated women, children and the elderly from the men. The men were forced into a separate room, blindfolded and handcuffed with plastic handcuffs. They were allowed to go to the toilet only after one of the men urinated on himself. The soldiers stationed themselves in the house.

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[413] PRCS records at al-Quds hospital.

[414] http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-news-080109.

737. In the morning of 5 January 2009, after the shelling of Wa'el al-Samouni's house, two of the survivors took refuge in Asaad al-Samouni's house. From the testimonies received, the Mission is not able to state whether the Israeli soldiers then ordered the al-Samouni family members in the house to leave and walk to Gaza City, or whether it was the families who pleaded with the soldiers to be allowed to leave having heard the appalling news of what had happened to their relatives in Wa'el al-Samouni's house. In any event, the persons assembled in Asaad al-Samouni's house walked out of the house and down al-Samouni Street to take Salah ad-Din Street in the direction of Gaza City. They had been instructed by the soldiers to walk directly to Gaza City without stopping or diverting from the direct route. The men were still handcuffed and the soldiers had told them that they would be shot if they attempted to remove the handcuffs.

738. On Salah ad-Din Street, just a few metres north of al-Samouni Street and in front of the Juha family house,[415] a single or several of the Israeli soldiers positioned on the roofs of the houses opened fire. Iyad was struck in the leg and fell to the ground.[416] Muhammad Asaad al-Samouni, who was walking immediately behind him, moved to help him, but an Israeli soldier on a rooftop ordered him to walk on. When he saw the red point of a laser beam on his body and understood that an Israeli soldier had taken aim at him, he desisted. The Israeli soldiers also fired warning shots at Muhammad Asaad al-Samouni's father to prevent him from assisting Iyad to get back on his feet. Iyad al-Samouni's wife and children were prevented from helping him by further warning shots. Fawzi Arafat, who was part of another group walking from the al-Samouni neighbourhood to Gaza, told the Mission that he saw Iyad al-Samouni lying on the ground, his hands shackled with white plastic handcuffs, blood pouring from the wounds in his legs, begging for help. Fawzi Arafat stated that he yelled at an Israeli soldier "we want to evacuate the wounded man". The soldier, however, pointed his gun at Iyad's wife and children and ordered them to move on without him.

739. Iyad al-Samouni's family and relatives were forced to abandon him and continue to walk towards Gaza City. At al-Shifa hospital they reported his case and those of the other dead and wounded left behind. Representatives of PRCS told them that the Israeli armed forces were not permitting them to access the area.

740. A PRCS staff member[417] told the Mission that three days later, on 8 January 2009, PRCS was granted permission by the Israeli armed forces through ICRC to evacuate Iyad al-Samouni. The PRCS staff member found him on the ground in Salah ad-Din Street in the place described by his relatives. He was still handcuffed. He had been shot in both legs and had bled to death.

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[415] This is the home of the family of Mu'een Juha, see the case of the shooting of Ibrahim Juha discussed below in the chapter.

[416] According to the researchers of a Palestinian NGO who investigated this case, the mobile phone in the pocket of the cousin walking in front of Iyad al-Samouni rang and Iyad al-Samouni tried to take the phone out of his pocket (the cousin's hands were tied as well, so he could not reach into his pocket himself), whereupon the Israeli soldier opened fire. This detail was not mentioned to the Mission in its interviews.

[417] Mission interview with PRCS driver W4, 10 June 2009.

2. Factual findings

741. The Mission found the witnesses it heard in relation to the shooting of Iyad al-Samouni to be credible and reliable. It has no reason to doubt the veracity of the main elements of their testimony, which is corroborated by the testimony of the PRCS ambulance driver.

742. The Mission finds that Iyad al-Samouni was part of a large group of civilians who were leaving their homes and walking towards Gaza City in an area under the complete control of the Israeli armed forces. His hands were tied with white plastic handcuffs. The soldier who opened fire on him should have known, on the basis of the plastic handcuffs if not of coordination with his fellow soldiers stationed in Asaad al-Samouni's house a few hundred metres away, that he had been searched and detained by the Israeli armed forces. In opening fire on Iyad al-Samouni, the Israeli armed forces shot deliberately at a civilian who posed no threat to them.

743. While the fire directed at Iyad al-Samouni could have been intended to incapacitate rather than to kill, by threatening his family members and friends with lethal fire, the Israeli armed forces ensured that he did not receive lifesaving medical help. They deliberately let him bleed to death.

744. The Mission found that the witnesses who spoke about the death of Iyad al-Samouni appeared to be profoundly traumatized by the recollection of his pleading for help from his wife, children and relatives. They also recalled the helplessness of his family, who were under a very credible threat of being shot themselves if they came to his help, and who were compelled to abandon him on the road to bleed to death.

3. The death of Muhammad Hajji in the attack on his family's house and the shooting of Shahd Hajji and Ola Masood Arafat

745. The Mission interviewed Mrs. Abir Hajji in private and received her testimony at the public hearing in Gaza.

746. In the night of 4 to 5 January 2009, the family of Muhammad Hajji and his wife Abir[418] was at home in the al-Samouni neighbourhood. In the hope of being safer from the shooting, they had put their mattresses on the floor. At around 1.30 a.m., Abir Hajji heard a very loud explosion, which shook the house and shattered the windows. Some minutes later, Abir Hajji was in a different room from the rest of the family, looking for her mobile phone to use as a torch, when she heard a second explosion, this time apparently inside the house. The children screamed, shouted "Dad!", but her husband did not reply. In the pitch-darkness she found her husband and felt that he was injured on one side of his head, in the area of the eye and the ear. Her daughters Noor, aged 6, and Nagham, aged 13, were injured.

747. She called her neighbour and brother-in-law, Nasser Hajji, who examined his brother and told her that he was dead. As they were preparing to move to Nasser Hajji's house, Israeli soldiers broke into the house shooting. The soldiers asked Nasser Hajji whether he "was

[418] Muhammad and Abir Hajji had five children, four daughters, Ghada (aged 16), Nagham (aged 13), Noor al-Huda (aged 6) and Shahd (aged 3), and a son, Amin (aged 11).

Hamas", which he denied assuring them that nobody in the area was a member of either Hamas or Fatah. Mrs. Hajji remembers the soldiers laughing and insisting that Nasser Hajji "was Hamas". The laughing added to her pain, as the soldiers had seen her dead husband and the children. Nasser Hajji was ordered to undress and then pull his brother's body to another room, where the soldiers threw mattresses and blankets on the body (the body was still lying in the same position when Abir Hajji returned to her home two weeks later). Her children asked her whether they would be killed as well. She told them to say the *Shehada*, the prayer recited in the face of death. Mrs. Hajji also recalled that the soldiers were breaking the tiles on the floor of the house and digging in the earth below. Asked about this at the public hearing, she expressed the opinion that this was to obtain sand for the sandbags they subsequently placed on the roof of the house.[419]

748. After some time, during which they were sitting on the ground as ordered by the Israeli soldiers, Mrs. Hajji, her children and Nasser Hajji were taken to Nasser's house. There they found four households of the extended Hajji family. The young men had been handcuffed and four of them also blindfolded. About 60 Israeli soldiers were in the house. Mrs. Hajji recalled them carrying around food and drinks and relaxing in the couches. One of her daughters asked to be allowed to eat something. The soldiers first denied her request, but then allowed her to go into the kitchen and get a small piece of bread.

749. After the midday prayers on 5 January 2009, the Israeli soldiers separated the men from the women and children. The latter were ordered to walk to Rafah. The Hajjis protested, asking to be allowed to go to Gaza City, where they had relatives, but the soldiers told them that they would be shot if they tried to walk to Gaza City. Nasser Hajji and his 18-year-old son were allowed to walk with the women and children, while the other men stayed behind.[420]

750. The group of Hajji family members walked down the alley to al-Sekka Street. There they were joined by members of the Arafat family, who also live in the al-Samouni neighbourhood, carrying white flags. On al-Sekka Street, one of the Israeli soldiers standing on a rooftop ordered the families to turn south and walk towards Rafah. The families begged to be allowed to walk to Gaza City instead. Without warning, the Israeli soldiers opened fire, "shooting at random" according to Abir Hajji. Ola Masood Arafat, a 28-year-old woman, was struck by a bullet and died on the spot. Mrs. Hajji was wounded in her right arm. Her three-year-old daughter Shahd was shot in the chest. Abir Hajji, who was still carrying Shahd, her other children, her mother-in-law and others managed to take refuge in a house. There they found out that Shahd was still alive.

751. Later on, they left the house and walked together with other families to Salah ad-Din Street and then south on that road. When they reached the Gaza wadi, a motorist took Abir Hajji and her daughter Shahd to a hospital in Deir al-Balah. Shahd died of her wound very soon after

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[419] *Soldiers' Testimonies…* suggests that breaking the tiles in civilian homes was a standard practice with two purposes: to fill sandbags ("Take for example the house we were in – it was abandoned and you go about it as if you own it. You break floor tiles to make sandbags, you break stuff to prepare an outpost", testimony 46, p. 100,) and to search for tunnels ("You're also told to wreck the floor tiles to check for tunnels", testimony 23, p. 54)

[420] Abir Hajji learned after the armed operations that they had been detained in that house for another three days and then released.

arriving at the hospital. Abir Hajji, who was two months pregnant at the time, also suffered a miscarriage.

4. Factual findings

752. The Mission found Mrs. Hajji to be a credible and reliable witness. It has no reason to doubt the veracity of her testimony. The Mission also notes that according to the testimony of four other witnesses (those it heard in the case of Ibrahim Juha below), a very similar incident occurred in the immediate vicinity on the same day.

753. With regard to the death of Muhammad Hajji, the Mission notes that Mrs. Hajji's testimony does not provide sufficient information to establish exactly what happened. On the basis of the information before it, the Mission can neither make a statement as to what type of weapon killed him, nor as to whether he was the intended target of a direct attack. The circumstances of his death suggest, however, that he was killed by fire from the Israeli armed forces while at home in a room with his children.

754. As to the fatal shooting of Shahd Hajji and Ola Masood Arafat, Mrs. Hajji's testimony as well as that of Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim Juha, of Mr. Sameh Sawafeary and of Mr. Rajab Darwish Mughrabi (see the case of Ibrahim Juha below) all establish that there were no combat operations in the area at the time of the incident. Indeed, the Israeli armed forces would not have ordered the members of the extended Hajji, Arafat, Juha and Sawafeary families to walk to Rafah, thereby asking hundreds of civilians to come out of their houses and fill the streets, if there had been any fighting in the neighbourhood at the time. The Israeli armed forces opened fire on a group of persons they had interacted with during the preceding 12 hours and therefore knew to be civilians. In doing so they killed Ola Masood Arafat and three-year-old Shahd Hajji and injured her mother, who was holding her in her arms.

5. The shooting of Ibrahim Juha

755. The Mission interviewed three eyewitnesses to the shooting of Ibrahim Juha and a further witness of the events surrounding the shooting.[421] The events preceding and following the shooting of Ibrahim Juha are described in greater detail in chapter XIII below in connection with the destruction of the Sawafeary chicken farms.

756. The Juha family lives in a house on al-Sekka Street a few meters north of where al-Samouni Street goes off Salah ad-Din Street to the west. The house was struck by several missiles during the night of 3 to 4 January 2009, which had caused significant destruction. In the early morning of 4 January, Israeli soldiers entered the house and fired into the room where the Juha family, consisting of Mr. Juha, his two wives, his mother and 13 children, was assembled. Photographs of the scene taken by Mr. Juha show that numerous rounds were discharged. The family was made to assemble in the upper part of the house. They were then ordered to leave the house and walk towards Rafah.

[421] Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim, Mr. Sameh Sawafeary and Mr. Mughrabi.

757. The Juha family and their neighbours, the Sawafeary family, walked down al-Sekka Street for 100 metres in the direction of Rafah. When they reached the house of another neighbour, Mr. Abu Zur, they were invited into that house and decided to stay there. The three families spent 4 January in the house. On the morning of 5 January the house was the subject of intense firing from Israeli troops in the vicinity. After some time Israeli soldiers approached the house and ordered everyone to come out. The men were separated from the women. From the group of men four were separated and required to strip to their underwear. They were held in a house opposite the Abu Zur house, belonging to Mr. Subhi al-Samouni. The remaining group was told once again to leave the area and walk towards Rafah. Mr. Juha recounts that walking down al Sekka Street the group came to a point where a large crater blocked the way ahead and the surrounding rubble provided a difficult obstacle for some members of his family, including his ageing mother, who had fainted shortly before outside the Abu Zur house.

758. In the face of these obstacles the group of three families walked east towards Salah ad-Din Street. There they entered the house of another family, the Mughrabis. With the arrival of the Juha, Sawafeary and Abu Zur families, there were now more than 70 persons assembled in the house.

759. Mr. Juha told the Mission that, after taking a little rest in the Mughrabi house, he came to the view that it was impossible for them all to stay there, given their substantial numbers and the earlier experience of the intense firing at the Abu Zur house. He decided that they should seek to go back into the street and move to another place. Mr. Mughrabi strongly advised against this.

760. The Juha, Abu Zur and Sawafeary families went back into the street in the afternoon of 5 January. Mr. Juha had his mother in front of him propped up on a two-wheeled trolley as she was unable to walk. Mr. Sawafeary was near to him at the front of the group. Behind him, towards the middle of the group, was his 15-year-old son, Ibrahim, carrying a white flag. Mr. Juha believes he heard two shots. One of the shots hit his son in the chest. The group immediately sought cover once again in the Mughrabi house. They tried to care for Ibrahim in the workshop at the front of the house. His mother tried to sew the wound with a needle and thread and sterilize the materials with eau de cologne. Ibrahim died some six hours after he was shot.

761. The group of over 70 persons remained in the house until 8 January in the afternoon, when ICRC and PRCS representatives came to the neighbourhood and they managed to leave the area and walk to Gaza City.

6. Factual findings

762. The Mission found the witnesses of the shooting of Ibrahim Juha to be credible and reliable. It has no reason to doubt the veracity of their testimony.

763. The testimonies of Mr. Mu'een Juha and Mrs. Juha, Mr. Sameh Sawafeary and Mr. Rajab Darwish Mughrabi, as well as of Mrs. Abir Hajji, all establish that there were no combat operations in the area at the time of the incident. The Israeli armed forces had attacked Mr. Juha's house and that of Mr. Abu Zur, where the Juhas and other families had taken refuge, forcing them to leave the area. It was the Israeli armed forces that ordered these families to take the road to Rafah. In sum, the Israeli armed forces deliberately opened fire on a group of persons

they had interacted with during the preceding 24 hours and therefore knew to be civilians, killing the child Ibrahim Juha.

7. The killing of Majda and Rayya Hajaj

764. The Mission visited Juhr ad-Dik village twice and interviewed three eyewitnesses of the killing of Majda and Rayya Hajaj[422] and two other members of the family, sons of Rayya Hajaj (and brothers of Majda). The Mission also measured the distances between the reported location of the victims at the time of the shooting and the tanks. The Mission further obtained copies of the PRCS records on its attempts to obtain approval from the Israeli armed forces to dispatch ambulances to Juhr ad-Dik. Finally, the Mission saw the agricultural land destroyed by tanks and bulldozers, the rubble remaining of the house of Saleh Hajaj, and the devastation and graffiti[423] left by the Israeli soldiers in Youssef Hajaj's house.

765. Juhr ad-Dik is a village in an agricultural area south-east of Gaza City, about 1.5 kilometres from the border with Israel (the so-called Green Line). On 3 January 2009, an Israeli tank force entered Juhr ad-Dik. Part of the tank force moved on towards Salah ad-Din Street and Zeytoun; the remaining force occupied Juhr ad-Dik.[424]

766. On 4 January 2009, at about 6 a.m., shells hit the house of Youssef Hajaj's family, where he, his wife and children, the wife and children of his brother Majd (who was not with his family), their sister Majda, aged 37, and mother Rayya, aged 65, were taking shelter. A daughter of Youssef, 13-year-old Manar, was injured. Between 9 and 10 a.m., the Hajaj family decided to move to the house of their neighbour Muhammad al-Safdi. Around 11 a.m., Youssef Hajaj received a phone call from his brother Majd, informing him that the Israeli armed forces had announced on local radio stations (al-Aqsa and al-Hurriya) that people living along the border between Israel and Gaza should evacuate their houses to remain safe. Having prepared two make-shift white flags, which were carried by Majda Hajaj and Ahmad Muhammad al-Safdi, 25 years old, who was also holding his two-year-old son in his arms, 26 members of the two families (more than half of them children)[425] left the al-Safdi house. They started walking down the road westwards, where a group of Israeli tanks was standing at a distance of 320 metres.[426] They walked very slowly, covering 200 metres in about 10 minutes. The group was some 120 metres away from the Israeli tanks when, without warning, they were fired on from the direction of the tanks. Majda Hajaj and her mother, Rayya, were hit. Majda died of her injuries instantly. Rayya tried to flee, but fell to the ground after a few metres.

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[422] Mission interviews of Ms. Farhaneh Hajaj, Ms. Siham Hajaj, Mr. Muhammad al-Safdi, Mr. Youssef Hajaj and Mr. Saleh Hajaj.

[423] Graffiti photographed by the Mission in the Hajaj house included, in Hebrew, names and dates, such as "Yahir Ben Eliezer Commander mon. [for month] March 2006" and "Yohanan Boutboul Commander mon. [for month] November 2005" and, in English, the phrase "Death will find you soon".

[424] Testimony to the Mission by Youssef and Saleh Hajaj, 3 June 2009.

[425] The overall number of persons leaving the house of the al-Safdi family was also indicated to the Mission as 28. The Mission was told that 17 children led the procession.

[426] This and the other distances mentioned in the summary of the case were measured with GPS instruments.

767. The others scrambled back to the al-Safdi family house, and managed to take shelter behind a shack next to it and later inside the house. Members of the Hajjaj family called PRCS for help with the evacuation of Majda and Rayya Hajaj's bodies. PRCS in turn contacted ICRC. The Israeli armed forces denied ICRC access to Juhr ad-Dik on the ground that the area had been declared a military zone.[427] The two families spent the remainder of the day and the night sheltering under the staircase in the al-Safdi house, while the Israeli armed forces continued to direct shell and machine-gun fire at the house. The following day they walked to Gaza City by a different, circuitous route. The Hajaj family found the bodies of Majda and Rayya Hajaj under the rubble when they were able to return to Juhr ad-Dik on the evening of 18 January 2009.

8. Factual findings

768. The Mission found the witnesses interviewed to be credible and reliable. It has no reason to doubt the veracity of their testimony.

769. The Mission finds that Majda and Rayya Hajaj were part of a group of civilians moving with white flags through an area in which there was, at the time, no combat. Moreover, the Israeli armed forces had, according to witnesses interviewed by the Mission, called over local radio on the civilian population of Juhr ad-Dik to evacuate their homes and walk towards Gaza City. In the light of these reported circumstances, and particularly considering that the civilians were at a distance of more than 100 metres from them, the Israeli soldiers could not have perceived an imminent threat from the movement of people in that area, as they would have expected the civilians to respond to the call for evacuation. The Mission, therefore, finds the shooting and killing of Majda and Rayya Hajjaj a deliberate act on the part of the Israeli soldiers.

9. The shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo

770. The Mission visited the site of the shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo and interviewed an eyewitness, Mr. Khalid Abd Rabbo, on site. Khalid and Kawthar Abd Rabbo gave their testimony at the public hearing in Gaza on 28 June 2009. The Mission also reviewed sworn statements from two additional witnesses it was not able to interview in person.[428]

771. The family of Khalid Abd Rabbo and his wife Kawthar lived on the ground floor of a four-storey building in the eastern part of Izbat Abd Rabbo, a neighbourhood east of Jabaliyah inhabited primarily by members of their extended family. Khalid Abd Rabbo's parents and brothers with their families lived on the upper floors of the house. The residents of Izbat Abd Rabbo started hearing the sound of shooting and of the Israeli ground incursion in the evening of 3 January 2009. Khalid Abd Rabbo's family decided to stay inside the house, all gathered on the ground floor, as they had done safely during previous Israeli incursions into the neighbourhood.

772. In the late morning of 7 January 2009, Israeli tanks moved onto the small piece of agricultural land in front of the house. Shortly after 12.30 p.m., the inhabitants of that part of Izbat Abd Rabbo heard megaphone messages telling all residents to leave. According to one

[427] PRCS records confirm the ICRC requests to the Israeli armed forces to be allowed access to Juhr ad-Dik.

[428] Affidavits of W5 and W6.

witness's recollection, there had also been a radio message broadcast by the Israeli armed forces around 12.30 announcing that there would be a temporary cessation of shooting between 1 and 4 p.m. that day, during which time residents of the area were asked to walk to central Jabaliyah.

773. At about 12.50 p.m., Khalid Abd Rabbo, his wife Kawthar, their three daughters, Souad (aged 9), Samar (aged 5) and Amal (aged 3), and his mother, Hajja Souad Abd Rabbo, stepped out of the house, all of them carrying white flags. Less than 10 metres from the door was a tank, turned towards their house. Two soldiers were sitting on top of it having a snack (one was eating chips, the other chocolate, according to one of the witnesses). The family stood still, waiting for orders from the soldiers as to what they should do, but none was given. Without warning, a third soldier emerged from inside the tank and started shooting at the three girls and then also at their grandmother. Several bullets hit Souad in the chest, Amal in the stomach and Samar in the back. Hajja Souad was hit in the lower back and in the left arm.

774. Khalid and Kawthar Abd Rabbo carried their three daughters and mother back inside the house. There, they and the family members who had stayed inside tried to call for help by mobile phone. They also shouted for help and a neighbour, Sameeh Atwa Rasheed al-Sheikh, who was an ambulance driver and had his ambulance parked next to his house, decided to come to their help. He put on his ambulance crew clothes and asked his son to put on a fluorescent jacket. They had driven a few metres from their house to the immediate vicinity of the Abd Rabbo house when Israeli soldiers near the Abed Rabbo house ordered them to halt and get out of the vehicle. Sameeh al-Sheikh protested that he had heard cries for help from the Abd Rabbo family and intended to bring the wounded to hospital. The soldiers ordered him and his son to undress and then re-dress. They then ordered them to abandon the ambulance and to walk towards Jabaliyah, which they complied with. When the families returned to Izbat Abd Rabbo on 18 January, they found the ambulance was in the same place but had been crushed, probably by a tank.

775. Inside the Abed Rabbo house, Amal and Souad died of their wounds. The family decided that they had to make an attempt to walk to Jabalya and take Samar, the dead bodies of Amal and Souad, and their grandmother to hospital. Khaled and Kawthar Abd Rabbo, and other family members and neighbours carried the girls on their shoulders. Hajja Souad was carried by family and neighbours on a bed. Samar was transferred to al-Shifa hospital and then, through Egypt, to Belgium, where she still is in hospital. According to her parents, Samar suffered a spinal injury and will remain paraplegic for the rest of her life.

776. When Khalid Abd Rabbo returned to his home on 18 January 2009, his house, as most houses in that part of Izbat Abd Rabbo, had been demolished. He drew the Mission's attention to an anti-tank mine under the rubble of a neighbour's house.[429]

10. Factual findings

777. The Mission found Khalid and Kawthar Abd Rabbo to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimony. The Mission also

[429] The UNOSAT report (p. 14) counts 341 buildings in Izbat Abd Rabbo destroyed or severely damaged as a result of the military operations.

reviewed several sworn statements they and other eyewitnesses gave to NGOs about the incident and found them to be consistent with the account it received.

778. The Mission notes that, in general, Izbat Abd Rabbo and the nearby areas of Jabal al-Kashef and Jabal al-Rayes appear to have been among the locations in Gaza which saw the most intense combat during the military operations.[430] The testimony of Khalid and Kawthar Abd Rabbo, however, shows that the Israeli armed forces were not engaged in combat or fearing an attack at the time of the incident. Two soldiers were sitting on the tank in front of the Abd Rabbo family house and having a snack. They clearly did not perceive any danger from the house, its occupants or the surroundings. Moreover, when the family, consisting of a man, a young and an elderly woman, and three small girls, some of them waving white flags, stepped out of the house, they stood still for several minutes waiting for instructions from the soldiers. The Israeli soldiers could, therefore, not reasonably have perceived any threat from the group. Indeed, the fact that the gunfire was directed at the three girls and, subsequently, at the elderly woman, and not at the young adult couple, can be seen as further corroborating the finding that there was no reasonable ground for the soldier shooting to assume that any of the members of the group were directly participating in the hostilities. The Mission finds that the soldier deliberately directed lethal fire at Souad, Samar and Amal Abd Rabbo and at their grandmother, Hajja Souad Abd Rabbo.

779. The Mission further finds that, by preventing Sameeh al-Sheikh from taking the wounded to the nearest hospital in his ambulance, the Israeli armed forces deliberately further aggravated the consequences of the shooting. The Mission recalls that the soldiers had forced Sameeh al-Sheikh and his son to get out of the ambulance, undress and then re-dress. They therefore knew that they did not constitute a threat. Instead of allowing them to take the gravely wounded Samar Abd Rabbo to hospital, the soldiers forced Sameeh al-Sheikh and his son to abandon the ambulance and to walk towards Jabaliyah.

11. The shooting of Rouhiyah al-Najjar

780. The Mission visited the site of the shooting of Rouhiyah al-Najjar in Khuza'a. It interviewed two eyewitnesses of the shooting and six other witnesses to the events, including Yasmine al-Najjar, Nasser al-Najjar, Rouhiyah al-Najjar's husband, and their daughter Hiba.

781. The Israeli armed forces launched the attack against Khuza'a, a small town about half a kilometre from the border (Green Line) with Israel east of Khan Yunis, around 10 p.m. on 12 January 2009. During the night, they used white phosphorous munitions, causing fires to break out in the al-Najjar neighbourhood on the eastern fringe of Khuza'a. Families in the neighbourhood, including the family of Nasser al-Najjar, his first wife Rouhiyah and their daughter Hiba, spent much of the night trying to extinguish fires in their houses. Israeli armed forces, possibly heliborne troops, had taken position on the roofs of some houses in the neighbourhood and observed the residents as they attempted to fight the fires. Around 3 a.m. residents also began to hear the noise of approaching tanks and bulldozers, with which they were well familiar, as in 2008 there had been several Israeli incursions into the farmland to the north

[430] "The hidden dimension of Palestinian war casualties…" suggests that these areas were among those in which Palestinian combatants most frequently engaged the Israeli armed forces.

and east of Khuza'a, in the course of which bulldozers flattened fields, groves, chicken coops and greenhouses.

782. In the early morning hours, some of the residents, including Rouhiyah al-Najjar, climbed on the roofs of their houses and hoisted improvised white flags. Using megaphones, the Israeli armed forces asked the men of the neighbourhood to come out of the houses and walk towards the tanks. There the men were separated into two groups which were then held in different houses under the control of the soldiers.

783. At some point between 7 and 7.45 a.m., Rouhiyah al-Najjar and the women in her immediate neighbourhood decided to leave their homes and walk with their children to the town centre. The group of women was headed by Rouhiyah al-Najjar and her 23-year-old neighbour and relative Yasmine al-Najjar, both carrying white flags. Rouhiyah's daughter Hiba was right behind her. Other women were holding up babies in their arms, shouting "God is great!" and "We have children!" The group of women and children started moving down a straight alley, about six or seven metres wide, flanked on both sides by houses. At the other end of the alley, a little more than 200 metres away,[431] was the house of Faris al-Najjar, which had been occupied by numerous Israeli soldiers (around 60 according to one witness). The soldiers had made a hole in the wall of the first floor of the house, giving them a good view down the alley into which the group of women and children were advancing. When Rouhiyah al-Najjar was about 200 metres from Faris al-Najjar's house, a shot fired from that house hit her in the temple (she had just turned her head towards her neighbour next to her to encourage her). Rouhiyah al-Najjar fell to the ground; Yasmine was struck in her leg. This single shot was followed by concentrated gunfire, which forced the group of women and children to scramble back into the houses of Osama al-Najjar and Shawki al-Najjar, though it did not cause further injury. Because of the fire from the Israeli soldiers, they did not dare to leave the house and look after Rouhiyah al-Najjar. They stayed inside until around noon the same day, when they made a second, successful attempt to leave the neighbourhood and walk to a safer part of Khuza'a.

784. An ambulance driver from Khan Yunis hospital, Marwan Abu Reda, received a phone call from Khuza'a asking for emergency help for Rouhiyah al-Najjar at around 7.45 a.m. He immediately drove to Khuza'a and arrived in the neighbourhood shortly after 8 a.m., i.e. within no more than an hour from the shooting. He was already in the alley where Rouhiyah al-Najjar was lying on the ground[432] when soldiers opened fire from houses or rooftops, forcing him to make a U-turn and take the ambulance to a nearby alley. He called PRCS and asked it to seek access to the injured woman, through ICRC and in coordination with the Israeli armed forces, without success. Marwan Abu Reda was not able to pick up Rouhiyah al-Najjar's (by then lifeless) body until the evening of that day. He confirmed to the Mission that she had received a bullet in the temple.

[431] The Mission did not measure the distance; this is an estimate.

[432] The Mission does not have information which would allow it to state whether Rouhiyah al-Najjar was still alive when the ambulance arrived.

12. Factual findings

785. The Mission has no reason to doubt the veracity of the main elements of the testimony of the witnesses it heard with regard to the shooting of Rouhiyah al-Najjar.

786. The Mission's site inspection and the testimony of several witnesses appear to establish that the group of women and children led by Rouhiyah al-Najjar had slowly walked for at least 20 metres before the shot that killed Rouhiyahher was fired. During that time, Israeli soldiers standing on the roofs of the houses in the neighbourhood had ample time to observe the group. The fact that, after shooting Rouhiyah and Yasmine al-Najjar, the soldiers directed warning fire at the group without injuring anyone, but forcing them to retreat to a house, is further indication that the soldiers had not observed any threat to them from the group.[433] Indeed, a few hours later the same group was allowed to walk past the soldiers to a safer area of Khuza'a. The Mission accordingly finds that Rouhiyah al-Najjar was deliberately shot by an Israeli soldier who had no reason to assume that she was a combatant or otherwise taking part in hostilities.

787. The Mission also observes that, while it is unclear whether the ambulance from Khan Yunis hospital could have saved Rouhiyah al-Najjar's life, the Israeli forces prevented the evacuation of the wounded woman without any justification.

13. The Abu Halima family case

788. The Mission interviewed three members of the Abu Halima family who were eyewitnesses to the events described below.[434] The Mission also spoke to the doctor who treated some of the family members.[435] The Mission reviewed a report by Physicians for Human Rights – Israel and Palestinian Medical Relief Society which includes analysis by doctors who observed the wounds of the surviving victims at the beginning of March 2009 and also has medical reports confirming the injuries they suffered.[436] Finally, the Mission reviewed information received from TAWTHEQ.

789. On 3 and 4 January 2009, the initial days of the ground invasion, there was heavy aerial bombardment and shelling by tanks of the open areas around Siyafa village, in al-Atatra neighbourhood west of Beit Lahia. Most residents are farmers and, although the Israeli armed

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[433] The Mission was not given any testimony about the presence of Palestinian combatants in Khuza'a at the time of this incident. In fact, Khuza'a municipal officials expressly denied that there was any combatant activity in Khuza'a at the time of the Israeli ground invasion, arguing that, Khuza'a and the surrounding fields being such an open area, there was no place for fighters to take cover. These statements are contradicted by reports indicating that "about one dozen fighters had directly engaged the IDF in Khuza'a. But these engagements appear to have been minimal, with the fighters mostly retreating whenever the Israeli forces advanced." (Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 53-54).

[434] Mission interviews with Sabah Abu Halima (aged 45), Muhammad Sa'ad Abu Halima (aged 24), Omar Sa'ad Abu Halima (aged 18), 15 June 2009.

[435] Mission interview with Dr. Nafeez, the burns expert from al-Shifa hospital, 12 June 2009.

[436] Physicians for Human Rights-Israel and Palestinian Medical Relief Society, "Final report: Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.08-18.01.09", pp. 51-55, available at: http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf.

forces had dropped leaflets warning civilians to leave the area, most had chosen to stay. Based on their previous experiences of ground invasions, they reportedly believed that they were not in danger.

790. On 4 January 2009, the bombardment reportedly increased as Israeli troops moved into and took control of al-Atatra neighbourhood. The Abu Halima family was sheltering in the home of Muhammad Sa'ad Abu Halima and Sabah Abu Halima in Sifaya village. The house has two floors; the ground floor is used for storage and the living quarters are on the upper floor. According to Sabah Abu Halima,[437] 16 members of her immediate family were sheltering on the upper floor.

791. In the afternoon, after hearing that a shell had hit the adjacent house of Sabah Abu Halima's brother-in-law, most of the family moved from the bedroom into a hallway in the middle of the upper floor, where they thought they would be better protected. At around 4.30 p.m., a white phosphorous shell came through the ceiling into the room where they were sheltering.

792. According to family members who survived,[438] there was intense fire and white smoke in the room, the walls of which were glowing red. Five members of the family died immediately or within a short period: Muhammad Sa'ad Abu Halima (aged 45) and four of his children, sons Abd al-Rahim Sa'ad (aged 14), Zaid (aged 12) and Hamza (aged 8), and daughter Shahid (aged 18 months). Muhammad Sa'ad and Abd al-Rahim Sa'ad were decapitated, the others burnt to death. Five members of the family escaped and suffered various degrees of burns: Sabah Abu Halima, her sons Youssef (aged 16) and Ali (aged 4), daughter-in-law Ghada (aged 21), and Ghada's daughter Farah (aged 2).[439]

793. Family members tried to call an ambulance, but the Israeli armed forces had declared the area a closed military zone and ambulances were not permitted to enter. Two cousins put Sabah Abu Halima in the back of a tractor trailer and drove her to Kamal Idwan hospital in Beit Lahia. The driver reported that he reached the hospital despite coming under fire from Israeli soldiers posted inside the Omar Bin Khattab school for girls on the road to al-Atatra.[440] One cousin remained with Sabah Abu Halima, while the other returned to help the rest of the family.

794. The remaining survivors and the injured were placed on a second tractor trailer to take them to Kamal Idwan hospital. The remains of Shahid Abu Halima were also taken. The tractor was driven by a cousin, Muhammad Hekmat Abu Halima (aged 16). Another cousin, Matar Abu Halima (aged 17), his brother Ali (aged 11) and his mother, Nabila, accompanied them.

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[437] Statement by Sabah Abu Halima to the Mission on 15 June 2009.

[438] Statements by Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to the Mission on 15 June 2009.

[439] Given the seriousness of their injuries, Sabah, Farah and Ghada Abu Halima were transferred to Egypt for treatment. Ghada died there in late March 2009.

[440] www.dci-pal.org/English/Doc/Press/Case-Study_Cast-Lead_Abu-Halima_Family_FINAL.pdf.

795. When they reached the crossroads next to the Omar Bin Khattab school in al-Atatra, Israeli soldiers positioned on the roof of a nearby house, some ten metres away, ordered them to stop. Muhammad Hekmat, Matar, Ali, Nabila and Matar got down and stood beside the tractor. One or more soldiers opened fire, hitting Muhammad Hekmat Abu Halima in the chest and Matar Abu Halima in the abdomen.[441] Both died as a result of their injuries. Ali, Omar and Nabila Abu Halima fled. Omar was shot in the arm, but they eventually reached Kamal Idwan hospital.

796. The remaining family members were ordered to abandon the tractors and walk. They were not permitted to take the bodies of the two dead boys, or the remains of Shahid Abu Halima, which were recovered four days later, on 8 January. Ghada Abu Halima, who had burns on 45 per cent of her body, had great difficulty walking. After some 500 metres, a vehicle picked up several members of the family, including Ghada and Farah, and took them to al-Shifa hospital in Gaza City.

797. Dr. Nafiz Abu Shaban, Chief of Plastic Surgery at al-Shifa hospital, confirmed that Sabah, Ghada and Farah Abu Halima were admitted there with serious burns and were transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.[442]

14. Factual findings

798. The Mission found Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimonies, which were corroborated by the testimony of Dr. Nafiz Abu Shaban of al-Shifa hospital.

799. With regard to the white phosphorous shelling of the Abu Halima family house, the Mission notes that the house is located in a village in a rural area. The shelling occurred on 4 January 2009 at a time when Israeli ground forces were apparently advancing into al-Atatra. Moreover, the Israeli armed forces had dropped leaflets warning civilians to leave. Under the circumstances, the Mission cannot make any determination as to whether the shelling of the Abu Halima house was a direct attack against a civilian objective, an indiscriminate attack or a justifiable part of the broader military operation.

800. With regard to the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, the Mission notes that the Israeli soldiers had ordered the tractor on which they were transporting the wounded to stop and had ordered the two cousins (aged 16 and 17) to come down. They had complied with those instructions and were standing next to the tractor, when the Israeli soldiers standing on the roof of a nearby house opened fire on them. The soldiers cannot have been mistaken about the circumstance that these were two civilians taking gravely wounded persons to a hospital. The shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima was a direct

[441] According to statements given by Omar and Nabila Abu Halima to the NGO Defence for Children International (ibid.). Information provided to the Mission by Omar Abu Halima on 15 June 2009 was less detailed but consistent with this information.

[442] Mission interview, 12 June 2009.

lethal attack on two under-age civilians. The fact that they were hit in the chest and the abdomen, respectively, indicates that the intention was to kill them.

801. The Mission further notes that in this case the Israeli armed forces denied the ambulances access to the area to evacuate the wounded and then opened fire on the relatives of the wounded who were trying to take them to the nearest hospital.

C. Information concerning the instructions given to the Israeli armed forces with regard to the opening of fire against civilians

802. The Mission found in the above incidents that the Israeli armed forces repeatedly opened fire on civilians who were not taking part in the hostilities and who posed no threat to them. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend emerging from its fact-finding in the testimonies of Israeli soldiers collected by the Israeli NGO Breaking the Silence[443] and in the Protocol of the Rabin Academy's "Fighters' Talk". These testimonies suggest in particular that the instructions given to the soldiers conveyed two "policies". Both are an expression of the aim to eliminate as far as possible any risk to the lives of the Israeli soldiers.

803. The first policy could be summarized, in the words of one of the soldiers: "if we see something suspect and shoot, better hit an innocent than hesitate to target an enemy." Another soldier attributed the following instructions to his battalion commander: "If you are not sure – shoot. If there is doubt then there is no doubt." The first soldier summarized the briefing from the battalion commander as follows "the enemy was hiding behind civilian population. […] if we suspect someone, we should not give him the benefit of the doubt. Eventually, this could be an enemy, even if it's some old woman approaching the house. It could be an old woman carrying an explosive charge." A third soldier explained "you don't only shoot when threatened. The assumption is that you constantly feel threatened, so anything there threatens you, and you shoot. No one actually said 'shoot regardless' or 'shoot anything that moves.' But we were not ordered to open fire only if there was a real threat."[444]

804. The Mission notes that some soldiers stated that they agreed with the instructions to "shoot in case of doubt." One of them explained "this is the difference between urban warfare and a limited confrontation. In urban warfare, anyone is your enemy. No innocents." Another told of his profound discomfort with the policy and of how he and his comrades had attempted to question their commander about it after a clearly harmless man was shot.[445] While they disagreed about the legitimacy and morality of the policy, they had little doubt about the terms of the instructions: each soldier and commander on the ground had to exercise judgement,[446] but the policy was to shoot in case of doubt.

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[443] *Soldiers' Testimonies….*

[444] Ibid., testimony 21, pp. 50–51, testimony 7, p. 20, and testimony 9, p. 24.

[445] Ibid., testimony 7, p. 20, and testimony 14, pp. 38-39.

[446] Ibid., testimony 13, p. 37.

805. The second policy clearly emerging from the soldiers' testimonies is explained by one of the soldiers as follows: "One of the things in this procedure [the outpost procedure, which is being applied in areas held by the Israeli armed forces after the Gaza ground invasion] is setting red lines. It means that whoever crosses this limit is shot, no questions asked. […] Shoot to kill."[447] In one incident highly relevant to the cases investigated by the Mission because of factual similarities, a soldier recounted an event he witnessed.[448] A family is ordered to leave their house. For reasons that remain unclear, probably a misunderstanding, the mother and two children turn left instead of right after having walked between 100 and 200 metres from their house. They thereby cross a "red line" established by the Israeli unit (of whose existence the mother and children could have no knowledge). An Israeli marksman on the roof of the house they had just left opens fire on the woman and her two children, killing them. As the soldier speaking at the Rabin Academy's "Fighters' Talk" a month later observes, "from our perspective, he [the marksman] did his job according to the orders he was given".

806. "Incessant" alerts about suicide bombers[449] meant that even civilians clearly identified by the soldiers as carrying no arms were perceived as a threat as soon as they came within a certain distance from the soldiers – a threat to be eliminated, also without warning fire, as a second might be enough for the "suicide bomber" to get close enough to harm the soldiers.

807. The Mission notes that many of the persons interviewed in Gaza described incidents in which they were, individually, as part of a group or in a vehicle, exposed to intense gunfire from Israeli soldiers – but without being hit or injured. This was the case, for instance, of an ambulance drivers attempting to drive into an area which the Israeli armed forces had decided he should not enter.[450] In the Khuza'a case, after the lethal shooting of Rouhiyah al-Najjar and wounding of Yasmine al-Najjar, the other women and children were exposed to fire from the Israeli soldiers, which forced them to retreat to the houses they had been trying to leave.[451] These incidents suggest that the Israeli armed forces made ample use of gunfire to "communicate" with the civilian population, to issue injunctions to civilians not to walk or not to drive any further in a certain direction or to immediately retreat to a building they were about to leave. The terrifying effect this sort of non-verbal communication had on those at the receiving end is evident, as is the likelihood of lethal consequences.

808. The Mission also read testimony from soldiers who recounted cases in which, although a civilian had come within a distance from them which would have required opening fire under the rules imparted to them, they decided not to shoot because they did not consider the civilian a threat to them.

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[447] Ibid., testimony 12, p. 32, also testimony 21, p. 52; and the of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7.

[448] Testimony of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7. The Mission notes that "Ram" clearly states that he was an eyewitness to the incident.

[449] For instance, *Soldiers' Testimonies…*, testimony 13, p. 37, and testimony 22, p. 53.

[450] Interview with Marwan Abu Reda, 11 June 2009. For a description of warning shots in front of moving vehicles, see *Soldiers' Testimonies…*, testimony 12, p. 33.

[451] This would appear to have been the case also in the shooting of Majda and Rayya Hajaj in Juhr ad-Dik.

D. Legal findings with regard to the cases investigated by the Mission

809. The fundamental principles applicable to these incidents, which are cornerstones of both treaty-based and customary international humanitarian law, are that "the parties to the conflict shall at all times distinguish between the civilian population and combatants"[452] and that "the civilian population as such, as well as individual civilians, shall not be the object of attack". [453] The Israeli Government refers to the principle of distinction as "the first core principle of the Law of Armed Conflict." It further states that "the IDF's emphasis on compliance with the Law of Armed Conflict was also directly incorporated into the rules of engagement for the Gaza Operation." The principle of distinction was reportedly incorporated in the following terms: "Strikes shall be directed against military objectives and combatants only. It is absolutely prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm)."[454]

810. In reviewing the above incidents the Mission found in every case that the Israeli armed forces had carried out direct intentional strikes against civilians. The only exception is the shelling of the Abu Halima family home, where the Mission does not have sufficient information on the military situation prevailing at the time to reach a conclusion.

811. The Mission found that, on the basis of the facts it was able to ascertain, in none of the cases reviewed were there any grounds which could have reasonably induced the Israeli armed forces to assume that the civilians attacked were in fact taking a direct part in the hostilities and had thus lost their immunity against direct attacks.[455]

812. The Mission therefore finds that the Israeli armed forces have violated the prohibition under customary international law and reflected in article 51 (2) of Additional Protocol I that the civilian population as such will not be the object of attacks. This finding applies to the attacks on the houses of Ateya and Wa'el al-Samouni, the shooting of Iyad al-Samouni, of Shahd Hajji and Ola Masood Arafat, of Ibrahim Juha, of Rayya and Majda Hajaj, of Amal, Souad, Samar, and Hajja Souad Abd Rabbo, of Rouhiyah al-Najjar, and of Muhammad Hekmat Abu Halima and Matar Abu Halima. In these incidents, 34 Palestinian civilians lost their lives owing to Israeli fire intentionally directed at them. Numerous others were injured, some very severely and with permanent consequences.

813. Not only are civilians not to be the object of attacks, they are also "entitled in all circumstances, to respect for their persons … protected especially against all acts of violence or threats thereof" (Fourth Geneva Convention, art. 27). Fundamental guarantees set out in article 75 of Additional Protocol I include the absolute prohibition "at any time and in any place" of "violence to the life, health, or physical or mental well-being of persons". According to the facts presented to the Mission, these provisions have been violated.

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[452] Additional Protocol I, art. 48.

[453] Additional Protocol I, art. 51 (2).

[454] "The operation in Gaza…", paras. 94 and 222.

[455] Pursuant to article 51 (3) of Protocol Additional I, civilians enjoy immunity from attack "unless and for such time as they take a direct part in hostilities." On the status of this rule in customary law, see chap. VII.

814. The State of Israel would be responsible under international law for these internationally wrongful actions carried out by its agents

815. From the facts ascertained, the Mission finds that the conduct of the Israeli armed forces in these cases would constitute grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons[456] and as such give rise to individual criminal responsibility.

816. The Mission also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation by the Israeli armed forces of the right to life as provided in article 6 of the International Covenant on Civil and Political Rights.

817. In most of the cases examined above, the Mission finds that the Israeli armed forces denied the medical emergency services access to the wounded civilians. This was the case with regard to all the incidents occurring in the al-Samouni neighbourhood, particularly after the shooting of Ahmad al-Samouni, where the PRCS ambulance was forced to return to Gaza City having come within 100 metres of the gravely wounded boy. Ambulances were also arbitrarily prevented from reaching the wounded after the attack on Wa'el al-Samouni's house, most dramatically after the shooting of Amal, Souad, Samar, and Hajja Souad Abd Rabbo and of Rouhiyah al-Najjar. In the case of the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, it is the rescuers who were executed, preventing them from taking their severely burned relatives to hospital. In the case of Iyad al-Samouni, finally, the relatives who wanted to assist him were threatened with being shot themselves.

818. The Mission recalls that article 10 (2) of Additional Protocol I provides that "In all circumstances [the wounded] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. …" This provision enjoys customary international law status. The Mission is mindful that "the obligation to protect and care for the wounded … is an obligation of means." It applies whenever circumstances permit. However, "each party to the conflict must use its best efforts to provide protection and care for the wounded,… , including permitting humanitarian organizations to provide for their protection and care."[457]

819. The facts ascertained by the Mission establish that in the incidents investigated the Israeli armed forces did not use their best efforts to provide humanitarian organizations access to the wounded. On the contrary, the facts indicate that, while the circumstances permitted giving access, the Israeli armed forces arbitrarily withheld it.

820. On this basis, the Mission finds a violation of the obligation under customary international law to treat the wounded humanely.

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[456] Article 147 of the Fourth Geneva Convention defines the "wilful killing" of protected persons as a grave breach of the Convention. The same qualification is applied to acts which "wilfully caus[e] great suffering or serious injury to body or health".

[457] *Customary International Humanitarian Law*…, rule 110 and p. 402.

821. The conduct of the Israeli armed forces amounted to violations of the right to life where it resulted in death, and to a violation of the right to physical integrity, and to cruel and inhuman treatment in other cases, which constitutes a violation of articles 6 and 7 of the International Covenant on Civil and Political Rights.

E. The attack on the al-Maqadmah mosque, 3 January 2009

1. The facts gathered by the Mission

822. The al-Maqadmah mosque is situated near the north-west outskirts of Jabaliyah camp, close to Beit Lahia. It is located less than 100 metres from the Kamal Idwan hospital, in the al-Alami housing project. At least 15 people were killed and around 40 injured – many seriously – when the Israeli armed forces struck the entrance of the mosque with a missile.

823. The Mission heard five eyewitnesses who had been in the mosque at the time it was struck. Two of them had been facing the door as the explosion occurred. Three of them had been kneeling facing the opposite direction and had been seriously injured. The Mission also heard from a number of relatives of those who died in the attack and has seen a number of sworn statements signed by them testifying to the facts they witnessed.[458] The Mission also heard again from three witnesses it had interviewed earlier at the public hearings in Gaza. Finally, the Mission reviewed information received from TAWTHEQ.

824. On the evening of 3 January 2009, between 5 and 6 p.m., a large number of people had gathered in the mosque for evening prayers. Witnesses indicate that between 200 and 300 men had gathered on the first floor.[459] A number of women had also congregated in the basement at that time. Witnesses explained that in time of fear or emergency it was the tradition to combine sunset and evening prayers.[460] In addition, the Mission heard that, while some time normally elapses between the muezzin calling the faithful to prayer and the prayers beginning, at this time it was the practice to begin prayers almost immediately.

825. The witnesses indicated that prayers had ended and the sermon was just beginning. At that point there was an explosion in the doorway to the mosque. One of the two wooden doors was blown off its hinges and all the way across the prayer area to the opposite wall.

826. As a result of the explosion at least 15 people died. Almost all were inside the mosque at the time. One of the casualties was a boy who had been sitting at the entrance. His leg was blown off by the missile strike and found afterwards on the roof of the mosque. A large number, around 40, suffered injuries. Many were taken to the Kamal Idwan hospital for treatment.

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[458] Note, for example, the affidavit of Ismail al-Salawi, brother of the sheikh at the mosque. He recounts how he was on his way to the mosque when his 13-year-old daughter ran towards him screaming that it had been bombed. He rushed in to find a scene of bloody chaos. As an immediate result of the strike his grandson Muhammad (13 years old), his nephews Hani (8 years old) and Omar (27 years old) were killed. See also a similar explanation of events by Ayisha Ibrahim, whose husband, Abdul Rahman (46), and son Ra'id were killed in the attack.

[459] Sheikh al-Salawi, interviewed on 3 June 2009 and 4 July 2009.

[460] See, for example, Sheikh al-Salawi at the public hearing in Gaza on 27 July 2009, available at http://www.realnetworks.com

827. On visiting the mosque, the Mission was able to observe the damage done to it. Its immediate entrance is on a raised level from the external pavement and is reached via a ramp. There are a number of stairs below the doorway, now covered by the raised entrance at the end of the ramp. The stairs underneath the ramp were damaged and the concrete had been pierced. There was a scorch mark on the ground and stairs.

828. The Mission has also viewed a number of photographs taken shortly after the strike and considers them to be reliable. They showed that something had penetrated the concrete (about three inches thick) immediately outside of the mosque doorway and then hit the pavement at the bottom of the stairs below the concrete covering. The ramp and entrance level structure had a wall about one metre high built on its outer side. The part of the wall opposite the mosque door was blown away.

829. The Mission observed that the interior walls of the mosque and part of the exterior wall around the doorway appeared to have suffered significant damage as a result of a spray of small metal cubes. A good number of these were lodged in the wall even at the time of the Mission's visit to the site in June 2009. Several of these were retrieved and the Mission could see how deeply embedded they were in the concrete walls.

830. Apart from the aforementioned visit to the mosque, the Mission has interviewed its sheikh on three occasions, its imam twice, its muezzin, several members of the sheikh's family, several of those injured in the blast and a number of the relatives who lost family members and who assisted in the immediate aftermath of the attack. It has seen medical certificates that bear out the nature of those injuries related by the young men it interviewed. The Mission questioned all of the witnesses and sought to clarify any doubts it may have had.

2. The position of the Israeli Government and the Israeli armed forces

831. The Israeli armed forces' response to the allegations states:

> … relating to a strike against the "Maqadme" mosque in Beit-Lahiya on January 3rd, 2009, it was discovered that as opposed to the claims, the mosque was not attacked at all. Furthermore, it was found that the supposed uninvolved civilians who were the casualties of the attack were in fact Hamas operatives killed while fighting against the IDF.[461]

832. Apart from the apparent contradictions it contains, the Mission notes that the statement does not indicate in any way the nature of the inquiry, the source of its information or the reliability and credibility of such sources.

833. In July 2009 the Israeli Government repeated the same position.[462]

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[461] "Conclusions of investigations into central claims and issues in Operation Cast Lead", 22 April 2009, annex C. The document was approved and authorized by the Chief of the General Staff Lt. Gen. Gabi Ashkenazi. It is available at: http://dover.idf.il/IDF/English/opcast/postop/press/2201.htm

[462] "The operation in Gaza…".

3. Factual findings

834. The Mission has established that the Israeli armed forces fired a missile that struck near the doorway of the mosque. The penetration pattern witnessed on the concrete ramp and stairs underneath is consistent with that which would be expected of a shrapnel fragmentation sleeve fitted onto an air-to-ground missile. Shrapnel cubes that the Mission retrieved from the rear inside wall of the mosque are consistent with what would be expected to be discharged by a missile of this nature.[463]

835. The strike killed at least 15 people attending the mosque for prayers and very seriously injured several others.

836. The Mission is not in a position to say from which kind of aircraft or air-launch platform the missile was fired. It believes the testimony of the witnesses regarding the circumstances of the attack, finding it plausible and consistent not only with the other witnesses, but also with the physical evidence at the scene. The Mission also notes that a number of local organizations sent representatives to the site of the attack very shortly after it occurred and they witnessed the scene for themselves. The Mission has also spoken with them and notes that their accounts are consistent with the testimony provided by the witnesses it heard.

837. There has been no suggestion that the al-Maqadmah mosque was being used at that time to launch rockets, store weapons or shelter combatants.[464] Since it does not appear from the testimonies of the incident or the inspection of the site that any other damage was done in the area at that time, the Mission concludes that what occurred was an isolated strike and not in connection with an ongoing battle or exchange of fire.

4. Legal findings

838. In the absence of any explanation as to the circumstances that led to the missile strike on al-Maqadmah mosque and taking into account the credible and reliable accounts the Mission heard from multiple witnesses, as well as the matters it could review for itself by visiting the site, the Mission concludes that the mosque was intentionally targeted by the Israeli armed forces. The Mission also takes into account the precision and sophistication of the Israeli armed forces' munitions in making this finding.

839. The Mission's finding is strengthened in the face of the unsatisfactory and demonstrably false position of the Israeli Government.

840. It follows that this was an attack on the civilian population as such and not on a military objective.

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[463] The Mission considers it possible in analysing the information available that the missile in question may have been a modified high-explosive anti-tank missile, sometimes referred to as either augmented high-explosive anti-tank (AHEAT) or high-explosive dual-purpose (HEDP).

[464] See, for example, statements made by Israel in "The operation in Gaza…", para. 234.

841. Based on the facts ascertained, the Mission finds that the Israeli armed forces have violated the prohibition under customary international law that the civilian population as such will not be the object of attacks as reflected in article 51 (2) of Additional Protocol I.

842. Based on those facts, the violations also constitute a grave breach of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons.

843. The Mission also finds that the State of Israel would be responsible for the arbitrary deprivation of the right to life, in relation to article 6 of the International Covenant on Civil and Political Rights, of those killed.

F. The attack on the al-Daya family house, 6 January 2009

1. The facts gathered by the Mission

844. On 6 January 2009, the al-Daya Family house located on al-Rai'i Street in Zeytoun, south-east of Gaza City, was struck by a projectile fired from an F-16 aircraft which killed 22 members of the family. Twelve of those killed were children under 10.

845. In June 2009, the Mission visited the site of the incident where it interviewed two of the four surviving members from the al-Daya family and a number of local residents.[465] Further inquiries and interviews were conducted in late July with neighbours of the al-Daya family.

846. The al-Daya house was a four-storey building with seven apartments owned by Fayez Musbah al-Daya. Each apartment was occupied by one of his seven sons, some married and living with their own families, and two unmarried daughters.

847. The Israeli armed forces reached Zeytoun on 3 January. Witnesses interviewed by the Mission said that the Israeli armed forces dropped leaflets in the area instructing people not to support Hamas and to provide the Israeli armed forces with information, at a given number, on military activities in the neighbourhood, including details of weapon facilities.[466]

848. Witnesses mentioned that a rumour had circulated that the Israeli forces were going to bomb a house in the neighbourhood, which led several families to leave their homes.[467] A few families chose to stay, including the remaining members of the al-Daya family and five other families.[468]

849. On the morning of 6 January, at around 5.35 a.m. a missile was reportedly fired in the vicinity of the al-Daya house, close to the Hassan al-Banna mosque, which killed an elderly man. Witnesses stated that the strike occurred shortly after the morning prayers had ended and when the man was on his way home. The same witnesses confirmed that the death of the man in

[465] Muhammad Fayez al-Daya, Rida Fayez al-Daya, Aimer al-Daya and Hafez al-Daya.

[466] Mission interviews with Muhammad Salam al-Ra'i, Deeb al-Ra'i, Faraj al-Ra'i and Rida al-Daya, July 2009.

[467] Those who left included the eldest son of the al- Daya family, Nafez al-Daya, his wife and seven children.

[468] The families of Zuher al-Ra'i (an estimated 16 people), Faraj al-Ra'i (an estimated 15 people), Jumaa al-Ra'i (an estimated 7 people), Mahmoud al-Hindi (an estimated 4 people) and Shawqi Sa'd.

question was caused not by a bullet but by a small missile. Approximately 10 minutes later, at around 5.45 a.m. the al-Daya family house was hit by a projectile from an F-16 aircraft.

850. Twenty-two members of the al-Daya family inside the house were killed.[469]

851. The Mission interviewed a number of neighbours. Each one of them said they had not received any warning call from the Israeli forces prior to the strike on the al-Daya house and confirmed that no other house in the street was struck after the al-Daya house had been hit.

852. Owing to the location of the house and the narrow street access it took several hours before neighbours were able to dig through the rubble. One brother, Radwan al-Daya, was pulled out of the debris alive and taken to the hospital with the help of a PRCS worker who lived near the al-Daya house. He died three days later having suffered severe asphyxiation. Several bodies were recovered only after the withdrawal of the Israeli armed forces.

2. The Israeli position

853. On 22 April 2009 the Israeli armed forces issued the following statement:

> […] The Al-Daia family residence in the Zeitoun neighbourhood in the city of Gaza (January 6th, 2009) – the incident in question was a result of an operational error with unfortunate consequences. The investigation concluded that the IDF intended to attack a weapons storage facility that was located in the building next to the Al-Daia family residence. It appears that following an error, the structure that was planned to be attacked was the Al-Daia residence rather than the building containing the weapons.[470]

854. In July 2009 the Israeli Government stated the following:

> The IDF has concluded that this tragic event was the result of an operational error. An investigation determined that the IDF intended to strike a weapons' storage facility located in a building next to this residence. However, the IDF erroneously targeted the Al-Daia residence, rather than the weapons storehouse. Although the IDF did provide warning shots to the roof of the Al-Daia residence, other warnings (such as the warning phone call) were made to the building *actually* containing the weapons, not the Al-Daia residence.
>
> The IDF is examining how the unfortunate operational error occurred, in order to reinforce safeguards and to prevent its recurrence. Israel deeply regrets the tragic outcome. This is the kind of mistake that can occur during intensive fighting in a crowded environment, against an enemy that uses civilian neighbourhoods as cover for its operations. IDF forces did not intentionally target civilians. This lack of unlawful intent

[469] These included the wife of Muhammad al-Daya (one of the surviving family members), their three daughters and one son, all under seven, who were crushed under the rubble of the house. Most of them were asleep at the time of the attack. Others killed included Fayez al-Daya and his wife; Iyad al-Daya and his wife Rawda, their three daughters and three sons, all under 10; Ramez al-Daya, his wife Safa, and their six-month-old daughter and two-year-old son; two sisters, Raghdah and Sabrine, and Radwan al-Daya.

[470] "Conclusions of investigations…", annex C.

has been a critical factor, in past incidents involving operational mistakes by other armies (such as NATO's erroneous bombing of the Chinese Embassy in the former Yugoslavia), in determining that no violation of the Law of Armed Conflict occurred. Similarly, although its attack on the Al-Daia residence was a tragic error, it did not constitute a violation of the laws of war.[471]

3. Factual findings

855. Israel's position is that the al-Daya house was destroyed as a result of an "operational error" made at some point in the planning of the operation. It says the target that should have been hit was a neighbouring house storing weapons. The Mission has interviewed the residents of the neighbouring houses and visited the site. No neighbouring house was attacked at any time after the al-Daya house was destroyed. The Mission finds it difficult to understand how a target apparently important enough to be targeted for such definitive destruction in the first place, as a result of what it apparently contained, could then remain free from attack for the remaining 12 days of the land operation.

856. The Mission is unable to verify claims that a warning was given by means of firing a small missile to the roof as the house was destroyed and the residents killed. Local witnesses have reported that a small missile did appear to strike an elderly man in the neighbourhood about 10 minutes before the al-Daya house was destroyed but the Mission is not in a position to say whether this is likely to have been an errant warning shot.

857. The Israeli authorities have not indicated with any precision which house they called but the claim that a warning call was made to the house that allegedly contained weapons has been denied by all local residents. No such call was received by anyone in the houses neighbouring the al-Daya house.

858. In these circumstances there are significant doubts about the Israeli authorities' account of the incident and what has been offered to date does not in the view of the Mission constitute an explanation.

859. Besides the main difficulties mentioned above, there are a number of issues that could have been easily clarified but were not. The precise nature of the operational error remains unclear, as does the time it occurred and who was responsible for it. Similarly, it would appear that the warnings system failed at various points: the Government of Israel reports that a warning was given on the basis that it believed there was a house storing weapons. Given the power of the projectile that destroyed the four-storey al-Daya building, the Mission wonders what the consequences would have been if the projectile had in fact struck a weapons store, yet there is no suggestion by the Israeli authorities of a warning having been given to neighbouring houses that secondary explosions were possible. Not only does it appear that the wrong warnings were given to the wrong people, but if the existence of the storage facility is to be believed at all, it would also appear that the apparently feasible step of warning locals of entirely foreseeable danger was not taken either.

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[471] "The operation in Gaza…", paras. 386-387.

860. The Mission finds the version of events offered so far by Israel to be unsatisfactory. The details given are not sufficient to clarify the nature of the very serious error that has been made, if it was an error. In so far as any explanation has been given, it appears to lack coherence and raises more questions than it answers.

4. Legal findings

861. In the absence of information necessary to determine the precise circumstances of the incident, the Mission can make no findings on possible violations of international humanitarian law or international criminal law. If indeed a mistake was made and the intention was to destroy a house nearby rather than to kill the al-Daya family, there could not be said to be a case of wilful killing as the requisite degree of criminal intent would not have been established on the part of the individuals responsible.[472]

862. However, the issue of State responsibility remains. The International Law Commission's articles on the responsibility of States for internationally wrongful acts[473] are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. In a commentary on the articles, Crawford and Olleson consider that "if a State deliberately carries out some specific act, there is less room for it to argue that the harmful consequences were unintended and should be disregarded. Everything depends on the specific context and on the content and interpretation of the obligation said to have been breached".[474]

863. The obligation breached in this case is the duty to ensure the general protection of the civilian population against the dangers arising from military operations, as reflected in article 51 (1) of Additional Protocol I.

864. The firing of the projectile was a deliberate act in so far as it was planned, by Israel's admission, to strike the al-Daya house. The fact that target selection had gone wrong at the planning stage does not strip the act of its deliberate character. The consequences may have been unintended; the act was deliberate. Taken together with further facts (such as the failure to deliver an effective warning) and the nature of the "intransgressible obligation" to protect civilian life, the Mission considers that, even if a fault element is required, the available information demonstrates a substantial failure of due diligence on the part of Israel. As such, the Mission considers Israel to be liable for the consequences of this wrongful act.

865. The Mission finds that Israel's lack of due diligence in this case also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal

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[472] See, for example, article 32 of the Rome Statute.

[473] Annexed to General Assembly resolution 56/83.

[474] J. Crawford and S. Olleson, "The nature and forms of international responsibility", in *International Law*, M. Evans, ed. (Oxford, Oxford University Press, 2003).

acts, but also to prevent arbitrary killing by their own security forces.[475] No exception is made for acts during war.

866. The right to life also includes a procedural component that requires adequate investigation of any alleged violation "promptly, thoroughly and effectively through independent and impartial bodies" for "failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant."[476] The investigation of the Israeli armed forces referred to above lacks transparency and credibility. The failure of Israel to comply with the procedural requirement adds to the frustration and anger felt by survivors, who have received no credible explanation for what occurred.

G. Attack on the Abd al-Dayem condolence tents

1. The facts gathered by the Mission

867. On 4 January 2009 the Israeli armed forces struck an ambulance in the Beit Lahia area with a flechette missile as it was attending a number of wounded persons who had been hit in an earlier attack. Those wounded in the first attack had also been hit by a flechette missile. As a result of the attack on the ambulance, one of the first-aid volunteers in the ambulance crew, Arafa Abd al-Dayem, suffered severe injuries. He died later the same afternoon.

868. The following day, as is the custom, the family set up condolence tents where family and friends would pay their respects and comfort the grieving relatives. The family home is in Izbat Beit Hanoun, a built-up area in the north-east corner of the Gaza strip. It is located between Jabaliyah and Beit Hanoun, about 3 kilometres from the border with Israel both to the north and to the east. Although the Israeli armed forces had entered Gaza at the time of the incident, in this area they remained on the Israeli side of the "Green Line" border. Two tents were set up – one for male visitors and one for female visitors. They were positioned at about ten metres from each other. The male tent was outside the house of Mohammed Deeb Abd al-Dayem, the father of the ambulance driver.

869. The tents were struck three times in two hours, again with flechette missiles.

870. The Mission spoke to several of the witnesses who had attended and survived the attacks on the condolence tents. The Mission noted the great pride Arafa Abd al-Dayem's father had in his son and the deep sense of loss he clearly felt.

871. As regards the attacks on the condolence tents, witnesses stated that at around 7.30 a.m. on 5 January, the house of Mohammed Deeb Abd al-Dayem, was hit by a shell. The shell struck the fourth floor of the five-storey building causing the roof to collapse.[477] Three men at the gathering, including the father of the deceased, were slightly wounded and taken to the Kamal

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[475] General comment No. 6 (1982), para. 3.

[476] Human Rights Committee, general comment No. 31 (2004), para. 15. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 3 (b).

[477] Testimony of IK/12 and IK/13 to the Mission on 30 June 2009.

Idwan hospital in Beit Lahia for treatment. They returned to the house at around 8.15 a.m. where a decision was taken by the mourners to end the condolence ceremony for fear of further attacks.

872. The witness stated that at around 8.30 a.m. when the people were leaving the house of Mohammed Deeb Abd al-Dayem and moving towards the women's condolence tent, two flechette missiles struck within a few metres of the tent and less than half a minute apart. Around 20 to 30 persons assembled there were injured. The injured include a 13-year-old boy who received a flechette injury to the right side of his head and a 33-year-old man who sustained injuries to the chest and head, his body punctuated with little holes according to a witness who saw his corpse being prepared for burial. A 22-year-old man was wounded in the abdomen, the chest and the head. A 16-year-old boy sustained injuries to the head and the neck. A 26-year-old man sustained injuries to his chest, head and left leg. These five persons died of their injuries. Another 17 persons present at the scene, including 14 men, two children (aged 17 and 11) and one woman were injured.

873. IK/12, who survived the attack, still has several flechettes embedded in his body, including in his chest, and is unable to move freely without pain.

874. Witnesses described that their sense of loss was aggravated by the fact that they could not access the injured or dead in hospitals as movement was restricted owing to continued shelling in and around the neighbourhood. Only two families out of the five families of the dead were able to conduct the burial according to their traditional customs and practices.

2. The Israeli position

875. The Israeli Government does not appear to have made any public comment on the allegations surrounding the Abd al-Dayem case, despite information about it being in the public domain for some time.[478] It has, however, recalled that the Israeli High Court of Justice has rejected the argument that flechette munitions are by their nature indiscriminate and maintains that subject to the general requirements of the rules of armed conflict their use is legal.[479]

3. Factual findings

876. The Mission visited the area and the house of the Abd al-Dayem family. It spoke with the father of Arafa Abd al-Dayem, who had died as a result of the injuries received while working as a first-aid volunteer, and with several of the witnesses who had attended the condolence ceremonies.

877. The account of the incidents was consistent and plausible. The fact that it was mainly men who were killed near the women's tent is explained by the fact that the strikes occurred precisely when the men were making their way across the road.

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[478] The incident is mentioned in Amnesty International, *Fuelling Conflict: Foreign Arms Supplies to Usrael/Gaza* (February 2009).

[479] See "The operation in Gaza…", paras. 431-435.

878. The Mission can see nothing at all that points to the house of Mohammed Deeb Abd al-Dayem, or the condolence tents constituting a military objective. The repeated nature of the strikes indicates that there was a deliberate attempt to kill members of the group or the entire group, but no information about the purpose of the strikes has been forthcoming from the Israeli authorities.

879. The Mission inspected the sites of the attacks and was left in no doubt that they had been entirely deliberate. There was a tent at each side of the wide road. The particular area is relatively open.

4. Legal findings

880. While international humanitarian law does not explicitly prohibit the use of flechettes in all circumstances, the principles of proportionality and precautions necessary in attack render their use illegal. Flechettes are 4-cm-long metal darts used as anti-personnel weapons that penetrate straight through human bone and can cause serious, often fatal, injuries.[480] Discharged from tank shells and aircraft or UAV-launched missiles, they are fired in salvo and are therefore an area anti-personnel weapon. They are, therefore, by their nature lacking in discrimination.

881. The Mission notes that, during the condolence ceremony, flechette shells were fired in the vicinity of a large group of civilians, killing 5 and injuring more than 20. To consider the attacks indiscriminate would imply that there was a military objective underlying the attacks in the first place. The Mission has no information on which to base such a conclusion and notes the silence of the Israeli authorities on the incident.

882. The Mission therefore considers that the families participating in the condolence ceremony were civilians and taking no active part in hostilities. The attacks on the condolence tent on the morning of 4 January were entirely unjustified and unnecessary. The attacks seemed designed to kill and maim the victims directly and otherwise to terrify the people in the area rather than to pursue any genuine military objective.

883. The Mission finds that the attack on the Abd al-Dayem family condolence tents constitutes an intentional attack against the civilian population and civilian objects, wilful killing and the wilful infliction of suffering. In particular, the Mission believes that any party using a flechette missile in circumstances that are totally or predominantly civilian cannot fail to anticipate the severe and unnecessary suffering of the civilians affected.

884. Based on the facts ascertained, the Mission therefore finds there to have been violations of customary international law in respect of a deliberate attack on civilians. It considers the attack was not only an attack intended to kill but also to spread terror among the civilian population, given the nature of the weapon used. (See art. 51 (2) of Additional Protocol I.)

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[480] Amnesty International, Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction (London, 2009) and B'Tselem, "Flechette shells: an illegal weapon", available at: http://www.btselem.org/english/firearms/flechette.asp.

885. The Mission also finds the attack to constitute a grave breach of the Fourth Geneva Convention with respect to article 147 regarding wilful killings and wilfully causing great suffering.

XII. THE USE OF CERTAIN WEAPONS

886. In the course of its inquiries, the Mission was made aware of the use of certain weapons by the Israeli armed forces. This chapter does not intend to present a comprehensive analysis of all the aspects raised on the kinds of weaponry used during the military operations. It is rather a summary of the Mission's views on a number of issues that arise from the foregoing chapters in relation to the obligation to take all feasible precautions in the choice of the means and methods of warfare. Many of the issues brought to the Mission's attention had already received scrutiny in the press or as a result of analysis carried out by a number of organizations.[481] Among these issues was the use of white phosphorous, the use of flechette missiles, the use of so-called dense inert metal explosive (DIME) munitions, and the use of depleted uranium.

A. White phosphorous

887. White phosphorous was used throughout the ground phase of the operations. The Israeli Government has set out its reasons for doing so, emphasizing that it is not only not a proscribed weapon under international law but that it was deployed with a high degree of success.[482]

888. It has explained that it used white phosphorous in two forms. One was as exploding munitions used as mortar shells by ground and naval forces. It says that in this form it was deployed only in unpopulated areas for marking and signalling purposes, and not in an anti-personnel capacity. It claims that, as a result of international concerns, it decided to stop using these munitions on 7 January 2009, although this was not required by international law. It also acknowledges the use of smoke projectiles containing felt wedges dipped in white phosphorous.

889. The Mission understands the means of deploying these smoke projectiles was that they were fired as a canister shell by 155-mm howitzers. The projectile was timed or programmed to air-burst over its designated target. The canister shell then discharged a quantity of felt wedges impregnated with white phosphorous, usually in the order of 160 wedges in a fan-like dispersion earthwards. These wedges with white phosphorous, which is a pyrophoric chemical (that is, self-igniting when in contact with the air), emit smoke and continue to do so until the chemical is exhausted or deprived of air. Wedges of white phosphorous therefore remain active and have done so in Gaza for up to 21 and 24 days after discharge. It is technically possible that there are

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[481] See, for example, Physicians for Human Rights-Israel, Report of the Independent Fact Finding Mission into violations in the Gaza Strip during the period 27.12.08-18.01.09, http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf, Human Rights Watch, Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza (March 2009), Amnesty International, Fuelling conflict: Foreign arms supplies to Israel/Gaza (February 2009), Report of the Independent Fact Finding Committee on Gaza, "No safe place…", paras. 206-207; Summary of the Report of the United Nations Headquarters Board of Inquiry, paras. 46-56, documentation provided by UNRWA.

[482] "The operation in Gaza…", paras. 406-430. The Mission addressed written questions to the Government of Israel regarding the use of white phosphorous during the military operations in Gaza. No reply was received.

still active white phosphorous wedges in Gaza – in water tanks or in sewage systems, for example. Children have subsequently been injured by coming in contact with such wedges.

890. The Mission has recounted a number of incidents where it has particular concern about the choice to use white phosphorous. These incidents have been addressed in detail elsewhere and include the incidents at the UNRWA compound in Gaza City, the attacks on al-Quds and al-Wafa hospitals, also in Gaza City, and the use of white phosphorous in the attack on the Abu Halima family to the north of al-Atatra and in Khuz'a.

891. The Mission notes that, at least in the case of Abu Halima,[483] it appears that the white phosphorous was deployed by means of an exploding shell and not as a smoke projectile. This occurred several days after the apparent decision to stop using the munitions on 7 January 2009.

892. The Mission has also spoken at some length to a number of local and international medical experts who treated patients in Gaza who suffered burns as a result of exposure to white phosphorous.

893. The Mission need not repeat much of what it has already concluded on the choice to use white phosphorous in specific circumstances. It has already made clear that the risks it posed to the civilian population and civilian objects in the area under attack were excessive in relation to the specific military advantages sought.

894. The Israeli Government has frequently pointed out the difficulties posed by fighting in built-up areas. One of the difficulties is the proximity of civilian premises to possible military targets. Commanders have no choice but to factor in the risk to such premises and the people inside them in deciding which weapons to use. The Mission finds that the Israeli armed forces were systematically reckless in determining to use white phosphorous in built-up areas and in particular in and around areas of particular importance to civilian health and safety.

895. In addition to the reckless use of white phosphorous, the Mission must emphasize that it is concerned not only with the inordinate risks the Israeli armed forces took in using it, but also the damage it caused in fact. In speaking with medical experts and practitioners, it was impressed by the severity and sometimes untreatable nature of the burns caused by the substance.

896. Several doctors told of how they believed they had dealt with a wound successfully only to find unexpected complications developing as a result of the phosphorous having caused deeper damage to tissue and organs than could be detected at the time. Several patients died, according to doctors, as a result of organ failure resulting from the burns.

897. A senior doctor at al-Shifa hospital in Gaza City confirmed that Sabah, Ghada and Farah Abu Halima were admitted with serious burns and transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.[484]

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[483] See chap. XI.

[484] Mission interview on 12 June 2009.

898. The doctor commented that, before the military operations, the hospital was not familiar with white phosphorous burns. Staff became concerned when patients who had been sent home after treatment of apparently minor burns would come back in the following days with more serious wounds. They found that when they removed the bandages that had been applied to a wound that still contained fragments of white phosphorous, smoke would come from the wound, even hours after the injury. White phosphorous continues to burn as long as it is in contact with oxygen.

899. International doctors working with al-Shifa staff, some of whom had worked in Lebanon during the 2006 war, identified white phosphorous as the cause of these injuries and the treatment was adapted accordingly. Any apparent white phosphorous burn was immediately covered with a wet sponge and the particles extracted. White phosphorous sticks to tissue, so all flesh and sometimes the muscle around the burn would have to be excised.

900. In addition, the highly toxic substance, used so widely in civilian settings posed a real health threat to doctors dealing with patients. Medical staff reported to the Mission how even working in the areas where the phosphorous had been used made them feel sick, their lips would swell and they would become extremely thirsty and nauseous.

901. While accepting that white phosphorous is not at this stage proscribed under international law, the Mission considers that the repeated misuse of the substance by the Israeli armed forces during this operation calls into question the wisdom of allowing its continued use without some further degree of control. The Mission understands the need to use obscurants and illuminants for various reasons during military operations and especially in screening troops from observation or enemy fire. There are, however, other screening and illuminating means which are free from the toxicities, volatilities and hazards that are inherent in the chemical white phosphorous. The use of white phosphorous in any from in and around areas dedicated to the health and safety of civilians has been shown to carry very substantial risks. The Mission therefore believes that serious consideration should be given to banning the use of white phosphorous as an obscurant.

B. Flechettes[485]

902. Flechettes are small, dart-like pieces of composite metal and are usually fired in salvo from canister projectiles or shells. Those fired and retrieved in Gaza were 4 cm long and approximately 2–4 mm wide, having a pointed end and a fletched end.

903. Flechettes are used in an anti-personnel role and are discharged in such quantities that they cover an area forward of the canister shell. As an area weapon, on impact the darts will hit whatever is within a certain zone. They are incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

[485] See "The operation in Gaza…", paras. 431-434. The report simply states that the weapons are not proscribed and this was reiterated by the Israeli High Court of Justice in 2002. Although it does not address specific allegations, it does state in general terms that allegations are still being investigated (para. 435). The Mission addressed questions to the Government of Israel regarding the use of flechettes during the military operations in Gaza. No reply was received.

904. Flechettes were fired during the military operations on several occasions by tanks and on at least one occasion from an air-to-surface missile of the "Helfire" type.[486] In all cases those hit by these devices were civilians and in one case were attending a condolence tent following the loss of a family member who was also killed by flechettes.

905. Flechettes are known to bend, break or "tumble" on impact with human flesh. Such performances are often part of the flechettes design characteristic and are marketed as such. "Tumbling" in particular is adjudged to be a further determination of the projectiles "incapacitation" effect.[487] The Mission notes, however, that flechettes can be designed to be free of these post-impact characteristics if it is desired that they should do so.

C. Alleged use of munitions causing a specific type of injury

906. The Mission received reports from Palestinian and foreign doctors who operated in Gaza during the military operations of a strikingly high percentage of patients with severed legs as a result of the impact of projectiles launched by the Israeli armed forces. Dr. Mads Gilbert, a Norwegian anaesthetist, and Dr. Eric Fosse, a Norwegian surgeon, who carried out surgery in al-Shifa Hospital from 31 December 2008 to 10 January 2009,[488] described to the Mission the characteristics of the wounds. The amputations mostly occurred at waist height in children, generally lower in adults, and were combined with skin-deep, third-degree burns, four to six fingers upward from the amputation. Where the amputation took place, the flesh was cauterized as a result of the heat. The patients with these amputations had no shrapnel wounds, but red flashes on the abdomen and chest. The excision of large pieces of flesh was not infrequent in these patients. Dr. Gilbert added that the patients also suffered internal burns. This description was confirmed to the Mission by Palestinian surgeons.

907. The Mission understands such injuries to be compatible with the impact of DIME weapons. DIME weapons consist of a carbon-fibre casing filled with a homogeneous mixture of an explosive material and small particles, basically a powder, of a heavy metal, for instance, a tungsten alloy. Upon detonation of the explosive, the casing disintegrates into extremely small, non-lethal fibres. The tungsten powder tears apart anything it hits. The impact of such weapons in general causes very severe wounds within a relatively limited diameter (compared to other projectiles) from the point of detonation. As the small heavy metal particles can slice through soft tissue and bone, survivors close to the lethal zone may have their limbs amputated and tungsten alloy particles embedded in their bodies. The probabilities of injuries to persons at a greater distance from the detonation point are reduced compared to more conventional projectiles. It is therefore also referred to as a "focused lethality munition".[489]

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[486] See Abduldayem case in chapter XI.

[487] William Kokinakis and Joseph Sperrazza, "Criteria for incapacitating soldiers with fragments and flechettes (U)", Ballistic Research Laboratories Report Number 1269, Aberdeen Proving Ground, Maryland (January 1965).

[488] Mads Gilbert and Eric Fosse, "Inside Gaza's al-Shifa hospital", *The Lancet*, vol. 373, No. 9659 (17 January 2009), p. 200.

[489] The DIME munitions subject of discussion here are distinct from the missile described, for example, in the al Maqadmah mosque case. In that case the missile had been fitted with a micro-shrapnel fragmentation sleeve. The

908. The materials submitted to the Mission, including by the expert witness Lt. Col. Lane, point to specific medical concerns with regard to survivors of DIME weapon injuries.[490] The tungsten alloy particles are suspected to be highly carcinogenic and so small that they cannot be extracted from the patient's body. Dr. Gilbert noted that there had been no follow-up studies on the survivors of this type of amputation observed in Gaza and Lebanon since 2006 following Israeli military operations. There is some research suggesting that these patients might be at increased risk of cancer. These concerns apply equally to missile or projectile shrapnel of heavy metal such as tungsten or tungsten alloy which was used in at least two occasions in Gaza. The carcinogenic hazards are the same no matter the delivery means or the size or shape of the pieces of the metal that enter human flesh.

D. Factual findings on the use of munitions causing a specific type of injury

909. From the facts it gathered, the Mission finds that the allegations that DIME weapons were used by the Israeli armed forces in Gaza during the military operations require further clarification with regard to their use and, particularly, the health-care needs of survivors of the amputations attributed to DIME weapons.

910. The Mission notes that DIME or heavy metal shrapnel weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands. The "focused lethality" reportedly pursued in the development of DIME weapons could be seen as advancing compliance with the principle of distinction. The Mission also observes, however, that there remains a very high risk of harming civilians when using these weapons in built-up areas and that concerns have been expressed that DIME weapons could have a particularly adverse impact on the enjoyment of the right to health of survivors, which would go beyond the impact generally associated with being affected by anti-personnel weapons in an armed conflict.

E. Allegations regarding the use of depleted and non-depleted uranium munitions by the Israeli armed forces

911. The Mission received submissions and reviewed reports alleging the use of depleted uranium weapons by the Israeli armed forces during the military operations in Gaza.[491] While it cannot be excluded that such weapons were used, on the basis of the information received the Mission decided not to investigate the matter further.

912. The Mission also received a submission which alleged that the analysis of the air filter taken from an ambulance which was in operation in the Beit Lahia area during the military

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micro-shrapnel consisted of tungsten or tungsten alloy cubes, which may have similar carcinogenic hazards as the powder or fibres in DIME.

[490] Written submissions to the Mission by expert witness Lt. Col. Lane.

[491] Arab Commission for Human Rights, Action des citoyens pour le désarmement nucléaire and International Coalition Against War Criminals, Preliminary report, Mission for Gaza, April 2009 by Jean-François Fechino, pp. 55-60; Action des citoyens pour le désarmement nucléaire, On the use of radioactive weapons in the Gaza Strip during « Operation Cast Lead » (27 December 2008 - 18 January 2009), http://www.acdn.net/.

operations showed unusually high levels of non-depleted uranium and niobium in the air.[492] In view of the limited time available, the Mission could not further investigate this matter.

XIII. ATTACKS ON THE FOUNDATIONS OF CIVILIAN LIFE IN GAZA: DESTRUCTION OF INDUSTRIAL INFRASTRUCTURE, FOOD PRODUCTION, WATER INSTALLATIONS, SEWAGE TREATMENT PLANTS AND HOUSING

A. The destruction of el-Bader flour mill

913. The Mission visited the site of the air strikes and surveyed the surrounding area in Sudaniyah, west of Jabaliyah. It met and interviewed the Hamada brothers, joint owners of the el-Bader flour mill, on four occasions. It spoke with representatives of the business community about the context and consequences of the strike on the flour mill. Mr. Hamada also testified at the public hearings in Gaza.[493] The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the el-Bader flour mill, but received no reply.

914. The Hamada brothers are well-established businessmen and hold *Businessman Cards*, issued by the Israeli authorities to facilitate business travel to and from Israel. The flour mill is one of several businesses owned by the brothers on this site, including a tomato-canning factory and a factory for the production of nappies. These last two businesses were closed down sometime before the beginning of the Israeli military operations in Gaza, as the blockade led to a lack of supplies. According to Mr. Rashad Hamada, the tomato-canning business failed primarily because of the Israeli authorities' refusal to allow tins for canning into Gaza. The owners had transferred many employees from the businesses that had closed down to the flour mill so that these employees would continue to draw a salary. At the time of its destruction, the flour mill employed more than 50 people.

915. The el-Bader flour mill began operations in 1999.[494] By 27 December 2008, it was the only one of Gaza's three flour mills still operating. The others had ceased operations owing to a lack of supplies. The el-Bader mill was able to continue in part because of its greater storage capacity.

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[492] Submission by Chris Busby & Dai Williams. Battlefield Fallout: Evidence of Uranium and Niobium in Weapons Employed by the Israeli Military in Gaza. Analysis of Ambulance Air Filter and Bomb Crater.

[493] The Mission met Rashad Hamada and other members of the Palestinian business community on 3 June 2009 and interviewed him at the site of the el-Bader flour mill on 4 June 2009. Mr. Hamada testified at the public hearings in Gaza on 29 June 2009.

[494] Rashad Hamada stated that the aim of the business, besides making a profit, was to help Gaza to be more self-sustaining economically and thus to reduce dependence on external supplies. He indicated that the increase in running costs caused by the blockade gave Israeli competitors a considerable advantage. The cost of electricity, for example, was approximately 50 per cent higher than it was for his competitors in Israel. In addition, since the Israeli Government had closed the Erez crossing and all imports and exports had to go through the Karni crossing, transport costs had increased 10-fold. The increased cost for the consumer had, as a result, also been significant. The retail price of milled flour had risen, in his estimation, by perhaps as much as 10 per cent.

916. On 30 December 2008, a recorded warning was left on the flour mill's answering machine to the effect that the message was from the Israeli armed forces and that the building should be evacuated immediately. The approximately 45 workers in the mill at the time were evacuated at around 9.30 a.m.

917. Following the evacuation, Mr. Hamada called a business associate in Israel, explained what had happened and asked him for advice. The business associate called him back, indicating that he had spoken with contacts in the Israeli armed forces on Mr. Hamada's behalf, and had been told that, although the mill had been on a list of proposed targets, they had decided not to proceed with the strike. Mr. Hamada did not receive any information as to why his mill might have been targeted.

918. As a result of these conversations and the fact that there had been no strike, the employees returned to work the next day. Work continued for a number of days until a second recorded warning was received on or around 4 January 2009. The flour mill was again evacuated and Mr. Hamada again contacted his business associate in Israel. The same scenario unfolded whereby Mr. Hamada received a call later on to the effect that the Israeli armed forces had informed his associate that the mill would not be hit. The employees returned to work in the light of the information and the fact that the warnings had not been put into effect.

919. On 9 January, at around 3 or 4 a.m., the flour mill was hit by an air strike, possibly by an F-16. The missile struck the floor that housed one of the machines indispensable to the mill's functioning, completely destroying it. The guard who was on duty at the time called Mr. Hamada to inform him that the building had been hit and was on fire. He was unhurt. In the next 60 to 90 minutes the mill was hit several times by missiles fired from an Apache helicopter. These missiles hit the upper floors of the factory, destroying key machinery. Adjoining buildings, including the grain store, were not hit. The strikes entirely disabled the factory and it has not been back in operation since. A large amount of grain remains at the site but cannot be processed.

920. The Israeli armed forces occupied the disabled building until around 13 January. Hundreds of shells were found on its roof after the soldiers left. They appeared to be 40-mm grenade machine-gun spent cartridges.

921. The Hamada brothers rejected any suggestion that the building was at any time used for any purpose by Palestinian armed groups. They pointed out that all of the buildings and factories were surrounded by a high wall and manned by at least one guard at night. In addition, the Israeli authorities knew them as businessmen and they would not have been given Businessman Cards had there been any reason for the Israeli Government to suspect that they were involved with or supported armed groups. They were both adamant that their interest was and always had been industrial and commercial, and that the last thing they were prepared to do was put their business at risk.

1. Factual findings

922. The Mission found the Hamada brothers to be credible and reliable witnesses. It has no reason to doubt the veracity of their testimony. The information they provided was corroborated

by other representatives of the Gaza business community with whom the Mission discussed the context and consequences of the strike on the flour mill.

923. The owners and employees of the flour mill were forced to evacuate the building twice because of the two recorded warnings left on the answerphone, which were not followed by air strikes. They were put into a state of fear as a result of the false alarms. When the mill was hit on 9 January, the strike happened without prior warning, raising questions about the efficacy or seriousness of the warnings system used by the Israeli armed forces.

924. The consequences of the strike on the flour mill were significant. Not only are all the employees out of work, the capacity of Gaza to produce milled flour, the most basic staple ingredient of the local diet, has been greatly diminished. As a result, the population of Gaza is now more dependent on the Israeli authorities' granting permission for flour and bread to enter the Gaza Strip.

925. Available information does not suggest that the Israeli authorities have investigated the destruction of the flour mill. The Mission finds the version of the Hamada brothers to be credible and in line with the Israeli practice of leaving telephone warnings of impending attacks.

2. Legal findings

926. In considering the degree to which there may have been violations of international humanitarian law, the Mission refers to article 52 of Additional Protocol 1, which is set out in full above at chapter VII. The Mission also considers the following provisions to be relevant to its deliberations:

Article 54 (1) and (2) of Additional Protocol I

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

Article 147 of the Fourth Geneva Convention provides:

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

927. No other buildings in the industrial compound belonging to the Hamadas were damaged at the time of the strikes. It appears that the strikes on the flour mill were intentional and precise.

928. The Hamada brothers are well-known businessmen. The Israeli authorities did not appear to consider them either before or after the military operations to be a threat, given the unrestricted issuance of their Businessman Cards and their ability to travel to Israel afterwards. The issuance of a Businessman Card is no trifle, especially in the context of the ongoing restrictions on trade. It is not plausible that the Israeli authorities would issue such a document to any party it regarded with suspicion.

929. The only issue that remains to be examined is whether there was any reason for the flour mill to have been deemed a military objective on 9 January. The building was one of the tallest in the area and would have offered extensive views to the Israeli armed forces. The Mission notes that taking control of the building might be deemed a legitimate objective in the circumstances. However, by 9 January the Israeli armed forces were fully aware that the flour mill could be evacuated at short notice by using the warning message system. If the reason for attacking the mill was to gain control of it for observation and control purposes, it made no sense to bomb the principal machinery and to destroy the upper floors. There is also no suggestion that the Israeli armed forces considered the building to be a source of enemy fire.

930. The nature of the strikes on the mill and in particular the precise targeting of crucial machinery on one of the mid-level floors suggests that the intention was to disable its productive capacity. There appears to be no plausible justification for the extensive damage to the flour mill if the sole objective was to take control of the building. It thus appears that the only purpose was to put an end to the production of flour in the Gaza Strip.

931. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity would amount to a war crime.

932. Having concluded that the strikes were without any military justification, and therefore wanton and unlawful, the Mission finds it useful to consider if there was any non-military purpose to the strikes.

933. The aim of the strike, if not military, could only have been to destroy the local capacity to produce flour. The question is whether such deliberate destruction of the sole remaining flour-producing capacity in the Gaza Strip can be described as having been done for the purpose of denying sustenance to the civilian population.

934. Article 54 (1) and (2) of Additional Protocol I reflect customary international law.[495] Article 54 (2) prohibits acts whose specific purpose is the denial of sustenance for whatever reason, including starvation, forced displacement or anything else. In short, the motive for denying sustenance need not be to starve the civilian population. Indeed, the motive is irrelevant.

[495] In this respect the Mission agrees with the views expressed by ICRC in *Customary Rules of International Law…*, pp. 189-193.

935. The civilian population is increasingly dependent on external humanitarian assistance, whose arrival depends on permission from the Israeli authorities. While it is not suggested that starvation is imminent, the health and welfare of the population at large have been profoundly affected by the blockade and the military operations. The only reason why starvation is not imminent however is precisely the provision of humanitarian assistance. Without such assistance Gaza's civilian population would not be able to feed itself.[496]

936. States cannot escape their obligations not to deny the means of sustenance simply by presuming the international community will fill the gap they have created by deliberately destroying the existing capacity.

937. From the facts ascertained by it, the Mission finds that the destruction of the mill was carried out for the purpose of denying sustenance to the civilian population, which is a violation of customary international law as reflected in article 54 (2) of Additional Protocol I and may constitute a war crime.

3. The right to food[497]

938. The right to adequate food therefore requires the right to food security (through either self-production or adequate income) and the "fundamental" right to be free from hunger.[498] That Israel has not created a state of hunger is the result largely of the external aid provided to the population of Gaza. It has, however, severely affected the ability of Gazans both to produce food and to purchase it.

939. Article 1 of the International Covenant on Civil and Political Rights states that "in no case may a people be deprived of its own means of subsistence."

940. The right to adequate food is also reflected in the Convention on the Elimination of All Forms of Discrimination against Women, which requires State parties to guarantee to women "adequate nutrition during pregnancy and lactation."

941. The Mission finds that, as a result of its actions to destroy food and water supplies and infrastructure, Israel has violated article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women.

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[496] According to John Ging, 80 per cent of the Gazan population is dependent on UNRWA for food supplies. Interview with IRIN, 20 January 2009.

[497] See chap. XVII.

[498] See Randle C. DeFalco, "The right to food in Gaza: Israel's obligations under international law", *Rutgers Law Record*, vol. 35 (Spring 2009), available at: http://www.lawrecord.com/rutgers_law_record/2009/05/the-right-to-food-in-gaza-israels-obligations-under-international-law.html#sdfootnote24sym.

B. The destruction of the Sawafeary chicken farms

942. On or around the night of 3 January 2009 Israeli troops arrived at a number of houses on al-Sekka Road in Zeytoun. The Mission interviewed four people who were direct witnesses to and victims of the events that occurred in the aftermath of their arrival. One witness was interviewed three times for a total of five hours and testified at the public hearings in Gaza.[499] Another three were interviewed for an hour each. The Mission also visited the site of the Sawafeary chicken farms. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking Mr. Sawafeary's chicken farms, but received no reply. The following narrative reflects the eyewitness accounts.

943. Sameh Sawafeary is a chicken farmer. His family has been in the egg production business for many years. He indicated that he, his brothers and his children owned 11 chicken farms in Zeytoun as of December 2008. The farms housed more than 100,000 chickens.

944. On 3 January, Mr. Sawafeary, who was in his home on al-Sekka Road in the al-Samouni neighbourhood of Zeytoun with his family, was alerted by an al-Jazeera television news broadcast at around 8 p.m. that an Israeli ground invasion was imminent.[500] As a result, he took a number of precautions, including hiding money and other valuables. He then gathered around 11 members of his family on the upper floor of the two-storey concrete house. At around 10 p.m. a missile struck the house, entering through the rear of the upper floor and exiting near the window of the living room opposite. The missile passed over several of Mr. Sawafeary's children and grandchildren, who were lying on the floor. No one was injured.

945. At around 11 p.m., Mr. Sawafeary heard the sound of helicopters flying over his house followed by soldiers landing on his roof. The soldiers remained there until 7 a.m. the next morning, firing what he described as "a rain of bullets". The family stayed, terrified, on the floor of an upstairs room.

946. At around 7.15 a.m. on 4 January, soldiers came into the upstairs room where the family was sheltering. They separated the men from the women and put the women in another room. The hands of the men and the boys were tied behind their backs, except for one of Mr. Sawafeary's sons who has only one arm. After some time the commander told Mr. Sawafeary that they should walk south and "go to Rafah". The soldiers then searched the house. The 11 members of the household there at the time left the house as instructed.

947. The Sawafeary family spent the following five days in terror. Together with neighbouring families they spent one night in the Abu Zur house and the following three in the nearby house of Mr. Rajab Mughrabi. During that time they suffered a number of violations at the hands of the Israeli armed forces, including the killing of the child Ibrahim Juha (see chap. XI).

948. For the purposes of this section the Mission refers to the information it received about the systematic destruction that occurred for several days and which the witnesses were able to see during the time they were forced by the circumstances to remain in the house of Mr. Mughrabi.

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[499] Interviewed by the Mission in Gaza on 3 June and 14 June and at the Gaza public hearing on 29 June.

[500] The previous night, a garage next door had been destroyed by an air strike.

949. Mr. Sawafeary and Mr. Mughrabi informed the Mission that they had watched Israeli armoured bulldozers systematically destroy land, crops, chickens and farm infrastructure. Mr. Mughrabi stated that he watched the bulldozers plough through fields with crops and trees, destroying everything in their path. Mr. Sawafeary stated that he saw less, as he was watching through a small opening because he was afraid of being seen and shot. He stated that he saw only two or three "tanks", but was not in a position to say whether there were more. He watched as the armoured bulldozers destroyed the chicken farms, crushing the wire mesh coops with the chickens inside. He could not see his own farms and the chickens he could see being destroyed were not his. He noted that the drivers of the tanks would spend hours flattening the chicken coops, sometimes stopping for coffee breaks, before resuming their work.

950. When he left Mr. Mughrabi's house on 8 January, Mr. Sawafeary was able to see that his own farms did not appear to have been subjected to the destruction he had witnessed from inside the house. However, when he was able to return to his home after the Israeli withdrawal all 31,000 of his chickens had been killed and the coops systematically flattened.

951. The Mission visited the site and saw the still flattened mesh coops, which had been covered with corrugated iron, as well as the remains of water tanks and machinery. The Mission was also shown the remnants of a small mosque near the end of one of the lines of the coops that had been destroyed. The remains of some dead chickens were still visible and Mr. Sawafeary stated that it had been a mammoth task to clean up the area when he returned. He pointed out that, in addition to the loss of livestock, the farm had been completely automated with significant investment in machinery, all of which had been destroyed, as had the plant for packaging the eggs. In short, the business had been razed to the ground. A protective grille, believed to be part of a D-9 armoured bulldozer, was found at the site.

952. The Mission notes comments from one soldier to Breaking the Silence that appears to broadly corroborate the destruction in Zeytoun, probably at the hands of the Givati Brigade.[501]

953. The Mission inspected the inside of Mr. Sawafeary's house and noted damage to the upper floor, where a missile had penetrated. It also observed a number of graffiti that appeared to have been written by Israeli troops. One said "424 Givati". There were others apparently written in Russian.

954. Mr. Sawafeary told the Mission that he and his family together supplied approximately 35 per cent of the egg market in Gaza. His own farms supplied over 10 per cent. He noted that it was not only his farms that had been destroyed but also most of his family's farms had been destroyed in the same way as his. He estimated that close to 100,000 chickens were killed in the process.

955. The Mission has reviewed the relevant UNOSAT report and satellite imagery. One satellite image shows the Sawafeary chicken farms in June 2007 and another shows the area in

[501] *Soldiers' Testimonies…*, testimony 37, p. 82.

January 2009. The images depict clearly the size of the farms and the surrounding area. The destruction is plainly visible in the second image.[502]

1. Factual findings

956. The systematic destruction along with the large numbers of killings of civilians suggest premeditation and a high level of planning. Even in the context of a campaign that had many serious violations of international humanitarian law, the events in Zeytoun at this time stand out.

957. The Mission finds that the destruction of the land and farms in the area was not justified by the pursuit of any military objective. The Israeli armed forces that arrived took control of the area within a matter of hours. They remained there until 18 January. The destruction of the land was not necessary to move the tanks or equipment or gain any particular visual advantage.

958. An inspection of the scene indicates that the area is relatively sparsely populated. The Mission rejects the idea that the Sawafeary farm was destroyed in the pursuit of any military objective.

959. The destruction of the farms appears to have been wanton and not militarily necessary. Not only were the coops with the chickens destroyed, but all of the plant and machinery of the farms as well.

960. From the facts ascertained by it, the Mission finds that the Sawafeary chicken farms, the 31,000 chickens and the plant and material necessary for the business were systematically and deliberately destroyed, and that this constituted a deliberate act of wanton destruction not justified by any military necessity.

2. Legal findings

961. The Mission makes the same findings regarding article 147 of the Fourth Geneva Convention and article 54 (2) of Additional Protocol I, article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women as it made above in relation to the el-Bader flour mill.

C. The destruction of water and sewage installation

1. The Gaza wastewater treatment plant, Road No. 10, al-Sheikh Ejlin, Gaza City

962. The Mission visited the site of al-Sheikh Ejlin treatment plant on 3 and 17 June 2009. While there it interviewed the Director of the Coastal Municipalities Water Utility (CMWU), Mr. Munther Shublaq, inspected the plant, the site of lagoon No. 3 and the location where a large pipe carrying raw sewage had been ruptured. On 3 June, the Mission also visited a nearby farm that had been inundated with raw sewage and spoke to the farmer. The Mission interviewed Mr.

[502] UNOSAT satellite image analysis, 27 April 2009, p. 29.

Munther Shublaq a second time at length on 14 June 2009. The Mission took photographs of the area, and obtained plans and diagrams of the plant. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking al-Sheikh Ejlin treatment plant, but received no reply.

963. The Gaza wastewater treatment plant is located in the coastal area south-west of Gaza City in the al-Sheikh Ejlin neighbourhood. It was built in 1977 and expanded with support from development cooperation. It consists of a number of installations, including offices, tanks and lagoons to store raw sewage.

964. At some point between 3 and 10 January, a large missile hit the northernmost wall of lagoon No. 3, causing a massive outflow of raw sewage, which travelled a distance of 1.2 kilometres and damaged 5.5 hectares of land, including agricultural land, according to UNOSAT satellite imagery.

965. The chief of the plant, Mr. Jaoudat al-Dalou, explained to the Mission that when the Israeli ground offensive started around 3 January, all staff left for security reasons, as did the local residents of the sparsely populated area. Around 14 January, he received a phone call from someone in the vicinity of the plant reporting the strike on lagoon No. 3 and the flooding of neighbouring farmland by sewage. He contacted ICRC and PRCS to seek permission from the Israeli armed forces to go to the plant and carry out urgent repairs. Permission was denied on the grounds that the area was a "military zone".

966. After the withdrawal of the Israeli armed forces, Mr. al-Dalou and his colleagues returned to al-Sheikh Ejlin to inspect the damage. They also saw what they believed to be unexploded bombs nearby and called the police to contact UNRWA to clear the area. Mr. al-Dalou found a crater five metres deep on the north-east side of lagoon No. 3. The damaged wall took over four days to repair at a cost of some US$ 158,000. More than 200,000 cubic metres of raw sewage had flowed into neighbouring farmland.

967. In addition, a number of items, including an incubator, had been taken out of the plant and used by Israeli soldiers to make a barricade or protection wall. The damage done by the impact of bullets could still be seen on interior walls. Shattered windows had still not been replaced as glass was not available. Other damaged equipment included distillation equipment (damaged beyond repair) and a nitrogen ammonium machine.

968. In interviews with the Mission, Mr. Munther Shublaq, who issued a CMWU report of the damage in January 2009,[503] confirmed that staff had left upon the arrival of Israeli ground forces and did not return until their withdrawal. He also indicated that on hearing news of the rupture of lagoon No. 3 he made several unsuccessful efforts to obtain permission to access the area to stop the damage caused by the outflow.

969. The Mission noted breaks in a large raw-sewage pipe which ran to the north of lagoon No. 3. Plant officials suggested that clearly visible markings on the pipe had been made by tanks.

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[503] CMWU, "Damage assessment report: water and waste water infrastructure and facilities", January 2009, available at: http://www.cmwu.ps/upload/Damages_Assessment_for_W_WW_after_War2009.pdf.

The routes of such pipes are marked by 1.5-metre-high, red and white poles to ensure that care is taken not to damage the pipes. The damage is very close to one such pole.

970. The precise date of the strike on Lagoon No. 3 is uncertain because there were no witnesses in the area at the time. With satellite images it is, however, possible to establish that the strike must have occurred before 10 January 2009, as the images clearly show the massive outflow of sewage from the lagoon on that date.

971. It is also possible to ascertain from the satellite images that the strike on the lagoon wall's eastern side created a breach of about 22 metres, through which the sewage flowed. The same images show the route of the outflow and where it stopped. The United Nations Environment Programme carried out a ground survey of the site on 30 January 2009 and data from that survey were added to the UNOSAT image interpretation.

972. The plant occupies a position at the top of a hill and provides a view over a considerable area of open land, which is mainly farmland. As such, it might reasonably be considered to be of strategic interest.

Factual findings

973. The plant was effectively abandoned by staff when the ground invasion began. The strike on lagoon No. 3 must have occurred after the Israeli armed forces had taken control of the plant and the surrounding area as the employees interviewed confirmed that it was intact when they left the area. Although the damage to the raw-sewage pipe may have been caused by a tank stopping or passing over it, the Mission is not in a position to conclude that this was in fact what occurred.

974. Notwithstanding the possible military advantage offered to the Israeli armed forces by the plant's location, the Mission cannot find any justification for striking the lagoon with what must have been a very powerful missile, sufficient to cause a breach 5 metres deep and 22 metres wide. It is highly unlikely that Palestinian armed groups could have taken up positions in or around the lagoon after the initial occupation of the area by Israeli armed forces: any such groups would have been exposed in the open area. The fact that the lagoon wall was struck precisely there where it would cause outflow of the raw sewage suggests that the strike was deliberate and premeditated.

2. Namar wells group, Salah ad-Din Street, Jabaliyah refugee camp

975. The Mission visited the site of the Namar wells group on 17 June 2009.[504] It interviewed engineer Ramadan Nai'm, CMWU water production and storage manager, and Ibrahim al-Ejjla, CMWU media coordinator. The Mission took photographs of the site. The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the Namar wells group, but received no reply.

[504] The Namar wells group consists of two of installations situated in Jabaliyah. See "Damage assessment report…".

976. The wells group stood approximately 50 metres from the Jabaliyah refugee camp's administration building, which was also destroyed. A crater (approximately five metres wide) was still visible in the grounds belonging to the civil administration, with at its bottom the case of a rocket.[505]

977. This was a complex of two water well pumps, one in operation and another next to it as standby. Mr**.** Ramadan Nai'm told the Mission how proud CMWU had been of this water well, which produced more than 200 cubic metres per hour of the best-quality water in the area. The well supplied water to some 25,000 people in eastern and central Jabaliyah. The standby well pump was capable of pumping some 100 cubic metres of water. Both were completely destroyed on 27 December by an airstrike.

978. In the Namar water wells complex there were not only pumping machines but also a 180 kg generator, a fuel store, a reservoir chlorination unit, buildings and related equipment. These were also destroyed.

979. The operator, Mr. Abdullah Ismail al-Zein, was killed in the air strike while he was working at the station. He was employed by the Municipality rather than by CMWU and had been working in the station for four years. He was blown to pieces and his identity was established when his shoes were found three days later.

980. The strike also blew up the pipes connecting the wells to other water wells; incoming water spilled into the area for some 10 days before the pipes could be shut off.

981. Mr. Nai'm informed the Mission that he tried through the mediation of ICRC to get permission from the Israeli armed forces to repair the supply pipes, but permission was not granted and he was obliged to wait until the withdrawal of the Israeli armed forces.

982. It was calculated that repairs to this group of water wells would cost around US$ 200,000, excluding the ancillary but necessary civil engineering works.

983. Mr. Nai'm stated that at least 10 bombs were used to destroy the complex. Not a single wall was left intact.

Factual findings

984. From the facts ascertained by it, the Mission finds that the Namar wells were destroyed by multiple air strikes on the first day of the Israeli aerial attack and that civil administration buildings located at approximately 50 metres were also destroyed.

985. The question remains as to whether the Israeli air strikes on the Namar wells group were deliberate or made in error. The Mission notes that the deployment systems and aircraft used in the strikes of 27 December (principally F-16 fighter jets and UAVs) are capable of a high degree of precision. It notes also that, by all accounts, a great deal of preparation had been put into determining and designating the targets of air strikes. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error, given the

[505] Photographs of the damage can be found in "Damage assessment report…".

nature of the deployment systems and the distance between the wells and any neighbouring buildings. The facts thus indicate that the strikes on the Namar wells group were intentional.

986. The Mission found no grounds to suggest that there was any military advantage to be gained from hitting the wells. There was no suggestion that Palestinian armed groups had used the wells for any purpose.

3. Legal findings

987. From the facts ascertained by it, the Mission makes similar findings to those set out regarding the violation of article 147 of the Fourth Geneva Conventions and article 54 (2) of Additional Protocol I in relation to the destruction of the el-Bader flour mill.

988. The right to food clearly includes the right to have adequate access to water. The Mission finds that this was denied to the people served by the Namar wells. It took some 75 days to repair them

989. The Mission also finds that the killing of Mr. Abdullah Ismail al-Zein was unlawful and constitutes a violation of the right to life. Since targeting the wells constituted an act of wanton destruction, the incidental loss of life cannot be justified with regard to any military advantage.

D. The destruction of housing

990. The Mission received information about the extensive destruction of houses and private property during the military operations.[506] During its own visits to the Gaza Strip, the Mission witnessed the extent of the destruction caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. Some areas of the Gaza Strip were more heavily affected than others, but the Mission saw many piles of rubble where, prior to the military operations, there had been multi-storey houses.

991. In many, if not most, of the incidents investigated by the Mission, described in chapters X, XI, XIV and XV, the victims it interviewed not only suffered the loss of loved ones (or were used as human shields or detained), but also saw their homes severely damaged or completely destroyed. For present purposes, the Mission will recall a few of the incidents relating to the destruction of housing.

992. In some cases, the damage to or destruction of housing was arguably related to the conduct of military operations against Palestinian combatants. The houses of Majdi Abd Rabbo

[506] Information received includes the following reports: Al Mezan, Statistical Report on Persons Killed and Property Destroyed by Israeli Occupation Forces during Operation Cast Lead, June 2009, Al-Dameer Gaza, IOF Targets Civilian Premises and Cultural Properties during its Offensive on the Gaza Strip, May 2009, Submission to the Mission by Habitat International Coalition's Housing and Land Rights Network entitled "Targeting Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice.", and Submission to the Mission by the Centre on Housing Rights and Evictions (COHRE), June 2009, pp. 3-4.

and of his neighbour, HS/08, for instance, were destroyed in combat against the three Palestinian fighters hiding in HS/08's house (see chap. XIV).[507]

993. In many others, such as the shelling of the houses of Mahmoud Abd Rabbo al-Ajrami (chap. XIV), of the Sawafeary family (see above and chap. XI) and of the Abu Halima family (chap. XI), the houses were in the general path of the advancing Israeli ground troops.

994. In a third group of cases, however, the facts ascertained by the Mission strongly suggest that housing was destroyed without their having any direct link to combat operations. On 6 January 2009 at 1.45 a.m., Mr. Abu Askar received a phone call from the Israeli armed forces informing him that his family should evacuate their house as it was going to be targeted by an air strike. This warning was put into practice a few minutes later, when the home of about 40 members of the extended Abu Askar family was destroyed by a missile (see chap. X).

995. In Juhr ad-Dik, after the killing of Majda and Rayya Hajaj (chap. XI), the Israeli armed forces directed machine-gun fire at the house of the al-Safadi family for the entire afternoon of 4 January 2009. The soldiers firing at the house had seen the Hajaj and al-Safadi families taking refuge there after their failed attempt to flee to Gaza City. When the Hajaj family managed to leave Juhr ad-Dik the following day, Israeli troops apparently took up position in Mr. Youssef Hajaj's house, which they rendered completely uninhabitable, as the Mission saw for itself during a visit. His brother Saleh Hajaj was even less fortunate. His house was reduced to a pile of rubble.

996. Other neighbourhoods were destroyed during the last few days of the military operations as the Israeli armed forces were preparing to withdraw. For example, in an incident described below, after an attempt to demolish a cement-packaging plant in east Gaza, soldiers also destroyed the surrounding houses of the owner and the employees. The factory owner, Mr. Abu Jubbah, had hidden in the house for two days with seven members of his family. Suddenly, a direct strike on the side of the house warned them that the house was to be destroyed and they should leave. Waving a white flag, Mr. Abu Jubbah left the house in a rush, put his family in a car and drove off. On their way they saw tanks and soldiers in the area. Their house was destroyed by shelling. It took several strikes to destroy it, while the factory facilities and the fence were demolished by bulldozers. Housing for 55 factory workers was also demolished with bulldozers.[508]

997. Two further cases investigated by the Mission also exemplify the deliberate demolition of residential housing. The house of Wa'el al-Samouni, in which 21 family members died, was damaged but still standing when PRCS and ICRC extracted the wounded survivors in the afternoon of 7 January 2009 (chap. XI). When the family and rescuers returned to the area on 18 January, the house was completely demolished. As the Mission could see for itself during its visit to the area as well as on photographs taken on that day, the manner in which the house had collapsed strongly indicated that this was the result of deliberate demolition and not of combat.

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[507] The Mission is only noting that there was a factual link between combat and the destruction of the houses, it is not making a finding as to whether the destruction of the two civilian houses was proportionate to the military objective to be achieved.

[508] Mission interview with Mr. Atta Abu Jubbah, owner of the cement packaging factory.

Similarly, when Khalid Abd Rabbo returned to the home of his extended family in Izbat Abd Rabbo (which he had abandoned intact after the shooting of his daughters, see chap. XI) after the withdrawal of the Israeli armed forces, he found it completely demolished, as were the other houses in the vicinity. Khalid Abd Rabbo drew the Mission's attention to what appeared to be an anti-tank mine visible under the rubble of his neighbour's house, which had reportedly been used by the Israeli armed forces to cause the controlled explosion which brought down the building. As in the case of Wa'el al-Samouni's house, the way the buildings had collapsed strongly suggests that both Khaled Abd Rabbo's house and that of his neighbour were deliberately demolished by explosives experts, rather than damaged during combat. Khaled Abd Rabbo added that, to his knowledge, his house had been demolished by the Israeli armed forces shortly before they withdrew from Gaza.

1. Factual findings

998. From the facts gathered, the Mission concludes that, in a number of cases it investigated, the Israeli armed forces launched direct attacks against residential houses, destroying them. Although the Mission does not have complete information on the circumstances prevailing in Juhr ad-Dik, al-Samouni neighbourhood and Izbat Abd Rabbo when the houses of the Hajaj, al-Samouni and Khalid Abd Rabbo families were destroyed, the information in its possession strongly suggests that they were destroyed outside of any combat engagements with Palestinian armed groups. Nor were these houses otherwise making any effective contribution to military action. These attacks deprived the extended families living there of shelter and of a significant part of their property.

999. In other cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In these cases, although the facts gathered by the Mission do not suggest that the residential houses were directly targeted, it doubts whether there were military objectives pursued by the shelling.

2. Corroboration of Mission's factual findings and widespread nature of housing destruction

1000. Testimonies of Israeli soldiers deployed in Gaza during the military operations corroborate what the Mission saw for itself and heard from the witnesses it interviewed. Several of the soldiers interviewed by Breaking the Silence spoke of the unprecedented scale of destruction of houses and of "intentional, systematic destruction."[509] The testimonies of the soldiers appear to distinguish between three phases in or types of destruction of residential housing. First, there is the destruction which is incidental to the actual combat between the advancing Israeli forces and the Palestinian combatants or to Israeli forces directing fire at locations from which rockets were launched.[510] Second, there is destruction of houses for what

[509] *Soldiers' Testimonies…*, pp. 59, 66, 69 and 101. One soldier recalls: "There was a point where D-9s were razing areas. It was amazing. At first you go in and see lots of houses. A week later, after the razing, you see the horizon further away, almost to the sea. They simply took down all the houses around so the terrorists would have nowhere else to hide."

[510] In "The hidden dimension of Palestinian war casualties…", the Jerusalem Centre for Public Affairs argues that Palestinian houses were also demolished when Palestinian armed groups attacked houses in Gaza in which the Israeli armed forces had taken up positions. This argument is supported with reports of incidents gathered from websites of Palestinian armed groups, such as the following referring to the evening of 9 January 2009: "Three RPG

is termed "operational reasons". This is the deliberate destruction of houses from which fire had been opened on Israeli soldiers or which were suspected of being booby-trapped, containing tunnels or being used for weapons storage.[511] "Operational necessity" also embraced the destruction of houses which obstructed visibility for the Israeli armed forces or had a "strategic advantage" for them.[512] "In case of any doubt, takedown houses. You don't need confirmation for anything, if you want", were the instructions of one commander to his troops.[513]

1001. The third phase of destruction of housing was no longer tied to the "operational necessities" of the ongoing military operations. It was in view of "the day after" the Israeli armed forces withdrew from Gaza. In the words of one Israeli soldier:

> … then we were told there are houses to be demolished for the sake of "the day after". The day after is actually a thought that obviously we're going in for a limited period of time which could be a week and it might also be a few months. But it's not a longer span of time without defining what it is. And the rationale was that we want to come out with the area remaining sterile as far as we're concerned. And the best way to do this is by razing. That way we have good firing capacity, good visibility for observation, we can see anything, we control a very large part of the area and very effectively. This was the meaning of demolition for the sake of the day after. In practical terms this meant taking a house that is not implicated in any way, that its single sin is the fact that it is situated on top of a hill in the Gaza Strip.[514]

1002. Satellite imagery provided by UNOSAT at the Mission's request is consistent with the soldiers' testimonies. It shows, for instance, that 65 per cent of the destruction/damage of buildings in Rafah was caused by airstrikes between 11 and 18 January. By contrast, 54 per cent of the destruction/damage in Izbat Abd Rabbo (east Gaza) occurred between 6 and 10 January as the Israeli troops advanced into the city.[515]

1003. The UNOSAT reports on the destruction of buildings in al-Samouni neighbourhood and al-Atatra, two areas that suffered particularly heavy destruction of civilian housing and other buildings, show that most were destroyed during the last three days of the Israeli armed forces' presence on the ground in Gaza. In al-Samouni, out of 114 severely damaged or completely destroyed buildings, 60 were destroyed between 27 December 2008 and 10 January 2009 (i.e. the

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rockets and machine guns are fired against a house where IDF soldiers took up positions in the Ezvet Abd Rabbo region in the eastern sector of Jabalya" (p. 12).

[511] *Soldiers' Testimonies…*, pp. 26, 35, 44, 56, 59, 61 ("Sometimes you know the house is empty. You know as far as you can know. Now if the house disrupts your defence line, you take it down with a tank or a bulldozer. We took an eight-storey house and the instruction was not to enter any doorway because it would be booby-trapped."), and 66 ("we were to raze as much as possible of the area. Such razing is a euphemism for intentional, systematic destruction, enabling total visibility. Razing was meant to give us the advantage of full control over fire and field of view, to see exactly what was happening throughout the zone. So that no one could hide anything from us.").

[512] Ibid., pp. 12, 61, 100 and 101.

[513] Ibid., p. 56.

[514] Ibid., p. 66. See also p. 69.

[515] UNOSAT satellite imagery, pp. 14 ff.

air phase and the advance of the ground invasion), only 4 between 10 and 16 January and 50 between 16 and 19 January 2009.[516] Similarly, in al-Atatra, out of 94 severely damaged or completely destroyed buildings, 36 were destroyed between 27 December 2008 and 10 January 2009, only 6 between 10 and 16 January, and 52 between 16 and 19 January 2009.[517]

1004. These figures confirm that a first phase of extensive destruction of housing for the "operational necessity" of the advancing Israeli forces in these areas was followed by a period of relative idleness on the part of the Israeli bulldozers and explosives engineers. But during the last three days, aware of their imminent withdrawal, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings.[518]

3. Legal findings

1005. From the facts ascertained by it, the Mission finds that the houses of the families of Saleh Hajaj, of Wa'el al-Samouni, of Khalid Abd Rabbo and of Muhammad Fouad Abu Askar were subjected to direct attacks in spite of their unmistakably civilian nature. They did not present any apparent threat to the Israeli armed forces. These attacks violated the principle of distinction in customary international humanitarian law as codified in article 52 of Additional Protocol I.

1006. Considering the facts it has gathered on the destruction of these houses from the soldiers' testimonies and the UNOSAT report, the Mission finds that the conduct of the Israeli armed forces in these cases amounted to the grave breach of "extensive destruction… of property, not justified by military necessity and carried out unlawfully and wantonly" under article 147 of the Fourth Geneva Convention.

1007. Article 11 of the International Covenant on Economic, Social and Cultural Rights requires State parties to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate… housing". From the facts ascertained by it, the Mission finds that the Israeli armed forces violated the right to adequate housing of the families concerned.

E. Analysis of the pattern of widespread destruction of economic and infrastructural targets

1008. The Mission interviewed Mr. Amr Hamad, the Deputy General-Secretary of the Palestinian Federation of Industries, on three separate occasions, including at the public hearings in Gaza. The Mission also met a number of businessmen involved in fishing, strawberry farming, construction, including concrete and cement production and packaging, food and drinks production, car mechanics and repairs, livestock farming and refrigeration. While much of the information provided to the Mission focused on the effect of the restrictions Israel had imposed

[516] UNOSAT report, p. 17.

[517] Ibid., pp. 20–21.

[518] The Mission finally notes that, in its formal submission, Housing and Land Rights Network – Habitat International Coalition provides a detailed historical account of the Israeli army practices of targeting civilian homes and generating displaced populations that suggests a pattern that is not unique to the military operation in Gaza of December 2008 – January 2009 , but "consistent over time and across borders".

on the Gaza Strip for a considerable time before 27 December 2008, significant information was also provided on the effect of the attacks during the Israeli military operations in Gaza.

1009. Mr. Amr Hamad indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40,000 jobs. In its detailed written report on the impact of the Israeli military activities, the Palestinian Federation of Industries points out that 200 businesses and factories were destroyed in Gaza City, 101 in northern Gaza and 20 in southern Gaza. Of the total 324 premises damaged, almost 30 per cent were linked to the metals and engineering sector, over 20 per cent to construction and 16 per cent to furniture businesses. Other sectors with significant losses were aluminium, food, sewing textiles, chemicals and cosmetics, plastics and rubber, paper and carton, and handicrafts. The Federation states that more than half were totally destroyed.

1010. The Federation emphasized that "the Gaza Strip's most crucial industries, and ones which require the greatest investment, were most severely hit".[519] Eleven of the 324 premises struck by the Israeli armed forces were linked to the food industry and the losses incurred amount to some US$ 37 million, i.e. over one third of all the losses to the industrial sector. Similarly, while the construction sector suffered 69 of the 324 strikes, this represented just under 30 per cent of the total damage. The report notes that the majority of the losses resulting from the strikes on the 324 premises related to machinery costs (50 per cent), while just over a quarter relate to the buildings themselves.

1011. The Mission found the information provided by Mr. Hamad, as well as the report produced by the Palestinian Federation of Industries, to be credible and reliable. The Mission discussed and was satisfied by the methodology used in compiling the report, which was produced with the support of the Konrad Adenauer Foundation. The Mission also found that the testimony of businessmen whose premises had been struck or destroyed by the Israeli armed forces corroborate information provided by Mr. Hamad and the Palestinian Federation of Industries.

1. Construction industry

1012. One of the incidents Mr. Hamad referred to at the public hearing relates to the destruction of the only cement-packaging plant in Gaza. The Mission also interviewed its owner, Mr. Atta Abu Jubbah.[520] According to the reconstruction of the events, the Israeli armed forces began striking the plant from the air, damaging it significantly. Later ground forces -- equipped with bulldozers and tanks -- moved in and used mines and explosives to destroy the silo that used to contain 4,000 tons of cement. Helicopters launched rockets to destroy the main manufacturing line and fired holes into the cement containers. Bulldozers were used to destroy the factory walls. Over four days the factory was systematically destroyed. The Mission spoke with a number of other witnesses able to verify this account and considers it to be reliable. Among those witnesses was a civil engineer who inspected the site and confirmed that certain aspects of the destruction

[519] Page 14 of the Report of the Palestinian Federation of Industries.

[520] Mission interview with Mr. Atta Abu Jubbah, Gaza, 17 June 2009.

could have been achieved only by placing explosives inside the building. The silo had not been entirely destroyed in the aerial attacks, so explosives were attached to its supporting columns.

1013. The plant was an important part of Gaza's construction industry. It produced cement in bags, selling 200 tons per day with a profit of US$ 15 per ton. The company is valued at some US$ 12 million. As mentioned above, the owner's house was also destroyed by rocket fire.

1014. The owner is one of fewer than 100 businessmen who are in possession of the Businessman Card issued by Israel. The Mission notes that the plant was not destroyed during the aerial phase but was systematically reduced to rubble in a concerted effort over several days at the end of the military operations.

1015. The destruction of Mr. Atta Abu Jubbah's plant forms part of what appears to have been a very deliberate strategy of attacking the construction industry. The Palestinian Federation of Industries also provides detail on the systematic and total destruction of the Abu Eida factories for ready-mix concrete. They were established in 1993. Nineteen of the 27 concrete factories were reported to have been destroyed, representing 85 per cent of the productive capacity.

1016. The ability to produce and supply concrete in a context where external supplies are entirely controlled by Israel is a matter not only of economic importance but arguably one of human necessity to satisfy the basic need for shelter. Even if the population can get by in makeshift accommodation or by living in cramped conditions with their extended families, the capacity to repair the massive damage done to buildings without internally produced concrete is severely reduced. To the extent that concrete is allowed to enter at all, it is significantly more expensive than domestically produced concrete.

1017. There appears to have been no military reason or justification for destroying the factory. This conclusion is borne out by the long established trading history of the owners and their recognition through the Businessman Cards.

2. Destruction of the remaining food industry

1018. As already reported, more than a third of all egg factories were destroyed by the Israeli armed forces. Other testimonies, for example that of the Mayor of al-Atatra,[521] who referred to the destruction of his sister's chicken farms, indicated that a substantial part of the chicken farming industry appears to have been deliberately and systematically destroyed.

1019. The Mission also notes the destruction of the al-Wadiyah Group's factories. The al-Wadiyah Group employed some 170 people, had been in business since 1954 and produced a variety of food and drinks. Dr. al-Wadiyah presented a detailed account of its activities and losses to the Mission.[522]

[521] Mission interview with Muhammad Husein al-Atar, Mayor of al-Atatra, 3 June 2009.

[522] Mission interview with Dr. Yasser al-Wadia, 3 June 2009.

1020. The Mission found no reason to believe that the premises of the flour mill, chicken farms and food-processing plants that were destroyed had been used for purposes that would render them in any way military objectives.

1021. The Mission also reviewed satellite images showing significant destruction of greenhouses throughout Gaza.[523] In total, it is estimated that over 30 hectares of greenhouses were demolished; 11.2 hectares were destroyed in Gaza City and 9.5 hectares in north Gaza. The Mission found that the large-scale and systematic destruction of greenhouses was not justified by any possible military objective.

3. Destruction of water installations

1022. Finally, in relation to the supply and treatment of water, the Mission analysed a limited number of cases. The strikes on the al-Sheikh Ejlin plant and on the Namar water wells have been described in some detail. The Mission also spoke at length with Mr. Munther Shublaq, who was responsible for the CMWU Damage Assessment Report. That report indicates that all types of water installations appeared to have been damaged to some extent during the Israeli operations, but notes especially that in some areas, particularly Beit Lahia, Jabaliyah, Beit Hanoun, part of Zeytoun, south of Rafah and the villages in the east, buildings, water and wastewater infrastructure and other facilities have been totally destroyed. "Those areas need a complete water and wastewater infrastructure which may require re-designing the networks based on the new population in the area".[524]

1023. Mr. Munther Shublaq noted that, although a number of wells had been struck, the worst effects had been as a result of the damage to water-treatment plants and sewage pipes. The Mission heard a number of reports that indicated that the strikes on plants, pipes, wells and tanks had put considerable pressure on the sanitation and water-supply system.

1024. The Palestinian Authority claimed that 5,708 roof water storage tanks were destroyed, but it is not clear how many of these were on the roofs of the 4,036 houses that the Palestinian Authority stated were destroyed.

1025. The Mission found that the targeting of water-related installations was not justified by any possible military objective.

4. Conclusions

1026. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations. In a number of testimonies given to Breaking the Silence, Israeli soldiers have described in detail the way in which what is at one point euphemistically referred to as "infrastructure work" was

[523] UNOSAT report, pp. 23–27. See also chapter XVII.

[524] "Damage assessment report…", p. 8.

carried out. The deployment of bulldozers for systematic destruction is graphically recounted. Soldiers confirm in considerable detail information provided to the Mission by witnesses.[525]

1027. The Mission refers to chapter XVII, where it found that the systematic destruction of food production, water services and construction industries was related to the overall policy of disproportionate destruction of a significant part of Gaza's infrastructure.

5. General legal findings

1028. The Mission has made detailed findings in relation to each of the incidents set out above. However, given the nature of the systematic attacks on the food, water and infrastructure provision in Gaza during the military operations, the Mission also believes it is important to highlight the issue of State responsibility and the liability of Israel in relation to the internationally wrongful acts committed.

1029. While the element of fault is controversial in the law of State responsibility, the Mission has found that in all of the cases described above both the act and the consequence were intended.

1030. Israel had a number of duties in respect of its actions during the military operations. These included the general obligation reflected in article 52 of Additional Protocol I to ensure that civilian objects are not the objects of attack and to ensure the protection of objects indispensable to the survival of the civilian population. In addition, the customary norms of international law contained in article 54 (2) of Additional Protocol I require States not to destroy objects indispensable to the survival of the population.

1031. Israel displayed a premeditated determination to achieve the objective of destruction. It is, therefore, responsible for the internationally wrongful acts it perpetrated in breach of the duties specified above.

XIV. THE USE OF PALESTINIAN CIVILIANS AS HUMAN SHIELDS

1032. The Mission received allegations that in two areas in north Gaza Israeli troops used Palestinian men as human shields whilst conducting house searches. The Palestinian men were allegedly forced to enter houses at gunpoint in front of or, in one case, instead of soldiers. The Mission investigated four cases. One incident took place in the Izbat Abd Rabbo neighbourhood and another in al-Salam neighbourhood, both east of Jabaliyah, close to the border with Israel. Two incidents took place in al-Israa neighbourhood, west of Beit Lahia. The Mission visited

[525] See *Soldiers' Testimonies…*, testimony 17 on "infrastructure work" and the razing of orchards, p. 44 and testimony 29, p. 66. Note also testimony 46 on the practice of D-9 armoured bulldozers effectively working around the clock, largely destroying orchards (p. 100). The Mission notes that an issue raised on several occasions was the idea of the "day after" – the circumstances that Israel would find after finishing the military operations in terms of addressing future attacks from Gaza. Even if this could be conceived of as a longer-term strategic military goal, it is not a legitimate one in these circumstances. It does not meet the appropriate test for military advantage in the pursuit of certain objectives. Nor does it meet the test of military necessity referred to in the grave breaches provisions. See also chapter XVI.

each of the locations and interviewed a number of witnesses. In each case, the Mission found the allegations to be credible.

A. The case of Majdi Abd Rabbo

1033. To investigate this case, the Mission visited Izbat Abd Rabbo. The Mission interviewed Mr. Majdi Abd Rabbo[526] and several of his neighbours.[527] It also obtained two sworn statements Majdi Abd Rabbo had given to two NGOs.

1034. Majdi Abd Rabbo, a man aged 39 at the time of the incident, is married and the father of five children aged between 16 years and 14 months. He is an intelligence officer of the Palestinian Authority. He lived with his family in a house on the main street of Izbat Abd Rabbo, al-Quds Street, which in this section is commonly known as Izbat Abd Rabbo Street. His family house stood next to Salah ad-Din mosque. The home of the family of Khalid and Kawthar Abd Rabbo (see chap. XI) is less than 500 metres east of the Majdi Abd Rabbo family home.

1035. Majdi Abd Rabbo recounted that, at around 9.30 a.m. on 5 January 2009, he heard loud banging on the outer door of the house. He asked who was at the door and someone responded in Arabic, ordering him to open the door. He opened the door and saw in front of him a handcuffed Palestinian man, whom he later found out to be HS/07, aged 20. A group of around 15 Israeli soldiers stood behind HS/07. One of the soldiers was holding a weapon to HS/07's head. The soldiers pushed HS/07 to one side and four soldiers pointed their weapons at Majdi Abd Rabbo. They ordered him to undress down to his underwear. He was then told to dress again and they pushed him into the house.

1036. The soldiers ordered him to call his children one by one. He started with his eldest son, aged 16, who was ordered by the soldiers to strip naked. The same process was followed with the two other sons, aged nine and eight. He then called his daughter, aged 14, who was told to press her clothes to her body and turn around. His wife, who was holding their baby daughter, was also told to press her clothes to her body, and then to take the baby's trousers off.

1037. Majdi Abd Rabbo stated that the soldiers then forced him to walk in front of them as they searched the house, room by room, holding a firearm to his head. They questioned him about the house behind his. He told them that the house was empty and the owner, HS/08, had been absent for four years working in the Sudan. There was a small gap between the two houses, but they were joined at the roof. The soldiers gave him a sledgehammer, the kind used to break stones, and told him to break a hole through the dividing wall into HS/08's house. This took around 15 minutes.

1038. From the roof, the soldiers entered HS/08's house, pushing Majdi Abd Rabbo ahead of them down the stairs while they watched over his shoulders. They had descended only a few steps, however, when the soldiers apparently detected some movement in the house, started

[526] Mission interview with Majdi Abd Rabbo.

[527] Mission interviews with Muhammad Muhammad Abd Rabbo, Muhammad 'Aish Muhammad Abd Rabbo, witness HS/11 and Iyad Abd Rabbo.

shouting, pulled Majdi Abd Rabbo back and rushed back into his house over the roof. Majdi Abd Rabbo heard some gun shots.

1039. The soldiers ran out into the street, forcing Majdi Abd Rabbo and HS/07 with them while they were shooting. Both were taken into the adjacent mosque, where there were a large number of soldiers with military equipment. They were forced to sit down and then handcuffed.

1040. The soldiers used the raised area of the mosque, from where the imam leads prayers, to fire at Majdi Abd Rabbo's house and the houses next to it. He shouted at the soldiers to stop, as his family was still in the house. A soldier told him to shut up or they would shoot him. The shooting continued for around 30 minutes. After a lull, the soldiers warned that there would be a huge explosion and, indeed, about three minutes later there was a huge explosion. The explosion was followed by intensive gunfire and artillery shells. Majdi Abd Rabbo could not identify the source of the explosion.[528]

1041. In the meantime, he had been forced to break a hole in the wall of the mosque on the south side and into the neighbouring house. He had then been interrogated about his knowledge of Hamas and the location of tunnels. Subsequently, he was taken and detained together with a group of neighbours, men and women, in another house in the neighbourhood (the HS/09 family home).

1042. When the shooting stopped, soldiers came to fetch him. He was taken to the road next to his house, to an empty area behind HS/08's house. He saw that HS/08's house and the entrance area of his house had been damaged. There were numerous soldiers standing next to the house, including some officers. He saw a senior officer talking to the soldiers who raided his house, and the officer then came to speak to him, through an Arabic-speaking soldier. The soldier said that they had killed the fighters inside the house and told him to go into the house and come back with their clothes and weapons. He protested, saying that he just wanted to find out if his family was safe. The officer told him to obey their orders if he wanted to see his family again. He refused to go, and was kicked and beaten by soldiers with their weapons until he gave in.

1043. He approached HS/08's house from the street. The entrance was destroyed and blocked by rubble. He went back to the officer and told him that he could not get in. The officer told him to go through the roof instead. He went into his own house, which he found empty, except for a soldier. This reinforced his anxiety about the fate of his family. At this point, there was no major damage to his house. He crossed the roof and went down the stairs into HS/08's house. He was scared that the fighters would shoot at him and shouted, "I am a Palestinian, a neighbour. I am being forced to come into this house." In a room at the bottom of the stairs he found three armed young men wearing military camouflage and headbands of al-Qassam Brigades. They pointed their weapons at him. He told them that the Israeli soldiers thought that they had been killed and had sent him to check. He said that he was helpless as the soldiers had taken his wife and

[528] Other sources clarify that HS/08's house had been bombed by Israeli aircraft which had been called in by the soldiers in the mosque. Jerusalem Center for Public Affairs, "The hidden dimension of Palestinian war casualties in operation 'cast lead': Hamas fire on Palestinian areas", p. 20; *Soldiers' Testimonies…*, p. 7 ("The [combat] helicopters fired anti-tank missiles" according to testimony 1, which in this part appears to repeat an account heard from other soldiers).

children. The armed men told him that they had seen everything, and asked him to go back to the soldiers and tell them what he had seen.

1044. He went back outside, again crossing over the roof of his house. As he approached the soldiers, they pointed their weapons at him and ordered him to stop, strip naked and turn around. After he dressed again, he told them what he had seen. Initially, the soldiers did not believe him. They asked how he knew that they were Hamas militants and he explained about their headbands. The soldiers asked about their weapons. He replied that they were carrying Kalashnikovs. The officer told him that, if he was lying, he would be shot dead.

1045. He was handcuffed and taken back to the HS/09 family house for detention. At around 3 p.m., he heard gunfire for around 30 minutes. The soldiers came back for him and took him to the same officer. This time he noticed different soldiers present with different military equipment. Through the translator, the officer told him that they had killed the militants, and told him to go in and bring back their bodies. Again he refused, saying "this is not my job, I don't want to die." He lied to them, saying that the three militants had told him that if he came back, they would kill him. The officer told him that, as they had already killed the militants, he should not worry. He added that they had fired two missiles into the house, which must have killed the militants. When he still resisted, he was beaten and kicked again, until he went into HS/08's house via the roof again.

1046. He found the house very badly damaged. The bottom part of the stairs was missing. He again went in shouting, to alert the militants if they were still alive. He found them in the same room as before. Two were unharmed. The third was badly injured, covered in blood, with wounds to his shoulder and abdomen. They asked him what was going on outside and he told them that the area was fully occupied and the soldiers had taken numerous hostages, including his family.

1047. The wounded man gave him his name (HS/10) and asked him to tell his family what had happened. Majdi Abd Rabbo promised to do so if he survived and later did so. Another of the three told him to tell the Israeli officer that, if he was a real man, he would come to them himself.

1048. Majdi Abd Rabbo returned to the soldiers, who again forced him to strip naked before they approached him. He told the officer that two of the militants were unharmed. The officer swore at him and accused him of lying. Majdi Abd Rabbo then repeated the message from the militant, at which the officer and four other soldiers assaulted him with their weapons and insulted him.

1049. The officer asked Majdi Abd Rabbo for his identity card. He replied that it was in his house but gave him the ID card number. The officer checked the number via an electronic device. Three minutes later the officer asked him if it was true that he worked with the head of Palestinian Authority's intelligence services, which he confirmed. The officer asked him if he was with Abu Mazen and a Fatah affiliate. He said he was.

1050. The soldiers brought Majdi Abd Rabbo a megaphone and told him to use it to call the militants. He initially refused but did so under threat. As instructed, he told the militants to surrender, that ICRC was present and they could hand themselves over. There was no response.

1051. By then, night had fallen. Majdi Abd Rabbo was again handcuffed and taken back to the house of the HS/09 family. Thirty to forty minutes later, he heard shooting and a huge explosion. Soldiers came to tell him that they had bombed HS/08's house and ordered him to go in again and check on the fighters.

1052. The Israeli armed forces had floodlit the area. Majdi Abd Rabbo found both his and HS/08's house very badly damaged. He could not use the roof of his house to enter HS/08's house, as it had collapsed. He went back to the soldiers, who again made him strip, this time to his underwear. He asked where his family was and said that he could not reach the fighters because of the damage to the houses. He accused the soldiers of destroying his house. The officer said that they had only hit HS/08's house. Majdi Abd Rabbo was then handcuffed. Until this time, he had been given no food or water, and it was very cold. After a while, his handcuffs were removed, he was told to dress and taken back to the HS/09 family house, to the room where he found that other people were being held. All the men and boys in this room were handcuffed and their ankles were tied. A soldier came with some drinking glasses and smashed them at the entrance to the room where they were being held. After smashing the glasses, he left again. Majdi Abd Rabbo had developed a severe headache. Another detainee, who spoke Hebrew, called a soldier to say that Majdi Abd Rabbo was sick and needed medicine. The soldier told him to keep quiet or he would be shot. A woman tied a scarf around Majdi Abd Rabbo's head to ease the pain.

1053. At around 7 a.m., Majdi Abd Rabbo was taken back to the soldiers outside. He was questioned about the number of fighters in the house. He confirmed that he had seen only three.

1054. Two young Palestinian men from the neighbourhood were brought over. A soldier gave them a camera and told them to go into the house and take photos of the fighters. The two tried to refuse, and were beaten and kicked. The soldier showed them how to use the camera and they went into HS/08's house through the damaged main entrance. About 10 minutes later, they came back with photos of the three fighters. Two appeared to be dead, under rubble. The third was also trapped by rubble but appeared to be alive and was still holding his firearm. A soldier showed Majdi Abd Rabbo the photos and asked if these were the same people. He confirmed they were.

1055. A soldier took the megaphone and told the fighters that they had 15 minutes to surrender, that the neighbourhood was under the control of the Israeli armed forces and that, if they did not surrender, they would hit the house with an air strike.

1056. Fifteen minutes later, a soldier came with a dog, which had electronic gear attached to its body and what looked like a camera on its head. Another soldier had a small laptop. The dog handler sent the dog into the house. A few minutes later, shots were heard and the dog came running out. It had been shot and subsequently died.

1057. At around 10.30 a.m. on 6 January 2009, a bulldozer arrived and started to level the house. The bulldozer moved from east to west, demolishing everything in its way. Majdi Abd Rabbo watched it demolish his own house and HS/08's house. He and the two young men were told to go back to the HS/09 house. They heard shooting.

1058. At around 3 p.m., he was taken back close to the site of his and HS/08's house. He told the Mission that he saw the bodies of the three fighters lying on the ground in the rubble of the house.

1059. The soldiers then forced him to enter other houses on the street as they searched them. All the houses were empty. The soldiers forced him to go into the house alone initially and, when he came out, sent in a dog to search the house. During the house searches he managed to find some water to drink, the first drink he had had for two days. At midnight, the soldiers took him back to the HS/09 family house.

1060. On 7 January, all the men and boys were taken from the HS/09 family house and transferred to the house of a cousin of Majdi Abd Rabbo's in the same neighbourhood. There were more than 100 men and boys, including members of his extended family, aged between 15 and 70. The women were being held elsewhere. Majdi Abd Rabbo's immediate family members were not there, and he learnt that no one had seen them. He remained extremely anxious about their safety.

1061. At around 11 p.m., the men and boys in that house were told that they were going to be released, and that they should all walk west towards Jabaliyah, without turning left or right, on threat of being shot. They found Izbat Abd Rabbo Street severely damaged. Majdi Abd Rabbo went to his sister's house in Jabaliyah, where he was reunited with his wife and children on 9 January 2009. His wife then told him that they had stayed for some hours in the house, during the first shooting on 5 January, and had then fled with a white flag to a neighbour's house.

1062. Majdi Abd Rabbo told the Mission that he and his family were traumatized by what had happened to them and did not know what to do now, having lost their home and all their possessions. His children were all suffering psychologically and performing poorly at school. Five months later, in June 2009, Majdi Abd Rabbo was still having nightmares.

1063. The Mission notes that his account to it implies that there were at least three other Palestinian men compelled by the Israeli armed forces to search houses. A journalist's account indicates that the author "spoke with eight residents of Izbat Abd Rabbo neighbourhood, who testified that they were made to accompany IDF soldiers on missions involving breaking into and searching houses […]. The eight estimated that about 20 local people were made to carry out "escort and protection" missions of various kinds, […], between January 5 and January 12."[529]

B. The case of Abbas Ahmad Ibrahim Halawa

1064. The Mission interviewed Mr. Abbas Ahmad Ibrahim Halawa and his wife,[530] and visited al-Israa, the neighbourhood west of Beit Lahia, where his house is located.

1065. When hostilities started on 27 December 2008, Abbas Ahmad Ibrahim Halawa, aged 59, asked his family to leave the home and stayed behind alone. On 9 January 2009, after a day of

[529] Haaretz, "Gazans: IDF used us as 'human shields' during offensive", 28 March 2008, available at: http://www.haaretz.com/hasen/spages/1065594.html.

[530] Mission interviews with Abbas Ahmad Ibrahim Halawa and his wife.

shelling, the ground forces invaded the north-west of his neighbourhood. At around 0.05 a.m. on 5 January 2009, the Israeli armed forces stormed into his house. He was hiding under the staircase and screamed when they reached him, putting his hands in the air. The soldiers had torch lights on their rifles and helmets, and their faces were painted black.

1066. At gunpoint, the soldiers ordered him to take off his clothes, which he did except for his underwear. They made him turn around and ordered him to dress again. By this time there were some 40 soldiers in the house. His hands were tied behind his back, his legs were tied and he was blindfolded. He was severely beaten. He was then taken to a neighbour's house. He told the soldiers that he had bad asthma, but they would not allow him to take his inhaler.

1067. In the neighbour's house, he was questioned by an Israeli officer about the whereabouts of Gilad Shalit and the location of Hamas tunnels and rocket launch sites. The soldiers threatened to blow up his house if he did not tell them. He insisted that he did not know the answers to their questions. He pleaded that he had worked in Israel for 30 years and had built hundreds of houses there. He speaks fluent Hebrew and communicated with the soldiers in Hebrew.

1068. After about 30 minutes, he was taken to a different location in the vicinity and made to sit down. After another 15 minutes, he was again made to walk to a different location. He was still blindfolded; the ties binding his legs had been loosened slightly, but walking was difficult. One of the soldiers was directing his footsteps while holding him at gunpoint.

1069. In a house that he subsequently recognized as that of a neighbour, one of the soldiers untied his legs and the blindfold. His hands remained tied. He saw a number of soldiers in the house and around 15 officers sitting in the living room. They had maps and radios in front of them. One of the officers (there were three stripes on the shoulder of his uniform) asked him to identify his house on the map, and then asked him about the location of tunnels and rocket launching sites. He answered that he did not know. He was blindfolded again but he could see a little through the blindfold.

1070. He was then taken out of the house and onto the road. As previously, he was held from behind, a weapon pressed against his back or the back of his head. Due to the damage to the roads caused by the tanks and other military equipment, walking was difficult. For about two hours he walked around as directed by the soldiers. They would stop and call: "Who is in the house?" They would then open fire, force Abbas Ahmad Ibrahim Halawa to go into the house while they were gathering behind him, and then leave the house again after the search. He was made to go into five houses in this way. They did not find anyone in any of the houses.

1071. Thereafter, they walked and stopped for about an hour without any shooting. Finally, he was ordered to sit down on the ground and covered with a blanket. He was held for two days at this location, which he identified to be near the American School in north Gaza, close to an Israeli armed forces' tank position. During the two days he was given neither food nor water.

1072. He was then transported, blindfolded, in what he believes was a tank, for about 90 minutes to another location which he believes was Netsalim (Nitzarim), where he was thrown on the ground. He was kept there for two days and nights in the open, during which time the soldiers refused to give him a blanket. During the two days he was again interrogated several times about

the location of Hamas tunnels and rockets, and about Gilad Shalit's whereabouts. He was beaten and threatened with death if he did not provide the information.

1073. At around 5 p.m. on the second day he was taken in a closed vehicle, which he believes was a truck, to a detention centre inside Israel, which he heard a soldier refer to as Telmund. He was fingerprinted and taken to see a doctor, whom he told that he was suffering from acute asthma and severe pain from a back injury caused by the beating.[531] The doctor did not give him medication. He was placed in a cell, where he was again refused a blanket.

1074. He was interrogated again at the detention centre, this time by civilians and then transferred to another location, where he was held together with some 50 Arabs. After two days, he was taken to the Erez border crossing and told to walk back into Gaza. Soldiers shot around his feet and over his head as he walked. He managed to reach his sister's house, where he collapsed and was taken to al-Shifa hospital.

1075. When he returned to his house, he found it vandalized. When the Mission spoke to him, he was still traumatized from the treatment he had undergone at the hands of the Israeli armed forces.

C. The case of Mahmoud Abd Rabbo al-Ajrami

1076. Mr. Mahmoud Abd Rabbo al-Ajrami was interviewed twice, at length, by the Mission. He also testified at the public hearing in Gaza on 30 June 2009.

1077. Mahmoud Abd Rabbo al-Ajrami is a former civil servant, whose last position was as Assistant Foreign Minister. He resigned from the Ministry when Hamas took over Gaza and has not worked since. He, his wife and 15-year-old daughter lived in a house in the same neighbourhood west of Beit Lahia as Abbas Ahmad Ibrahim Halawa. The area was shelled during the initial air strikes of the Israeli campaign. Mahmoud Abd Rabbo al-Ajrami's home was directly hit for the first time on 2 or 3 January 2009, according to him by tank shells and by missiles fired by Apache helicopters, which seriously damaged external and internal walls. Tanks came into the area on 3 or 4 January and initially were positioned around 500 metres north of his house.

1078. He stayed in the house with his wife and daughter. As he told the Mission, he had decided not to leave because of his father's experience of leaving his home in Israel and not being able to return. On an unspecified date during the first week of January, however, he decided that this was proving too difficult for his daughter. He called a taxi and his daughter moved to the house of an uncle in a safer area.

1079. On 9 January 2009, shelling of the area was particularly intensive. According to Mahmoud Abd Rabbo al-Ajrami, 10 tank shells hit his house. His wife received light injuries from shrapnel and broken glass. In the night of 9 to 10 January 2009, around midnight, soldiers made a violent entry into their home, where he and his wife were sheltering on the ground floor,

[531] The Mission was provided medical documentation supporting his statement that he suffered two fractured vertebrae as a result of the beating by Israeli soldiers. He now has to wear a corset to support his spine.

underneath the stairs. They threw a grenade into the entrance on the west side of the building and entered the house shooting.

1080. An officer ordered Mahmoud Abd Rabbo al-Ajrami to lift his robe (he was in nightclothes) and turn around. He then told Mahmoud Abd Rabbo al-Ajrami's wife to press her clothes close to her body and turn around. Mahmoud Abd Rabbo al-Ajrami and his wife were then taken to a neighbouring house where soldiers took his identity card and checked his identity on a laptop computer. An officer interrogated him about the location of Hamas tunnels, rockets, Palestinian fighters and Gilad Shalit. He responded that he could not provide that information because he did not know, that he was previously a member of the Fatah administration. The soldier responded: "You are Hamas; Hamas killed all Fatah and others in Gaza, so you must be Hamas." Mahmoud Abd Rabbo al-Ajrami insisted that he was a civilian. The officer told him again that he had five minutes in which to give him information or he would be shot. Five minutes later, he again responded that he did not know anything about the questions asked.

1081. He was handcuffed with his hands in front of him and blindfolded. Two or three soldiers took him by the shoulders and forced him to walk in front of them. His wife tried to go with him but they pushed her back into the room. It was by now around 2 a.m. The soldiers took him up to the second floor of the building and threw him down. He landed on rubble and fainted. When he came to, he had severe pain in his right side and had difficulty breathing. He found out later that he had broken four ribs and he had severe bruising down his right leg. Four soldiers forced him to stand. He was moaning with the pain but did not want them to hear. It was raining and still dark. The soldiers pushed him against a wall and walked away from him. He thought that they were going to shoot him. He was still blindfolded.

1082. In the early morning hours, the soldiers took him and another man (whom he subsequently found out to be his neighbour Abbas Ahmad Ibrahim Halawa) and forced them to walk in front of them. Mahmoud Abd Rabbo al-Ajrami was blindfolded and a gun was held to the back of his head. He thinks that there were around 25 soldiers behind him and the other Palestinian man. Having walked in this way for a while, both he and the other man were forced to enter several houses with the soldiers taking cover behind them. In Mahmoud Abd Rabbo al-Ajrami's recollection, on six or seven occasions the soldiers opened fire. They did not find anyone in any of the houses.

1083. After these house searches, the soldiers, Mahmoud Abd Rabbo al-Ajrami and Abbas Ahmad Ibrahim Halawa walked north towards a place called Dogit, a former settlement. He could hear the movement of tanks and see tank positions. Both men were forced to sit on the ground. Mahmoud Abd Rabbo al-Ajrami had his hands handcuffed in front; the other man had his hands handcuffed behind him. It was still raining, very cold, and Mahmoud Abd Rabbo al-Ajrami's ribs and leg were very stiff and painful. They were left there without food, water or blankets until morning. At around 10 a.m., soldiers took Abbas Ahmad Ibrahim Halawa for interrogation.

1084. During that and the following day, Mahmoud Abd Rabbo al-Ajrami was also interrogated, by a senior officer. On the second day, he was taken to the edge of the camp and told to walk back south into Gaza City. He was able to reach the outskirts of the city and was helped by a stranger to reach a family member's house, from where he was taken to al-Shifa hospital.

1085. On returning to his house, he found it ransacked and vandalized. He recounted that many items of value had been stolen, including jewellery and electronic equipment.

D. The case of AD/03

1086. The summary of AD/03's case is based on his interview by the Mission. His case is also discussed in chapter XV, which gives more details on his case.

1087. AD/03 is a resident of al-Salam neighbourhood, located east of Jabaliyah, close to the eastern border with Israel. On 8 January, at around noon, the Israeli armed forces made an announcement ordering all residents of the area to evacuate their homes and come out in the street. The men were separated from the women and children, the men being told to line up against a wall. They were told to lift their shirts and to strip to their underwear. They remained in that position, stripped and lined up against the wall for approximately 15 minutes. The women and children were told to go to Jabaliyah. Shortly afterwards, AD/03 and three others (his brother, a cousin and an unknown man) were made to lie on the ground, were blindfolded and their hands were tied behind their backs with plastic strips. They were detained overnight in a house, in a room together with three men who identified themselves as residents of Izbat Abd Rabbo. The next morning, on 9 January, their blindfolds were removed and the seven men were interrogated.

1088. On the second day of detention, the Israeli armed forces began to use a number of the detainees as human shields. At this point the detainees had been without food and without sleep for a day. There were constant death threats and insults. To carry out house searches, the Israelis took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell the Israeli soldiers, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed, he was taken to another house with a gun pressed against his head and told to carry out the same search there. He was punched, slapped and insulted throughout the process. AD/03 indicates that he was forced to do this twice while the group was held in this house for eight days. Others were also required to do it. On the first occasion he was forced to carry out searches in three houses and on the second occasion in four houses. AD/03 estimates that each time he was involved in searches for between one hour and one and a half hours. At no point did he come across any explosive devices or armed group members.

E. Denial of the allegations by the Israeli armed forces

1089. Reacting to reports of the use of civilian men as human shields in Izbat Abd Rabbo, the Israeli armed forces' Spokesperson's Unit told an Israeli journalist:

> The IDF is a moral army and its soldiers operate according to the spirit and values of the IDF, and we suggest a thorough examination of the allegations of Palestinian elements with vested interests. The IDF troops were instructed unequivocally not to make use of the civilian population within the combat framework for any purpose whatsoever, certainly not as "human shields."
>
> Following an examination with the commanders of the forces that were in the area in question, no evidence was found of the cases mentioned. Anyone who tries to accuse

the IDF of actions of this kind creates a mistaken and misleading impression of the IDF and its fighters, who operate according to moral criteria and international law.[532]

F. Factual findings

1090. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt the veracity of their accounts and found that the different stories serve to support the allegation that Palestinians were used as human shields.

1091. The Mission notes in particular that Mr. Majdi Abd Rabbo has told the story of his experience from 5 to 7 January 2009 to several NGOs, to several journalists and to the Mission without any material inconsistencies. There are some minor inconsistencies, which are not, in the opinion of the Mission, sufficiently weighty to cast doubt on the general reliability of Majdi Abd Rabbo. There are also, not surprisingly, some elements of the long account which appear in some versions and not in others. The Mission finds that these inconsistencies do not undermine the credibility of Majdi Abd Rabbo's account.

1092. The Mission further notes that one of the Israeli soldiers interviewed by the NGO Breaking the Silence recounts the case of Majdi Abd Rabbo. The soldier describes the case in great detail and mentions having personally met Majdi Abd Rabbo.[533] Finally, the Mission notes that the submission it has received from the Jerusalem Center for Public Affairs, while not containing a summary of Majdi Abd Rabbo's role in the incident in which the three Palestinian fighters were killed, also refers to the incident.[534]

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[532] "Gazans: IDF used us as 'human shields' during offensive".

[533] The Mission notes, however, that the soldier does not appear to have been a direct witness to the incident, but rather heard it from others and subsequently met Majdi Abd Rabbo. *Soldiers' Testimonies…*, pp. 7-8:

"Testimony 1 […] In one case, our men tried to get them to come out, then they opened fire, fired some anti-tank missiles at the house and at some point brought in a D-9, bulldozer, and combat helicopters. There were three armed men inside. The helicopters fired anti-tank missiles and again the neighbour was sent in. At first he told them that nothing had happened to them yet, they were still in there. Again helicopters were summoned and fired, I don't know at what stage of escalation (in the use of force). The neighbour was sent in once again. He said that two were dead and one was still alive, so a D-9 was brought in and started demolishing the house over him until the neighbour went in, the last armed man came out and was caught and passed on to the Shabak. […] [Some civilians] were made to smash walls with 5-kilo sledgehammers. There was a wall around a yard where the force didn't want to use the gate, it needed an alternative opening for fear of booby-traps or any other device. So the "Johnnies" themselves were required to bang open another hole with a sledgehammer. Talking of such things, by the way, there was a story published by Amira Hass in Haaretz daily newspaper, about Jebalya where a guy tells exactly the same thing. It's the guy who was sent. I saw him afterwards, the guy who was made to go into that house three times. He also told us about being given sledgehammers to break walls."

The newspaper article referred to by this testimony is "Gazans: IDF used us as 'human shields' during offensive". The Mission notes that the soldier who gave testimony 1 states that one of the three Palestinian combatants was arrested, while Majdi Abd Rabbo's testimony is that he saw all three of them dead.

[534] "The hidden dimension…" p. 20. This submission is a "war diary" pieced together "from detailed data that both Hamas and its Izz ad-Din Qassam Brigades have published." That this incident and the story of Majdi Abd Rabbo are the same is corroborated by comparing the three names of the killed Palestinian combatants mentioned in both accounts (one name is identical, the second very similar).

1093. In more general terms, the Mission notes that the statements of the men used as human shields by the Israeli armed forces during house searches are corroborated by statements made by Israeli soldiers to the NGO Breaking the Silence. The soldier providing testimony 1 speaks of the "Johnnie procedure": "It was the first week of the war, fighting was intense, there were explosive charges to expose, tunnels in open spaces and armed men inside houses. […] Close in on each house. The method used has a new name now – no longer 'neighbour procedure.' Now people are called 'Johnnie.' They're Palestinian civilians, and they're called Johnnies […] To every house we close in on, we send the neighbour in, 'the Johnnie,' and if there are armed men inside, we start, like working the 'pressure cooker' in the West Bank." This soldier then mentions that some commanders were "bothered" by the fact that "civilians were used to a greater extent than just sending them into houses." A second soldier interviewed by Breaking the Silence, testimony 17, appears to have discussed the "Johnnie procedure" at length, but his testimony was censored or otherwise cut in that respect, so that we can only read: "They [civilians found in houses] were used as 'Johnnies' (at a different point in the interview the witness described the 'Johnnie' procedure, using Palestinian civilians as human shields during house searches), and then released, and we're finding them in later searches." [535]

1094. The Mission thus finds that while these testimonies do not confirm the details of the specific cases it investigated, they strongly support the general allegation that the Israeli armed forces engaged in the practice of compelling Palestinian civilians to accompany them on house searches.

1095. In conclusion, from the facts it gathered, the Mission finds that Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa, Mahmoud Abd Rabbo al-Ajrami and AD/03 were captured by the Israeli armed forces while they were in their homes, in some cases together with their families, and were then forced at gunpoint to search houses together with the Israeli armed forces. The Mission also finds on the basis of those facts that they were all subject to cruel, inhuman and degrading treatment during their captivity.

G. Legal findings

1096. Several provisions of international humanitarian law prohibit the practice of using civilian men captured by the armed forces to search houses in which the invading army suspects the risk of ambushes or booby traps.

1097. This practice constitutes the use of involuntary human shields and is a violation of article 28 of the Fourth Geneva Convention which reads: "The presence of a protected person may not be used to render certain points or areas immune from military operations." Article 51, paragraph 7, of Additional Protocol I (set out in full in chapter VIII above) adds that "the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military

[535] *Soldiers' Testimonies…*, pp. 7–8 and 46. A third soldier recounts discussing the use of Palestinian civilians with his unit commander. The unit commander denied knowing about this, but the soldier concludes: "This procedure of using civilians exists, he knows about this. 'Neighbour procedure' is an official army procedure; it's just not called that any longer. The brigade commander was on the ground the whole time. He even came to visit us one day. An official army procedure means army instructions." Ibid., p. 107.

objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations." The prohibition of the use of human shields also has customary law status (rule 97 of the ICRC rules of customary humanitarian law[536]), both in international and in non-international armed conflict. The Mission, therefore, finds that the Israeli armed forces have violated article 28 of the Fourth Geneva Convention and the prohibition under customary international law that the civilian population as such will not be the object of attacks, as reflected in article 51 (2) of Additional Protocol I.

1098. In 2002, the Israeli Supreme Court sitting as the High Court of Justice was seized of a case regarding the use of a very similar practice in the West Bank, at the time known as the "neighbour procedure". The petitioners, seven Israeli and Palestinian human rights organizations, described cases in which "the IDF forced Palestinian residents to walk through and scan buildings suspected to be booby-trapped, and in which it ordered them to enter certain areas before the combat forces, in order to find wanted persons there; also described are cases in which the army used residents as a "human shield" which accompanied the combat forces, to serve as a shield against attack on those forces. […] Further described were cases in which local residents were asked about the presence of wanted persons and weapons, under threat of bodily injury or death, should the questions go unanswered."[537] In other words, the petitioners described incidents analogous to those investigated by the Mission in Gaza.

1099. In their response to the petition, the Israeli armed forces and other respondents "clarified unequivocally that they recognize that the forces operating in the field are categorically forbidden from using Palestinian residents as a 'live shield' or as 'hostages', and that involving local residents in any activity exposing them to danger to life or limb is prohibited."[538] The Israeli armed forces also submitted to the High Court of Justice a directive regarding the use of the so-called "early warning" procedure. This procedure relied on the allegedly exclusively voluntary cooperation of Palestinian civilians to give wanted persons a warning to turn themselves in. The directive states that "it is strictly forbidden to use the local resident in military missions (e.g. locating explosive charges, intelligence gathering)." It also provides "it is strictly forbidden to use a local resident as a 'live shield' against attack. Thus, during the advance of the force, accompanied by the local resident, the latter is not to be positioned at the head of the force."[539]

1100. As a result of these assurances given by the Israeli armed forces, the High Court of Justice did not rule on the so-called neighbour procedure, but on the "early warning" procedure. In its ruling, it found that the "early warning" procedure was also "at odds with international law" and

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[536] *Customary International Humanitarian Law*..., p. 337. The Israeli Government recognizes the customary nature of the principle enshrined in Additional Protocol I, article 51 (7) ("The operation in Gaza…", para. 151).

[537] Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Commander of the Central Region et al., case No. 3799/02, Judgement of 23 June 2005.

[538] Ibid., Opinion Justice D. Beinisch.

[539] Ibid., para. 7.

ordered the armed forces to desist from any further use of the procedure.[540] In reaching this outcome, Supreme Court President A. Barak left no doubt that he considered the "neighbour procedure" to violate article 28 of the Fourth Geneva Convention. He quotes approvingly from J. Pictet's *Commentary* to the Fourth Geneva Convention, in which it is stated that "such practices [the use of human shields], the object of which is to divert enemy fire, have rightly been condemned as cruel and barbaric".

1101. When reporting on its military operations in Gaza, the Israeli Government stated:

> IDF's rules of engagement strictly prohibit the use of civilians as human shields. Moreover, the Israel Supreme Court has ruled that use of civilians in any capacity for the purpose of military operations is unlawful, including the use of civilians to call terrorists hiding in buildings. Following this judgement, this latter practice has also been proscribed by IDF orders. The IDF is committed to enforcing this prohibition.
>
> The IDF took a variety of measures to teach and instil awareness of these rules of engagement in commanders and soldiers.[541]

The Israeli Government does not, however, in any way mention the very specific allegations of use of Palestinian civilians as human shields in January 2009 which have been in the public domain since they were published in an Israeli newspaper in March 2009[542] and in NGO reports from April 2009 onwards, and which have been brought to the attention of the Attorney-General of Israel in letters by Israeli NGOs.

1102. The Mission further finds from the facts available to it that the conduct of the Israeli armed forces in the cases above violates article 31 of the Fourth Geneva Convention. This provision dictates that "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." The ICRC Commentary notes that "article 31 prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. Thus, the custom, hitherto accepted in practice but disputed in theory, that an invasion army may force the inhabitants of an occupied territory to serve as 'guides' is now forbidden."[543]

1103. The questioning of civilians under threat of death or injury by Israeli soldiers, who demanded information about Hamas and the location of Palestinian combatants and tunnels, also constitutes a violation of article 31. The Mission has no information on cases in which such a threat was actually followed by the killing of a captured civilian. However, Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami, all claim that they were threatened with execution. Majdi Abd Rabbo also claimed that he was kicked and beaten by soldiers until he gave in to their request to enter the house of HS/08. Mahmoud Abd Rabbo

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[540] Ibid., para. 25.

[541] "The operation in Gaza…", paras. 227-228.

[542] "Gazans: IDF used us as 'human shields' during offensive".

[543] p. 220.

al-Ajrami was thrown from the second floor of his house after refusing to provide information to Israeli soldiers, resulting in several broken ribs.

1104. The use of the "neighbour procedure", now apparently renamed "Johnnie procedure", constitutes a violation of fundamental human rights norms. It puts the right to life of the civilians concerned, protected in article 6 of ICCPR, at risk in an arbitrary and unlawful way. The anguish to which civilians who, blindfolded and handcuffed, are forced at gunpoint to enter houses which – this is the reason they are forced to enter the houses – might be booby-trapped or harbour combatants who might open fire on them, can only be described as cruel and inhuman treatment prohibited by article 7 of ICCPR. Furthermore, the witnesses were all deprived of liberty and the security of their person violated. This also constitute a violation of article 9 of ICCPR. The Mission must state that numerous civilians who came into contact with the Israeli armed forces during the military operation recounted shocking stories of humiliation that would certainly be in stark contravention of the principle of respect for human dignity, which forms the core of all human rights and fundamental freedoms.

1105. The Mission also finds that the intentional use as human shields of those whose accounts are presented above qualifies as inhuman treatment of and wilfully causing great suffering to protected persons under the Fourth Geneva Convention. As such, the Mission considers the conduct of the Israeli armed forces in relation to such persons to amount to grave breaches of the said Convention. The use of human shields is also a war crime under article 8 (2) (b) (xxiii) of the Rome Statute.

1106. Finally, the Mission finds that obliging Majdi Abd Rabbo to use a megaphone to call on the men trapped in the house behind his to surrender, on the grounds that ICRC was present and they could safely hand themselves over, qualifies as a violation of article 37 of Additional Protocol I of the Geneva Conventions, which prohibits perfidy. At the time, the Izbat Abd Rabbo area was a closed military zone into which no one, including ICRC, was permitted to enter. Perfidy is defined by article 37 as "acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence". Acts amounting to perfidy resulting in death or serious personal injury are also a war crime under article 8 (2) (b) (vii) of the Rome Statute.

XV. DEPRIVATION OF LIBERTY: GAZANS DETAINED DURING THE ISRAELI MILITARY OPERATIONS OF 27 DECEMBER 2008 TO 18 JANUARY 2009

1107. According to information that the Mission received, hundreds of Gazans, including women and children, were detained by the Israeli armed forces during the military operations. Their exact number is not known. Some were held for hours or days in homes, other buildings or sandpits in the Gaza Strip; others were taken into detention in Israel, either immediately or after an initial period of detention in the Gaza Strip. A number of people were held in army bases (e.g. Sde Teiman[544]), others were held in prison, and some released detainees do not know where they

[544] Correspondence with HaMoked, 22 July 2009. See also the testimony of AD/06 taken by Addameer, Prisoners Support and Human Rights Association.

were held. Some detainees have reported abuse during detention, including beatings, and being kept in unsanitary conditions, without any or with only inadequate food or toilet facilities. Some released persons have reported that they were used as human shields during their detention, for example, forced to walk in front of soldiers and enter buildings ahead of soldiers.[545]

1108. On 28 January 2009, seven Israeli human rights organizations appealed to the Israeli Military Judge Advocate General and to the Attorney General, concerning the "appalling conditions in which Palestinians arrested during the fighting in Gaza were held, and the humiliating and inhuman treatment to which they were subjected from the time of their arrest until their transfer to the custody of the Israel Prison Service."[546]

1109. The number of detainees that were eventually taken to Israeli prisons has been estimated at around 100.[547] Some of them have since been released. It often took the families and lawyers several weeks to find out that their loved ones or clients were being detained. Some lawyers have alleged that Israel deliberately did not disclose the number of detentions, even to ICRC.[548] Human rights organization Adalah have filed a freedom of information request to the Government, but at the time of writing this report is yet to receive a response. Eventually many were released by the Israeli Prison Service but the Mission is not in a position to determine the exact number.

1110. A PCATI lawyer representing detainees, Mr. Bader, who spoke at the Mission's public hearings in Geneva, interviewed a number of the detainees in Israeli prisons and relayed their testimonies. These include stories from prisoners who said they were used as human shields or held in sandpits.

1111. The Mission has interviewed a number of persons who were detained by the Israeli armed forces for substantial periods of time during the military operations in Gaza and thereafter. In the course of that detention they were in some cases held without trial or respect for basic due process guarantees, and were mentally and physically abused. The Mission has also heard directly from legal representatives of several people who were detained at this time, including some of those referred to above. Moreover, the Mission addressed questions to the Government of Israel with regard to the number of persons from Gaza detained by Israel during the military operations and the duration of their detention, including how many remain in custody. The Mission asked how many persons detained in Gaza were charged with being "unlawful combatants" and on what basis, how many were subjected to trial and what due process guarantees were afforded to them. No reply was received.

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[545] PCATI Affidavit submitted to the Mission. Addameer, Prisoners Support and Human Rights Association affidavit of AD/06.

[546] The complaint was submitted by the Public Committee against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI), HaMoked – Centre for the Defence of the Individual, Physicians for Human Rights – Israel (PHR-Israel), B'Tselem, Adalah and Yesh Din. See http://www.btselem.org/english/press_releases/20090128.asp

[547] Figures supplied to the Mission by PCHR, Adalah and PCATI.

[548] Correspondence with Addameer, Prisoners Support and Human Rights Association, 25 June 2009.

A. Al-Atatra sandpits

1112. Al-Atatra is located 10 kilometres north of Gaza City, west of Beit Lahia and three to four kilometres south of the Green Line. The neighbourhood is largely agricultural with orange and lemon orchards. On the morning of 5 January, it suffered heavy aerial bombardment, which was followed by a ground incursion by Israeli troops. The Mission met six people, members of the same extended family[549] and residents of al-Atatra, three of whom were direct witnesses and victims of the events that occurred in the aftermath of the ground incursion.[550] Their testimonies are supported by those of three others, also residents of al-Atatra, submitted to the Mission by an NGO.[551]

1113. On the morning of 5 January, shortly after the ground operations began, an estimated 40 Israeli soldiers broke into several homes, including that of AD/01, who described to the Mission how 65 persons, several of whom were holding white flags, were made to assemble in the street. The soldiers separated the men from the women. The men were made to line up against a wall and strip to their underwear. AD/01 indicated that any attempt to resist the soldiers was met with physical force, resulting in injuries.

1114. Approximately 20 minutes later, they were taken into a house owned by Mr. Khalil Misbah Attar, where they were detained for a day, the men still separated from the women. The house had been struck by a number of missiles that morning and was badly damaged. Witnesses indicated to the Mission that the house was at that time being used by the Israeli armed forces as a military base and sniper position.[552]

1115. At around 10 p.m., all of the men were handcuffed behind their backs with plastic restraints and blindfolded. The men, 11 women and at least seven children below the age of 14 were taken on foot to al-Kaklouk located south of the American School, one to two kilometres away. Many of the men remained in their underwear, exposed to the harsh winter weather.[553] Al-Kaklouk is very close to Israeli military artillery and tank positions, and while the detainees were held here at least one tank was engaged in frequent firing.

1116. AD/01 told the Mission that, on arrival at al-Kaklouk, everyone was asked to clamber down into trenches, which had been dug to create a pit surrounded by a wall of sand, about three metres high. There were three such pits, each of which was surrounded by barbed wire. They were estimated to cover about 7,000 square metres ("six or seven *donums*") each. AD/01 described how they were assembled in long single files, rather than massed together, and held in

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[549] For security reasons the witnesses from the family are referred to by coded reference here.

[550] Testimony to the Mission by AD/01 (plus three others), 30 June 2009.

[551] Affidavit of RR, RS and RT, residents of al-Atatra, submitted to the Mission by Adv. Majd Bader.

Public Committee Against Torture in Israel who testified at the public hearings in Geneva.

[552] The use of Mr. Khalil Misbah Attar's house as a detention place is corroborated in the testimony of Samir Ali Muhammad Attar collected in an affidavit by Advocate Mahar Talhamy on behalf of PCATI, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

[553] According to the BBC weather services, temperatures in the Gaza Strip in December and January, on average, vary from maximum 17° to minimum 7° Celsius.

these pits, in the open air and exposed to cold temperatures for three days (till 8 January). Each pit accommodated approximately 20 people. They were forced to sit in stress positions, on their knees and leaning forward keeping their heads down. They were monitored by soldiers and were not allowed to communicate with each other. They had no access to food or water on the first day of their internment, and were given a sip of water and an olive each to eat on the second and third days of their detention (6 and 7 January). They had limited access to toilet facilities. The men had to wait for two to three hours after asking before they were allowed to leave the pits to relieve themselves and sometimes were able to remove their blindfolds for the purpose. A few of them were told to relieve themselves inside the pit, behind a small mount of sand. They stated that it was culturally too difficult for the women to seek permission to relieve themselves and they did not ask.

1117. AD/01 states that some tanks were inside the pit with at least one tank positioned at the eastern end.[554] While the people were held there, the tank facing inland each day sporadically fired on the houses along the road opposite the site.

1118. AD/01B and AD/01C recounted that on 8 January, the women and children were released and told to go to Jabaliyah. The men were transferred to military barracks near the northern border, identified as the Izokim Barracks. At the Izokim barracks, the men were detained in pits similar to but smaller than those in al-Kaklouk. They continued to be exposed to the cold temperature, rain and the constant sound of tank movement overhead. The witnesses have described to the Mission the experience of continued and prolonged exposure to the sound of this tank movement as disorienting and creating feelings of futility, isolation, helplessness and abject terror.

1119. The men were held handcuffed and in their underwear in the Izokim barracks overnight. They were questioned intermittently, mostly on details and locations of Qassam rockets, the tunnels and the whereabouts of Hamas parliamentarians. According to statements made to the Mission, they were beaten during the interrogation and threatened with death and being run over by tanks. The Mission notes that the nature and types of questions asked remained the same throughout the interrogations in various detention facilities.

1120. On 9 January, the men were taken to a prison in Israel, indentified by one witness as the Negev prison, where they remained until 12 January. They were detained in one section of the prison, alternating between being held in isolation and in shared cells, and were subjected to harsh interrogation, often by two people dressed in civilian clothes. Interrogation focused on the identification of Hamas tunnels and arms as well as the whereabouts of Gilad Shalit.

1121. AD/01B and AD/01C recounted that they were shackled to a chair with plastic strips and interrogated several times, with AD/01B stating that he was made to strip naked during an interrogation. He was kept in solitary confinement where a soldier would come intermittently during the day, and slam the cell door open and shut, exposing him to extremely cold temperatures. AD/01C stated that during the first interrogation he was verbally threatened and in the subsequent two he was blindfolded and beaten. He was made to stand up and face the wall,

[554] This is corroborated in the statement by RR to PCATI.

following which his face was smashed against the wall several times before he was severely beaten (kicked and punched) on his back and buttocks.

1122. Requests for clothing were denied. During the interrogation the detainees were informed that they were "illegal combatants" and that they had no protection under the Geneva Conventions. They had limited access to food, water and sanitation. Their morning meal was a bottle-cap-sized piece of bread with a drop of marmalade. The evening meal, if provided, consisted of rotting sardines and cheese on mouldy bread.

1123. AD/01C described the experience of being detained, stripped and shackled as one of abandonment, desperation, suffocation and isolation. He continues to experience discomfort where he was beaten and is unable to sit and sleep comfortably.

1124. AD/01C stated that while in Negev prison an additional group arrived. They were kept separately in the second section. The exact number of detainees in the second group is unknown, although AD/01C indicated to the Mission that the second group was smaller.

1125. On 12 January, nine people including the witnesses were blindfolded, handcuffed and transported to the Erez border. AD/01 described to the Mission how they were subjected to harsh interrogation at Erez and made to strip completely. Several hours later they were told to run into Gaza, to look straight ahead and not to look back.

1126. AD/01 states that all 65 detainees from the original group taken from al-Atatra to Israel were eventually released. Some members of his family were detained afterwards, but not in the original group of 65. At the time of writing, three of these remain incarcerated in various detention facilities of the Israel Prison Service. An unknown number remain in prison facing charges of being illegal combatants and members of al-Qassam Brigades. The first hearing was scheduled to be held in August in Israel (exact date not known).

B. Detention and abuse of AD/02

1127. AD/02 was interviewed by the Mission on 1 July 2009. He is a resident of Beit Lahia and a businessman. He was detained on 4 January 2009 for around 85 days. In that period he was held in Beersheba and Negev prisons, after being detained in locations identified as military posts. He was mentally and physically abused. He appeared before what appeared to be a criminal court, but the precise nature of the proceedings and their results were never made clear to him. He was released without explanation and returned to the Erez border and told to re-enter Gaza.

1128. By 3 January AD/02 and his extended family, numbering over 200, had gathered together in Beit Lahia as a result of the attacks that were taking place in the area. At around 4 a.m. on 4 January Israeli troops entered the area shooting. They ordered everyone out of the house and separated the men from the women and children. They selected 15 of the men, without asking for names. The women and children were ordered to go south. AD/02 recounted that the 15 men, including him, were separated from the other men and were blindfolded and handcuffed with

plastic strips.[555] They were taken on foot to an open space half a kilometre away. An hour later, they were taken to a house where they were joined by an estimated 54 or 55 people, who apparently also wore blindfolds.

1129. AD/02 described how they were interrogated in a separate room, individually and at times in groups of two or three. He stated that some of the men, though not him, were beaten during the interrogation and were made to clamber down into trenches or pits, dug in the ground outside the house, big enough to accommodate one person. They were kept in the pits for several hours at a time, handcuffed and blindfolded, with no access to toilets.

1130. Later that night, 15 people – four women and at least 11 children – were brought to the house. They were detained overnight in the corridor outside the room where the men were detained. The next morning, on 4 January, the men, women and children were taken out of the house to an open space. The men remained blindfolded and handcuffed. AD/02 stated that the open space was a military post with many tanks and soldiers. They were all told to sit in the middle of the empty space. A fence of barbed wire was then erected around them. They sat within the barbed enclosure all day and all night in close proximity to the movement and sound of military tanks.

1131. AD/02 stated that 18 to 20 other men were held overnight in an open truck, exposed to the cold and rain. AD/02 knew this from talking to some of the men the following morning.[556]

1132. On 5 January, 18 to 20 men, not including AD/02, were taken from the military post to an unknown location.[557] AD/02 and 35 others were taken to an area described by him as located north of Gaza City and in Israel. They remained handcuffed and blindfolded for an hour and a half. Then a roll-call was taken, their blindfolds removed and they were interrogated by a person who identified himself as an intelligence officer. Shortly afterwards, AD/02 and a few others (exact number not known) were interviewed by a group of people identifying themselves as part of a television crew. AD/02 does not know the name and/or details of the television channel. They were then led to an open space, where they stayed all evening exposed to the rain and cold. Later that night (5–6 January) they were blindfolded and shackled with chains and taken to a location which AD/02 subsequently learned was the Beersheba prison facility. A few hours later, at dawn, their blindfolds and handcuffs were removed.

1133. AD/02 recounted that he was in extreme pain as the handcuffs were very tight, adding to the pain caused by pre-existing injuries to his hands and wrist. Earlier in his life, he had suffered serious burns and the scarring on his hands and arms is evident. There is continued nerve damage to the skin tissue which causes significant pain in cold weather. His gloves were taken away by

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[555] Jerusalem Centre for Public Affairs submission, page 48; see also testimony 21 in *Soldiers' Testimonies…*, which supports AD/01's statement: "we go in, call out to the owner to open, gather all the males, shackled them, gather the family in one room and begin to search", p. 50.

[556] AD/02's statement is corroborated in a letter sent by various NGOs (ACRI, PCATI, HaMoked, PHR, B'Tselem, Yesh Din and Adalah) to the Military Advocate General on 8 January 2009, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

[557] AD/02 indicated that it was later learned that the men had been taken to Ashkelon prison before being brought to the Beersheba Prison, where they were grouped with the others, including AD/02.

soldiers during an interrogation, exposing his hands to the extreme cold. His requests for medical assistance were ignored several times before his arrival in Beersheba, where he was given access to a doctor. He was, however, given only a non-medicated lotion.

1134. AD/02 stated that he was detained in Beersheba for approximately a week. He was intermittently kept in isolation and then in a courtyard with several other detainees. In one instance, he was blindfolded, handcuffed and shackled, and interrogated for approximately two hours by three people. He was verbally abused and beaten during the interrogation, his hair was pulled and he was kicked with one of the interrogators attempting to push his boots through the loop of the handcuffs tied around his wrists.

1135. On or around 13 January, pursuant to an interrogation by a person dressed in civilian clothes, AD/02 was blindfolded and handcuffed and taken to the Negev prison. He remained there until the end of March. During this time he was transferred at least 10 times from one cell to another.

1136. On arrival his handcuffs were removed and he was taken to a ward, which consisted of small one-man cells with iron doors and no windows. The cells each contained an iron bench. Two hours later, he was blindfolded and taken to an interrogation room, where he was stripped and made to stand alone, naked, for almost an hour before his clothes were returned and he was handcuffed and shackled. He was taken by four people to another room, where he was beaten with the butt of a rifle while also being kicked and punched several times. The beating lasted for about 30 minutes. He was then left alone in the room for about 2 hours. He was then taken to a large communal space referred by the soldiers as the “tents.” There were seven or eight such spaces or tents spread across the prison.

1137. AD/02 said that he was unable to stand owing to the severe injuries sustained during the beatings and had to be carried to the tents. He was taken to a doctor, given some medicines and allowed to take a shower. AD/02 stated that he stayed in the tent area for about a week before being transferred to a cell occupied by four people. The cell had an iron bed and a bunk bed. Two people including AD/02 slept on the floor. The cell was dark and filthy. There was no clean water and no toilet. During the entire week the men had to relieve themselves in the cell, which was never cleaned.

1138. AD/02 remained in the cell for about one week. At some time during this period he was taken, blindfolded, handcuffed and shackled, by bus to what appeared to be a court. On arrival, his handcuffs and blindfold were removed. He remained shackled when he was taken inside the courtroom. The courtroom had a standard layout with the judge seated behind a table in the centre of the room. The prosecution was on one side and the defence on the other. They were all dressed in civilian clothes. Once inside the courtroom, AD/02 was made to sign a consent form, accepting the lawyer reportedly appointed to defend him. Although the lawyer identified himself as belonging to a human rights organization, he gave no name. As the proceedings began, the judge addressed AD/02 and read out the charge against him. The judge announced that he was being charged with being an illegal combatant but did not explain specific charges. AD/02 was asked no questions. When the defence lawyer asked for the charge to be elaborated, the judge replied that the charges were part of a secret dossier and could not be elaborated upon or revealed. The proceeding lasted about 30 minutes and AD/02 was taken back to Negev.

1139. A week later, around or on 28 January, AD/02 was transferred to another section of the prison, where roll-calls and strip searches were carried out regularly. Some 8 to 10 days later, around 7 February, he and 14 others, were moved to a larger ward with prisoners from the West Bank. The ICRC was given access to them.

1140. On 8 February, AD/02 was transferred, twice, to another section of the prison and shortly afterwards to the cell where he had first been detained on arrival at Negev. On 9 February, at around noon, he and several others were transferred, for the ninth time, to another section of the prison occupied by a large number of prisoners, including those from the West Bank. AD/02 indicated that several of them were parliamentarians. He remained in this section for approximately 20 days. During this time he three times met a person who identified himself as a lawyer. He was informed of the charges against him, which included membership and involvement with the resistance.

1141. On 2 March, he was transferred with 10 others to yet another section of the prison. They were put in two rooms, five in each room. The rooms had graffiti on the wall that read *illegal combatants* in English and in Hebrew. They had limited access to toilets and were given uncooked food to eat.

1142. Around 29–30 March, AD/02 was finally released. He and his brother, a cousin and two other residents of Izbat Abd Rabbo were blindfolded and handcuffed and taken to the Erez border, where they were interrogated for approximately four hours. They were then told to cross the border and not look back. They were given no explanation about either their detention or their release.

C. AD/03

1143. AD/03 is a resident of al-Salam neighbourhood, east of Jabaliyah and close to the eastern border with Israel. His arrest and detention were preceded by aerial attacks and a ground invasion in his neighbourhood. His house was struck several times, over a period of five days, by projectiles fired from F-16 aircraft. The attacks continued throughout the night when most people were asleep.[558] As a result of the continued attacks, he sought refuge in a relative's house nearby.

1144. AD/03 stated that, although the area could be considered as a frontline where armed groups had been present, the neighbourhood could not reasonably have been perceived as a military threat by the time the Israeli armed forces arrived on the ground. There was no resistance going on in the neighbourhood when it was targeted. If the intent of the attacks was to

[558] On the afternoon of 3 January, AD/03's house was struck twice by projectiles, within two hours, causing significant damage. He and his family moved to a relative's house nearby, where they stayed overnight. On 4 January in the evening, when AD/03 had returned to his own home, it was struck for the third time and part of the roof collapsed. AD/03 sustained minor injuries; his mother and his wife sustained more serious injuries. Later that night, at around 9.40 p.m., the house was hit by a fourth rocket, which was followed by another attack 20 minutes later that completely destroyed the ground floor facade injuring AD/03's father's second wife. Another shell (the sixth attack) was fired shortly afterwards. AD/03 and his family relocated for the second time to his cousin's house, where they remained for four nights, until 7 January. On the morning of 8 January, aerial bombardment intensified to the extent that three explosions/shells were reportedly heard every minute.

destroy alleged command centres, positions or weapons caches of Hamas, he felt that those positions would have been destroyed in the first few attacks on the neighbourhood given the intensity of the shelling.

1145. On 8 January, at around 11.30 a.m., the house where AD/03 was seeking refuge was struck by a missile so he decided to return to his own house. He described how Israeli soldiers fired at them, including women and children carrying white flags, when they tried to leave his cousin's house. His father's wife sustained a bullet injury to her leg. Thirty minutes later, around noon, the Israeli armed forces ordered all residents to evacuate their homes and come out in the street. The men were separated from the women and children, and told to line up against a wall, lift their shirts and strip to their underwear. They remained stripped and lined up against the wall for approximately 15 minutes. The men, women and children were then told to walk down the street.

1146. AD/03 recounted that the street was blocked with large piles of heavy rubble and debris of bulldozed buildings, which provided a difficult obstacle for several people, including children and elderly people. They walked 200-250 metres before arriving at a house. Two hours later the women and children were told to go to Jabaliyah. Shortly afterwards, AD/03, his brother, cousin and an unknown man were taken to another room, where they were forced to lie on the ground. They were then blindfolded and their hands were tied behind their backs with plastic strips. They were interrogated individually for several hours. Later that evening, they were made to walk about 100 metres eastward to another house. They were detained overnight in a room, together with three others, who identified themselves as residents of Abd Rabbo. They had no access to food, water or toilets. The next morning, on 9 January, their blindfolds were removed and all seven were interrogated, individually, by one soldier.

1147. AD/03 stated that the house was being used as a military base and sniper position. On the second day of detention the Israeli soldiers began to use some detainees as human shields. By then the detainees had been without food and sleep for a day. They had been subjected to what AD/03 described as psychological torture. There were constant death threats and insults. To carry out house searches as human shields the Israeli soldiers took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell them, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed he was taken to another house with a gun pressed against his head and told to carry out the same procedure there. He was punched, slapped and insulted throughout the process.

1148. AD/03 indicated that he was forced to do this twice while the group was being held in this house for eight days. Others were also required to do the same thing. On the first occasion he was forced to carry out searches in three houses and on the second in four. AD/03 estimates that these searches took between one hour and one hour and a half. At no point did he come across any explosive devices or armed group members.

1149. AD/03 stated that, at the end of every search, the houses were vandalized by the Israeli soldiers, who broke doors, windows, kitchenware and furniture, for instance.[559]

1150. At the end of the day he was taken back to the house, where he and six others continued to be detained for 8 days, until 16 January. They had limited access to food and water and were often denied access to toilets. They were told that their ordeal would continue indefinitely. One soldier reportedly told them that the soldiers were "following instructions issued by the chain of command."

1151. For the first time the detainees were asked for proof of identity. AD/03 said that their identification documents were thoroughly inspected. Had they revealed anything in relation to militant activities, he believed they would have been killed.

1152. On 16 January they were handcuffed, with plastic strips tied very tightly around their wrists, made to stand in a single file, blindfolded and told to hold on to the shirt of the person standing in front of them. They were made to walk towards a military tank positioned very close to the house where they had been detained and told to sit on top of each other inside the tank. The tank drove on a bumpy track and over big boulders causing them to frequently slam against the sides of the tank. About three hours later it stopped in an unknown location. On arrival, they were asked to clamber down into holes or pits about three to four metres deep. AD/03 stated that they were in a military post, as they heard the voices of several soldiers laughing and joking noisily. They remained blindfolded and handcuffed and exposed to the continued sound of tank movement overhead. They remained in the pit for about one hour and were then made to sit inside a tank that moved in circles.

1153. Shortly afterwards, their handcuffs were removed and they were shackled with chains inside a bus. They were accompanied by soldiers who spoke Hebrew. On arrival, they were searched and then interrogated for eight hours before being taken to the military barracks in Beersheba. Then they were made to line against the wall before being asked to strip naked. They were made to stand, blindfolded, naked and exposed to the cold winds, for about three or four hours.

1154. On 19 January, eight people, including AD/03, his brother and one other man from the group of seven who were taken to Beersheba on 16 January, were shackled inside the bus, made to bend forward and keep their heads down, between their knees, and were taken to Negev prison, a journey that lasted approximately four hours. During this journey they were continuously beaten, kicked and punched by four or five soldiers on board. According to AD/03, the detainees sustained serious injuries and were bleeding, two bleeding more profusely than the others. Two detainees reportedly even fainted. He stated that soldiers on board made constant reference to shackling practices in the Russian Federation, leading AD/03 to believe that the soldiers were from there.

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[559] The account of a soldier interviewed by Breaking the Silence and the account in the submission of the Jerusalem Centre for Public Affairs clarify that soldiers would vandalize houses after searches. Jerusalem Center for Public Affairs submission, p. 78. "The family was not in there, they had run away. He [one of the soldiers] took out notebooks and textbooks and ripped them. One guy smashes cupboards for kicks, out of boredom. […]" *Soldiers' Testimonies…*, testimony 35, p. 80.

1155. On arrival at Negev, they were severely beaten by the prison security for approximately one and a half hours before being put into cells and told that they were caught during battle and were illegal combatants. Later that night, 10 more people joined the group of detainees.

1156. AD/03 described how on the second day of their incarceration, 20 January, the detainees (at this point 18 in number) were told that they would be interrogated in accordance with their alleged political affiliations. Several of them pointed out that they had none. They were grouped apart. AD/03 said that they talked among themselves and he found out that nine of them were livestock farmers and three or four were merchants and traders.

1157. AD/03 described how the detainees were divided into two groups of nine each and put in a section of the prison referred to as the *mardaban*, which was divided into two wards containing 10 iron beds each and guarded by Israeli Arab soldiers. They remained incarcerated for eight days, until 27 January, with limited access to food, water, toilets and physical exercise.

1158. On 24 January, AD/03 was given access to a lawyer, affiliated with Addameer, Prisoners Support and Human Rights Association,[560] for the first and only time. The Mission interviewed him[561] and he confirmed that he had visited AD/03 and his brother on 25 January 2009. The lawyer's evidence provided corroboration of the detention of AD/03 and his brother (who was also assisted by the lawyer), and the conditions under which he was subjected to criminal proceedings in Israel. The lawyer was informed by the Israeli authorities that AD/03 was detained under the illegal combatant law but he was not given the dossier to review. His brother was never formally charged.

1159. On 25 January, the detainees were told that they would be taken to Beersheba for their trial. On 26 January, all 18 detainees were shackled with iron chains to iron benches in a bus, handcuffed with iron handcuffs and taken to Beersheba. They were not blindfolded. The journey lasted five hours during which the bus drove on bumpy roads causing the detainees to slam against the sides of the bus. They were detained in Beersheba overnight in overcrowded cells together with people convicted of serious offences, according to AD/03. They were mostly Israeli Jews.

1160. The following morning, on 27 January, they were taken back to the Negev prison in shackles and handcuffs. They were given no information regarding the scheduled hearing. The outcome of the proceedings was not clear to AD/03 at the time, as he believed he had been "acquitted" only when they were returned to the Negev prison.

1161. The lawyer from Addameer was present in the court. According to him, the prosecutor made the decision not to proceed with the case rather than the detainees being acquitted. The lawyer confirms that they were held in Ktziot prison in the Negev Desert and released on 27 January.

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[560] The Mission has heard directly from AD/03's legal representative, who stated that he received a copy of his file, but not the secret file, from the Prosecutor's Office on 21 January 2009. AD/03 was arrested on suspicion of being an illegal combatant.

[561] The lawyer had been alerted to the cases by Al Mezan, a human rights organization in Gaza.

1162. AD/03 said they were then taken back to Beersheba and later to the Erez border, where they were released. They were told to run into Gaza and not look back.

1163. AD/03 indicated that two others, detained with him, were released a month later. Two others continue to be detained in the Ktziot prison and are reportedly awaiting trial. The status and whereabouts of 11 others are not known.

D. Factual findings

1164. The Mission found the witnesses credible and reliable taking into account their demeanour and the consistency of their statements. At least one of them was still suffering considerable anguish because of the treatment he had endured at the hands of the Israeli soldiers and other officials. The Mission notes that there are several common features to these incidents that disclose a pattern of behaviour on the part of the Israeli soldiers, indicating that the treatment meted out to the persons deposing before the Mission were not isolated incidents. The facts available to the Mission indicate that:

- All three locations were near the border with Israel;
- Before the arrival of ground troops, all three had been under aerial or ground attack. The soldiers on the ground were in complete control of the area at the time of their encounter with the civilians;
- There was no combat activity by the persons reporting, nor any likelihood of such activity being under way in the area or nearby at the time that the soldiers started the operation against civilians in the three locations. None of the civilians was armed or posed any apparent threat to the soldiers. In two of the incidents they were holding white flags as a sign of their non-combatant status;
- It is clear in two of the incidents that none of those detained had been asked for their names by the soldiers for several days. This establishes that there was no definite suspicion against them that they were combatants or otherwise engaged in hostile activities;
- In all cases a number of persons were herded together and detained in open spaces for several hours at a time and exposed to extreme weather conditions;
- The soldiers deliberately subjected civilians, including women and children, to cruel, inhuman and degrading treatment throughout their ordeal in order to terrorize, intimidate and humiliate them. The men were made to strip, sometimes naked, at different stages of their detention. All the men were handcuffed in a most painful manner and blindfolded, increasing their sense of fear and helplessness;
- Men, women and children were held close to artillery and tank positions, where constant shelling and firing was taking place, thus not only exposing them to danger, but increasing their fear and terror. This was deliberate, as is apparent from the fact that the sandpits to which they were taken were specially prepared and surrounded by barbed wire;

- During their detention in the Gaza Strip, whether in the open or in houses, the detainees were subjected to beatings and other physical abuse that amounts to torture. This continued systematically throughout their detention;

- Civilians were used as human shields by the Israeli armed forces on more than one occasion in one of the three incidents. Taking account of other incidents in which the Mission has found this to have happened, it would not be difficult to conclude that this was a practice repeatedly adopted by the Israeli armed forces during the military operation in Gaza;

- Many civilians were transferred across the border to Israel and detained in open spaces as well as in prisons;

- The methods of interrogation amounted not only to torture in some of the cases, but also to physical and moral coercion of civilians to obtain information;

- These persons were subjected to torture, maltreatment and foul conditions in the prisons. They were deprived of food and water for several hours at a time and any food they did receive was inadequate and inedible;

- While in detention in Israel they were denied due process.

E. Legal findings

1165. The Mission considers the following legal provisions relevant to its consideration of the matters presented above:[562]

Article 4 of the Fourth Geneva Convention

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12August 1949, or by the Geneva

[562] The Mission does not repeat here the provisions already cited elsewhere, such as article 57 of Additional Protocol I or common article 3.

Convention relative to the Treatment of Prisoners of War of 12August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5 of the Fourth Geneva Convention

Where, in the territory of a party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or occupying Power, as the case may be.

Article 27 of the Fourth Geneva Convention

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 76 of the Fourth Geneva Convention

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

1166. Relevant parts of article 75 of Additional Protocol I, which reflect customary international law, provide:

1. In so far as they are affected by a situation referred to in article 1 of this Protocol, persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) Violence to the life, health, or physical or mental well-being of persons, in particular:

[…]

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

[…]

(b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishments; and

(e) Threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt;

(g) Anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) No one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) Anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned,

they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) Persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) Any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

1167. From the facts available to it, and in the absence of any information refuting the allegations that the incidents described above took place, the Mission finds that there have been a number of violations of international humanitarian law and human rights law.

1168. All of the persons held were civilians and protected persons under article 4 of the Fourth Geneva Convention. The Mission does not accept the proposition that the men were detained as or considered to be unlawful combatants and therefore beyond the protection of the Fourth Geneva Convention. An individual loses the status of protected person only if that person is "definitely suspected of or engaged in activities hostile to the security of the State" (art. 5). The Mission has not heard any information suggesting this to be the case. Even if a person is no longer entitled to the status of protected person, article 5 provides that such persons must "be treated with humanity" and "shall not be deprived of the rights of fair and regular trial." Furthermore, under Additional Protocol I, article 75, they shall enjoy "as a minimum" the protections provided by that article.

1169. The Mission has considered to what extent the actions of the Israeli armed forces might legitimately be considered as some kind of internment in the light of the resistance from armed groups in the area generally, although not in the context of the specific detentions. These people from Gaza were detained in prisons inside Israel (Beersheba, Ashkelon and Negev prisons), contrary to the Fourth Geneva Convention, which stipulates in article 76 that protected persons should be detained inside the occupied territory and not transferred out of it unless there is a pressing security need.[563] It also makes clear that internment is the most severe measure that a

[563] ICRC also specifies that, in occupied territories, civilians can be interned, or placed in assigned residence, only within the frontiers of the occupied country itself. See ICRC Commentary on article 78 of the Fourth Geneva Convention.

detaining authority or occupying Power may take with respect to protected persons against whom no criminal proceedings have been initiated. Internment is a preventive administrative measure and cannot be considered a penal sanction.[564] Recourse to the measure may be had only if the security of the State makes it "absolutely necessary" (art. 42) or "for imperative reasons of security" (art. 78).

1170. The Mission does not consider that the information it has received supports defining the treatment described above as internment.

1171. The rounding-up of large groups of civilians and their prolonged detention under the circumstances described above constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation and terrorism, prohibited under article 33 and a grave breach of the Convention that constitutes a war crime.

1172. By holding the detainees in sandpits without privacy, the Israeli soldiers failed to ensure respect for their persons or to treat them humanely as required by article 27 of the Fourth Geneva Convention. The information before the Mission suggests that this treatment could not be justified as necessary "measures of control and security." This treatment also constituted outrages on personal dignity, humiliating and degrading treatment contrary to the Geneva Conventions, common article 3, and Additional Protocol I, article 75 (2) (b). The abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime.

1173. "Women shall be the object of special respect", in accordance with article 76 of Additional Protocol I. The Mission finds, on the information before it, that the treatment of the women in the sandpits, where they endured especially distressing circumstances, was contrary to this provision and would also constitute a war crime.

1174. The Mission has received information relating to the particular treatment received by some witnesses, such as shackling, severe beatings during detention and interrogation, being held in foul conditions or solitary confinement, which added to their already profound sense of degradation. Such treatment violates article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons, "in particular to gain information from them". This would also constitute a war crime.

1175. Furthermore, on the basis of this information, the Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israelis and in detention in Israel, would constitute torture, and a grave breach under article 147 of the Fourth Geneva Convention and a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such violations also constitute war crimes.

[564] ICRC Commentary on the Fourth Geneva Convention.

1176. From the facts ascertained by it, the Mission believes that there has also been a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, as well as of article 14 ICCPR with regard to the right to be brought before a judge at the earliest opportunity, the right to be informed of the charges against one, the right to consult with legal counsel and the right to be provided with a meaningful opportunity to defend oneself.

XVI. OBJECTIVES AND STRATEGY OF ISRAEL'S MILITARY OPERATIONS IN GAZA

1177. This chapter addresses the objectives and the strategy underlying the Israeli military operations in Gaza.

A. Planning

1178. The question of whether incidents involving the Israeli armed forces that occurred between 27 December 2008 and 18 January 2009 are likely to be the result of error, the activities of rogue elements or a deliberate policy or planning depends on a number of factors, including the degree and level of planning involved, the degree of discretion field commanders have in operations, the technical sophistication and specification of weaponry, and the degree of control commanders have over their subordinates.

1179. The Government of Israel has refused to cooperate with the Mission. The Mission has therefore been unable to interview high-level members of the Israeli armed forces. It has, nevertheless, reviewed a significant amount of commentary and conducted a number of interviews on planning and discipline, including with persons who have been connected with the planning of Israeli military operations in the recent past. The Mission has also analysed the views expressed by Israeli officials in official statements, official activities and articles, and considered comments by former senior soldiers and politicians.

1. The context

1180. Before considering the issue of planning there is an important issue that has to be borne in mind about the context of Israeli operations in Gaza. The land mass of Gaza covers 360 square kilometres of land. Israel had a physical presence on the ground for almost 40 years with a significant military force until 2005. Israel's extensive and intimate knowledge of the realities of Gaza present a considerable advantage in terms of planning military operations. The Mission has seen grid maps in possession of the Israeli armed forces, for example, that show the identification by number of blocks of houses throughout Gaza City.

1181. In addition to such detailed background knowledge, it is also clear that the Israeli armed forces were able to access the telephone networks to contact a significant number of users in the course of their operations.[565]

1182. Since the departure of its ground forces from Gaza in 2005, Israel has maintained almost total control over land access and total control over air and sea access.[566] This has also included

[565] See "The operation in Gaza…", paras. 8, 24, 138, 264, 350, 354, 375, 389 and 447.

the ability to maintain a monitoring capacity in Gaza, by a variety of surveillance and electronic means, including UAVs. In short, Israel's intelligence gathering capacity in Gaza since its ground forces withdrew has remained extremely effective.

2. Legal input and training of soldiers on legal standards

1183. The Israeli Government has set out the legal training and supervision relevant to the planning, execution and investigation of military operations.[567] The Mission also met Col. (Ret.) Daniel Reisner, who was the head of the International Legal Department of the Military Advocate General's Office of the Israeli Defense Forces from 1995 until 2004. In an interview with the Mission he explained how the principles and contents of international humanitarian law were instilled into officers. He explained the four-tiered training system, reflecting elements similar to those presented by the Government, which seeks to ensure knowledge of the relevant legal obligations for compliance in the field. Firstly, during training all soldiers and officers receive basic courses on relevant legal matters. The more senior the ranks, the more training is required "so that it becomes ingrained". Secondly, before a significant or new operation, legal advice will be given. Col. Reisner indicated that he understood from talking with colleagues still in active service that detailed consultations had taken place with legal advisers in the planning of the December-January military operations. He was not in a position to say what that advice had been. Thirdly, there would be real-time legal support to commanders and decision makers at headquarters, command and division levels (but not at regiment levels or below). The fourth stage is that of investigation and prosecution wherever necessary.

1184. The same framework explained by Col. Reisner appears to be repeated in similar detail in a presentation of the Office of the Legal Adviser to the Ministry of Foreign Affairs.[568]

3. The means at the disposal of the Israeli armed forces

1185. The Israeli armed forces are, in technological terms, among the most advanced in the world.[569] Not only do they possess the most advanced hardware in many respects, they are also a market leader in the production of some of the most advanced pieces of technology available, including UAVs.[570] They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Moreover, some new targeting systems may have been employed in Gaza.[571]

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[566] See chap. IV.

[567] "The operation in Gaza…", paras. 212-221.

[568] http://www.mfa.gov.il/NR/rdonlyres/8DC5105D-A2A1-4709-9874-F42F1D1DA44B/0/TaubGazaLegalAspects270509.pps.

[569] For a detailed breakdown of Israeli capacity, see http://www.inss.org.il/upload/(FILE)1245235226.pdf.

[570] Ibid., pp. 8-9.

[571] According to the Israeli armed forces, the system, controlled by a computer and composed of 120 ml mortars, was developed for use by ground forces. "The Keshet weapons system is an autonomous mortar with the ability to aim and navigate independently. It fires at a fast speed and has the capacity to fire the first mortar accurately within a minute". See http://dover.idf.il/IDF/English/News/today/2008n/04/1401.htm.

1186. Taking into account all of the foregoing factors, the Mission, therefore, concludes that Israel had the means necessary to plan the December-January military operations in detail. Given both the means at Israel's disposal and the apparent degree of training, including training in international humanitarian law, and legal advice received, the Mission considers it highly unlikely that actions were taken, at least in the aerial phase of the operations, that had not been the subject of planning and deliberation.[572] In relation to the land-air phase, ground commanders would have had some discretion to decide on the specific tactics used to attack or respond to attacks. The same degree of planning and premeditation would therefore not be present. However, the Mission deduces from a review of many elements, including some soldiers' statements at seminars in Tel Aviv and to Breaking the Silence, that what occurred on the ground reflected guidance that had been provided to soldiers in training and briefing exercises.[573]

1187. The Mission notes that it has found only one example where the Israeli authorities have acknowledged that an error had occurred. This was in relation to the deaths of 22 members of the al-Daya family in Zeytoun. The Government of Israel explained that its armed forces had intended to strike the house next door, but that errors were made in the planning of the operation.[574] The Mission expresses elsewhere its concerns about this explanation (see chap. XI). However, since it appears to be the only incident that has elicited an admission of error by the Israeli authorities, the Mission takes the view that the Government of Israel does not consider the other strikes brought to its attention to be the result of similar or other errors.

1188. In relation to air strikes, the Mission notes the statement issued in Hebrew posted on the website of the Israeli armed forces on 23 March 2009:

> Official data gathered by the Air Force concluded that 99 per cent of the firing that was carried out hit targets accurately. It also concluded that over 80 per cent of the bombs and missiles used by the Air Force are defined as accurate and their use reduces innocent casualties significantly…[575]

1189. The Mission understands this to mean that in over 80 per cent of its attacks the Air Force deployed weapons considered to be accurate by definition – what are known colloquially as precision weapons as a result of guidance technology. In the other 20 per cent of attacks, therefore, it apparently used unguided bombs. According to the Israeli armed forces, the fact that these 20 per cent were unguided did not diminish their accuracy in hitting their targets, but may have caused greater damage than those caused by precision or "accurate" weapons.

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[572] See "The operation in Gaza…", para. 236.

[573] See, for example, a soldier's report of a junior officer's briefing before entering Gaza: "I want aggression. If we suspect a building we take down this building. If there's a suspect on one of the floors of that building we shell it. No second thoughts. It's either them or us. Let it be them… No one has second thoughts. Let error take their lives, not ours". See transcript from Channel Ten News on record with the Mission of soldiers speaking at a seminar in Tel Aviv.

[574] "The operation in Gaza…", paras. 385-387. The Israeli Government's comments in relation to the attack on a truck with oxygen tanks is somewhat more equivocal. The blame is put on the proximity of the tanks to alleged armed groups. Ibid., paras. 398-400.

[575] http://dover.idf.il/IDF/News_Channels/today/09/03/2301.htm (Mission's own translation).

1190. These represent extremely important findings by the Israeli Air Force. It means that what was struck was meant to be struck. It should also be borne in mind that the beginning of the ground phase of the operation on 3 January did not mean the end of the use of the Israeli Air Force. The statement indicates:

> During the days prior to the operation "Cast Lead", every brigade was provided with an escorting UAV squadron that would participate in action with it during the operation. Teams from the squadrons arrived at the armour and infantry corps, personally met the soldiers they were about to join and assisted in planning the infantry manoeuvres. The UAV squadrons had representatives in the command headquarters and officers in locations of actual combat who assisted in communication between the UAVs – operated by only two people, who are in Israeli territory – and the forces on the ground. The assistance of UAVs sometimes reached a ratio of one UAV to a regiment and, during extreme cases, even one UAV to a team.

1191. Taking into account the ability to plan, the means to execute plans with the most developed technology available, the indication that almost no errors occurred and the determination by investigating authorities thus far that no violations occurred, the Mission finds that the incident and patterns of events that are considered in this report have resulted from deliberate planning and policy decisions throughout the chain of command, down to the standard operating procedures and instructions given to the troops on the ground.

B. The development of strategic objectives in Israeli military thinking

1192. Israel's operations in the Occupied Palestinian Territory have had certain consistent features. In particular, the destruction of buildings, including houses, has been a recurrent tactical theme.[576] The specific means Israel has adopted to meet its military objectives in the Occupied Palestinian Territory and in Lebanon have repeatedly been censured by the United Nations Security Council, especially its attacks on houses.[577] The military operations from 27 December to 18 January did not occur in a vacuum, either in terms of proximate causes in relation to the Hamas/Israeli dynamics or in relation to the development of Israeli military thinking about how best to describe the nature of its military objectives.

1193. A review of the available information reveals that, while many of the tactics remain the same, the reframing of the strategic goals has resulted in a qualitative shift from relatively focused operations[578] to massive and deliberate destruction.

1194. In its operations in southern Lebanon in 2006, there emerged from Israeli military thinking a concept known as the Dahiya doctrine, as a result of the approach taken to the Beirut

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[576] See, for example, Housing and Land Rights Network – Habitat International Coalition's submission to the Mission (pp. 12-28).

[577] Security Council resolutions 101 (1953), 106 (1955), 111 (1956), 171 (1962), 228 (1966), 248 (1968), 265 (1969), 270 (1969), 313 (1972), 316 (1972), 332 (1973), 347 (1974), 450 (1979), 501 (1982), 515 (1982), 520 (1982) and 1544 (2004).

[578] The reference to relatively focused operations here should not be misunderstood as an indication that all such actions were acceptable in terms of distinction and proportionality. It is merely a comparative reference.

neighbourhood of that name.[579] Major General Gadi Eisenkot, the Israeli Northern Command chief, expressed the premise of the doctrine:

1195. What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. […] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. […] This is not a recommendation. This is a plan. And it has been approved.[580]

1196. After the war in southern Lebanon in 2006, a number of senior former military figures appeared to develop the thinking that underlay the strategy set out by Gen. Eiskenot. In particular Major General (Ret.) Giora Eiland[581] has argued that, in the event of another war with Hizbullah,[582] the target must not be the defeat of Hizbullah but "the elimination of the Lebanese military, the destruction of the national infrastructure and intense suffering among the population… Serious damage to the Republic of Lebanon, the destruction of homes and infrastructure, and the suffering of hundreds of thousands of people are consequences that can influence Hizbollah's behaviour more than anything else".[583]

1197. These thoughts, published in October 2008 were preceded by one month by the reflections of Col. (Ret.) Gabriel Siboni:[584]

> With an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy's actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite… In Lebanon, attacks should both aim at Hizbollah's military capabilities and should target economic interests and the centres of civilian power that support the organization. Moreover, the closer the relationship between Hezbollah and the Lebanese Government, the more the elements of the Lebanese State infrastructure should be targeted. Such a response will create a lasting memory among … Lebanese decision makers, thereby increasing Israeli deterrence and reducing the likelihood of hostilities against Israel for an

[579] During the 2006 Lebanon war, Israel inflicted massive destruction on Dahiya, which it considered to be a stronghold of Hizbullah.

[580] Ynet, "Israel warns Hizbullah war would invite destruction", 10 March 2008.

[581] Former Chief of the Israeli National Security Council, former National Security Adviser to the Prime Minister, and prior to that head of the IDF Operation Branch.

[582] Although Major General Eiland was writing about Lebanon and the Syrian Arab Republic, it is the suggestion of the objectives and the means of obtaining them that is striking in relation to what occurred in Gaza.

[583] Giora Eiland, "The third Lebanon war: target Lebanon", Strategic Assessment, vol. 11, No. 2 (November 2008), p. 9.

[584] Colonel (Res.) of the IDF. Researcher for Institute for National Strategic Studies. Former fighter and commander in the Golani Brigade, completed his service as the brigade's reconnaissance unit commander. Within the scope of his reserve service, he served as senior staff officer of the Golani Brigade, Deputy Commander of the logistics unit, and Chief of Staff of an armoured division in the north.

> extended period. At the same time, it will force Syria, Hizbollah, and Lebanon to commit to lengthy and resource-intensive reconstruction programmes…
>
> This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.[585]

1198. General Eisenkot used the language quoted above while he was in active service in a senior command position and clarified that this was not a theoretical idea but an approved plan. Major General Eiland, though retired, was a man of considerable seniority. Colonel Siboni, while less senior than the other two, was nonetheless an experienced officer writing on his field of expertise in a publication regarded as serious.

1199. The Mission does not have to consider whether Israeli military officials were directly influenced by these writings. It is able to conclude from a review of the facts on the ground that it witnessed for itself that what is prescribed as the best strategy appears to have been precisely what was put into practice.

C. Official Israeli statements on the objectives of the military operations in Gaza

1200. The Mission is aware of the official statements on the goals of the military operations:

> The Operation was limited to what the IDF believed necessary to accomplish its objectives: to stop the bombardment of Israeli civilians by destroying and damaging the mortar and rocket launching apparatus and its supporting infrastructure, and to improve the safety and security of Southern Israel and its residents by reducing the ability of Hamas and other terrorist organizations in Gaza to carry out future attacks.[586]

1201. The Israeli Government states that this expression of its objectives is no broader than those expressed by NATO in 1998 during its campaign in the Federal Republic of Yugoslavia.

1202. The Mission makes no comment on the legality or otherwise of NATO actions there.

D. The strategy to achieve the objectives

1203. The issue that is of special concern to the Mission is the conceptualization of the "supporting infrastructure". The notion is indicated quite clearly in General Eisenkot's statements in 2006 and reinforced by the reflections cited by non-serving but well-informed military thinkers.

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[585] Siboni, op. cit. This appears very similar to the so-called Dahiya doctrine. See, for example, Ed Blanche, Jane's Rockets and Missiles, 3 February 2009, citing Major General Gadi Eisenkot.

[586] See "The operation in Gaza…", para. 83.

1204. On 6 January 2009, during the military operations in Gaza, Deputy Prime Minister Eli Yishai[587] stated: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". "I hope the operation will come to an end with great achievements and with the complete destruction of terrorism and Hamas. In my opinion, they should be razed to the ground, so thousands of houses, tunnels and industries will be demolished". He added that "residents of the South are strengthening us, so the operation will continue until a total destruction of Hamas [is achieved]".[588]

1205. On 2 February 2009, after the end of the military operations, Eli Yishai went on: "Even if the rockets fall in an open air or to the sea, we should hit their infrastructure, and destroy 100 homes for every rocket fired."[589]

1206. On 13 January 2009, Israel's Foreign Minister, Tzipi Livni, was quoted as saying:

> We have proven to Hamas that we have changed the equation. Israel is not a country upon which you fire missiles and it does not respond. It is a country that when you fire on its citizens it responds by going wild – and this is a good thing.[590]

1207. It is in the context of comments such as these that the massive destruction of businesses, agricultural land, chicken farms and residential houses has to be understood. In particular, the Mission notes the large-scale destruction that occurred in the days leading up to the end of the operations. During the withdrawal phase it appears that possibly thousands of homes were destroyed. The Mission has referred elsewhere in this report to the "day after" doctrine,[591] as explained in the testimonies of Israeli soldiers, which can fit in with the general approach of massively disproportionate destruction without much difficulty.

1208. The concept of what constituted the supporting infrastructure has to be understood not only in the context of the military operations of December and January, but in the tightening of the restrictions of access to goods and people into and out of Gaza, especially since Hamas took power. The Mission does not accept that these restrictions can be characterized as primarily an attempt to limit the flow of materials to armed groups. The expected impact, and the Mission believes primary purpose, was to bring about a situation in which the civilian population would

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[587] During the military operation in Gaza, Eli Yishai served as Deputy Prime Minister and Minister of Industry, Trade, and Labour in the Government of Mr. Olmert. He serves in the current Government headed by Mr. Netanyahu as Internal Affairs Minister as well as Deputy Prime Minister. During the military operations in Gaza, he was also a member of the Security Cabinet for National Security within the Israeli Cabinet. Its duties include setting the targets of the security system and its policies; questions related to the Israeli armed forces, issues related to intelligence, foreign policy, military and security operations, and coordination of the activities of the Government in "Judea, Samaria and Gaza". See http://www.pmo.gov.il/PMO/Archive/Decisions/2006/05/des20.htm (in Hebrew).

[588] http://news.walla.co.il/?w=//1412570 (in Hebrew).

[589] http://www.ynet.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3665452,00.html (2 February 2009, in Hebrew).

[590] The Independent, Israeli cabined divided over fresh Gaza surge, 13 January 2009.

[591] See chap. XIII.

find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population.

1209. The Israeli Government has stated:

> While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.[592]

1210. The framing of the military objectives Israel sought to strike is thus very wide indeed. There is, in particular, a lack of clarity about the concept of promoting "terrorist activity": since Israel claims there is no real division between civilian and military activities and it considers Hamas to be a terrorist organization, it would appear that anyone who supports Hamas in any way may be considered as promoting its terrorist activity. Hamas was the clear winner of the latest elections in Gaza. It is not far-fetched for the Mission to consider that Israel regards very large sections of the Gazan civilian population as part of the "supporting infrastructure".

1211. The indiscriminate and disproportionate impact of the restrictions on the movement of goods and people indicates that, from as early as some point in 2007, Israel had already determined its view about what constitutes attacking the supporting infrastructure, and it appears to encompass effectively the population of Gaza.

1212. A statement of objectives that explicitly admits the intentional targeting of civilian objects as part of the Israeli strategy is attributed to the Deputy Chief of Staff, Maj. Gen. Dan Harel. While the Israeli military operations in Gaza were under way, Maj. Gen. Harel was reported as saying, in a meeting with local authorities in southern Israel:

> This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole *Hamas* government and all its wings. […] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.[593]

E. Conclusions

1213. The Israeli military conception of what was necessary in a future war with Hamas seems to have been developed from at least the time of the 2006 conflict in southern Lebanon. It finds its origin in a military doctrine that views disproportionate destruction and creating maximum

[592] "The operation in Gaza…", para. 235.

[593] *Ynet*, "Deputy chief of staff: worst still ahead".

disruption in the lives of many people as a legitimate means to achieve military and political goals.

1214. Through its overly broad framing of the "supporting infrastructure", the Israeli armed forces have sought to construct a scope for their activities that, in the Mission's view, was designed to have inevitably dire consequences for the non-combatants in Gaza.

1215. Statements by political and military leaders prior to and during the military operations in Gaza leave little doubt that disproportionate destruction and violence against civilians were part of a deliberate policy.[594]

1216. To the extent to which statements such as that of Mr. Yishai on 2 February 2009 indicate that the destruction of civilian objects, homes in that case, would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired"), the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.[595] Even if such actions could be considered a lawful reprisal, they do not meet the stringent conditions imposed, in particular they are disproportionate,[596] and violate fundamental human rights and obligations of a humanitarian character.[597] One party's targeting of civilians or civilian areas can never justify the opposing party's targeting of civilians and civilian objects, such as homes, public and religious buildings, or schools.

XVII. THE IMPACT OF THE BLOCKADE AND OF THE MILITARY OPERATIONS ON THE PEOPLE OF GAZA AND THEIR HUMAN RIGHTS

"A military commander's obligation does not end with avoiding harm to the lives and the dignity of the local residents, a "negative obligation", but his obligation is also "positive"- he must protect the lives and dignity of the residents, within the constraints of the time and place…." Justice Barak (HCJ 764/04)

"As long as Israel has control of the transfer of necessities and the supply of humanitarian needs to the Gaza Strip, it is bound by the obligations of international humanitarian law to allow the civilian population to have access, inter alia, to medical facilities, food and water, as well as additional humanitarian items". Justice Beinisch (HCJ 201/09)

1217. During its visits to the Occupied Palestinian Territory, and its meetings and hearings in Gaza, Amman, Geneva and other places, the Mission saw for itself and received reports and

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[594] Highlighting the pattern of military actions targeting civilian shelters and shelter seekers, the Habitat International Coalition concludes: "The official statements that accompany these actions […] seem to reflect a presumption that any source of brutality against the indigenous inhabitants would convert the victims into agents of the attackers' preferred outcome: defeat of resistance" (submission, cited, p. 40).

[595] See Additional Protocol I, art. 51 (6).

[596] *Customary International Humanitarian Law*…, pp. 513–518.

[597] See also article 50 of the articles on responsibility of States for internationally wrongful acts of the International Law Commission (General Assembly resolution 56/83, annex).

testimonies about the negative effects that the severe restrictions on the movement of goods and people from and to the Gaza Strip had caused to the full enjoyment of a range of social, economic and civil rights by women, men and children. These reports and testimonies come from a variety of sources, including businesspeople, industry owners, ordinary residents, public officials and NGOs in the Occupied Palestinian Territory and abroad.

1218. People in Gaza, as in other parts of the Occupied Palestinian Territory, have been living under foreign occupation for decades and enduring the restrictions and other effects of the policies implemented by the occupying Power. While the start of the blockade and the most recent military operations have undoubtedly added to those restrictions and scarcities, people in Gaza have not been living in what can be called a "normal" situation for a long time.

1219. The restrictions imposed by Israel on the imports to and exports from the Gaza Strip through the border crossings as well as the naval and airspace blockade have had a severe impact on the availability and accessibility of a whole range of goods and services necessary for the people of Gaza to enjoy their human rights. Their already eroded ability to access and buy basic goods was compounded by the effects of the four-week Israeli military campaign, which further restricted access to those essential items and destroyed goods, land, facilities and infrastructure vital for the enjoyment of their fundamental rights. In conjunction, the blockade and the military hostilities have created a situation in which most people are destitute. Women and children have been particularly affected. The current situation has been described as a crisis of human dignity.[598]

A. The economy, livelihoods and employment

1220. The Mission received information about the state of the economy, employment and family livelihoods in the Gaza Strip. Before the December-January military operations, the Gaza economy was already in dire straights, with few business sectors able to operate at full capacity. The blockade restricted or denied entry to a range of items and energy necessary for the economy to function. These included fuel and industrial diesel for the Gaza power plant to produce enough electricity for factories and businesses to function and for agricultural activities to continue on a regular basis. The net result was a stalled economy, with many businesses, factories and farms either closed or operating at reduced capacity.

1221. Electricity was purchased directly from Israel (51 per cent) and Egypt (7 per cent), while the Gaza power plant produced only 34 per cent, leaving an 8 per cent electricity deficit. Following additional cuts by Israel in the supply of industrial fuel, the Gaza power plant further reduced its output. The shortage of fuel caused the plant to malfunction, while the lack of spare parts and maintenance is likely to damage the plant in the long term.[599] According to OCHA, the electricity shortfall in the Gaza Strip was 41 per cent by 15 December 2008. Cooking gas was also restricted although less drastically.

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[598] WHO report 2009, p. 8.

[599] OCHA, "Gaza humanitarian situation report: the impact of the blockade on the Gaza Strip", 15 December 2008.

1222. Raw materials, equipment, spare parts and other inputs necessary for industrial and agricultural activity were not allowed into the Gaza Strip either.

1223. The consequences for day-to-day life were considerable. Some areas of the Gaza Strip were left without electricity for several hours a week, many households, especially those in buildings that depend on the use of water pumps, had access to water only a few hours a week. Intermittent electricity supply damaged medical equipment in hospitals and doctors' practices, and generally disrupted civilian life. The operation of sewage treatment facilities was also reduced and increased quantities of untreated sewage were dumped into the sea, causing public health risks and pollution, which in turn affected fishing.

1224. Several companies closed or cut back their operations, laying off employees, who consequently lost their livelihoods. Information provided to the Mission covering June 2007 to July 2008 showed that 98 per cent of industries were temporarily shut down and five establishments were relocated to the West Bank and Jordan. Around 16,000 workers were laid off. The ban on all exports caused losses for the agricultural sector estimated at US$ 30 million up until July 2008 and 40,000 jobs lost. Similarly, the construction sector endured severe losses resulting from the halt in development projects and other construction projects owing to the absence of construction materials. Some 42,000 workers were reported to have lost their jobs as a result.[600] Those who were laid off searched for employment in other sectors, such as agriculture, or joined the ranks of those who live on food assistance from the United Nations and aid agencies.

1225. As a result of the closure of the crossings to the transit of people, many families also lost the financial support they had from relatives, usually the male head of the family, who used to work abroad, either in Israel or in neighbouring Arab countries.[601] In its submission to the Mission, UNCTAD stated that 15.4 per cent of Gaza's labour force was employed in Israel by 2000.[602] In his presentation to the Mission, the economist Shir Hever explained that by 2009 no one from Gaza could find work in Israel. Even Palestinian workers from the West Bank mostly work in industrial zones in settlements rather than in Israel.[603]

1226. By December 2008 the destructive impact of the blockade on the local economy had doubled unemployment levels. While in 2007 79 per cent of households lived below the official poverty line (US$ 4 per capita/day) and some 70 per cent below the deep poverty line (US$ 3 per capita/day), these figures were expected to increase by the end of 2008 – even before the Israeli military operations. The Mission received information from organizations explaining how the agricultural sector had traditionally absorbed unemployed workers from other sectors, but in the circumstances imposed by the blockade, without fertilizers, pesticides, machinery, spare parts

[600] Palestine Trade Center (PALTRADE), "Gaza Strip: A year through siege", July 2008.

[601] GISHA Legal Center for Freedom of Movement and Physicians for Human Rights – Israel, *Rafah Crossing: Who holds the keys?* (March 2009).

[602] UNCTAD submission, p. 4.

[603] Mission meeting with Shir Hever, Alternative Information Centre, 2 July 2009.

and, crucially, without access to markets, it could no longer fulfil the role of shock absorber.[604] In its submission to the Mission, UNCTAD noted that when the industrial and agricultural sectors lost their capacity to provide jobs, public administration and services absorbed up to 54 per cent of Gaza's labour force (up from 37 per cent in 1999). UNCTAD concluded:

> The ultimate impact of this momentum is the systematic erosion of the Palestinian productive base to deprive them from the ability to produce and feed themselves, and turn them into poor consumers of essential goods imported mainly from Israel and financed mainly by donors.

1227. The military operations destroyed a substantial part of the Gaza Strip's economic infrastructure and its capacity to support decent livelihoods for families. Many factories and businesses were directly targeted and destroyed or damaged. Poverty, unemployment and food insecurity increased dramatically.

1228. Information provided to the Mission showed that some 700 private (industry and trade) businesses were damaged or destroyed during the military operations, with direct losses totalling approximately US$ 140 million. The industrial sector appeared the most affected, as it suffered 61 per cent of those losses, in particular in the sub-sectors of construction and food.[605] Because of the extent and gravity of the destruction inflicted on the industrial sector, businesspeople and industrialists who spoke to the Mission stated their belief that Israel had as one of its military objectives the destruction of local industrial capacity so as to harm the prospects for an economic recovery in the Gaza Strip.[606]

1229. The severe restrictions on the availability of banknotes imposed by Israel caused serious disruptions in economic transactions and affected the ability of the public sector and the non-governmental sector to carry out operations such as contracting or procuring goods and services.

1230. The agricultural sector, including crop farming, fisheries, livestock farming and poultry farming, suffered direct losses worth some US$ 170 million. Indirect losses have still to be definitively calculated. One business organization estimates that 60 per cent of all agricultural land had been destroyed, 40 per cent directly during the military operations.[607] Moreover, 17 per cent of all orchards, 8.3 per cent of livestock, 2.6 per cent of poultry, 18.1 per cent of hatcheries, 25.6 per cent of beehives, 9.2 per cent of open fields and 13 per cent of groundwater wells were destroyed. Agriculture had already lost a third of its capacity since the start of the second intifada and the frequent Israeli incursions, according to NGO estimates used by UNDP-Gaza.[608] Parts of

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[604] Meetings with representatives from the agricultural sector in Gaza, 30 June 2009; meeting with representatives of Campaign to End the Siege, Gaza, 29 June 2009.

[605] Private Sector Coordination Council Gaza Governorates, "Gaza private sector: Post-war status and needs", 25 February 2009.

[606] Interviews with Amr Hamad of the Palestinian Federation of Industries and with Ali Abu Shalah of the Palestinian Business Association.

[607] "Gaza private sector: post-war status…", p. 5.

[608] UNDP, FAO and Ministry of Agriculture, "Assessment of impact of cast lead operation: estimated direct losses to agriculture in the Gaza Strip between 27 December 2008 and 18 January 2009".

the land were reportedly contaminated by unexploded munitions and chemical weapons residues (e.g. white phosphorous) and would need to be tested and cleared before agricultural activity could resume.[609] Some 250 agricultural wells were reportedly destroyed or severely damaged.

1231. Fishing that provided direct employment to some 3,000 people was also affected by the blockade and the military operations. Several boats and some fishermen were directly hit. The Mission met representatives of fishermen's associations and a fisherman testified at the public hearings in Gaza.[610] One fisherman interviewed by the Mission explained that he had previously owned a fishing boat, mainly to fish sardines. It was hit by shelling as it was moored beside the civil defence buildings that were hit by air strikes on 27 December. Half of it was destroyed. Another small boat was also destroyed as were the nets. The family house was also destroyed and he had been out of work since the beginning of the military operations in December. However, his fishing activities had already been affected before the operations, when the Government of Israel had imposed a limit of six nautical miles for fishing, and then further reduced it to only three.[611]

1232. The continuation of the blockade does not permit the reconstruction of the economic infrastructure that was destroyed. Not only do construction materials continue to be banned but the provision of energy is also still insufficient and irregular. Local purchasing capacity being shattered, there is not enough market demand for many products.

1233. Exports also continue to be prohibited, with the exception of some truckloads of flowers that crossed the borders between January and March 2009. Without external markets, local production of all kinds has no prospect and so employment and livelihoods will remain precarious and diminished. A strawberry farmer and the Head of the Association of Strawberry Farmers based in Beit Lahia explained that before the military operations he used to export up to 2,000 tons of strawberries to Europe. Hundreds of *donums* of land were destroyed during the operations as well as some 300 greenhouses and 2,000 acres of citrus trees. As a result, they had lost the European market for their products.[612]

B. Food and nutrition

1234. The availability of food in the Gaza Strip is determined by the amount imported through the crossings and that which is locally produced. The Mission received credible information indicating that during the months preceding the military operations both sources of food suffered from the severe restrictions imposed by Israel.

1235. The closing of the Karni grain conveyor belt, the only mechanism for importing wheat, during part of December, resulted in the depletion of wheat stocks, forcing the six mills in the Gaza Strip to close down or reduce operations. The el-Bader flour mill appeared to be the only

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[609] "Gaza private sector: post-war status…", p. 5; FAO, "Impact of Gaza crisis: Agricultural sector report", p. 16; WHO Report, p. 29.

[610] Public hearings, Gaza, 29 June 2009.

[611] Meeting with the Mission, Gaza, 3 June 2009.

[612] Meeting with the Mission, Gaza, 3 June 2009.

one that kept working as its owners had kept a good stock of grain, but it was later bombed and destroyed (see chap. XIII). However, about one third of the previous number of truckloads of wheat continued entering through the Kerem Shalom crossing. The blockade was tightened following the confrontations of November 2008, further restricting United Nations food assistance. On 18 December, UNRWA was compelled to halt its food distribution programme to thousands of families because its stocks were depleted. It also had to downsize its cash-for-work programmes as it ran out of banknotes.

1236. By December 2008 food insecurity was on the rise. Food security is the capacity of each individual to have access to sufficient and adequate food at all times. The Mission received information indicating that rising food insecurity was the result falling income levels, eroded livelihoods and higher food prices. Some food items were also unavailable in the local markets. Consequently, the average Gazan household was spending two thirds of its income on food.[613] People had to reduce the quantity and the quality of food they ate, shifting a diet based on low-cost and high-energy cereals, sugar and oil.

1237. Changes in diet patterns are likely to prejudice the long-term health and nutrition of the population. According to the WHO office in Gaza, there are indications of chronic micronutrient deficiencies among the population, in particular among children. Among the most worrying indicators is the high prevalence of stunting among 6- to 16-year-old children (7.2 per cent), while the prevalence of thinness among that group was 3.4 per cent for 2008 (the WHO standard is 5 per cent). Levels of anaemia are alarming: 66 per cent on average among 9- to 12-month-old babies (the rate being higher for girls (69 per cent)). On average, 35 per cent of pregnant women suffer from anaemia.[614]

1238. During the military operations the availability and quality of fresh food dropped: local production was suspended during the fighting and local produce was spoilt. Mr. Muhammad Husein al-Atar, Mayor of al-Atatra, told the Mission how agricultural land in his neighbourhood was razed. The area is close to the Israeli border and 95 per cent of the work is farming-related. Israeli military incursions had been happening since 2000 accompanied by destruction and bulldozing. As a result, 50,000 acres of land had not a single tree left standing and between 10 and 15 farmers had been killed every year during the last nine years. During the December – January military operations the area was bombed from the air, land and sea. He had personally lost three (industrial) refrigerators, each capable of holding 600 tons of vegetables, for instance. His sister's chicken farms were also destroyed, including some 70,000 chickens (see chap. XIII).[615]

1239. The destruction of land and greenhouses has an impact on the availability of fresh food in the Gaza Strip and, consequently, on the total supply of micronutrients to the population. Satellite imagery commissioned by the Mission shows that for the whole Gaza Strip an estimated 187 greenhouse complexes were either destroyed or severely damaged, representing approximately 30.2 hectares. Of all the destroyed greenhouses 68.6 per cent were in the Gaza

[613] "Gaza humanitarian situation report: the impact…".

[614] Nutrition indicators for 2008 and 2009 provided by WHO office in Gaza to the Mission.

[615] Meeting with the Mission, 3 June 2009.

and Gaza North Governorates; and 85.4 per cent were destroyed or damaged during the last week of the military operations. Satellite imagery also gives strong indications that tanks and/or heavy vehicles were likely to have been responsible for most of the damage.[616]

1240. Despite the increased quantities of food allowed into Gaza since the beginning of hostilities, representing between 60 and 80 per cent of all truckloads, wheat flour was in short supply. This was probably the result of the severe depletion of local stocks following the tighter restrictions during December. After the ceasefire was declared by the parties to the conflict, access to food remained problematic for most people many prices had risen and there was a lack of income and banknotes. It was reported that the military operations caused food insecurity to increase and affect up to 75 per cent of the population.[617]

1241. In a rapid assessment, FAO and the World Food Programme (WFP) found that food availability was back to pre-military operations levels, but the supply of fresh food was likely to decrease in the immediate future due to the large-scale destruction. Prices continued to be very high and some items were prohibitively expensive (e.g. poultry, eggs and meat) and unaffordable. However, severe access problems persisted and were aggravated for a population whose income and livelihoods had been shattered, despite the food assistance provided by the United Nations and aid agencies.[618]

C. Housing

1242. Figures about the overall damage to residential housing vary according to the source and time of the measurement as well as the methodology. The human rights NGO Al Mezan reports that a total 11,135 homes were partially or fully destroyed.[619] According to the human rights NGO Al-Dameer-Gaza, 2,011 civilian and cultural premises were destroyed, of which 1,404 were houses that were completely demolished and 453 were partially destroyed or damaged.[620] A UNDP survey immediately after the end of military operations reported 3,354 houses completely destroyed and 11,112 partially damaged.[621] The destruction was more serious in the north, where 65 per cent of houses were completely destroyed. As a result of the destruction, more than 600 tons of rubble had to be removed, with the consequent costs and potential impact on the environment and public health. Information provided to the Mission showed that much of the construction in Gaza contained important amounts of asbestos, the particles of which had been or could be released into the air at the time of destruction or removal. The refugee population was concentrated in the north and the destruction of residential housing appeared to have particularly affected them.

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[616] UNOSAT satellite imagery, p. 23. See also chap. XIII.

[617] OCHA, *The Humanitarian Monitor*, No. 33 (January 2009).

[618] FAO and WFP, "Report of the rapid qualitative emergency food security assessment – Gaza Strip", 24 February 2009.

[619] Al Mezan Center for Human Rights, "Cast lead offensive in numbers".

[620] Al-Dameer Gaza, "IOF targets civilian premises and cultural properties during its offensive on the Gaza Strip", May 2009.

[621] *The Humanitarian Monitor*, No. 33, p. 7. A figure similar to this was provided by the Palestinian Authority in its reply to questions by the Mission, 5 August 2009.

1243. The destruction or damage of their homes forced many people to flee and find shelter with relatives or agencies providing assistance, such as UNRWA. At the height of the military operations UNRWA was providing shelter to 50,896 displaced persons in 50 shelters. This number was estimated to be a fraction of those who had become homeless, most of whom found temporary shelter with relatives. The Mission was informed that this situation created extreme hardship for people who had to share already deteriorated and limited housing, sanitary and water facilities. It saw for itself people who were still living in tents some six months after the end of the operations.

1244. Children and women were particularly affected by the hardship caused by the destruction of homes and the displacement. Housing and Land Rights Network – Habitat International Coalition reported that "of those forced to seek shelter following the military damage or destruction of their home, over half were children. While female-headed households constitute only a relatively small percentage of the total affected families (7 per cent), their number in absolute terms, 763 such families, is significant."[622]

1245. The impact of the destruction of housing is aggravated by the substantial destruction of the Gaza construction industry during the military operations. In chapter XIII, the Mission described the destruction of the Atta Abu Jubbah cement-packaging plant, which formed a significant part of the construction materials industry in Gaza. The Mission also noted reports regarding the destruction of 19 producing plants (representing 85 per cent of the production capacity of the Gaza factories of ready-mix concrete). External supplies of concrete and other building materials into Gaza are entirely controlled by Israel, which has banned imports of cement into Gaza. The thousands of families who have lost their shelter as a result of the military operations are therefore prevented by the blockade imposed by Israel from rebuilding their homes.

D. Water and sanitation

1246. The Mission received submissions, testimonies and information about the effects of the blockade and of the military operations on the supply of and access to water and sanitation facilities by the population of the Gaza Strip.[623] During the months preceding the military operations the water and sanitation sectors were already under severe strain. The lack of construction materials, pipes and spare parts had prevented the building of additional infrastructure and the proper maintenance of existing facilities. Desalinization plants and works to preserve the aquifer had to be postponed. By December 2008, OCHA reported that the degradation of the system "is posing a major public health hazard".[624] Frequent power outages, fuel shortages and a lack of spare parts for electricity generators had also affected the functioning of the water and sanitation systems.

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[622] Submission to the Mission by Housing and Land Rights Network -- Habitat International Coalition, "Targeting shelters and shelter seekers during operation Cast Lead in the context of Israeli military practice".

[623] Submission by the Centre on Housing Rights and Evictions (COHRE); Al Mezan Center for Human Rights, "The impact of the Israeli offensive on the right to water in the Gaza Strip", February 2009.

[624] "Gaza humanitarian situation report: the impact…".

1247. By December 2008, it was reported that some 80 per cent of Gaza's water wells were only partially functioning while the others were not functioning at all. This situation had already affected the population's access to water: over half of the residents of Gaza City had access to running water few hours a week, with those living in houses and buildings using water pumps spending many hours trying to get water by other means. Of the water supplied in Gaza 80 per cent did not meet WHO standards for drinking water owing to, among other factors, the shortage of chlorine to purify the water. Important health risks were consequently likely to arise. Other health hazards were expected to arise from the practice of discharging untreated or partially treated wastewater into the sea. More than 70 million litres a day were discharged into the sea, creating significant environmental damage and health risks for human beings and marine life.

1248. As with other sectors, the military operations worsened the situation in the water and sanitation sector. Services and infrastructure already partially paralysed or in serious need of maintenance suffered further destruction or damage. The Gaza wastewater treatment plant was hit sometime between 3 and 10 January and one of its lagoons was severely damaged (see chap. XIII). Sewage pipes leading to the plant and others in different parts of the city were hit or damaged. Up to 11 water wells that supplied water for human consumption were hit and 3 completely destroyed.[625] Thousands of metres of water and sewage pipes/networks were destroyed or damaged and around 5,700 rooftop water tanks destroyed and some 2,900 damaged.

1249. By the end of January only 70 per cent of Gaza's water wells were working, either whether fully or partially, i.e. 10 per cent less than before the hostilities. At the height of the military operations some 500,000 Palestinians did not have access to running water at all, whereas the rest received water for few hours a week. Sanitation and water facilities in public shelters were overwhelmed, and raw sewage ran through fields and streets in some areas. The water authorities' reparations team were prevented from going to the sites to carry out urgent repairs and had to wait in most cases until Israeli troops had withdrawn. All urgent repairs were done on a provisional basis given the lack or shortage of construction materials and equipment. The Mission witnessed how precarious those repairs could be when it saw one sewage pipe in the vicinity of the Gaza wastewater treatment plant explode during a site visit.

E. Environment

1250. The Mission has received comments and concerns from non-governmental organizations and concerned individuals in Gaza relating to threatened environmental damage by reason of munitions or debris from munitions. These concerns relate to the fear that hazardous material might have remained or will remain in the soil and water of parts of the Gaza Strip for indefinite periods of time and could enter the food chain or otherwise be hazardous to life.

1251. The Mission was unable to further investigate these concerns, but is aware of an environmental impact study being undertaken by the United Nations Environmental Programme (UNEP) in the Gaza Strip. Preliminary results from UNEP indicate that the environment in the Gaza Strip has been seriously impacted by the Israeli military operations of December-January.

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[625] "Damage assessment report…". Al Mezan reports that 112 wells were destroyed but it clarifies that this figure includes agricultural wells; COHRE submission to the Mission.

In particular, the groundwater in Gaza show high nitrate levels exceeding WHO ceilings, putting infants at risk of nitrate poisoning.

F. Physical and mental health

1252. The capacity of the health sector in the Gaza Strip was already diminished by the blockade when the Israeli offensive started. While hospitals and clinics continued operating, the quality of their service and its accessibility were eroded. The insufficient and erratic supply of electricity caused equipment to malfunction even when the staff had recourse to generators. Power cuts and water impurities damaged equipment and created additional health hazards. The lack of maintenance and spare parts that were blocked at the crossings further compounded the situation. In addition, the lack of construction materials and inputs hampered the development of additional facilities and needed infrastructure.

1253. Reported confrontation between the Palestinian Authority in Ramallah and the Gaza authorities also affected the quantity and quality of the service provided. The Ministry of Health in Ramallah had been responsible for the supply of medicines to Gaza since September 2008, but it was reported that few trucks with medicines actually reached the Gaza Strip after that time resulting in serious availability problems for some 20 per cent of essential medicines. The referral of patients needing specialized treatment abroad (e.g. in Israel, Jordan and Egypt) was also affected by the blockade established in 2007. Before that date only some 9 per cent of patients intending to cross the border were rejected or their permits delayed, but that proportion had reached some 22 per cent by September 2008.[626]

1254. The beleaguered health sector was subjected to severe strain when the military operations started on 28 December. Hospitals and health centres of the Ministry of Health worked on an emergency basis under extremely difficult conditions and with limited resources. They nevertheless responded effectively to the crisis. Urgent medical interventions to treat critical injuries were performed under severe circumstances. Of the 5,380 injured people reported by the Ministry, 40 per cent were admitted to the main hospitals, but because of the policy of discharging patients as soon as feasible to free up beds and staff, there were concerns that some injuries (e.g. burns and acute surgical conditions) might have led to complications as follow-up care may have been inadequate. Some injuries will result in permanent disability (see also section G below).

1255. Medical facilities and personnel were targeted during the fighting. Seventeen health personnel were killed and 26 injured. In total, 29 ambulances were damaged or destroyed by bombs or crushed by armoured vehicles, while 48 per cent of Gaza's 122 health facilities were either directly or indirectly hit by shelling. Medical relief and rescue were in many cases also intentionally hindered.

1256. OCHA reported that medical supplies, including drugs and equipment, were allowed into the Gaza Strip in larger quantities during January in the midst of the fighting. However, logistical difficulties and the fact that many medicines had a very short expiration date prevented the health staff from using the increased quantities for the benefit of patients. Finally, the situation of

[626] WHO Report…; "Gaza humanitarian situation report: the impact…".

patients with chronic health conditions, such as heart and kidney problems, became a concern because patients with critical life-threatening injuries requiring urgent attention were given priority.[627]

1257. The destruction of sewage treatment facilities and pipes together with the lack of purifying materials had consequences for public health. Thousands of litres of untreated sewage dumped in fields or in the sea created a potential health hazard. The Mission received information about recent epidemiological tests of water samples. The samples had been collected from all water networks and wells, especially from areas targeted during the military operations, to investigate the presence of microbiological pollutants. Information on water-related diarrhoea among children under age 3 attending UNRWA facilities was collected weekly in January and February 2009. The analyses showed an increase of 18 per cent between 19 January and 8 February. Moreover, 14 per cent of the water samples collected in February were polluted with microbiological pollutants. The increase in diarrhoeal disease was also confirmed to have occurred in the areas where the water had been contaminated.[628]

1258. WHO also cited the preliminary results from UNEP initial sampling in Gaza, which showed that "much of the rubble is contaminated with asbestos; damage to the waste treatment system had contaminated the aquifer; the health waste handling system had completely broken down, with such waste going into domestic waste. The results on heavy metal contamination are so far inconclusive."[629] The Mission also investigated and confirmed allegations about the use of weapons whose potential long-term impact on individual victims' health raises concern. They include allegations of the use of weapons containing chemical pollutants such as tungsten and white phosphorus (see also chapter XII).[630]

1259. Conditions under Israeli occupation prior to 2005, together with poverty and the difficulties caused by the blockade, had already made a deep impact on the mental health of the local population. The three weeks of intense bombardment and military ground action added new, serious psychological traumas, especially noticeable in children. According to Dr. Iyad al Sarraj of the Gaza Community Mental Health Programme, over 20 per cent of Palestinian children in Gaza suffer from post-traumatic stress disorders, the symptoms of which "will appear over the days, months, years, or decades to come".[631]

1260. One particular characteristic of the conflict, namely that the population could not flee the conflict areas as can be done in many conflicts, and had no shelters or safe places in which to hide or protect themselves, reinforced feelings of being trapped, defenceless and vulnerable to more attacks with a sense of inevitability.[632] Many of those who met the Mission stated that they felt terrorized.

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[627] The Humanitarian Monitor, No. 33.

[628] WHO, "Quality of water in the Gaza Strip", March 2009.

[629] WHO Report, p. 29.

[630] Report of the Mission by Physicians for Human Rights-Israel, p. 75-76.

[631] Public hearing, Gaza, 29 June 2009.

[632] WHO report, p. 12.

1261. According to Dr. Ahmad Abu Tawahina, psychosomatic disorders have a particularly serious impact on Palestinian society, where social stigma is often associated with mental suffering. In general, this makes it difficult for people to express psychological problems. This condition is frequently experienced in the form of recurrent psychosomatic symptoms, such as migraines, pains in joints and muscles, general fatigue and the inability to do even normal daily activities. Most of these patients are referred not to mental health practitioners, but to general physicians, who prescribe drugs to alleviate the symptoms and not the causes. This in turn has given rise to a serious problem of drug dependency.[633]

1262. The sense of security that comes from living in a supportive and safe environment had already been eroded over the years by constant attacks and military confrontation, but was further undermined by the direct experience and/or witnessing of violence against relatives. The widespread destruction, the displacement, the inability to find a safe place anywhere, together with the direct exposure to life-threatening events will continue to have a serious impact on the population. The general state of the inhabitants of the Gaza Strip was described as a form of alienation.[634]

1263. Many of the mental health problems are the result of years of conflict, living in poverty, scarcity and instability in the area and will probably continue until the root causes are eliminated. People, in particular children, live or grow up in a society under occupation, with constant episodes of violence and no sense of security or normalcy.

1264. The situation is compounded by the relative scarcity of qualified professionals and inadequate facilities. The Gaza Community Mental Health Programme has only about 40 members of staff specialized in mental health, including physicians, social researchers, nurses, as well as psychologists. According to Dr. al-Sarraj, this number is not sufficient to cover even the needs of Gaza City district, whereas for the entire population of the Gaza Strip a team of 300 specialists would be necessary.[635]

1265. Over the past two decades, the Gaza Community Mental Health Programme and others have worked to build resilience in people. They told the Mission that the recent military operations had wiped out their achievements. People suffering severe loss also detach themselves from reality, in a phenomenon called “numbness”. According to Dr. Tawahina, the general feeling among most people in Gaza is that they have been completely abandoned by the international community. This feeling of abandonment in turn increases their frustration, creating additional pain, and leads eventually to more violence and extremism. The Gaza Community Mental Health Programme studied children’s attitudes towards violence and found that, as a result of this situation, and especially when children had lost their parents and with them the

[633] Dr. Ahmad Abu Tawahina, Gaza Community Mental Health Programme, public hearing, Gaza, 29 June 2009, available at: http://www.un.org/webcast/unhrc/archive.asp?go=090629.

[634] Ibid.

[635] Dr. Iyad al-Sarraj, public hearing, Gaza, 29 June 2009, available at: http://www.un.org/webcast/unhrc/archive.asp?go=090629.

associated protection and sense of security, they tended to look at "martyrs" and members of armed groups as adult role models instead.[636]

1266. A study conducted by the United Nations Development Fund for Women (UNIFEM) revealed that men also showed more symptoms of psychological trauma after the December-January military operations. Based on specialists' reports, the Mission is of the view that this could in part be due to the additional stress that men face as heads of families in a male-dominated society when they are unable to fulfil their role as main breadwinners or to provide protection and security to their children, wives and other family members.[637]

1267. Based on previous experiences with emergencies, WHO expects the number of people with serious mental health disorders to increase by an average of 1 per cent above the baseline and with mild to moderate disorders by 5 to 10 per cent "provided that a protective environment is restored".[638]

G. Education

1268. The Mission received information about the state of the education sector in the Gaza Strip. UNRWA operates one of the largest school systems in the Middle East and has been the main provider of basic education to Palestine refugees for nearly five decades. The Mission was greatly impressed by its activities and achievements. UNRWA runs 221 schools, while the Government runs 383. UNRWA schools are also a vehicle for health-monitoring and food/nutritional programmes. That Palestinians have high levels of education is largely the result of that work. By the same token, the Mission was shocked to learn how badly educational facilities and activities in the Gaza Strip have been affected as a result of the blockade and the recent military operations.

1269. Information and testimonies received by the Mission showed that the education system was affected in several ways by the restrictions imposed by the blockade. The lack of construction materials had halted all new construction. Repairs to the educational infrastructure also had to be postponed. Around 88 per cent of UNRWA schools and 82 per cent of Government schools operated on a shift system to cope with the demand. The lack of educational material and equipment hampered the ability to maintain teaching standards. This situation was causing a decline in attendance and performance at governmental schools.[639]

1270. The ban on the movement of people through the crossings affected not only university students planning to study or already undertaking studies abroad, but also the possibilities for academics and scholars to travel abroad on academic exchanges. Between July and September 2008 only 70 students managed to leave the Gaza Strip via Erez but hundreds saw their aspirations to study abroad truncated.

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[636] Meeting of the Mission with the Gaza Community Mental Health Programme, 4 June 2009.

[637] United Nations, Voicing the Needs of Women and Men in Gaza, 2009, p. 32.

[638] WHO report, p. 13.

[639] UNRWA and the Association of International Development Agencies (AIDA), "The Gaza blockade: Children and education fact sheet".

1271. The military operations destroyed or damaged at least 280 schools and kindergartens. Six of them were located in northern Gaza, affecting some 9,000 pupils, who had to be relocated. According to the Ministry of Education and Higher Education, 164 pupils and 12 teachers were killed during the military operations. Another 454 pupils and five teachers were injured. At UNRWA schools, 86 children and three teachers were killed, and 402 children and 14 teachers injured. During the military operations, 44 UNRWA schools were used as emergency shelters to cope with the more than 50,000 displaced individuals.

1272. Schools were generally closed for the duration of the hostilities, disrupting the study programme. After the ceasefire it was unclear how many students and teachers returned to schools but that number was reported to reach up to 90 per cent in UNRWA schools.[640] Children and teachers reported situations of anxiety and trauma as a result of the extreme violence to which they had been exposed and the loss of relatives or friends. The Mission heard that the start of the military operations with air strikes at a time when schools were functioning exposed children to a heightened risk and filled them with fear and panic. Schools and the roads towards them occasionally remained unsafe because of the presence of explosive remnants of war. Two Palestinian children were killed by those explosives in Zeytoun shortly after the ceasefire was declared. The Mission heard reports that some children were injured by white phosphorus on their way to school.

1273. The Mission saw the destruction caused to the American School. It also saw the destruction caused at the Islamic University and in other university buildings that were destroyed or damaged. These were civilian, educational buildings and the Mission did not find any information about their use as a military facility or their contribution to a military effort that might have made them a legitimate target in the eyes of the Israeli armed forces.

1274. The Mission was also informed of indoctrination programmes allegedly introduced by the Gaza authorities, and of a process of ideological and political polarization. Such programmes have a high potential for imposing models of education at odds with human rights values and with a culture of peace and tolerance. In this regard, the Mission believes that efforts to incorporate human rights in the curricula should be encouraged by the relevant authorities.

H. Impact on women and children

1275. The attention of the Mission was drawn to the particular manner in which children and women had been affected by the blockade policies and the military operations. In its report, WHO took figures from PCHR: out of 1,417 persons killed, 313 were children and 116 women. It also takes figures from the Israeli armed forces that showed that 1,166 were killed, of whom 49 were women and 89 were under 16.[641] Among the 5,380 injured, 1,872 were children and 800 women.[642] The Mission directly investigated many incidents in which women and children had been killed as a result of deliberate or indiscriminate attacks by the Israeli armed forces.[643]

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[640] The Humanitarian Monitor, No. 33.

[641] WHO report, p. 10.

[642] The Palestinian National Early Recovery and Reconstruction Plan….

[643] See chapters VII, X, XI and XIV.

WHO also reported that among the many injured people who crossed the Rafah border and were accepted for medical treatment in Egypt during the second week of the military operations there were 10 children showing a single bullet injury to the head and one with two.

1276. The Mission held interviews with a number of women and representatives of women's organizations and heard the testimony of Mariam Zaqout of the Culture and Free Thought Association.[644] It heard that the blockade and the military operations had aggravated poverty, which particularly affected women, who must find food and other essentials for their families. Women were often the sole breadwinners (for instance, if male family members had died or been injured as a result of conflict or violence, or were imprisoned) but jobs were hard to come by. Over 300 women had been widowed as a result of the military operations and had become dependent on food and income assistance. In addition, women bore a greater social burden, having to deal with daily life made harsher by the crisis and, at the same time, provide security and care for injured family members and children, their own and others who have lost their parents. These responsibilities sometimes compelled them to conceal their own sufferings, so their concerns remained unaddressed.

1277. In the same interviews, the participants stated that women were particularly affected by the destruction of homes and the invasion of privacy. Having to live in tents without privacy or appropriate sanitary facilities added to their hardship. Moreover, the military operations had strained relations among family members. Psychological pressures on men and women, together with financial difficulties, led to family disputes, family violence and divorce. There were frequent disputes between widows and their in-laws regarding child custody and inheritance. Widows were also under increased pressure to get married again to be able to sustain themselves. Consequently, there was an increase in women seeking legal aid, as legal problems tended to become aggravated because of shortcomings in the law and fewer safeguards for the rights of women.[645]

1278. The particular manner in which the conflict affected women was dramatically illustrated for the Mission by the testimony of a woman of the al-Samouni family (see chap. XI). She had three children and was pregnant when her family and her house came under attack. She commented on how the children were scared and crying. She was distressed when recounting how her 10-month-old baby, whom she was carrying in her arms, was hungry but she did not have anything to give him to eat, and how she tried to feed him by chewing on a piece of bread, the only food available, and giving it to him. She also managed to get half a cup of water from an ill functioning tap. There were other babies and older children. She and her sister exposed themselves to danger by going out to search for food for them. Her husband, mother and sister were killed but she managed to survive. Her other son was wounded in the back, and she carried both out of the house.[646]

1279. Many women felt helpless and embarrassed at not being able to protect and care for their children. Others felt frustrated, invaded in their personal space and powerless when their houses

[644] Public hearings, Gaza, 29 June 2009.

[645] Meeting with women's organizations, 3 June 2009.

[646] Mission interview with Mrs. Massouda Sobhia al-Samouni, Gaza, 3 June 2009.

and possessions were destroyed or vandalized. Those feelings contributed to their psychological suffering.[647]

1280. A UNFPA study conducted immediately after the December-January military operations reported a 40 per cent increase in miscarriages admitted to maternity wards, a 50 per cent increase in neonatal deaths, a rise in obstetric complications and anecdotal evidence of deaths or health complications because pregnant women were unable to reach hospital to deliver their babies.[648] Women interviewed in the context of another UNFPA study expressed extreme fears for themselves and their loved ones. Associated symptoms included anxiety, panic attacks, feelings of insecurity, disturbed sleep and eating patterns, depression, sadness and fear of sudden death.[649]

1281. Adults and children showed signs of profound depression, while children suffered from insomnia and bed-wetting. Numerous testimonies received by the Mission highlight the presence of children in situations where houses were searched or occupied with force by Israeli soldiers, and when killings occurred.[650] The Mission heard the testimony of a mother whose children, aged 3 to 16, had witnessed the killing of their father in their own house. With Israeli soldiers forcefully questioning their mother and uncle and vandalizing their house, the children asked their mother whether they would be killed as well. Their mother felt the only comfort she could give them was to tell them to say the *Shehada*, the prayer recited in the face of death.[651] Children were present in improvised shelters on United Nations premises, enduring the trauma of displacement as well as feelings of fear from the military attacks and of deep insecurity from having been attacked in their own homes or in a shelter that was expected to be safe. During its visits, the Mission saw many children living with their families in the ruins of their homes and in makeshift accommodation. The trauma for children having witnessed violence and often the killing of their own family members will no doubt be long-lasting. Mrs. Massouda Sobhia al-Samouni told the Mission that her son was still traumatized. He kept placing coins in his mouth and when she told him it was dangerous and he might die if he did so, he replied that he wanted to join his father.

1282. Some 30 per cent of children screened at UNRWA schools had mental health problems, while some 10 per cent of children had lost relatives or friends or lost their homes and

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[647] Culture and Free Thought Association and UNFPA, "Gaza crisis: Psychosocial consequences for women, youth and men", executive summary, 27 April 2009, p. 3.

[648] UNFPA, "Gaza crisis: impact on reproductive health, especially maternal and newborn health and obstetric care", draft report, 10 February 2009.

[649] Culture and Free Thought Association, "Gaza crisis: Psycho-social consequences for women", executive summary, 8 February 2009.

[650] See, for example, chapters X and XI. See also the testimony of Mrs. Abir Hajji at the public hearing, Gaza, 6 June 2009, recounting the killing of her husband in the presence of her children.

[651] Mission interview with Mrs. Abir Hajji, Gaza, 3 June 2009. Mrs. Hajji also participated in the public hearings, Gaza, 28–29 June 2009.

possessions. WHO estimated that some 30,000 children would need continued psychological support and warned of the potential for many to grow up with aggressive attitudes and hatred.[652]

I. Persons with disabilities

1283. Information provided to the Mission showed that many of those who were injured during the Israeli military operations sustained permanent disabilities owing to the severity of their injuries and/or the lack of adequate and timely medical attention and rehabilitation. Gaza hospitals reportedly had to discharge patients too early so as to handle incoming emergencies. Other cases resulted in amputations or disfigurement. About 30 per cent of patients were expected to have long-term disabilities.[653]

1284. WHO reported that by mid-April 2009 the number of people with different types of permanent disability (e.g. brain injuries, amputations, spinal injuries, hearing deficiencies, mental health problems) as a result of the military operations was not yet known. It reported speculations that there might be some 1000 amputees; but information provided by the WHO office in Gaza and based on estimates by Handicap International indicated that around 200 persons underwent amputations.[654]

1285. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.[655]

1286. The Mission also heard moving accounts of families with disabled relatives whose disability had slowed their evacuation from a dangerous area or who lived with a constant fear that, in an emergency, their families would have to leave them behind because it would be too difficult to evacuate them.

1287. One testimony concerned a person whose electric wheelchair was lost after his house was targeted and destroyed. Since the residents were given very short notice of the impending attack, the wheelchair could not be salvaged and the person had to be taken to safety on a plastic chair carried by four people.

1288. The Mission also heard a testimony concerning a pregnant woman who was instructed by an Israeli soldier to evacuate her home with her children, but to leave behind a mentally disabled child, which she refused to do.

1289. Even in the relative safety of shelters, people with disabilities continued to be exposed to additional hardship, as these shelters were not equipped for their special needs. The Mission heard of the case of a person with a hearing disability who was sheltering in an UNRWA school,

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[652] WHO report, p. 13.

[653] The Humanitarian Monitor, No. 33.

[654] WHO report, p. 11; Gaza Situation Report Feb - May 2009, WHO Gaza, provided to the Mission.

[655] Gaza Situation report.

but was unable to communicate in sign language or understand what was happening and experienced sheer fear.

1290. Frequent disruptions in the power supply had a severe impact on the medical equipment needed by many people with disabilities. People using wheelchairs had to face additional hurdles when streets started piling up with the rubble from destroyed buildings and infrastructure.

1291. In addition, programmes for people with disabilities had to be closed down during the military operations and rehabilitation services stopped (for instance, organizations providing assistance were unable to access stocks of wheelchairs and other aids). Many social, educational, medical and psychological programmes have not yet fully resumed.[656]

J. Impact on humanitarian assistance provided by the United Nations

1292. The tightening of the blockade during the two months before the military operations entailed additional restrictions also for United Nations programmes and activities, in particular those of UNRWA, WFP and others that provide food and other forms of support. The Mission was informed that, as a result of the blockade and the Israeli limitations on the delivery of humanitarian assistance, the capacity of UNRWA to mitigate the effects of the military operations on the civilian population was reduced.[657] As stated above, just days before the Israeli military operations started, UNRWA had to suspend its food assistance programmes and scale down other programmes.

1293. But the impact of the blockade also extended to several humanitarian projects that had been planned or were in progress and had to be stopped and postponed. Most of them were in health, sanitation, water and education.

1294. During the military operations, UNRWA workers and trucks were also hit, resulting in deaths and injuries. The Board of Inquiry established by the United Nations Secretary-General investigated a number of incidents in which United Nations facilities were targeted and issued a report determining responsibilities.[658] The Mission is of the view that the factual findings made by the Board of Inquiry entail legal liability for those responsible (see below).

1295. The Mission learned that seven UNRWA staff members (none of them on duty), five job creation programme contractors (one on duty) and three contractors were killed; 21 other contractors were injured. In all, 57 UNRWA buildings were damaged by shelling or airstrikes, including 36 schools (six serving as emergency shelters), seven health centres, three sanitation offices, two warehouses and five other buildings.

1296. Thirty-five UNRWA vehicles, including three armoured vehicles, were damaged. From its remaining 321 vehicles, only 286 are operational and 7 are damaged beyond repair.

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[656] Meeting of the Mission with the Society for Disabled in the Gaza Strip, 30 June 2009.

[657] Meeting of the Mission with UNRWA, 1 June 2009.

[658] See Summary of the Report of the United Nations Headquarters Board of Inquiry.

1297. UNRWA informed the Mission that between 27 December and 19 January, 536 UNRWA trucks entered the Gaza Strip through the Kerem Shalom border crossing. By 21 January, 394 trucks had entered through Karni and 2089 through Kerem Shalom (including private, humanitarian and UNRWA trucks). UNRWA considered these amounts to be insufficient to meet the humanitarian needs of the population of the Gaza Strip.[659]

1298. The Israeli Government stated that "from the commencement of the Gaza Operation and for its duration" a total of 1,511 trucks with supplies from Israel as well as diesel, cooking gas and other fuel were allowed into the Gaza Strip. It would appear that some 60 per cent of these supplies were foodstuffs. The Israeli Government states that (presumably during the same period) it also coordinated the passage of 706 trucks carrying donations from international organizations and various countries.[660] Information from UNRWA suggests that these quantities were irrelevant given the situation prevailing during the military operation and the local needs. For instance, although fuel for the power plant was let in, it was inadequate, forcing the power plant to shut down and causing 16-hour power cuts in some areas. Israel also reported allowing in 2,277,000 litres of diesel during the military operations, but according to UNRWA records only 199,400 litres were allowed in, while OCHA records suggest only 92,000 litres were allowed in, compared to 6,628,400 litres in January 2007.[661]

1299. The Israeli Government also provided information about medical supplies that were brought into the Gaza Strip, but the figures are imprecise or incomplete as it was unclear what unit of measure was being used. In addition, many of the agencies listed were not actually bringing in medical supplies. For instance, its report lists that WFP brought in "3,611" medical supplies, but information made available to the Mission indicated that WFP was bringing in only flour and hygiene kits.

K. Legal analysis

1300. Obligations under international humanitarian law are relevant for the assessment of the facts described above. As mentioned earlier, the Fourth Geneva Convention as well as provisions of Additional Protocol I reflecting customary international law apply to the actions of Israel in the Occupied Palestinian Territory before and during the military operations. The protections owed under international humanitarian law to the civilian population of the Gaza Strip by all parties to the conflict include the duty to allow the free passage of humanitarian medical supplies, as well as consignments of essential foodstuffs and clothing for children, pregnant women and mothers at the earliest opportunity (article 23 of the Fourth Geneva Convention). Article 70 of Additional Protocol I provides that parties to a conflict are obliged to allow the passage of articles that are essential for the civilian population, at the earliest opportunity and without delay.

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[659] By 1 February UNRWA was providing food assistance to 900,000 registered Palestine refugees, 504,000 of them children, in the Gaza Strip. There are 1,048,125 refugees in the Gaza Strip (74 per cent of the population), see UNRWA, "Fact sheet: Consequences of the conflict in the Gaza Strip 27 December 2008- 18 January 2009".

[660] "The operation in Gaza…", para. 271.

[661] OCHA also reported that in January 2009 no imports of petrol to Gaza were registered, compared to 1,522,250 litres in January 2007; 915,310 kilograms of cooking gas was imported in January 2009, compared to 5,238,030 in January 2007; and 3,760,400 litres of industrial diesel, compared to 8,370,290 in January 2007.

1301. The relevant provisions of the Fourth Geneva Convention relating to the duties of an occupying Power should also be taken into consideration, in particular the obligations contained in articles 50 (duty to facilitate the working of care and education institutions), 55 (duty to ensure food and medical supplies to the population), 56 (duty to ensure and maintain medical and hospital establishments and services), 59 (duty to agree on relief schemes if the occupied territory is not well supplied) and 60 (duty to continue performing obligations even if third parties provide relief consignments). Several provisions of Additional Protocol I reflecting customary international law are also relevant here, including articles 51 and 52, which prohibit attacks on civilians and on civilian objects, and article 54, which prohibits the destruction of objects indispensable to the survival of the civilian population.

1302. Access to adequate food, shelter and clothing, as part of an adequate standard of living, are human rights recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights. The same instrument recognizes the rights to education and to the highest attainable standard of physical and mental health (art. 12). The content of these rights and the corresponding State duties has been clarified by the United Nations Committee on Economic, Social and Cultural Rights. The Convention on the Rights of the Child protects the child's right to life, survival and development (art. 6) and to be protected from all forms of mental or physical violence (art. 19), to the highest standard of health (art. 24), to an adequate standard of living (art. 27) and to education (arts. 28 and 29). Although these instruments protect women and men, girls and boys alike, the Convention on the Elimination of All Forms of Discrimination against Women adds more specification and scope to those obligations with regard to women. All these human rights obligations are applicable to Israel with respect to its actions in the Gaza Strip since they apply also in situations of armed conflict.

1303. Some rights contained in the International Covenant on Economic, Social and Cultural Rights are subject to progressive realization. This means that they can be achieved only over time. States have an obligation to move as expeditiously and effectively as possible towards that goal. Deliberate retrogressive measures are permitted only under stringent conditions.[662]

1304. The Mission recalls in this regard its analysis of the Israeli objectives and strategies during the military operations in chapter XVI. There the Mission referred to statements made by Deputy Prime Minister Eli Yishai on 6 January 2009: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". The Mission also referred to the so-called Dahiya doctrine, which requires widespread destruction as a means of deterrence and seems to have been put into practice. These objectives and strategies should be kept in mind with regard to the following analysis.

1305. The Mission considers that the closure of or the restrictions imposed on border crossings by Israel in the immediate period before the military operations subjected the local population to extreme hardship and deprivations that are inconsistent with their protected status. The restrictions on the entry of foodstuffs, medical supplies, agricultural and industrial input, including industrial fuel, together with the restrictions on the use of land near the border and on

[662] General comment No. 3 (1990), para 9.

fishing in the sea have resulted in widespread poverty, increased dependence on food and other assistance, increased unemployment and economic paralysis. The Mission can conclude only that Israel has and continues to violate its obligations as an occupying Power under the Fourth Geneva Convention.

1306. The Mission has given consideration to the argument put forward by the Israeli Government that the above policies and restrictions are being imposed as a form of sanction. However, such blanket sanctions are not permitted under international law. The Committee on Economic, Social and Cultural Rights has addressed economic sanctions and their effects on the enjoyment of economic and social rights, and held:

> […] whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights [and]
>
> […] it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country.[663]

1307. In respect to the right to water, the Committee stated: "States parties should refrain at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water." Similar considerations apply to food and health services and goods.[664]

1308. The Mission also notes that reprisals and collective penalties are prohibited under international humanitarian law.

1309. The Mission has considered the question of military security. As serious as the situation that arises when rockets and mortars are fired on or near border crossings may be, the Mission considers that it does not justify a policy of collective punishment of the civilian population of the Gaza Strip. The Mission is aware of the Government of Israel's declaration of the Gaza Strip as a "hostile territory". Again, for the Mission, such a declaration does not relieve Israel of its obligations towards the civilian population of the Gaza Strip under international humanitarian law.

1310. Moreover, the Mission takes note that following the decision of the Supreme Court of Israel in what is known as the *Fuel and electricity* case,[665] Israel reconsidered its obligations relating to the amounts and types of humanitarian supplies that it allowed into the Gaza Strip to meet "vital humanitarian needs". Whatever that somewhat vague standard may be, the Mission stresses that Israel is bound to ensure supplies to meet the humanitarian needs of the population, to the fullest extent possible.

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[663] General comment No. 8 (1997), paras. 4 and 16.

[664] General comments No. 15 (2002) and No. 12 (1999), para. 8.

[665] Gaber et al. v. The Prime Minister, case No. 9132/07.

1311. In sum, the Mission restates its view that Israel has not fulfilled its duties as an occupying Power in relation to the Gaza Strip.

1312. Again, reference is made to the blockade and Israel's obligation to respect, protect, facilitate or provide, to the extent possible, for the enjoyment of the whole range of economic, social and cultural rights in the Gaza Strip. At the very least, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[666] Israel's actions have led to a severe deterioration and regression in the levels of realization of those rights. Consequently, the Mission finds that Israel has failed to comply with those obligations.

1313. The Mission has also given consideration to the extent and type of military operations conducted by Israel in the Gaza Strip between 27 December 2008 and 18 January 2009. As mentioned earlier, provisions of the Fourth Geneva Convention and of Additional Protocol I that reflect international customary law apply to those operations. Their obligations include that under the Fourth Geneva Convention to give particular protection and respect to the infirm and expectant mothers (art. 16), to respect and protect civilian hospitals and medical personnel (arts. 18 and 20), and to allow the free passage of all consignments of medical and hospital objects, food and clothing subject to certain conditions (art. 23). The Mission will address here only respect for the provisions contained in article 23, which it considers to be part of customary international law. With regard to Additional Protocol I, the Mission will address here Israel's compliance with article 54.

1314. The Government of Israel has provided information about the actions it took to ensure the supply of humanitarian assistance to the Gaza Strip and to ensure that medical relief and rescue as well as essential facilities would function during the hostilities. These actions allegedly comprised: the continuous supply of humanitarian aid through the crossings; coordination of evacuation within the Gaza Strip and outside; a unilateral suspension of military operations each day to enable the resupply of assistance for the population and actions to ensure the functioning of essential infrastructure in the Gaza Strip. To this end, the Government of Israel reported that it established a number of coordinating and liaison bodies with Palestinian authorities and organizations, the United Nations agencies on the ground and humanitarian agencies, such as ICRC. The Government also reported that a number of trucks carrying humanitarian goods from Israel and from other countries, including from international organizations, were given passage.

1315. In response, the Mission draws attention to the fact that no consideration was given to the situation that prevailed in the Gaza Strip before the military operations. In particular, the Mission notes that the amounts and types of food, medical and hospital items and clothing were wholly insufficient to meet the humanitarian needs of the population. Given that since the end of the operations the number of truckloads allowed through the crossings has again fallen, the humanitarian supplies are even less sufficient.

1316. At the height of the military operations, several NGOs appealed to the Government of Israel to ensure a sufficient supply of electricity and fuel to the Gaza Strip to allow for the

[666] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, para. 112.

functioning of vital services.[667] At the same time, two petitions were filed with the Supreme Court of Israel on 7 and 9 of January, respectively, to order the Government to ensure that the Israeli armed forces did not attack ambulances and medical personnel and that sufficient electricity and fuel were supplied to enable hospitals, water and sanitation systems to function during the conflict. On 19 January, as military operations ended, the Supreme Court ruled denying both petitions.[668]

1317. The Government of Israel seems to see the hardship and suffering of Palestinians as an inevitable consequence of a situation of war. The Government's statement that "civilian populations inevitably and tragically suffer during a time of armed combat, particularly where the combat operations take place in densely populated urban areas"[669] may be correct, but this does not relieve Israel from its obligations under international humanitarian law.

1318. From the facts it ascertained and the foregoing analysis, the Mission finds that Israel has violated its obligation to allow the free passage of all consignments of medical and hospital stores and objects, food and clothing (article 23 of the Fourth Geneva Convention).

1319. Article 54 of Additional Protocol I contains the prohibition:

> to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas…, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive […].

The Mission regards this rule as reflective of international customary law. In this context, Israel's obligations to respect, protect and facilitate or provide for the realization of economic, social and cultural rights, and its obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women are also relevant, and have been undermined by the blockade and restrictions on the Gaza Strip, as well as the actions taken during the military operations.

1320. With regard to article 54 (2) of Additional Protocol I, the Mission recalls its analysis included in chapter XIII on the destruction of buildings, food production and industry. From the facts ascertained and the circumstances described in the present chapter and in chapters XIII and XVI, the Mission concludes that in the destruction or damaging of greenhouses, agricultural land, water wells for irrigation and irrigation networks there was the specific purpose of denying their use for the sustenance of the civilian population of the Gaza Strip. Furthermore, this

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[667] An excerpt from the Hebrew appeal is available in an English press release at: http://www.gisha.org/UserFiles/File/Press%20Materials/HR%20groups%20-%20resumption%20of%20gaza%20fuel%20supplies%201-1-09%20-%20online%20version.pdf

[668] Physicians for Human Rights et. al. v. The Prime Minister et. al., case No. 201/09, and Gisha Legal Centre for Freedom of Movement et al. v. Minister of Defense, case No. 248/09, Judgement of 19 January 2009, para. 26, available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.pdf

[669] "The operation in Gaza…", para. 277.

appears to be done as part of a policy of collective punishment of the civilian population as elaborated below.

1321. With respect to the right to water, the Committee on Economic, Social and Cultural Rights stated:

> The obligation to *respect* [the right to water] requires that States parties refrain from […] limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.[670]

1322. This language is similar to that of a resolution adopted by consensus at the 26th International Conference of the Red Cross and Red Crescent that calls upon parties to a conflict to "take all feasible measures to avoid in their military operations, all acts liable to destroy or damage water sources."[671]

1323. Similar considerations apply to the right to adequate housing.[672] The widespread destruction of residential housing, water wells and pipe networks cannot be seen as an inevitable or necessary incidence of military hostilities. Israel had a duty to distinguish between civilian and military objects and not to direct any attacks at civilians or civilian objects. The Mission has not received any information suggesting that all the houses destroyed served as hideouts for Hamas fighters or were booby-trapped and does not accept that this was the case. The patterns of destruction described in the present chapter and in others reveal that many houses were fired at or demolished after their occupants had been ordered to leave them. There was then no clear necessity for Israeli soldiers to occupy such properties or to destroy them. They were in effective control of the area. In other cases, houses were demolished with bulldozers during the last few days of the military operations when, again, Israeli forces were in total control of the areas in which the houses were located. Military necessity and the need to prevent rockets being fired from the houses into Israel do not seem to the Mission plausible reasons for this widespread destruction. These considerations apply equally to the destruction of agricultural land and greenhouses, which are so important for local food security.

1324. From the facts available to it and by virtue of the foregoing considerations, the Mission believes that the destruction of private residential houses, water wells, water tanks, agricultural land and greenhouses violates Israel's duties to respect the right of the people in the Gaza Strip to an adequate standard of living (including food, housing and water).

1325. The Mission is aware of the statement of the Committee on the Rights of the Child that many of the fundamental rights of the child "have been blatantly violated during this crisis".[673] On the basis of this finding and on the facts as described above, the Mission also considers that

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[670] General comment No. 15 (2002), para. 21.

[671] *Customary International Humanitarian Law…*, p. 150.

[672] Submission to the Mission made by COHRE.

[673] Committee on the Rights of the Child, "Effects of the Gaza conflict on children 'devastating'", statement, 12 January 2009.

Israel has violated its obligations under the Convention on the Rights of the Child during its military operations in the Gaza Strip and in particular of article 24 (1), stipulating that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services"; article 38 (1), stipulating that "States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child"; and article 38 (4), stipulating that "States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict".

1326. The Mission also notes that Israel is in continuing violation of article 39 of the Convention in that, by actively preventing reconstruction efforts, it does not fulfil its obligations to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: […] armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child".

1327. The Mission is also aware of the statement made by the Committee on the Elimination of All Forms of Discrimination against Women that "the human rights of women and children in Gaza, in particular to peace and security, free movement, livelihood and health, have been seriously violated during this military engagement."[674] It concurs with this statement. The Mission also notes that the Convention on the Rights of Persons with Disabilities, article 11, requires States parties to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict". Israel has signed, but not yet ratified, this Convention and is thus under an obligation not to defeat its object and purpose.

1328. The Mission also considered whether the Gaza population was subject to collective punishment or penalty. According to article 33 of the Fourth Geneva Convention, "collective penalties and likewise all measures of intimidation or of terrorism are prohibited". Article 75 (2) (d) of Additional Protocol I includes collective punishment as an act that is "prohibited at any time and in any place whatsoever". Reprisals against protected persons are also prohibited under article 33. These prohibitions are part of customary international law.[675]

1329. The Mission notes that the scope of collective penalties goes beyond physical or criminal sanctions to encompass also "sanctions and harassment of any sort, administrative, by police action or otherwise".[676] The cumulative effect of the blockade policies, with the consequent hardship and deprivation among the whole population, and of the military operations coupled with statements by Israel made to the effect that the whole of the Gaza Strip was a "hostile territory" strongly suggest that there was an intent to subject the Gaza population to conditions such that they would be induced into withdrawing their support from Hamas. This was apparently confirmed by the then Minister of Foreign Affairs of Israel commenting on the

[674] United Nations, UN committee says women's rights were seriously violated during Gaza conflict, press release, 6 February 2009.

[675] See *Customary International Humanitarian Law…*, p. 374.

[676] ICRC Commentary to Additional Protocol I, p. 3055.

decision by the Supreme Court to uphold the fuel cuts: "The Palestinians need to understand that business is not usual, I mean there is no equation in which Israeli children will be under attacks by Kassam rockets on a daily basis and life in the Gaza Strip can be as usual".[677]

1330. The above statements should also be seen in the light of what the Mission has identified as the objectives and strategies of Israel before and during the operations (see chap. XVI). Israel, rather than fighting the Palestinian armed groups operating in Gaza in a targeted way, has chosen to punish the whole Gaza Strip and the population in it with economic, political and military sanctions. This has been seen and felt by many people with whom the Mission spoke as a form of collective punishment inflicted on the Palestinians because of their political choices.

1331. The facts ascertained by the Mission, the conditions resulting from the deliberate actions of the Israeli armed forces and the declared policies of the Israeli Government – as they were presented by its authorized representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.

1332. The Mission has also considered the question of whether the crime of persecution as a form of crime against humanity had been committed against the civilian population of the Gaza Strip. To establish that a crime against humanity was committed it would have to be established that there was a widespread or systematic attack on a civilian population that blatantly discriminated and infringed a fundamental right recognized under international customary law or treaty, and was carried out deliberately with the intention so to discriminate.[678]

> The crime of persecution encompasses a variety of acts, including, inter alia, those of physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights.[679]

1333. In *Prosecutor* v. *Kupreskic* judgement, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia describes the types of acts that would constitute the crime of persecution in the following terms:

> […]
>
> (c) Persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic rights. […]

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[677] *Global Security*, "Israel's Supreme Court upholds fuel cuts to Gaza", 30 November 2007, available at: http://www.globalsecurity.org/military/library/news/2007/11/mil-071130-voa02.htm. The issue is also addressed in the submission to the Mission by Diakonia.

[678] *Prosecutor* v. *Kunarac et al.*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-96-23-T and No. IT-96-23/1-T, Judgement of 22 February 2001, para. 431.

[679] *Prosecutor* v. *Tadić*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-94-1-T, Judgement of 7 May 1997, para. 710.

(d) Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least of a patterned practice, and must be regarded in their context. […]

(e) […] discriminatory acts charged as persecution must not be considered in isolation. Some of the acts mentioned above may not, in and of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed on a particular group to curtail their rights to participate in particular aspects of social life (such as visits to public parks, theatres or libraries) constitute discrimination, which is in itself a reprehensible act; however, they may not in and of themselves amount to persecution. These acts must not be considered in isolation but examined in their context and weighed for their cumulative effect.[680]

1334. The Mission has described above a series of acts that deprive Palestinians in the Gaza Strip from their means of subsistence, employment, housing and water. Palestinians are further denied freedom of movement and their right to leave and enter their own country. Later the report will address the extent to which Palestinian rights to access a court of law and an effective remedy are limited or denied by Israeli laws (see chap. XXVII)

1335. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

XVIII. THE CONTINUING DETENTION OF ISRAELI SOLDIER GILAD SHALIT

1336. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by Palestinian armed groups during a cross-border operation. In reaction to the capture, the Israeli Government ordered a number of incursions to attack important infrastructure in the Gaza Strip as well as Palestinian Authority offices. This was followed by the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council by the Israeli security forces (see chap. II).

1337. Israeli Government officials have repeatedly stated that the easing of the blockade on the Gaza Strip (see chaps. V and XVII) is linked to the release of Gilad Shalit. In February 2009, it appeared that the Israeli Government had dropped its demand for Palestinian militants to release Gilad Shalit before it would end the blockade.[681] However, the then Deputy Prime Minister stated shortly after that "Israel is facing a serious humanitarian crisis, and it is called Gilad Shalit, and... until he is returned home, not only will we not allow more cargo to reach the residents of Gaza, we will even diminish it." Israel's then Prime Minister also stated that "we will not reopen the border crossings [into Gaza] and assist Hamas so long as Gilad Shalit is in

[680] *Prosecutor* v. *Kupreškić et al.*, case No. IT-95-16-T, Judgement of 14 January 2000, para. 615.

[681] Agence France Presse quoted by France 24 – "Israel drops Shalit release from truce demands, Hamas claims", 6 February 2009.

their brutal prison."[682] According to the CBS News Channel, this position was reiterated by the current Israeli Prime Minister in July 2009.[683]

1338. In October 2008, a Hamas spokesman stated that "the Shalit case is dependent on prisoners swap... He will never be released if the Israeli occupation does not release Palestinian prisoners whom Hamas wants free…."[684]

1339. The Mission is aware that negotiations, through intermediaries, continue with regard to the exchange of prisoners between the Israeli Government and Hamas representatives.

1340. The Mission asked the Gaza authorities to confirm the status of Gilad Shalit. In their reply, which the Mission considered to be unsatisfactory, the Gaza authorities denied being involved in any way with the capture and detention of Gilad Shalit and stated that they are not in possession of any information regarding his current status.

1341. During its investigations in the Gaza Strip, the Mission heard testimonies indicating that during the military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit (see chap. XV).

1342. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.[685] He informed the Mission of his extreme concern about the condition of his son, who has not been able to communicate with his family and has not been allowed to receive ICRC visits. Mr. Shalit expressed concern about the health and psychological status of his son after more than three years of captivity and appealed for his release.

Legal findings and conclusions

1343. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. ICRC should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

1344. The Mission is concerned by the declarations referred to above, made by various Israeli officials, who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

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[682] Amnesty International, "Detainees used as bargaining chips by both sides in Israel/Gaza conflict", 20 March 2009.

[683] CBS News Channel, "Gaza blockade remains until Shalit freed", 30 July 2009.

[684] "Detainees used as bargaining chips…".

[685] Mission's public hearings: http://www.un.org/webcast/unhrc/archive.asp?go=090706.

SECTION B: INTERNAL VIOLENCE

XIX. INTERNAL VIOLENCE AND TARGETING OF FATAH AFFILIATES BY SECURITY SERVICES UNDER THE CONTROL OF THE GAZA AUTHORITIES

1345. The Mission has received reports and allegations of violations committed in Gaza by the security services in the period under inquiry. It has heard some of those allegations first-hand and investigated them by comparing the accounts it received with reports of domestic and international human rights organizations.

1346. From the beginning of 2006, when Hamas won the majority of seats in the Palestinian Legislative Council, violence between competing Palestinian political groups in the Gaza Strip escalated. Armed clashes periodically erupted between the security forces affiliated with the two main political groups – Fatah and Hamas – and culminated in June 2007, when Hamas seized control of the Palestinian Authority's civil and security institutions of the Gaza Strip.[686]

1347. During the six months preceding the Israeli military operations in Gaza of December 2008-January 2009, reports of deaths in suspicious circumstances and abuses by the security services reporting to the Gaza authorities continued to be documented by domestic monitoring mechanisms, including by the Independent Commission for Human Rights (ICHR).[687]

1348. Between June and December 2008, ICHR received 45 complaints from citizens alleging that they were subjected to torture while being detained or interrogated. All these complaints were lodged against the Ministry of Interior, the police, the military intelligence, the general intelligence and the internal security services of the Gaza authorities, as well as al-Qassam Brigades.

1349. During the same period, ICHR received about 250 complaints from citizens that security agencies (namely the internal security and the police) detained them without respecting legally prescribed procedures. In particular, ICHR reported that no arrest warrants from the competent authorities were presented to detainees and that the security services searched civilian houses without having obtained the relevant search warrants. ICHR reported that family visits to detainees were denied, especially in the al-Saraya and al-Mashtal detention and interrogation centres of the internal security agency. In addition, detainees were not brought before the judicial

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[686] Non-governmental organizations reported that members of the security forces and armed groups belonging to both groups "committed grave human rights abuses and displayed a flagrant disregard for the safety of the civilian population." "Both sides killed captured rivals and abducted scores of members of rival groups and held them hostage, to be exchanged for friends and relatives held by their rivals." See "Occupied Palestinian Territories torn apart…".

[687] The Independent Commission for Human Rights is an independent Palestinian institution established in 1993 by Presidential Decree with a broad mandate in accordance with national and international norms. This mandate gives it the authority to deal with human rights violations; complaints of abuse of power submitted by citizens; education and promotion; monitoring; and generally integrating human rights into Palestinian legislation and practices. The Mission was impressed by the outstanding work of the institutions in both Gaza and the West Bank. See ICHR, "Monthly reports on violations of HR" (June to December 2008), available at: http://www.ichr.ps/etemplate.php?id=12.

authorities within the legally prescribed period. According to ICHR, the security services also continued to detain citizens with arrest warrants issued by the military justice authority.

1350. Many leaders of the Fatah movement as well as the Governors of Khan Yunis and Gaza were at the time of drafting this report still in detention at the al-Mashtal detention and interrogation centre.

1351. In the course of its investigations in Gaza, the Mission obtained information from international and domestic organizations and from individuals in Gaza about violence against political opponents by the security services that report to the Gaza authorities. The Israeli attacks, including the aerial strikes targeting police stations and the main prison in Gaza City (see chap. VII), created chaos, making it impossible to independently verify initial reports about violations by the security services. Towards the end of the military operations, however, domestic human rights organizations started to verify such allegations, including by analysing information from hospitals that they had received bodies of persons who had apparently not been killed in the Israeli attacks.

1352. According to both domestic and international human rights organizations, members of the security services and unidentified gunmen killed between 29 and 32 Gaza residents between the beginning of the Israeli military operations and 27 February.[688] Among these, between 17 and 22 detainees, who had been at al-Saraya detention facility on 28 December and had fled following an Israeli aerial attack, were killed in seemingly extrajudicial or summary executions, some of them while seeking medical assistance in hospitals (see chap. VII).

1353. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death.[689] Regardless of the intended scope of the Israeli attack on the prison, the effect was to create a chaotic situation that, according to some domestic observers,[690] was exploited by some elements in the security services.

1354. During the course of its work in Gaza, the Mission heard first-hand accounts of violations against Fatah affiliates committed during the period of the Israeli military operations. Some of the witnesses who were interviewed by the Mission were severely distressed and asked that their identity not be disclosed for fear of retaliation. The Mission questioned the witnesses and found them to be credible. The following cases are among those reported to the Mission and are based on information it gathered from a variety of sources.

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[688] See Under Cover of War…; ICHR, "Monthly report on human rights and freedoms in the PNA-controlled territory", January 2009, available at: http://www.ichr.ps/pdfs/eMRV-1-09.pdf; PCHR, "Special report: inter-Palestinian human rights violations in the Gaza Strip", 3 February 2009, available at: http://www.pchrgaza.org/files/Reports/English/pdf_spec/Increase_rep.pdf.

[689] No death sentence has been carried out since the Hamas takeover. Death sentences must be approved by the Palestinian Authority's President, who has not approved any of these sentences since Hamas took control of the administration of justice in Gaza. The last official execution was carried out in 2005 by firing squad.

[690] Mission interview with a civil society activist, Gaza City, June 2009.

1355. One of the individuals killed following their escape from the damaged al-Saraya prison was a Fatah affiliate who had been arrested and detained long before the Israeli military operations in Gaza. For about two weeks his family made several unsuccessful enquiries with different security services to discover his whereabouts. After finally tracing him, the family was able to visit him in the detention facility run by the internal security and saw that he was in poor health as the likely result of torture and inadequate detention conditions. He was reportedly not able to speak freely while in detention.

1356. He was still in al-Saraya prison on 28 December 2008, when it was hit during an Israeli aerial bombardment. His dead body was later found with signs of bullet wounds at al-Shifa hospital in Gaza City. The family was told that he had been shot dead by unknown persons. Independent sources consulted by the Mission seem to indicate that the victim had fled from al-Saraya detention facility after the aerial attack and had been wounded in the attack itself or shot by the prison staff trying to prevent detainees from escaping.[691]

1357. The Mission received a number of reports of violent attacks against individuals affiliated with Fatah[692] by armed men who broke into their homes. In one incident,[693] a group of persons claiming to be police officers knocked at the door of a family residence in Gaza City. The family was confronted by a group of 7 to 10 men wearing civilian clothes, most of them masked. They took one member of the family outside. When they brought him back roughly half an hour later, he appeared to have been beaten violently with metal pipes. He died of his injuries about a month later.[694]

1358. In another incident reported to the Mission, a group of 10 to 12 masked men wearing military uniforms broke into the residence of an individual who used to work for the preventive security under the Palestinian Authority before the Hamas takeover. When the family tried to resist attempts to capture him, the masked men started shooting indiscriminately, killing one member of the family and injuring 11 others. After the shooting, the masked men fled. According to the information provided to the Mission, when the injured were transferred to al-

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[691] The Mission ascertained that on 28 December 2008, the second day of the air strikes by Israel, about 200 to 300 prisoners were still held in the facility. Most of the almost 700 prisoners had been released in the previous days. According to a Human Rights Watch report based on the testimony of prisoners, "authorities … kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had been sentenced to death. Some of the remaining detainees escaped the following day when Israel bombed the prison, but were subsequently tracked down and killed by masked gunmen. The ICHR documented 20 cases of escaped prisoners being shot and killed by masked gunmen from December 28 to January 31; at least 12 of the victims had been detained in the prison for allegedly 'collaborating with the enemy.' Seventeen of the 29 people killed by gunmen that the Palestinian Center for Human Rights (PCHR) reported from December 28 to February 27 were prisoners and detainees who had fled the prison compound after Israel's attack, including 13 men sentenced to death for collaboration with Israel, three convicted of common crimes, and one man awaiting trial." (Under Cover of War….). The Gaza authorities informed the Mission (in correspondence of July 2009) that only 11 persons accused or convicted of criminal offences remained in their custody and were transferred "under supervision" to a residential apartment. See also chap. VIII.

[692] Dates and other identifying information have been removed to protect sources.

[693] Mission interviews, Gaza, June 2009.

[694] "In total, Palestinian human rights groups documented nine deaths by torture or severe beating in Gaza in January, February and March 2009". Under Cover of War….

Shifa hospital, members of the security services there prevented medical staff from providing assistance.

1359. The Mission was informed that – although serious – this was only one of many incidents in which this family had been targeted by Hamas operatives. One year earlier, a member of the family had been abducted and shot in the legs.

1360. The Mission was also informed of an incident in which a group of armed, masked men broke into the house of a Fatah supporter in Gaza City, abducted him and took him to a nearby location, where he was tortured and shot in the leg. He was reportedly left unconscious and rescued by neighbours. The ordeal reportedly lasted about one hour. The same individual had previously been arrested by members of the security services and kept in detention for a month and a half. He was released only after signing a pledge not to participate in Fatah political celebrations or occasions.

1361. The Mission was informed that, in another incident, three armed, masked men wearing symbols of al-Qassam Brigades broke into the residence in Gaza City of an individual who is a Fatah supporter and on the payroll of a Fatah-controlled institution. The men started beating everyone inside, including a child, and were screaming insults. All the males were then reportedly made to go outside – where other masked men were waiting – and were beaten with metal bars and with rifle butts. After this, the masked men took one of the men to a nearby location, where they again beat him very violently. While he was being beaten, the masked men reportedly kept insulting him, accusing him of collaborating with Israel and calling him a traitor. In response to a question by the Mission, a witness stated that he had the feeling that there was a clear chain of command among the group of masked men. Shortly before meeting the Mission, the same individual had been summoned by the internal security in Gaza along with other Fatah affiliates and kept for four hours at an internal security detention centre in Gaza City before being released.

1362. Similarly, a group of people who were identified as belonging to the internal security stormed the residence of an individual in Gaza City and beat members of the family. The group was composed of masked men who left only after shooting him in the leg. The victim was allegedly prevented by members of the security services from getting treatment at al-Shifa hospital for his injuries. He had previously been arrested and detained by members of the security services. During his detention, he was allegedly subjected to different forms of torture, including beatings, *shabah*,[695] electric shocks and sleep deprivation. His captors did not reportedly question him or levy specific charges against him. Finally, towards the end of his detention, he was formally accused of "having contacts with the Ramallah government". He was reportedly arrested again after the end of the conflict by members of the security services and again subjected to torture.

1363. The Mission was also informed of the case of another Fatah affiliate who had been summoned by the internal security in Gaza and detained on the basis of evidence provided by another member of his family who accused him of collaborating with Israel. Additional abuses allegedly committed by the security services include the confiscation of property from the

[695] A torture method in which the prisoner is tightly shackled for long periods.

families of Fatah affiliates, as well as additional cases of torture while in detention in facilities that they operate.

1364. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest very early on and threatened with "action" should they disobey. Hundreds of cases in which house arrest was imposed without any kind of due process were reported to domestic human rights organizations during this period. Some individuals received a written order from the police or the internal security (the Mission has a sample of these orders), or a verbal order from the members of al-Qassam Brigades or the internal security. In some cases, those issuing these orders would not identify themselves. The Mission was informed of one case in which an individual put under house arrest in this way was allegedly shot dead by the security services when he and other members of his family were evacuated from their home owing to the presence of the Israeli armed forces.[696]

1365. The Gaza authorities denied that any arrests had taken place in Gaza between 27 December 2008 and 18 January 2009 owing to the insecurity created by the Israeli military operations.[697] They stated that arrests were made only after the end of these operations and only in relation to criminal acts, "security prevention and to restore public order".

A. Factual findings

1366. The Mission finds that the statements provided to it in relation to abuses committed by the Gaza authorities' security services are credible and has no reason to doubt their veracity.

1367. As for violent attacks against individuals either in their homes or after being taken from their homes, this finding is reinforced by a number of factors. The pattern of armed and sometimes uniformed, masked men breaking into houses is described in almost all incidents reported to the Mission. Also, in most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities contrary to the perceived interest of the Gaza authorities. Some of the accounts also indicate that elements of hierarchical control were present within the groups of armed, masked men executing the attacks. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters.

1368. In relation to the allegations that between 27 December 2008 and 18 January 2009 more than 20 persons suspected of collaborating with Israel were killed or maimed by being shot in the leg or otherwise severely injured, the Gaza authorities stated that their investigations found these incidents to be the result of family feuds "or otherwise they were individual acts motivated by personal revenge." In addition, they stated that "the Government, through its competent

[696] Mission interview with a civil society activist, Gaza City, June 2009.

[697] Mission correspondence with the Gaza authorities, July 2009.

agencies, opened investigations into these events immediately after the war, and submitted charges before the competent Courts."[698] According to PCHR, however, on 2 February 2009 a spokesperson for the Gaza authorities stated that "the Government makes distinctions between abuses of law and the actions of the Palestinian resistance during the war, regarding the execution of some collaborators who are involved in collaborating with the [Israeli] occupation."[699] The statement seems to express support for a number of acts of violence that occurred in the chaotic atmosphere created by the military operations.

B. Legal findings

1369. Although not internationally recognized and therefore not able to be party to international human rights treaties, the Gaza authorities have an obligation to respect and enforce the protection of the human rights of the people of Gaza, inasmuch as they exercise effective control over the territory, including law enforcement and the administration of justice[700] (see chap. IV).

1370. Before Hamas took full control of the Gaza Strip in June 2007, its leaders had publicly indicated that they would respect international human rights standards.[701] In July 2009, the Gaza authorities formally stated to the Mission that they accepted the obligation to respect human rights and fundamental freedoms, including those enshrined in the Universal Declaration of Human Rights and in the Palestinian Basic Law. They added that "the Government is in permanent contact with the Red Cross and human rights organizations, and listens to their observations and takes into account their recommendations as far as it can, and those institutions can testify on that".[702]

1371. From the facts ascertained by it, the Mission finds that the actions by members of the security services described above constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law. In particular, regarding the Universal Declaration – which has become part of international customary law – they are in violation of article 3 in relation to everyone's right to life, liberty and security of the person; article 5 in relation to the freedom from torture and cruel, inhuman or degrading treatment or punishment; article 9 stating that no one shall be subjected to arbitrary

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[698] Written reply from the Gaza authorities to the Mission; July 2009.

[699] Taher al-Nouno, a spokesman of the Gaza authorities, attended the press conference with Ehab al-Ghusein, spokesman of the Ministry of the Interior, and Islam Shahwan, spokesman of the Palestinian police in Gaza. See "Special report…".

[700] For example, in their joint report on Lebanon and Israel, a group of four United Nations Special Rapporteurs concluded that: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. […] It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure" (A/HRC/2/7, para. 19). See A/HRC/6/76, paras. 4-9, for a brief overview of relevant events leading up to Hamas' seizure of full control in the Gaza Strip. (See also Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford, Oxford University Press, 2006), chap. 7.

[701] See A/HRC/8/17.

[702] The Gaza authorities have allowed IHCR to function uninterruptedly and regularly deal with the complaints it brings to their attention.

arrest and detention; articles 10 and 11 regarding the right to fair and impartial legal proceedings; and article 19 regarding the freedom of opinion and expression, including the freedom to hold opinions without interference.

1372. The Mission takes note of the statement of the Gaza authorities of the opening of criminal investigations into some of the killings that happened between 28 December 2008 and 18 January 2009. It is, however, concerned that – according to the Gaza authorities – these investigations concern only family feuds or individual acts motivated by personal revenge. The Mission also notes with concern that, at the time of drafting this report, appeals by international and domestic human rights organizations to the Gaza authorities to conduct serious investigations into all allegations of violations, to bring perpetrators to justice and to publish all of their findings remain unanswered. Failure to conduct credible investigations into these allegations and hold those responsible accountable will prevent the victims from accessing justice and encourage a culture of impunity.

THE WEST BANK, INCLUDING EAST JERUSALEM

1373. As explained above in chapter I, the Mission believes that the reference in its mandate to violations "in the context" of the military operations in Gaza required it to go beyond the violations that occurred in and around Gaza. it also believes that violations within its mandate in terms of time, objectives and targets, include those that are linked to the December 2008 – January 2009 military operations, and include restrictions on human rights and fundamental freedoms related to the strategies and actions of Israel in the context of its military operations.

1374. Developments in Gaza and the West Bank are closely interrelated, in the Mission's view, an analysis of both is necessary to reach an informed understanding of and to report on issues within the Mission's mandate. On the one hand, the events in Gaza have consequences in the West Bank, on the other, pre-existing problems in the West Bank have been exacerbated by the Gaza military operations.

1375. In its examination of the West Bank with respect to actions taken by Israel, the Mission focused on four key aspects in their linkage to the Israeli military operations in Gaza: (a) the sharp increase in the use of force by Israeli security forces, including the military, in the West Bank; (b) the tightening and entrenchment of the system of movement and access restrictions; (c) the issue of Palestinian detainees and especially the increase in child detainees during and after the military operations; and (d) the Gaza corollary of the detention of Hamas members of the Palestinian Legislative Council.[703] While the treatment by the Gaza authorities of those opposing its policies is discussed in chapter XIX, similar issues with regard to the conduct of the Palestinian Authority in the West Bank also called for investigation. Linkages with the Israeli operation in Gaza are elaborated in the respective chapters.

[703] The issue of Gazans detained by Israel during and following the operations from December 2008 to January 2009 is discussed in chapter XV.

Methodology

1376. One consequence of the refusal by Israel to cooperate with the Mission was that it was unable to visit the West Bank to investigate alleged violations of international law. The Mission nonetheless received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission met with representatives of a number of human rights organizations and with members of the Palestinian legislature and other community leaders (see annex). It invited experts, witnesses and victims to participate in the public hearings held in Geneva on 6 and 7 July 2009. The Mission also conducted telephone interviews with affected individuals and witnesses, and reviewed relevant video and photographic material.

1377. Owing to the lack of access to the West Bank, the chapters in the section below rely on secondary information to a greater extent than in the previous sections.

1378. The Mission found the witnesses it heard in relation to the situation in the West Bank to be credible and reliable. The Mission is also satisfied that the reports it reviewed and to which it refers are credible and based on sound methodologies.

1379. The Mission also wrote to the Palestinian Authority and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in this section. The information received by the Palestinian Authority was taken into account in the present chapter. The Government of Israel has not responded to the Mission's requests.

1380. Owing to the complexity of the issues relating to Palestinian detainees and of freedom of movement and access, the chapters on these issues include an explanatory introduction that sets out the factual parameters of the problems and explains some of the key terminology and concepts.

XX. TREATMENT OF PALESTINIANS IN THE WEST BANK BY ISRAELI SECURITY FORCES, INCLUDING USE OF EXCESSIVE OR LETHAL FORCE DURING DEMONSTRATIONS

1381. The information gathered by the Mission indicates an ongoing pattern of ill treatment and use of force by the Israeli security forces against Palestinians in the West Bank, including East Jerusalem. Ill treatment and low levels of force are reported being common in encounters at checkpoints between Palestinians and the Israeli security forces (army, police and border police),[704] while a greater, sometimes lethal, degree of force has been used during demonstrations, incursions and search and arrest operations. With heavily armed Israeli military forces present throughout the West Bank, the possibility of violence always exists. As a witness reported to the Mission, "the use of force is part of the system of control of the occupation, where a key element is fear, which can only be sustained by the constant threat and the periodic act of violence".[705]

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[704] B'Tselem, "Beatings & Abuse" (www.btselem.org/english/beating_and_abuse/index.asp). For the use of private contractors at checkpoints, see chap. XXI.

[705] Mission interview with Defence for Children International-Palestine Section, 3 July 2009.

1382. Violence against Palestinians in the West Bank does not only come from the security forces. The Israeli military operations in Gaza commenced when the West Bank was experiencing some of the worst acts of settler violence in several years.[706]

1383. Witnesses and experts informed the Mission of a sharp increase in the use of force by the Israeli security forces against Palestinians in the West Bank from the commencement of the Israeli operations in Gaza.[707] A number of protesters were killed and scores were injured by Israeli forces during Palestinian demonstrations following the beginning of the,[708]the degree of violence employed in the West Bank during the operations in Gaza, has been sustained since 18 January.[709] Reports from non-governmental organizations confirm this information.[710]

A. Settler violence in the West Bank in the period preceding the Israeli military operations in Gaza

1384. In early December 2008, Israeli settlers in the city of Hebron rioted and perpetrated acts of violence against the local Palestinian population. Although Israel, as the occupying power, has the responsibility to maintain public order and safety in the occupied territory,[711] the Israeli police did not intervene to protect Palestinians.[712] Settler violence is a regular occurrence, targeting primarily Palestinian civilians and their property but also, on occasion, Israeli soldiers.[713] According to the Office for the Coordination of Humanitarian Affairs, "a root cause

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[706] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008. In its reply to the Mission (5 August 2009), the Palestinian Authority reported 58 acts of violence perpetrated by settlers on Palestinian civilians from 16 November 2008 to 15 December 2008, compared to a monthly average of 26 reported incidents in the year to date..

[707] The NGO Al-Haq reported another particularly disturbing case of "what appears to be a willful killing" of a farmer from Hebron on 17 January 2009. According to medical personnel who were asked to collect his body from the Israeli soldiers by whom he had been detained, the farmer appeared to have been shot at point blank in the stomach while seated. See "A vicious reminder of occupation in the West Bank: Israeli soldiers Kill Palestinian farmer in Hebron". Al-Haq press release, 17 January 2009.

[708] Mission interview with Al-Haq, 2 July 2009 (six deaths were recorded by Al-Haq). See also Weekly Protection of Civilians reports of the Office for the Coordination of Humanitarian Affairs for the relevant period; the communication received by the Mission from the Palestinian Authority, which reported 30 injuries by shooting from 27 December 2008 to 18 January 2009; the statements of Mohamed Srour and Jonathan Pollak at the public hearings in Geneva, 6 July 2009; and B'Tselem press release of 18 June 2009 "Prohibit live ammunition in circumstances that are not life-threatening in the West Bank".

[709] Mission meetings with B'Tselem on 3 July 2009 and Al-Haq on 2 July 2009.

[710] B'Tselem reported an increase in the number of beatings, and referred to some particularly serious cases, including that of an elderly shepherdess whose arm was broken by border police on 11 March 2009. "Border police break arm of Halimeh a-Shawamreh, near the Separation Barrier", Deir al-'Asal al-Foqa, March 2009".

[711] The Palestinian Authority is not allowed to enter the part of the Old City of Hebron known as "H2" as a result of the Protocol Concerning the Redeployment in Hebron of January 1997.. With regard to the general situation in Hebron see www.btselem.org/English/Hebron/.

[712] "Al-Haq calls for immediate measures to stop settler violence in Hebron and throughout the Occupied Palestinian Territory", Al-Haq urgent release,5 December 2005. In its reply to the Mission, the Palestinian Authority reported 335 settler attacks from 19 May 2008 to 17 July 2009.

[713] In 2008, the Office for the Coordination of Humanitarian Affairs recorded 290 incidents of settler violence, resulting in 131 Palestinian deaths, a substantial rise over previous years. Most incidents reported involved groups of

of the phenomenon is Israel's decade-long policy of facilitating and encouraging the settling of its citizens inside occupied Palestinian territory, defined as transfer of population and prohibited by international humanitarian law."[714] Israeli media attribute the increase in settler violence to the settler movement which became increasingly radicalized after the Gaza Disengagement in August 2005.[715]

1385. According to various sources,[716] rioting erupted in Hebron on 4 December 2008 after the evacuation by the Israeli security forces of Israeli settlers from the Rajabi family home in the old city of Hebron. United Nations sources reported that, at first, clashes erupted between settlers and Israeli security forces, causing injuries on both sides; afterwards, "violence continued in Hebron city. Groups of settlers threw stones at Palestinian houses and set fire to vehicles, agricultural fields, houses and the contents of one mosque. Settlers also attempted to force entry into Palestinian homes."[717] One incident in which Israeli settler Ze'ev Braude shot and injured three members of the al-Matariyeh family was filmed and broadcast by the international media.[718]

1386. The wave of violence continued for days.[719] Palestinian hospitals reported 17 injuries during the period, including five bullet wounds.[720]

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settlers attacking vulnerable targets (children, women and the elderly) mainly in the Hebron and Nablus areas. In January 2007, B'Tselem launched a camera distribution and video advocacy project focusing on the Occupied Palestinian Territory. The project is aims at providing "Palestinians living in high-conflict areas with video cameras, with the goal of bringing the reality of their lives under occupation to the attention of the Israeli and international public, exposing and seeking redress for violations of human rights." The B'Tselem project has resulted in footage of these kinds of attacks being publicized, such as the attack by settlers on herders in Susya, June 2008..

[714] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[715] See also, "Israel's religious right and the question of settlements", International Crisis Group Middle East Report N°89 – 20 July 2009.

[716] "Settler violence after evacuation of Occupied House", Temporary International Presence, Hebron, Press Release; "Israel braces for settler violence in wake of Hebron house evacuation", *Ha'aretz*, 5 Decemeber 2008, and "Dozens injured as Israeli army removes settlers from Hebron house", Maan News Net, 4 December 2008.

[717] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[718] For example, "Settlers filmed shooting at Palestinians turn themselves in", *Ha'aretz,* 7 December 2008. The settler was eventually released and not charged or prosecuted.

[719] According to the Office for the Coordination of Humanitarian Affairs, "settler violence quickly spread to other West Bank areas (…) groups of settlers threw stones at Palestinian vehicles in more than twelve locations on the day of the evacuation and attacked Palestinian communities, setting fire to Palestinian property and land, cutting down olive trees, slashing vehicle tires and vandalizing other property", Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008., See also the Alternative Information Centre Settler Violence report for November/December 2008 available at www.alternativenews.org/publications/164-settler-violence-reports/1829-settler-violence-report-november-december-2008-.html and *Ha'aretz*: www.haaretz.com/hasen/spages/1043794.html

[720] "IDF declares Hebron area a closed Military Zone after settler rampage", *Ha'aretz*, 4 December 2008.

1387. The use of force against Gaza solidarity demonstrations in the West Bank during the Israeli operations in Gaza

1388. There was a significant increase in the use of force by Israeli security forces during demonstrations in the West Bank after the start of the Israeli operations in Gaza. The degree of force used against protests during the previous year had already been high, including during protests against the Wall in places such as Jayyous, al-Ma'sara, Bi'lin and Ni'lin.[721] The villages where demonstrations are regularly held have lost or stand to lose much of their land to Israeli settlements and the Wall. A vibrant grass-roots, non-violent resistance movement has evolved that has attracted support from Israeli and international activists. New tactics and weapons used by the Israeli security forces aimed at suppressing the popular movement[722] have resulted in deaths and injuries. For example, in July 2008, Israeli border police killed two children, Ahmad Musa, aged 10,[723] and Yusef Amera, aged 17, both of whom were shot in the head.[724]

1389. Another cause of concern for the Mission were further allegations of the use of unnecessary, lethal force by Israeli security forces. At the public hearing in Geneva of 6 July 2009, two witnesses, Mohamed Srour and Jonathan Pollak, described the fatal shooting, on 28 December 2008, of two young men from the village of Ni'lin during a protest against the Israeli operations in Gaza. Mr Srour was himself shot in the leg during the same protest.[725]

1390. At the hearing on 6 July, Mr Srour stated that as a result of this war, many people all around the West Bank, but also in his village Ni'lin, wanted to demonstrate and express their solidarity with the people of Gaza. The demonstration included important participation of people from the different solidarity movements, from Israel as well from the international community." The two witnesses spoke of the atmosphere that they had encountered in the confrontation with

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[721] "Repression Allowed, Resistance Denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation", Addameer and Stop the Wall report, July 2009. For a list of the 19 people including 11 children killed in anti-wall demonstrations up until July 2009, see http://palsolidarity.org/2009/06/7647 .

[722] See Ni'lin Factsheet at http://stopthewall.org/factsheets/1669.shtml

[723] 29 July 2008: Killing of Ahmed Husam Yusef Mousa (10) in Ni'lin. According to Al-Haq "Ahmad Husam Musa, a ten-year-old child, hid in an olive grove. A member of the Israeli Border Police saw Ahmad Musa, left the Border Police vehicle, aimed his rifle and fired a live bullet. Shot from a distance of 50 metres, the bullet entered Ahmad Musa's forehead and exited through the back of his skull. While two of the demonstration's organisers attempted to carry Ahmad Musa to safety, they were fired upon by the Border Police. They succeeded in carrying the child to safety, but he was already dead", "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", Al-Haq press release, 7 August 2008.

[724] "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", Al-Haq press release, 7 August 2008. See also "Repression Allowed, Resistance Denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation", Addameer and Stop the Wall report, July 2009. To illustrate the use of unusual weapons which, the report states, is aimed at creating lasting injury, on 13 June 2008, Ibrahim Burnat (aged 26) was shot three times in the thigh while in the weekly anti-Wall demonstration in Bi'lin. According to his medical report, he was shot with an explosive bullet. The report also states that, in the four villages mentioned, 1,566 people had been injured while six people had been killed at protests.

[725] The testimony of Mr. Srour and Mr. Pollak, including a video of the events can be viewed at http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090706pm1-eng.rm?start=00:35:37&end=01:41:24.

the soldiers and border police, which was markedly different from the situation before the operations in Gaza. Mr. Pollak stated:

> The atmosphere of the incident, and during and after the start of the war generally was that all checks and balances had been removed. The soldiers were saying things related to the Gaza war, taunting things like, "It's a shame we're not in Gaza killing Arabs." There seemed to be an enthusiasm to confront and the amount of live ammunition used shows this. The behaviour of the soldiers has escalated immensely – not that in the past the army was so gentle.

1391. According to the witnesses, the main demonstration had ended when the army and border police used tear gas and stun grenades to disperse the crowd. The next sequence of events took place on the edge of the village, at a considerable distance from the site of the construction of the Wall. The two young men killed were part of a small group of demonstrators, some of whom had thrown stones at the soldiers. In video footage, four or five soldiers appeared to be casually walking around and not seemingly threatened. No tear gas was used at that stage. Dozens of rounds of live ammunition were fired in the direction of the group of young men, hitting three of them within minutes of each other. Mohamed Khawaja was shot in the forehead; Arafat Khawaja, who had turned to run away, was shot in the back, and Mohammed Srour was shot in the leg. Subsequently an ambulance was prevented from reaching the victims, who had to be carried some distance and were eventually put onto a pick-up truck, at which the army fired tear gas. Arafat Khawaja was pronounced dead on arrival at the hospital and Mohamed Khawaja passed away a few days later.

1392. Two Palestinians were killed during other protests against the military operations in Gaza. On 4 January, Mufid Walwel was shot dead during a demonstration near Qalqilya, where the Wall is to be built. In Hebron, on 16 January, Mus'ab Da'na died after being shot in the head. According to an NGO report, the Israeli border police are believed to have been responsible for both incidents.[726]

1393. The Mission has asked the Government of Israel to explain the increased use of live ammunitions during demonstrations in the West Bank, but has received no reply.

B. The increased level of force since the end of the operations in Gaza

1394. Since the end of the December-January military operations in Gaza, the increased level of force has reportedly continued against demonstrators and in other situations. The Mission heard from an eye witness, how, on 13 March 2009, United States citizen Tristan Anderson was hit, while participating in an anti-Wall demonstration in Ni'lin, with a high velocity tear gas canister in the forehead. According to the witness, Mr. Anderson was taking pictures of Israeli soldiers and border police attacking the demonstrators. A high velocity long-range tear gas canister was used at short range, crushing his forehead. As he laid on the ground, the border police, who would have been able to seen him falling down and lying on the ground, continued to shoot tear gas in his direction. Video footage received by the Mission showed Palestinian paramedics in bright orange uniforms putting Mr. Anderson's body on to a stretcher, a tear gas canister landing

[726] Al-Haq affidavit No. 4667/2009 and 4608/2009.

directly beside them and a large cloud of gas developing.[727] According to the witness, Israeli forces delayed Mr. Anderson's transfer from the Palestinian ambulance to an Israeli ambulance at the checkpoint before entering Israel.[728] At 1 August 2009, Mr. Anderson remains in a critical condition in an Israeli hospital.

1395. On 17 April 2009, in Bi'lin, Bassem Abu Rahma was killed by a high velocity tear gas canister which was shot at his chest from a distance of 30 to 40 metres. The killing, which took place during a peaceful demonstration against the Wall, was filmed.[729] The footage shows Mr. Abu Rahma standing on a small hill, clearly visible and not armed or otherwise posing a threat.

1396. Eye witnesses reported to the Mission that they felt that it had become almost a sport for snipers, who now routinely enter villages and occupy roofs of buildings, to aim at protesters in a manner that is inappropriate in the context of crowd control, with apparent disregard for the lives or limbs of the persons they hit.[730]

1397. On 5 June 2009, five people were shot by snipers in a demonstration in Ni'lin, of whom one, Aqel Srour, was killed, and another, a 15 year-old boy, was shot in the abdomen and will be permanently disabled.[731] Al-Haq described the shooting of Srour, who according to Al-Haq had run to assist the boy who was shot in the abdomen, as a case of "wilful killing"[732].

1398. The weapons used by the security forces are also a cause for concern. Many of the injuries to protesters during anti-Wall demonstrations in recent months (in Ni'lin, Bi'lin, Jayyous, Bitunya and Budrus) and the death of Aqel Srour and that of a 14-year-old who was killed in Hebron in February[733]were reportedly inflicted by a .22 caliber Ruger rifle. B'Tselem has protested against the use of this weapon as a means of crowd control on the grounds that it is potentially lethal.[734] In its response to B'Tselem's letter of 26 February, the Israeli Judge Advocate General wrote, that "the open-fire regulations applying to the .22 ammunition are

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[727] See http://palsolidarity.org/2009/03/5324.

[728] Mission telephone interview with Ulrika Karlsson, 5 August 2009. Israel does not allow Palestinian ambulances to enter Israel. The witness also reported having been shot herself in January, in the calf, with a .22 bullet shot aimed at her, while moments later the only other person near her was shot in the foot. See also the Democracy Now news report "US Consul General says awaiting Israeli Report on IDF shooting of American citizen", 16 March 2009.

[729] "Our peaceful village should no longer be the graveyard of our youth", 17 April 2009, at the website www.bilin-village.org/english/articles/press-and-independent-media/Our-Peaceful-Towns-Should-No-Longer-Be-The-Graveyard-Of-Our-Youth.

[730] Mission telephone interview with Ulrika Karlsson on 5 August 2009 and direct interview with Jonathan Pollak on 6 July 2009.

[731] Mission interview with Jonathan Pollak and Mohamed Srour on 6 July 2009 and telephone interview with Ulrika Karlsson on 5 August 2009. See also Addameer report.

[732] "The willful killing of Aqel Srour following a Ni'lin demonstration against the Annexation Wall: a deplorable illustration of impunity's slippery slope", Al-Haq press release, 25 June 2009.

[733] "Prohibit live ammunition in circumstances that are not life-threatening in the West Bank", B'Tselem, Press Release, 18 June 2009.

[734] Correspondence received by the Mission, available at www.btselem.org/English/Press_Releases/20090709.asp.

comparable, in general, to the open-fire rules applying to "ordinary" ammunition" and that "following your letter, we directed that the forces again be instructed with respect to the binding Open-Fire Regulations that apply to use of the Ruger rifle."[735] However, from the nature of the killing of Aqel Srour and the injuries sustained by protesters in the months following the Judge Advocate General's response, it is clear that the use of the Ruger rifle has not been tempered.[736]

1399. The Israeli armed forces' open-fire regulations for the West Bank provide that different rules apply in situations where Israeli citizens are present, as compared to situations where there are only Palestinians present.[737] For example, they provide for the use of live ammunitions under certain conditions, in the case of violent "disturbances"[738] near the Wall or in the nearby area. Where Israelis participate, however, the use of live ammunitions is forbidden. Similarly different provisions are found with regard to the use of warning shots and rubber bullets. Witnesses indicated to the Mission, however, that the army no longer distinguishes between Palestinians and their Israeli and international supporters, and uses a greater degree of force against all.[739]

1400. The Mission asked the Government of Israel about the differences in open fire regulations applied in the Occupied Palestinian Territory in situations in which Israeli citizens are present as opposed to situations where none are present, but has received no reply.

1401. In a recent court hearing, Colonel Virob, an Israeli Brigade Commander in the West Bank, defended the routine use of force in achieving the goals of the occupation.[740] According to the Association for Civil Rights in Israel, when Colonel Virob was asked about using physical force during an investigation against people who are not suspects, he stated that "using violence and aggression to prevent the situation from escalating and the need to use even more violence is not only allowed but sometimes imperative (…), giving a blow, a push, in a situation even with people who are not involved in an operational situation, if it can advance the mission, is certainly possible." He added that "the way you use violence should also be appropriate (…), a slap, sometimes a hit to the back of the neck or the chest, in cases that there is friction, a reaction from the Palestinian side, sometimes a knee jab or strangulation to calm someone down is reasonable."[741]

1402. The Mission considers with concern reports of gratuitous abuse by Israeli soldiers. It heard testimonies in a video footage shown on Israeli television[742] that described a search and

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[735] Letter from Major Yehoshua Gortler, Legal Assistant to the Judge Advocate General to B'Tselem, dated 15 March 2009.

[736] See also B'Tselem letter to Brig. Gen. Avichai Mandelblit, Judge Advocate General, 17 June 2009.

[737] See *Open Fire Regulations Booklet for the Soldier in Judea and Samaria region*, issued by the Headquarters of the Central Command in July 2006. See "Open fire regulations for Palestinians only" (in Hebrew), *Maariv* at www.nrg.co.il/online/1/ART1/590/452.html.

[738] Situations of disturbances are defined as those that may be the result of demonstrations, marches, and similar events.

[739] Mission interview with Jonathan Pollak, 6 July 2009.

[740] "Truth walks into a Jaffa court", by Michael Sfard, Yesh Din, 10 June 2009.

[741] Association for Civil Rights in Israel Press Release, 24 June 2009.

[742] Available at http://news.nana10.co.il/Article/?ArticleID=641918&TypeID=1&sid=126.

detain operation by the Kfir brigade in the West Bank village of Haris. Hundreds of troops had participated in a nocturnal raid on a village aimed at finding boys who were thought to have thrown stones at settlers' cars some days previously. On 9 June 2009, *The Independent* reported on the operation, quoting soldiers of the Kfir Brigade involved. One was quoted as saying he saw many soldiers "just knee [Palestinians] because it's boring, because you stand there ten hours, you're not doing anything, so they beat people up."[743] A second soldier described a "fanatical atmosphere" during the search operations. "We would go into a house and turn the whole thing upside down", he recalled, but no weapons were found. "They confiscated kitchen knives." The first soldier stated that numerous soldiers were involved. "There were a lot of reservists that participated, and they totally had a celebration on the Palestinians: curses, humiliation, pulling hair and ears, kicks, slaps. These things were the norm." He described the beating of a child:

> The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves ... [it was] just because he's an Arab. He was something like 15 years old.

1403. He stated that the incidents in the toilet were the "extreme" and added that the beatings did not draw blood. They were "dry beatings, but it's still a beating".[744]

1404. Video footage uploaded to the internet by Israeli border police, and filed under "comedy" offers an insight into how wanton abuse is perceived by members of the security forces themselves.[745] The Mission has received reports of other, similar occurrences,[746] giving rise to the concern that an increased level of force and the dehumanization have become normalized in the practice of security forces.

C. The role of impunity

1405. Several witnesses told the Mission that, during the operations in Gaza, the sense in the West Bank was one of a "free for all", where any behavior was permitted for Israeli forces. An even greater use of force than that used in the West Bank could be attributed to a change in atmosphere or attitude towards the "other" during time of war. There are indications that this shift in attitude was also apparent during the war in Lebanon in 2006.[747] The concept of what is

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[743] "Bound, Blindfolded and Beaten, By Israeli Troops", *The Independent*, 9 June 2009.

[744] Ibid.

[745] "Border Police upload footage of their abuse of Palestinians to YouTube", *Ha'aretz*, 19 June 2009. The article reports how in the footage an Arab youth slaps himself while a voice is heard instructing him to say "I love you, Border Police," and "I will f**k you, Palestine," in Arabic, to the raucous laughter of those present, all border police.

[746] For example, "Soldiers come across Palestinians and detain and abuse them for hours, Dura, April 2009", B'Tselem.

[747] Mission telephone interview with Sarit Michael, 5 August 2009. In the video footage of the shooting of an Israeli demonstrator during the war in Lebanon in 2006, a border police member can be heard saying, after the order to

considered "normal" and "acceptable" conduct risks shifting to even higher levels, if those in positions of responsibility do not respond appropriately. In the face of the recently increase in violence by the Israeli security forces in the West Bank, B'Tselem stated that condemnations by Ministers and other officials

> remain solely declarative. Security forces, meanwhile, misusing their power, continue to abuse and beat Palestinians, among them, minors (…). If a message is sent to security forces, it is that even if the establishment does not accept acts of violence, it will not take measures against those who commit them. The effect of such a message is that the lives and dignity of Palestinians are meaningless and that security forces can continue, pursuant to the function they serve, to abuse, humiliate, and beat Palestinians with whom they come into contact.[748]

1406. In the past, every case in which a Palestinian not participating in hostilities was killed was subject to criminal investigation. This policy changed in 2000. Criminal investigations are now the exception,[749] these cases are now simply discussed in an "operational debriefing" by the military itself.[750] In 2003, the Association for Civil Rights in Israel and B'Tselem filed a petition to reverse this policy change, demanding that every civilian death be independently investigated. The petition included demands for investigations into individual deaths as well as the principle question relating to the overall policy. The former were dismissed, while the principle question is still pending.[751]

1407. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an "indictment being filed".[752] B'Tselem reported in June 2009 that the charges against Mr Braude, the Hebron settler who was filmed shooting and injuring three Palestinians in December 2009, would be dropped, as the court had ordered that "secret evidence" against him be disclosed, and the potential public harm of this disclosure would outweigh the harm done by a person, documented as having committed a violent crime, being released back into society.[753]

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open fire was given, "now we're in Lebanon". When passing by the injured demonstrator lying on the ground bleeding from his head injury, the commander ignored the calls by a woman to get an ambulance for the injured Israeli. He answers that there are many Israelis injured in Lebanon, too. As shown in the footage, the demonstrator was shot at close range from behind, as he was walking in front of the soldiers. See www.liveleak.com/view?i=8dba196f36.

[748] "Beating and Abuse", B'Tselem.

[749] Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

[750] Mission interview with Daniel Reisner, 6 July 2009. See also "Response to the Attorney-General's Refusal Concerning a Gaza Probe" at www.acri.org.il/eng/story.aspx?id=635 and chapter XXVIII below.

[751] See the Association for Civil Rights in Israel press release at www.acri.org.il/eng/Story.aspx?id=216. Text of the petition is available at www.btselem.org/english/Legal_Documents/HC9594_03_Investigations_Appeal.rtf.

[752] "Law Enforcement upon Israeli Civilians in the OPT", Yesh Din data sheet, July 2008.

[753] B'Tselem compares this to the admission in judicial proceedings of secret evidence in the prosecution of Palestinians (see also section below). See "8 June '09: Bring Ze'ev Braude, the shooter from Hebron, to justice" B'Tselem press release.

1408. In July 2009, an Israeli activist who had been shot in the head in 2006 by the Israeli border police was awarded compensation for his injury in an out of court settlement. To date, the commander who ordered the shooting has not been subject to criminal investigation.[754]

1409. On 7 July 2008, Ashraf Abu-Rahma was shot at short range while blindfolded and handcuffed. The incident was filmed and widely broadcast.[755] When the Israeli Military Advocate General charged the officer who ordered the shooting with "conduct unbecoming", Israeli international law Professor Orna Ben-Naftali stated that "the decision (was) indicative of a policy of tolerance towards violence against non-violent civilian protests against the construction of the Separation Wall". She added that "the implication of such a policy is twofold: first, it might transform 'conduct unbecoming' – which as a matter of law is a war crime – into a crime against humanity; second, it may well be construed as an invitation to the international community to intervene through the exercise of universal jurisdiction."[756]

D. Legal analysis and conclusions

1410. Israel has obligations to Palestinians in the West Bank under both international humanitarian law and international human rights law. With regard to the former, the obligations flow from the status of Israel as the occupying power and the consequent obligations concerning protected persons. With regard to the latter, specific human rights obligations to all individuals in the West Bank arise from both customary law and the obligations assumed by Israel under the various human rights conventions that it has ratified. The obligations under both bodies of law are complementary and mutually reinforcing, and provide a clear framework against which the facts outlined above may be analysed (see chapter IV above). With regard to the issues discussed in the present chapter, the most relevant obligations are set out below.

1. Violence by settlers against Palestinians in the West Bank

1411. Israel has an obligation under customary law, as reflected in article 43 of the Hague Regulations, to ensure public order and safety in the West Bank:

> Article 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

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[754] Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

[755] "Soldiers fires 'rubber' bullet at handcuffed, blindfolded Palestinian", B'Tselem, July 2008, at www.btselem.org/English/Video/20080707_Nilin_Shooting.asp.

[756] "Whose 'conduct unbecoming'? The shooting of a handcuffed, blindfolded Palestinian demonstrator, by Orna Ben-Naftali and Noam Zamir, *Journal of International Criminal Justice*, 3 March 2009 Recently, the Israeli Military Advocate General's decision to charge commander Omri Bomberg and his subordinate with "conduct unbecoming" was overturned, the second time in recent decades that a decision by the Military Advocate General has been overturned. The first being related to the demotion of General Tamir, who let his 14-year-old son drive his military vehicle, see "Neither an officer nor a gentleman", *Ha'aretz*, 31 July 2008; and "Israeli High Court of Justice rules against Judge Advocate General's 'extremely unreasonable' decision", B'Tselem press release, 1 July 2009.

1412. This obligation is supported by the obligation by Israel under article 27 of the Fourth Geneva Convention (set out in chapter XV above) to ensure that Palestinians, as protected persons, are protected against all acts or threats of violence.

1413. Israel also has obligations under international human rights law to protect Palestinians from violence by private individuals, and to investigate and punish acts of violence through the application of criminal law, without discrimination.

1414. Palestinians thus have "the right to security of the person" under article 9 (1) of the International Covenant on Civil and Political Rights, which the Human Rights Committee has read to mean that the State has an obligation to take reasonable and appropriate measures to protect individuals from threats to the life of persons under their jurisdiction, including threats from private actors.[757] Under article 2 of the Covenant, Israel has an obligation "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant" and to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". In applying the law, Israel has an obligation under article 26 of the Covenant to ensure that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". Finally, insofar as acts of violence amounting to cruel, inhuman or degrading treatment are perpetrated by private individuals with the acquiescence of public officials (including security forces), Israel has an obligation under article 16 of the Convention against Torture to prevent such acts:

> Article 16 (1). Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment …, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Conclusions

1415. With regard to violent acts perpetrated by settlers against Palestinians, such as those relating to the cases of December 2008 in Hebron reported above, the Mission concludes, on the basis of the reports received and the video footage viewed, that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances, evidence of the acquiescence of the security forces in this violence could amount to a violation of the relevant obligations relating to cruel, inhuman or degrading treatment.

1416. Insofar as this acquiescence only occurs in respect of violence against Palestinians by settlers, and not vice-versa, there is a strong argument that the behaviour of the security forces is in breach of the obligations of Israel to not discriminate on the basis of national origin under the International Covenant on Civil and Political Rights.

1417. The facts also suggest a violation of article 26 of the International Covenant on Civil and Political Rights guaranteeing equal protection of the law, particularly insofar as there is a failure to investigate Palestinians' allegations of assault by settlers.

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[757] For example, *William Eduardo Delgado Paez v. Colombia*, Communication 195/1985, views adopted 12 July 1990.

1418. Finally, the failure by Israel to adequately investigate allegations of the failure of the State to protect Palestinians, and of the acquiescence of state actors before the violence of private actors and thus to provide an effective remedy for those suffering human rights violations also place Israel in violation of article 2 of the International Covenant on Civil and Political Rights.

2. Actions by Israel with regard to Gaza solidarity demonstrations

1419. All individuals in the West Bank enjoy the right to freedom of expression provided in article 19 of the International Covenant on Civil and Political Rights:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1420. Israel has an obligation under article 21 of the International Covenant on Civil and Political Rights to recognize the right of peaceful assembly. While restrictions may be placed on the exercise of this right, they must be "in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". In accordance with article 2 of the Covenant, any restrictions on the right of peaceful assembly can only be imposed "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

1421. In dealing with Palestinian civilians, including in the context of public demonstrations, Israel has an obligation under articles 2 and 6 of the International Covenant on Civil and Political Rights to ensure, without distinction of any kind, that no one is arbitrarily deprived of their life:

> Article 2 (a). Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Article 6 (1). Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

1422. A further obligation on Israel is to ensure that no one is subject to torture or to cruel, inhuman or degrading treatment or punishment (article 7 of the International Covenant on Civil and Political Rights and articles 2 and 16 of the Convention against Torture), without discrimination.

1423. The Fourth Geneva Convention places a number of obligations on Israel relevant to the treatment of Palestinians participating in demonstrations. Under article 27, Israel must ensure that Palestinians as protected persons are "at all times … humanely treated, and … protected, especially against all acts of violence or threats thereof and against insults and public curiosity". Treatment by Israel as the occupier must be "without any adverse distinction based, in particular, on race, religion or political opinion". From article 32 derives the prohibition of "taking any

measure of such a character as to cause the physical suffering or extermination of protected persons".

1424. Finally, Israel has obligations under articles 146 and 147, as set out in chapter IV, which include an obligation to:

> bring before its courts persons alleged to have committed, or to have ordered to be committed ... grave breaches of the Fourth Geneva Convention, including wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

1425. The content of the international human rights obligations set out above has been clarified through a number of other sources, including the jurisprudence of the human rights treaty bodies (in this, particularly the Human Rights Committee), and various standards adopted under the auspices of the United Nations. The most relevant in respect of the facts outlined above are set out below.

1426. The permissible use of force by those exercising police powers is narrowly construed under international human rights law. The Code of Conduct for Law Enforcement Officials,[758] states that law enforcement officials (which include military authorities when exercising police powers) "may use force only when strictly necessary and to the extent required for the performance of their duty" (art. 3). Under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:[759]

> law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

1427. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials are obliged, inter alia, to "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment".

1428. Insofar as the events involve individuals who are human rights defenders, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) is also relevant,[760] in particular article 5 which affirms the right of

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[758] General Assembly resolution 34/169.

[759] Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

[760] General Assembly resolution, 53/144, annex. Israel joined consensus when the Declaration was adopeted by the Assembly.

everyone “to meet or assemble peacefully” for the purpose of promoting and protecting human rights and fundamental freedoms.

Conclusions

1429. The dispersal by Israeli security forces of demonstrations in the West Bank is prima facie in violation of the rights to freedom of expression and to peaceful assembly. Insofar as the protesters were protesting against the violation of human rights in Gaza, the activities of the security forces in dispersing demonstrations ran counter to the provisions of the Declaration on Human Rights Defenders.

1430. Regardless of whether the facts indicate that the above mentioned rights could be permissibly limited under the terms of the International Covenant on Civil and Political Rights, the methods and means of dispersal are questionable. The use of force described to the Mission against peaceful demonstrations is clearly prohibited in such situations, in particular the lethal use of tear gas canisters against demonstrators, of live ammunition (including .22 ammunition), and of snipers. It should be emphasized that the norms relating to the use of force by law enforcement officers outlined above, continue to apply even when the demonstrations are no longer peaceful, such as when stones are thrown, such as in the case of the Ni’lin demonstration of 28 December. The situation described by the witnesses to the killings in Ni’lin suggests that firearms were used when there was no threat to the life of the Israeli security forces or others under their protection. According to the witnesses, both the deceased were shot in the upper body and one of them in the back.

1431. On the basis of the facts obtained, the Mission finds that the use of firearms resulting in the death of demonstrators constitutes a violation of article 6 of the International Covenant on Civil and Political Rights as an arbitrary deprivation of life. Reports that Israeli security forces delayed the provision of medical aid to the injured in at least two demonstrations also suggest that violations occurred under the Fourth Geneva Convention and Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

1432. The impermissible use of force that resulted in injury rather than death is in clear violation of a number of standards, including articles 7 and 9 of the International Covenant on Civil and Political Rights.

1433. The use of snipers and lethal ammunitions against demonstrators in situations where there is no threat to soldiers’ lives or to the lives of others under their protection appears to indicate an intention, or at least recklessness, to cause harm to civilians, which may amount to wilful killing. Several of the incidents reported to the Mission raise concerns in this regard.

1434. The discrimination in the open-fire regulations for security forces dealing with demonstrations based on the presence of persons of a particular nationality, violates the principle of non-discrimination of article 2 of the International Covenant on Civil and Political Rights and article 27 of the Fourth Geneva Convention. These violations are all the more serious insofar as the regulations reflect a State policy based on discrimination.

3. Violence by Israeli security forces outside the context of demonstrations

1435. Reports on incidents such as the raid on Haris of March 2009 and the types of acts described by Colonel Virob, as well as those described in affidavits reviewed by the Mission raise concerns with regard to their compliance with article 32 of the Fourth Geneva Convention, article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture on the prevention of cruel, inhuman or degrading treatment or punishment.

4. Accountability

1436. The Mission emphasizes that effective investigation and, if appropriate, prosecution resulting from acts by its agents or by third parties involving deprivation of life, serious injuries and torture or inhuman or degrading treatment or punishment, and other possible violations of international humanitarian law and human rights law, is an obligation of the State of Israel. The Mission is concerned that the facts before it point to a failure by Israel to do so with regard to acts committed against Palestinians as reported above.

5. Conclusions

1437. The Mission is alarmed at both the reported increase in settler violence over the past year and the failure of the Israeli security forces to prevent settler attacks against Palestinian civilians and their property.

1438. The Mission is also gravely concerned at the increased use of force, including the use of lethal force, in response to demonstrations, and at the generalized violence of security forces against Palestinians living under occupation in the West Bank. Of particular concern is the apparent and systematic lack of accountability for acts of violence committed by Israeli security forces against Palestinian civilians.

1439. While the filming of incidents has led to the exposure of particular grave incidents of violence, the Mission is also concerned about violence that may have occurred out of sight gone unreported.

1440. In the opinion of the Mission, a line has been crossed, what is fallaciously considered acceptable "wartime behaviour" has become the norm. Public support for a more hard-line attitude towards Palestinians generally,[761] lack of public censure and lack of accountability[762] all combine to increase the already critical level of violence against the protected population.

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[761] As stated by a number of interviewees, such as Sarit Michaeli during a telephone interview, 5 August 2009.

[762] Michael Sfard, a prominent Israeli human rights lawyer, concludes in an article entitled "The price of internal legal opposition to human rights abuses", in which he reviews 35 years of human rights practice in Israel, "by lodging petitions to the Israeli High Court, human rights lawyers act as public relations agents of the occupation by promoting the notion that Palestinian residents have a recourse to justice."

XXI. DETENTION OF PALESTINIANS IN ISRAELI PRISONS

1441. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and around 390 children.[763] Most of these detainees are charged or convicted by the Israeli military court system that operates for Palestinians in the West Bank. The most common convictions are for stone-throwing. Being a "member of an illegal organization" is another common charge.[764] All but one of the Israeli prisons holding Palestinians from the Occupied Palestinian Territory are located inside Israel.[765]

1442. As at June 2009, of all the Palestinians held by Israel for reasons related to the occupation, 512 were held without charge or trial, of whom 12 were held under the Israeli Unlawful Combatants Law and 500 as "administrative detainees".[766, 767]

1443. The military courts system has been specifically set up by Israel to deal with Palestinians from the Occupied Palestinian Territory, while Israeli citizens living or otherwise present in the West Bank, if arrested, are dealt with under the Israeli civilian legal system. The Palestinian Authority is not allowed to arrest or detain Israeli citizens.[768]

1444. It is estimated that during the past 43 years of occupation, approximately 700,000 Palestinian men, women and children have been detained under Israeli military orders.[769] Israel argues that these detentions are necessary on grounds of security.

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[763] Estimates vary. The Mission is using figures provided by Addameer, Prisoners Support and Human Rights Association at 1 June 2009. Its General Director, Ms. Sahar Francis, explained at the public hearing in Geneva on 7 July 2009 that its statistics were based on monthly figures published by the Israeli prison authority and on its own monthly visits to detention facilities in Israel. The organization also attempted to collect direct information from the prisoners. Providing exact statistics was difficult as these figures changed daily, with new arrests and releases. She mentioned, for example, that in 2008, the Israeli military arrested more than 4,000 people, so the average was around 300 per day. Addameer defines as "political prisoners" those prisoners detained in relation with the occupation, as opposed to detainees suspected or convicted of crimes/offences unrelated to the occupation.

[764] Ms. Sahar Francis, testimony at the public hearing, Geneva, 7 July 2009.

[765] See "Yesh Din Petitions HCJ: Stop holding Palestinian detainees inside Israel. Yesh Din, along with the Association for Civil Rights in Israel (ACRI) and HaMoked: Center for the Defence of the Individual, filed a petition to the HCJ on March 25, 2009 demanding that prisoners and detainees who reside in the West Bank not be held in facilities within Israel, and that arraignment hearings for such detainees also not be held in courts outside the West Bank". See also, for instance, *Backyard Proceedings*…. See also http://www.hamoked.org/. See also Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (University of California Press, 2005).

[766] Figures provided by Addameer for 1 June 2009.

[767] The original military order dealing specifically with administrative detention is Military Order No. 1226. Subsequent amendments to it have each received different numbers. The most recent is: Order regarding Administrative Detentions (Temporary Order) [Combined version] (Judea and Samaria) (No. 1591), 2007. See also Addameer, "Administrative detention in the Occupied Palestinian Territory: A legal analysis report", November 2008.

[768] The Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip, annex IV, Protocol Concerning Legal Affairs, art. I.

[769] A/HRC/7/17.

1445. Due process rights for Palestinians in the Israeli military court system are severely limited. Military Order No. 378, which is the main source regulating detention and trial, allows for a Palestinian detainee from the Occupied Palestinian Territory, including children as young as 12, to be held for up to eight days before being brought before a military judge (Israeli detainees must be brought before a judge within 48 hours). Moreover, Palestinian detainees can be held for up to 90 days without access to a lawyer (compared to 48 hours for Israeli detainees).[770] Palestinian detainees can be held for up to 188 days before being charged (an Israeli detainee must be charged within 30 days).[771]

1446. Accusations of torture and other ill-treatment during arrest, interrogation and detention are common, while the court system is criticized for the use of coerced evidence.[772] It is also alleged that complaints about the ill-treatment of detainees rarely lead to investigations or to prosecution, let alone conviction.[773] The Israeli military court system treats Palestinian children as adults from the age of 16.[774] Israeli citizens, however, are considered adults only from the age of 18.

1447. Palestinian prisoners are reportedly held in substandard detention facilities (for example, Ktziot prison houses prisoners in tents) with very limited access to health care and education.[775] Detention inside Israel also means that many detainees do not receive family visits, as their relatives are prohibited from entering Israel (see chap. XXII).

1448. During the Israeli military operations in Gaza, scores of Gazans were detained by the Israeli armed forces. A portion of those were taken to prisons inside Israel, where some remain at the time of writing. This is discussed in chapter XV.

A. Issues linked to Israel's December-January military operations in Gaza

1. Differential treatment of Gaza prisoners

1449. After its disengagement from Gaza in August 2005, Israel ceased to apply its military orders to Gaza and began to prosecute Gaza detainees under domestic criminal law. In June

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[770] Articles 78c and d of Military Order No. 378 "Order Concerning Security Directives" and the Israeli Criminal Procedure (Powers of Enforcement – Detention) Law 1996.

[771] See also, for instance, *Backyard Proceedings*…. See also http://www.hamoked.org.

[772] In its review of Israel in May 2009, the United Nations Committee against Torture expressed concern inter alia at the "numerous, ongoing and consistent allegations" of the use of methods of interrogation contrary to the Convention (CAT/C/ISR/CO/4). See also the United Against Torture coalition's three "Alternative Reports" to the Committee, September 2008; United Against Torture Report, April 2009; examples of torture practised in the briefing by PCATI and the World Organisation against Torture to the Committee (April 2009); Amnesty International's report to the Committee.

[773] PCATI, "No defence: Soldier violence against Palestinian detainees", Periodic Report, June 2008, p. 38; see also Yesh Din's Accountability Project statistics: http://www.yesh-din.org/site/index.php?page=criminal3&lang=en.

[774] See Military Order No. 132.

[775] On child detainees, see below; on female detainees, see, for instance, Addameer, "In need of protection: Palestinian female prisoners in Israeli detention", November 2008.

2006, the Knesset passed a law[776] which alters existing Israeli criminal law due process guarantees by, for example, allowing a detainee to be held incommunicado for 21 days (after an initial appearance before a judge within 96 hours).[777]

1450. The Law does not discriminate. However, in practice, it is applied only to Palestinian suspects, whether Palestinians from the Occupied Palestinian Territory or Palestinian citizens of Israel. According to estimates submitted to the Knesset's Constitution, Law and Justice Committee by the head of the investigations unit of the General Security Services concerning the applicability of the Law, "over 90 per cent of detainees (to whom this Law was applied) were from the Gaza Strip, but there were cases of detainees who are not from the Gaza Strip such as East Jerusalem and the Arab-Israeli… who are Israeli civilians."[778]

1451. The Law was extended in January 2008. In January 2009 a petition submitted to the Israeli High Court of Justice by ACRI, PCATI and Adalah was heard. The Court criticized many aspects of the law, but the Government argued that it had secret materials that explained why such a law was necessary. In March 2009, the Court decided, on the basis of the secret evidence provided by the State, that the restrictions imposed by the Law were legal and proportionate.[779] In protest against the Court's use of secret evidence to determine the constitutionality of the Law, the human rights organizations withdrew their petition.[780]

(a) Unlawful Combatants Law

1452. The Israeli Internment of Unlawful Combatants Law 2002 provides for the indefinite detention of "foreign" nationals.[781] It offers a lower level of protection than the Law described above. In addition, it provides for a lower burden of proof and a higher threshold for judicial review.[782] In its submission to the Committee against Torture, the United Against Torture

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[776] Criminal Procedure (Enforcement Powers – Detention) (Detainee Suspected of Security Offence) (Temporary Order) Law 2006.

[777] Compared to detainees held under the regular criminal procedural law, who have to be brought before a judge within 24 hours, or 48 hours, as per the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism commented, on 5 July 2006, following the adoption on 27 June 2006 by the Knesset of Law 5765 – 2006 "Criminal Procedure (Enforcement Powers – Detention) (Detainees Suspected of Security Offences) (Temporary Provision)": "The law still does not provide all the necessary procedural safeguards for individuals detained for security reasons. In particular, the law provides that an individual may be held in detention for up to 96 hours before being brought before a judge and may not be present in court when a decision on the extension of the detention is made during the period when he is barred from contact with a legal counsel. In addition, while the provisions on access to legal counsel have not been worsened by this new law, the 21 days of detention without access to legal counsel authorized by the detention law currently in force remain incompatible with international human rights law" (A/HRC/4/26/Add.1).

[778] Quoted in the petition submitted by ACRI, PCATI and Adalah to the High Court of Justice, *The Public Committee against Torture et al*. v. *Minister of Justice et al.*, case No. 2028/08.

[779] ACRI and Partners, "Revoke law severely limiting due process rights", press release, 4 January 2009.

[780] ACRI, "Illegal decision by HCJ Judges to hear classified GSS evidence", press release, 24 March 2009.

[781] According to Adalah's data, the Law has been applied only to Gazans in the past six months, see "New data on Palestinian prisoners incarcerated in Israeli prisons", *Adalah's Newsletter*, vol. 62, July 2009.

[782] Mission correspondence with HaMoked, 22 July 2009.

coalition of NGOs concludes that "an examination of its provisions suggests that the goal behind the law is to allow Israel to hold suspects as hostages who can be used as bargaining chips in future negotiations".

1453. According to this Law, a person is designated an "unlawful combatant" by the Chief of General Staff. The definition the Law gives to the concept of "unlawful combatant" is:

> a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to him (art. 2).

1454. The amendments made to the Law in July 2008, which included lengthening the time detainees can be held before they must be brought before a judge and before they must be allowed access to a lawyer, were challenged and upheld on appeal. Israel's Court of Criminal Appeals considered the Law constitutional and consistent with international humanitarian law.[783]

1455. Detention under this Law does not require admission of guilt or the existence of evidence acceptable as part of fair trial standards. According to Al-Mezan, "this law essentially licenses the military to hold individuals arbitrarily and indefinitely, on the basis of assumed rather than proven guilt that they are conducting direct or indirect activities that could harm the security of Israel or are affiliated to groups working to harm the security of Israel."[784]

(b) Gaza and the ICRC Family Visits Programme

1456. On 6 June 2007, the Israeli authorities suspended the ICRC Family Visits Programme in the Gaza Strip, effectively barring all means of communication between Gazan prisoners and the outside world.[785] Before the new arrests of Gazan residents during Israel's latest offensive in the Gaza Strip (see chapter XV), the ban affected approximately 900 prisoners and their families. In June 2009, ICRC called for the ban to be lifted.[786]

1457. According to Addameer, the timing of the decision to ban family visits coincided with factional fighting in the Gaza Strip which was followed by Hamas' seizing of control, a party which Israel does not recognize and defines as a "terrorist" organization. Therefore, the decision to suspend the programme appears to be a form of collective punishment intended to coerce Palestinians to respond to Israel's demands in terms of Palestinian leadership.[787] On 17 June 2008, Adalah filed a petition on behalf of Gazan prisoners' families, Al-Mezan and the

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[783] Supreme Court sitting as the Court of Criminal Appeals, *A and B* v. *State of Israel*, Judgement of 11 June 2008.

[784] "Al-Mezan calls for release of all detainees held by Israel and especially those categorized as 'unlawful combatants' in contravention of international law and human rights principles", 26 March 2009.

[785] Palestinian detainees are not normally given access to telephones or the Internet.

[786] ICRC, "Gaza: families should be allowed to resume visits to relatives detained in Israel", news release, 10 June 2009.

[787] Addameer, "The Palestinian prisoners of Israel", fact sheet, February 2009.

Association for the Palestinian Prisoners, challenging the legality of the ban on visits.[788] At the time of writing, this petition remained pending.[789] In October 2008, the Government of Israel submitted arguments to the Supreme Court to suggest that the State is not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons.[790]

1458. In addition, during the December-January military operations in Gaza, Adalah filed a petition demanding that Gazan prisoners should be allowed to use the telephone to contact family members. Not allowing this, Adalah argues, violates detainees' right to dignity and their right to family life, and "transforms their imprisonment to a humiliating and degrading experience that contradicts international norms and conventions, in particular the Universal Declaration of Human Rights."[791] According to Adalah, the Prison Authority replied that they allowed each detainee to use the telephone once. Some prisoners confirmed to Adalah that they had been allowed to use the telephone, but others said that they were not allowed to do so on the grounds that they did not present a certificate proving that a close relative had passed away during the offensive.[792]

2. Increase in children from the West Bank arrested and detained during or after the military operations in Gaza

1459. The Mission received information that during the Israeli military operations in Gaza the numbers of children from the West Bank detained by Israel increased. According to Defence for Children International – Palestine Section, the figures for January and February were 389 and 423, compared with 327 and 307 the previous year and a monthly average of 319 in 2008. Many of these children were reportedly arrested on the street and/or during demonstrations.[793] Defence for Children International also found that their average age changed: for the 12–15 age range, the percentage is usually 23; in January–February 2009, it was 36.[794] In January–March, it represented 69 children in the Israeli military courts. As of 20 June 2009, eight of these children

[788] Adalah, "Adalah, Al Mezan and the Association for the Palestinian Prisoners petition Supreme Court demanding that Palestinians from Gaza be permitted to visit their relatives incarcerated in Israeli prisons", press release, 17 June 2008.

[789] Mission correspondence with Adalah, 2 August 2009.

[790] Adalah, "State to Supreme Court: Israel not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons", press release, 27 October 2008.

[791] Adalah: "Adalah to [Attorney General] and Prison Service: Prisoners from Gaza incarcerated in Israel must be allowed to use telephones to check on their family members", press release, 31 December 2008.

[792] Mission correspondence with Adalah, 2 August 2009.

[793] Defence for Children International – Palestine Section, "DCI concerned by increase in arrests of West Bank children", statement, 17 January 2009. In the first two weeks of January 10 Palestinian children were brought before Israeli military courts in pretrial hearings, while the normal monthly average is 10-15. Many of these children were arrested from the street and/or during demonstrations."

[794] Submission to the Mission. See also "DCI concerned by sharp increase in detention of child", statement, 11 March 2009.

were released without charge, while among the 61 charged, 47 were sentenced and 14 are still awaiting trial.[795]

1460. Defence for Children International also found that there was a change in the percentages of children charged with particular offences in the first three months of 2009: in 2008, 27 per cent of children had been charged with throwing stones, as opposed to 61 per cent in the period covered by the report. "During OCL, the army didn't want to lose control of the West Bank, so they came down like a tonne of bricks on demonstrations." It concludes "The fact that many of these children were younger than the average child detainee and the fact that the majority were charged with minor offences suggest that this increase is the result of children's participation in a high number of demonstrations in the West Bank during Operation Cast Lead, and the increased use of force, including mass arrest, by Israeli authorities to suppress and discourage these protests."[796]

Number of Palestinian children in Israeli detention at the end of each month (2008)[797]

Year/Month	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*
2008	327	307	325	327	337	323	324	293	304	297	327	342
2009	389	423	420	391	346	355	-	-	-	-	-	-

Note: These figures are not cumulative.

1461. One of the cases recorded by Defence for Children International is summarized as follows:

> **Ahmad Q.: 15-year-old boy arrested on 1 January 2009 and accused of throwing stones.** On 1 January 2009, Ahmad was protesting against the war in Gaza near Qalandiya checkpoint. He was arrested by soldiers and dragged 100 metres to a jeep. He was slapped and kicked, had his hands tied with plastic cords and he was blindfolded. He was transferred to Atarot for interrogation, made to sit outside in the cold until 4 a.m., transferred to Ofer prison, and then to prisons inside Israel. He was charged with throwing stones and sentenced to four and a half months in prison and fined NIS 1,000.

1462. The Israeli operations in Gaza caused a wave of demonstrations that did not end with the operations. Child detentions continued to be high in February and March, with the high percentage of children charged with stone-throwing indicating that they were detained during demonstrations. Defence for Children International reports two incidents of mass arrests of

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[795] Submission to the Mission, p. 4. Defence for Children International – Palestine Section estimates that it represents 30-40 per cent of children appearing before Israeli military courts.

[796] Mission meeting with Defence for Children International, 3 July 2009. On the increased use of force by the Israeli military in the West Bank, see chap. XX.

[797] Defence for Children International – Palestine Section. These numbers are essentially taken up by West Bank ID holders. Palestinian children (and adults) with Jerusalem ID are generally processed by civilian Israeli courts. The numbers do not include children from Gaza. (Mission interview with Gerard Horton of Defence for Children International, 24 July 2009.)

children after demonstrations in January and March 2009, including one in the village of Haris, where the Israeli armed forces entered the village at around midnight and rounded up about 90 children, detaining them in a school for almost a day, before finally arresting four of them.[798] The same incident was referred to in the British media and included testimony by Col. Itai Virob commander of the Kfir Brigade:

> The worst beatings were in the bathrooms, he said. "The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves... [it was] just because he's an Arab. He was something like 15 years old."[799]

1463. On 6 March 2009, the President of Defence for Children International wrote to the Israeli Minister of Justice, Daniel Friedmann, seeking an explanation for the sharp increase in the number of Palestinian children being detained by Israel and notified the United Nations Committee on the Rights of the Child of these developments. At the time of writing, there had been no response.[800]

1464. In its report on Israel's detention of Palestinian children, Defence for Children International concluded that the abuse of Palestinian children by Israeli authorities is systematic and institutionalized.[801]

1465. In a statement issued in support of this report, UNICEF, WHO, OHCHR and local and international child protection agencies (together the 1612 Working Group on Grave Violations against Children) stated that, "Israeli military courts violate many basic fair trial rights according to international humanitarian and human rights law… For example, in almost all cases, the primary evidence used to convict children is a confession obtained through coercive interrogations carried out in the absence of a lawyer. The most common charge made against children was stone-throwing (about 27 per cent), which carries a maximum sentence of 20 years. .... With the potential for harsh sentences, approximately 95 per cent of cases end in the child pleading guilty, whether the offence was committed or not."[802]

1466. A former Israeli military commander told the BBC that Palestinian youngsters are routinely ill-treated by Israeli soldiers while in custody. The BBC website item included a video of a young Palestinian boy being arrested at night. Col. Efrati, who had left the army five months

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[798] Submission to the Mission, p. 6.

[799] *The Independent*, "Bound, blindfolded and beaten – by Israeli troops", 9 June 2009.

[800] Submission to the Mission.

[801] Defence for Children International, *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities* (June 2009).

[802] Statement available at: http://www.unicef.org/oPt/1612_STATEMENT_JUNE__9.pdf. The Working Group is chaired by UNICEF and includes OCHA, OHCHR, UNRWA, WHO, Save the Children Alliance, Al-Mezan Centre for Human Rights, B'Tselem, Defence for Children International – Palestine Section and PC HR.

previously, said: "I never arrested anyone younger than nine or 10, but 14, 13, 11 for me, they're still kids. But they're arrested like adults. Every soldier who was in the Occupied Territories can tell you the same story. The first months after I left the army I dreamed about kids all the time. Jewish kids. Arab kids. Screaming."[803] He added, "Maybe [the kid is] blindfolded for him not to see the base and how we're working... But I believe maybe we put the blindfold because we don't want to see his eyes. You don't want him to look at us - you know, beg us to stop, or cry in front of us. It's a lot easier if we don't see his eyes."[804]

3. Members of the Palestinian Legislative Council

1467. In September 2005, i.e. some months before the Palestinian Legislative Council elections, the Israeli military conducted a two-day arrest campaign in which 450 persons affiliated with the political parties Hamas and Islamic Jihad were detained. These individuals had been involved in either, or both, the municipal elections or the Council elections. Most were kept in administrative detention and many were released just before or after the Palestinian Legislative Council elections on 25 January 2006. Some candidates were elected while in detention. A number of those released were subsequently rearrested.[805]

1468. Hamas had taken part in municipal elections in 2005 and in Council elections in mid-2005. While Hamas is considered an unlawful organization by Israel,[806] its candidates participated under a list named "Change and Reform Bloc", underlining the main election pledge of reforming the system. Not all candidates and elected persons on that list were members of Hamas; some independent candidates joined the list, including a number of Palestinian Christians.[807]

1469. Israel had not banned the Change and Reform Bloc from participating in the elections, which were supported by the international community.[808] Reportedly, Israel had agreed the list of proposed candidates for the elections with the Palestinian Authority[809] and facilitated voting on the day.[810] However, the mass arrests in September 2005 hampered campaigning and

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[803] BBC News, "Israeli troops accused of abuse", 5 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186522.stm.

[804] BBC News, "Israeli troops 'ill-treat kids'", 6 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186905.stm.

[805] Addameer, "The arrest and detention of Palestinian Legislative Council Members", fact sheet, available at: http://addameer.info/?p=503.

[806] See State of Israel - Defence Ministry: List of Declarations and Orders, available in Hebrew at: http://www.mod.gov.il/pages/general/pdfs/teror.pdf. Hamas was declared a "terrorist group" by Israel on 22 June 1989 (applicable in Israel) and in the Occupied Palestinian Territory on 26 February 1996.

[807] "The arrest and detention…".

[808] See, for instance, European Union "Javier SOLANA, EU High Representative for the CFSP, welcomes announcements by Israeli and Palestinian leaders on Palestinian Authorities elections", statement, 16 January 2006.

[809] Mission interview with Mr. Fadi Qawasme, 6 July 2009.

[810] Reportedly, by opening Israeli post offices in East Jerusalem as polling stations and transporting the ballot boxes to the Palestinian Authority's counting offices at the end of the day. Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and Mission interviews with Ms. Sahar Francis, 22 July 2009, and with Dr. Omar Abd al-Razeq, member of the Council, 16 July 2009.

organization, and candidates of all parties were banned by Israel from campaigning in Jerusalem. The Mission met Dr. Mustafa Barghouti, a member of the Council for the Palestinian National Initiative, who reported being arrested and beaten while attempting to campaign for the elections in Jerusalem.[811]

1470. Nevertheless, the "Change and Reform" list won the elections, gaining 74 seats out of 132, which is said to have come as a surprise to all involved. The tenth Government was inaugurated on 20 March 2006 and included a number of non-Hamas ministers.[812]

1471. As referred to in chapters II and XVIII, on 24 June 2006, an Israeli soldier, Gilad Shalit, was captured by Palestinian armed groups based in Gaza. The Government of Israel held the Palestinian Authority fully responsible for his capture "with all this implies". It made it clear that it would "take all necessary actions" to bring about his release and that "no person or organization will have immunity at this time".[813] On 29 June, the Israeli armed forces arrested some 65 members of the Palestinian Legislative Council, mayors and ministers. Most were Hamas members.[814] They were taken from their homes during the night. Interviewees described situations where up to 20 jeeps surrounded a Council member's home or where their homes were ransacked, and computers and papers taken.[815]

1472. According to Mr. Fadi Qawasme, lawyer to most of the detained Council members, the members detained on 29 June were prevented from having access to lawyers for a week, during which time they were interrogated. Some refused to cooperate; others openly admitted that they were members of Change and Reform. Some were released; others were kept in detention and charged with "membership of a terrorist organization",[816] or held under administrative detention orders. The prosecution requested that all should be remanded in custody pending trial, a period which took two years. Mr. Qawasme protested against the charges on the grounds that members of the Council should have immunity from prosecution; that they did not recognize the jurisdiction of the court (those arrested should have come under the jurisdiction of the Palestinian Authority according to the Oslo Accords) and argued that Israel had accepted the participation of Change and Reform in the elections.[817]

1473. Also according to Mr. Qawasme, the Court initially accepted the arguments and proposed releasing all on bail. The prosecution appealed and rejected the lawyer's arguments, claiming that Israel had not allowed Hamas to participate in the elections, and that "Change and Reform"

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[811] Mission meeting with Dr. Mustafa Barghouti, 3 July 2009.

[812] See Institute for Middle East Understanding, "Meet the new Palestinian Authority Cabinet", 20 March 2006, available at: http://imeu.net/news/article00764.shtml.

[813] Prime Minister's Office, "Political-Security Cabinet convenes", press release, 25 June 2006, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2006/06/spokekab250606.htm.

[814] Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 26/2006 (29 June-5 July 2006), available at: http://www.pchrgaza.org/files/W_report/English/2006/06-07-2006.htm.

[815] Mission interview with Dr. Mariam Saleh, member of the Council and former detainee, 27 July 2009.

[816] Prevention of Terror Ordinance No. 33 of 1948.

[817] Mr. Fadi Qawasme, testimony at the public hearing, Geneva, 3 July 2009.

was in fact Hamas. In February 2007, a year after the election, Israel declared "Change and Reform" a prohibited organization.[818] All were held for at least two years and some were convicted of "membership of Change and Reform", or "standing in election on behalf of Change and Reform". The minimum sentence given to the Council members was 42 months, with longer sentences for higher-ranking members.

(a) Arrest, interrogation and detention conditions

1474. The Mission interviewed three members of the Palestinian Legislative Council who were detained by Israel.[819] Dr. Mariam Saleh related how, on the night of her arrest, around 20-25 military jeeps surrounded her house and masked men entered the house by force. Having locked Dr. Saleh and her family on the balcony, they ransacked the house before putting her in a military jeep. They drove her to her office, which they entered by force and from which they took her computer hard disc and many papers. She was then taken to al-Maskobiya (an interrogation centre in Jerusalem), where she was held for a month. She reported being interrogated for three-day stretches from 8 a.m. to 5 a.m. the next morning. Dr. Saleh further reported that her son and husband were brought to the interrogation centre in order to pressure her into confessing that she was a member of Hamas.[820]

1475. The interviewees related that, as most members were in their fifties or sixties, detention was hard to cope with and a particularly humiliating experience.[821] They spoke of a lack of access to medical assistance and proper medication, of ailments worsening because of the dire detention conditions, of a lack of adequate food, and of specific dietary adjustment for a diabetic patient for instance. They further spoke of humiliation by prison guards (who initially found it amusing to have, for example, a minister as prisoner), of attempts to gain confessions by collaborators, of the use of stress positions and of sleep deprivation. They further reported extremely difficult transport conditions, being enclosed in a car with a dog, for example, or being shackled hands and feet inside a bus for 12 hours at a time with no water or access to a toilet. The trips from prison to court and back could take many days, with the bus stopping at a number of different prisons on the way picking up and dropping off passengers, and the detainees being tied up and crammed for lengthy periods despite some being elderly and in poor health. One

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[818] Change and Reform was declared an "unlawful association" by Israel on 22 February 2007 (applicable in Israel) and in the Occupied Palestinian Territory (by Israeli military order) on 22 July 2007.

[819] Dr. Mariam Saleh, Minister for Women in the 10th Palestinian Government, detained November 2007 and released June 2008; Dr. Omar Abd al-Razeq, Minister of Finance in the 10th Palestinian Government, detained 13 December 2005, released 13 March 2006, detained 29 June 2006, released 3 August 2008, detained 15 December 2008, released 28 April 2009; and WB/01, detained in 2007 and released in the past six months.

[820] Mission interview with Dr. Mariam Saleh, 27 July 2009. A PCATI report details the frequent use of family members to pressure detainees, despite an Israeli High Court decision banning the practice. PCATI, "Family matters: Using family members to pressure detainees under GSS interrogation", April 2008. See also B'Tselem, "Human rights organizations: Prohibit GSS use of family members to pressure interrogees", petition, 16 April 2008, available at: http://www.btselem.org/english/Press_Releases/20080416.asp.

[821] According to PCATI, even seemingly innocuous measures such as cuffing (both hands and feet) are used in a deliberate way. Painful shackling is done for invalid and irrelevant reasons, which include causing pain and suffering, punishment, intimidation, and illegally eliciting information and confessions. The practice of shackling may be used by the various authorities as a tool for dehumanizing Palestinian detainees subject to the control of the occupying Power. PCATI, "Shackling as a form of torture and abuse", Periodic Report, June 2009.

interviewee reported having spent altogether about 350 days, "almost a year", on such multi-day trips.[822]

1476. Interviewees reported extremely limited family visits, with one being told his mother was not considered "immediate family" and not being allowed a visit from her for three years.[823]

1477. The former detainees interviewed by the Mission feared rearrest, at times had been rearrested, on the same charges, and reported trying to minimize their travel and public appearances.[824] One interviewee reported that, during his last detention, he had been given a two-year suspended sentence, which would take him past any prospective election date. He added that, in any case, no one could stand in these elections for Hamas or Change and Reform, since doing so had become punishable and subject to three years' imprisonment.[825] All interviewees also reported family and friends receiving threats and being harassed by Palestinian Authority security forces.[826]

1478. According to B'Tselem, Israeli officials have made public statements relating the arrests of the Council members to political goals:

> in an interview with [Associated Press] a few hours after the first wave of arrests, on 29 June 2006, Major-General Yair Naveh, OC Central Command, said that the decision to arrest senior Palestinian officials was made by the political echelon and that they would be released upon the release of Gilad Shalit. In an interview with the army radio station on 24 May 2007, the day that the second wave of arrests took place, the then Defense Minister, Amir Peretz, stated that "the arrest of those heads of Hamas is to show the military organizations that we demand that the firing stop."[827]

1479. The Inter-Parliamentary Union has recently adopted a number of resolutions protesting against the arrest and detention of the Palestinian parliamentarians, including those from the Change and Reform Bloc. It notes that the Council members were sentenced to much longer periods in detention than persons convicted of military action and that "clearly, the intention was to keep them in prison for the rest of their parliamentary term." It "considers that the rearrest of four Change and Reform parliamentarians following the failure of the negotiations regarding the release of Gilad Shalit and the simultaneous restrictions of the rights of political prisoners suggests that Israel is in fact holding the [Palestinian Legislative Council] members concerned as hostages."[828]

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[822] Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

[823] Ibid.

[824] Mission interview with WB/01, 16 July 2009.

[825] Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

[826] Mission interviews with Dr. Omar Abd al-Razeq, 16 July 2009, and Dr. Mariam Saleh, 27 July 2009.

[827] B'Tselem, "Detention of senior Palestinian officials – wrongful infringement of fundamental rights", press release, 1 August 2007.

[828] Resolutions adopted unanimously by its Governing Council at its 184th session (Addis Ababa, 10 April 2009), see http://www.ipu.org/conf-e/120/120.pdf.

(b) Associated measures

1480. In May 2006, the Israeli Minister of Interior at the time, Roni Bar-On, decided to revoke the permanent residency status (i.e. the right to reside in Jerusalem under Israeli law) of four Council members (including the then Minister of Jerusalem Affairs). The letter received stated "Pursuant to [the Law of Entry into Israel], you are deemed to be a resident in the State of Israel. You are obliged to pay allegiance to the State of Israel. Nonetheless, your actions prove otherwise and indicate that your allegiance is paid to the Palestinian Authority."[829] The members petitioned the Israeli High Court, while ACRI and Adalah submitted an amicus curiae brief, arguing that the Jerusalemites' reduction to permanent resident status of the city after it was annexed by Israel could not be removed. The human rights organizations argued that the residency status of the members was cancelled because the Government of Israel did not welcome the election result.[830] The petition was filed at the Israeli High Court of Justice contesting the status removal or de facto exile, in 2006, but it is still pending.[831] Potentially, a ruling that Jerusalem residency can be revoked on the basis of a lack of loyalty to Israel could have extremely far-reaching consequences for the Palestinian residents of occupied East Jerusalem. Until now Israeli law has allowed the revocation of Jerusalem residency rights only of Palestinians who are unable to prove that their "centre of life" is in Jerusalem.[832]

(c) Recent developments

1481. In January 2009, during the Israeli operation in Gaza, the Israeli armed forces once again arrested a number of Hamas leaders on 1 and 9 January 2009.

1482. Addameer comments "the timing of the waves of arrests indicates that the arrests were intended to put pressure on the Palestinian people and its leadership."[833] Interviewees have indicated that the arrest campaigns effectively work as deterrence. They report having family members, colleagues and employees arrested by both Israel and the Palestinian Authority.

1483. In March, two Council members and former detainees interviewed by the Mission reported that a group of detainees associated with Hamas were given mobile telephones and asked to meet as a group and to intervene in the negotiations surrounding the release of Gilad Shalit. According to the interviewees, detainees were gathered from different prisons for this meeting in Ktziot prison in the Negev. Some detainees were brought out of solitary confinement for this purpose, while solitary confinement is normally imposed because allowing these specific

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[829] Al-Haq, "Attacking democracy: Recent Israeli attacks on Palestinian democratic institutions", November 2006, available at: http://www.alhaq.org/pdfs/Attacking%20Democracy.pdf.

[830] Adalah, "Israeli Supreme Court: Members of the Palestinian Legislative Council whose Jerusalem residency status was revoked must be given an opportunity to submit applications to reinstate it".

press release, 17 September 2008.

[831] *Khalid Abu Arafeh et al.* v. *Minister of Interior*, case No. 7803/06.

[832] See B'Tselem, "Revocation of residency in East Jerusalem".

[833] "The arrest and detention…".

detainees to meet and speak with others is considered a security risk.[834] On this occasion, the group of senior Hamas detainees (Council members and other leaders) were asked to call other Hamas leaders in Gaza and Damascus to influence the negotiations over Gilad Shalit and the prisoner exchange. However, they decided not to cooperate, stating that they were not free to confer or negotiate from detention.[835]

1484. According to Addameer, a few hours after Hamas declared an end to the negotiations for the release of Gilad Shalit, the Israeli armed forces conducted a series of raids into the West Bank towns of Nablus, Ramallah, Hebron and Bethlehem, and arrested four Council members, the former Deputy Prime Minister of the 10th Government, a university professor and a Hamas leader.[836] For PCHR these arrests "could be acts of pressure exerted by Israel on the Hamas leadership in order to resolve the case of captured Israeli soldier Gilad Shalit, and conclude the prisoner exchange."[837] Ms. Sahar Francis of Addameer commented:

> It is unthinkable that the Israeli Government first engages in a political process and negotiations with Hamas, and then kidnaps 10 political leaders, associated with the movement and uses them as bargaining chips. This is not only a form of collective punishment, which in itself is a violation of international humanitarian law, but also a politically counterproductive move.[838]

(d) The downgrading of Hamas prisoners' detention conditions

1485. On 18 March 2009, the Israeli Justice Minister, Daniel Friedmann, established a committee to "work to reduce privileges afforded Hamas and Islamic Jihad security prisoners".[839] He reportedly announced in the media that the downgrade was intended "to match [these prisoners'] conditions of incarceration to those of Gilad Shalit".[840] The Mission interviewed two former Hamas detainees who confirmed that from the end of March they had stopped receiving newspapers and books and had their "recreation" time reduced to 3 hours per

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[834] According to human rights organizations, some prisoners have been held in isolation from between five months to 23 years. Physicians for Human Rights – Israel and Addameer, "The sounds of silence: Isolation and solitary confinement of Palestinians in Israeli detention", July 2008.

[835] Mission interviews with WB/01, and with Dr. Omar Abd al-Razeq, 16 July 2009.

[836] Addameer, "Addameer condemns IOF's abduction of 10 political leaders", press release, 19 March 2009, available at: http://addameer.info/?p=934.

[837] PCHR, "PCHR condemns IOF acts of reprisal on Hamas affiliated political leaders in the West Bank", press release, 19 March 2009.

[838] "Addameer condemns…".

[839] "The team will include representatives of the Attorney General's office, the Israel Prison Service, the IDF and the ISA, and will work to reduce privileges afforded Hamas and Islamic Jihad security prisoners." Cabinet communique, 22 March 2009, available at: http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cabinet_communique_22-Mar-2009.

[840] Quoted by HaMoked in its "Position paper regarding the proposal for downgrading the incarceration conditions of prisoners associated with Hamas", available at: www.hamoked.org.il/items/111330_eng.pdf.

day.[841] According to HaMoked, the decision to create the committee "establishes the use of a large group of prisoners as 'bargaining chips' until the resolution of a matter to which they have no connection and which they cannot influence."[842] According to Addameer, "on 29 March the Israeli Government accepted recommendations presented by a special Ministerial Committee aiming at downgrading detention conditions of prisoners identified with Hamas and Islamic Jihad."[843]

(e) Effect of the detention of the Palestinian Legislative Council's members: disabling the legislative and enabling the executive

1486. The detention of the Council's members has meant that it has been unable to function for three years and no laws have been passed. According to ICHR, it has not been able to exercise its oversight function over the Government's administrative and financial performance, "whether through the questioning, granting/withholding confidence, or holding the Government accountable, or inquiry of finding the facts in cases of grave violations of Palestinian human rights during 2008."[844]

1487. Conversely, the executive authority in the West Bank has played a major role in legislative policymaking – where the Government has referred a number of laws to the President, and the President issued 11 decisions with the power of law in 2008.[845] The Palestinian Basic Law provides that a caretaker government may, in exceptional circumstances which cannot be postponed, issue decisions with the power of law; however these must be submitted to the Council at the first available session and be approved or cease to have power of law. ICHR argues that some of the laws issued by the President of the Palestinian Authority represent a retreat from the legal guarantees for the protection of fundamental rights and freedoms of Palestinian citizens (see chap. XXIII).

B. Legal analysis and conclusions

1488. The detention practices mentioned in the introduction to this chapter have been found by various United Nations bodies to be in violation of international human rights and humanitarian law. In the analysis that follows, the Mission has restricted itself to analysing the specific violations relevant to its mandate.

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[841] Note that these are normally paid for by the Palestinian Authority's Ministry of Detainees' and Ex-Detainees' Affairs. "Recreation time" is the time detainees are able to leave their cells and, as such, includes time spent in the showers, meal times, etc.

[842] "Position paper regarding the proposal…".

[843] Addameer, "The continuous violation of Palestinian political prisoners' rights", *public statement, 17 April* 2009, available at: http://addameer.info/?p=945.

[844] ICHR, *Fourteenth Annual Report*, p. 24.

[845] Ibid., p. 25.

1. The military court system and Israel's detention of Palestinians from the Occupied Palestinian Territory in general

1489. International law gives the occupying Power the right to detain members of the protected population both for criminal offences and for imperative security reasons (see below under "administrative detention"). According to international humanitarian law, as an exception to the preservation of legal conditions in the occupied territory, the occupying Power can "subject the population of the occupied territory to provisions which are essential to enable the occupying Power to fulfil its obligations under the present Convention" (article 64 of the Fourth Geneva Convention). It can establish military courts to prosecute local residents for violations of these provisions (art. 66), which should be "properly constituted, non-political", a requirement intended to prevent the use of such courts for political or racist persecution, and they should "sit in the occupied territory", a provision which is intended to ensure due process for detainees and accused persons brought before them.[846]

1490. Articles 67 to 75 of the Fourth Geneva Convention contain a number of fair trial guarantees the military courts should offer, including the right to choose a defence lawyer, who shall be able to visit freely (art. 72). However, based on information received by the Mission, even this most basic principle is not normally complied with in the Israeli military court system.

1491. Article 9 (3) of ICCPR requires anyone arrested or detained on a criminal charge to be brought promptly before a judge and to be brought to trial within a reasonable time or to be released. The provisions of Israeli Military Order No. 378 are not in line with this requirement.

2. The use of detention in the context of the Mission's mandate

1492. The detention of members of the Palestinian Legislative Council and their conviction for being members of a particular political party violate the prohibition on discrimination based on political belief, contrary to article 26 of ICCPR:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

1493. In addition they violate article 25:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors […].

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[846] Jean S. Pictet (ed.), *Commentary: The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), pp. 335-336.

1494. The Mission finds that the detentions, insofar as they were carried out in response to political events unrelated to the individual members detained, may amount to collective punishment, contrary to article 33 of the Fourth Geneva Convention:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.
>
> […]
>
> Reprisals against protected persons and their property are prohibited.

1495. The facts gathered by the Mission also indicate a violation of the right not to be arbitrarily detained as protected by article 9 (1) of ICCPR:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

3. Detention of children

1496. Article 76 of the Fourth Geneva Convention requires that proper regard should be paid to the special treatment due to minors in detention. The facts gathered by the Mission indicate that Palestinian minors are not given the special treatment due to them, in particular minors aged 16 and 17, who are treated as adults.

1497. Article 37 (b) of the Convention on the Rights of the Child provides that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate time." This requirement appears to have been violated by the detention of children in large numbers during or following demonstrations.

1498. The detention of large numbers of children and others participating in demonstrations may also be contrary to the provisions of the Declaration on Human Rights Defenders relating to the protection of the right to protest against violations of human rights.

1499. Reports of ill-treatment of children by Israeli security forces, described above, indicate violations of article 37 of the Convention on the Rights of the Child.

4. Additional legal issues

1500. The removal of residency status (of the Council members from East Jerusalem) based on their (implied) refusal to pay allegiance to Israel constitutes a violation of article 45 of the Hague Regulations which provides that "it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power," which is also part of customary international law.

1501. The removal of residency status could additionally amount to deportation, which violates the Fourth Geneva Convention, article 49. In addition, it violates the individual's freedom to choose his residency (article 12 of ICCPR), which, on the face of it, cannot be justifiably

curtailed under the exceptions foreseen by article 12 (3). If such curtailment is based on political belief it is prima facie inconsistent with articles 2 (non-discrimination) and 19 (freedom of opinion) of ICCPR. In addition, the revocation could constitute an unlawful interference with family life, contrary to article 17, as well as the right to family life in article 23, where residency status revocation means the family can no longer live together as one unit.[847]

1502. The systematic discrimination, both in law and in practice, against Palestinians in legislation (including the existence of an entirely separate legal and court system which offers systematically worse conditions than that applicable to Israelis) and practice during arrest, detention, trial and sentencing compared with Israeli citizens[848] is contrary to ICCPR, article 2, and potentially in violation of the prohibition on persecution as a crime against humanity.[849]

5. Conclusions

1503. The Mission is concerned about the detention of children and adults on political grounds, in poor conditions and outside the occupied territory in violation of international humanitarian law. The Mission notes the very high number of Palestinians who have been detained since the beginning of the occupation (amounting to 40 per cent of the adult male population of the Occupied Palestinian Territory) according to a practice that appears to aim at exercising control, humiliating, instilling fear, deterring political activity and serving political interests.

1504. The Mission is equally concerned by the reports of coercion and torture during interrogations, trials based on coerced confessions or secret evidence, and the reportedly systematic and institutionalized ill-treatment in prisons.

1505. The Mission is particularly alarmed at the arrest and detention of hundreds of young children, and the rise in child detention during and following the Israeli military operations in Gaza. The ill-treatment of children and adults described to the Mission is disturbing in its seemingly deliberate cruelty.

1506. The legal instruments allowing for the indefinite detention of "unlawful combatants", as well as enshrining the deficient due process regimes, the differential treatment of Palestinian and Israeli prisoners (including the differential definition of a "child"), and the exemptions de facto allowing for harsher interrogation techniques raise concerns about the legal system being a part of this practice, rendering it deliberate and systematic.

1507. The Mission notes with concern the arrest and lengthy detention of democratically elected Palestinian parliamentarians, which appears to be a deliberate act to interrupt the democratic functioning and self-governance of Palestinians.

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[847] On the revocation of Jerusalem residency rights generally, see B'Tselem, http://www.btselem.org/English/Jerusalem/Revocation_of_Residency.asp.

[848] There is also discrimination between Jewish Israeli citizens and Palestinian Israeli citizens, in law and practice.

[849] Article 7 of the Rome Statute.

XXII. ISRAELI VIOLATIONS OF THE RIGHT TO FREE MOVEMENT AND ACCESS

1508. In the West Bank, Israel has imposed a system of interlocking measures, only some of which are physical barriers that restrict the movement and access of Palestinians within the West Bank. This includes movement between Jerusalem and the rest of the West Bank, between the West Bank and Israel, between the West Bank and Gaza and between the West Bank and the outside world and vice versa.

1509. Movement is restricted by physical obstacles, such as roadblocks, checkpoints and the Wall, but also by administrative measures, such as identity cards, permits, assigned residence, laws on family reunification and policies on the right to enter from abroad and the right of return for refugees. The restriction on the ability to move freely, without obstacle or delay, or without another person's authorization, is often perceived as a humiliating experience.[850]

1510. Restrictions include denial access, mainly to Jerusalem for all Palestinians except those who are designated by Israel as Jerusalem residents,[851] citizens of Israel and special permit holders[852]. Special permits are rarely granted.[853]

1511. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements,[854] buffer zones, military bases and military training zones,[855] and the roads built to connect these places. Many of the roads are "Israeli only"[856] and

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[850] See the reports of Machsom Watch, a volunteer network of Israeli women who monitor checkpoints on a daily basis at www.machsomwatch.org/en. See also, "Ground to a halt: denial of Palestinians' freedom of movement in the West Bank", B'Tselem, August 2007 and the interview with Nadera Shalhoub-Kevorkian, on her book Militarization and Violence against Women in Conflict Zones in the Middle East, at www.opendemocracy.net/article/email/checkpoints-and-counter-spaces. Checkpoints are also sites of confrontation: see chap. XXI.

[851] Around 225,000 Palestinian with Jerusalem identity cards live in the part of Jerusalem between the Wall and the Green Line. A number of East Jerusalem areas and suburbs, however, now fall outside the Wall, such as Abu Dis, Kafr Aqab, and Shu'fat refugee camp. "Five years after the International Court of Justice advisory opinion: a summary of the humanitarian impact of the Barrier", Office for the Coordination of Humanitarian Affairs, July 2009.

[852] East Jerusalem Palestinians have identity cards showing their status as "permanent residents" of Israel. Palestinians living in the remainder of the West Bank have West Bank identity cards and need to apply for special permits to enter East Jerusalem.

[853] Shawan Jabarin, General Director of Al-Haq, Geneva public hearing, 6 July 2009 (by videoconference).

[854] Palestinians are normally not allowed to enter settlements, except for those employed in settlement industrial zones or in the settlements, who normally require permits. For a comprehensive overview of the settlement project, see "Land Grab, Israel's settlement policy in the West Bank", B'Tselem, September 2008; and "Access Denied: Israeli Measures to Deny Access to Land around Settlements", B'Tselem, May 2002.

[855] This applies to much of the Jordan Valley. See "The Eastern Border: Palestinians of the Jordan Valley", Jordan Valley Solidarity, 15 February 2009., available at www.jordanvalleysolidarity.org/index.php?option=com_content&task=view&id=166&Itemid=9The Mission met with the Mayor of Al-Akaba village in the Jordan Valley, Mr. Sami Sadeq, who gave an account of his experience of living in a village surrounded by military training grounds, 3 July 2009.

[856] Access also includes foreign citizens.

forbidden for Palestinian use.[857] An example of an "Israeli only" road is Road 443, between Tel Aviv and Jerusalem, which passes through the West Bank. Once a major Palestinian traffic artery serving 33 villages, this stretch of the road has now been turned into a highway that Palestinians are forbidden to use. A number of tunnels have been built under the road to enable access, but movement is still extremely restricted for the villagers.[858]

1512. Movement between Gaza and the West Bank for Palestinians is virtually impossible.

1513. Generally speaking, Israelis can and do travel freely around the West Bank, with the exception of the main Palestinian cities, which are off limits to Israelis, according to Israeli law.[859]

1514. The Mission has reviewed claims that foreign passport holders, whether or not of Palestinian origin, can and are regularly denied entry to the West Bank by Israeli border authorities.[860] According to a report of June 2009 received by the Mission, in the first six months of 2009, the number of entry denial cases reported increased relative to the last quarter of 2008, "raising concerns that Israel is again escalating its policy of arbitrary entry denial".[861] Recent reports criticize the new "Palestinian Authority only" visas issued by Israel to foreign citizens.[862] These practices severely limit the ability of international humanitarian workers and human rights defenders to carry out their activities.[863]

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[857] See "Checkpoints, physical obstructions, and forbidden roads", B'Tselem, at www.btselem.org/english/Freedom_of_Movement/Checkpoints_and_Forbidden_Roads.asp; and "Road 443, West Bank road for Israelis only", B'Tselem at www.btselem.org/English/Freedom_of_Movement/Road_443.asp. See also Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[858] Other access restrictions are more difficult to grasp, such as access with usage restriction; for example on land and in urban areas where no building or agriculture is permitted, or where environmental pollution has made the land unusable. See testimony of Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference), and "Road 443, West Bank road for Israelis only", B'Tselem; "The prohibited zone: Israeli planning policy in the Palestinian villages in area C", Bimkom, at http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf; See also "Foul play: neglect of waste water treatment in the West Bank", B'Tselem, www.btselem.org/English/Publications/Summaries/200906_Foul_Play.asp.

[859] Israeli Military Order 378 "Order on the Security Provisions (Judea and Samaria) (No. 378) 1970 – Proclamation regarding Closing and Area (Prohibition of Entry and Stay) (Israelis) (Area A), issued 5 October 2000, signed by General Itzhak Eitan.

[860] See the reports published by the Campaign on the Right to Entry at www.righttoenter.ps/. On 16 December 2008, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, was denied entry into Israel: see, www.righttoenter.ps/images/Press_Release_Richard_Falk.pdf and A/HRC10/20.

[861] Campaign for the right to enter the Occupied Palestinian Territory, situation update report, September 2008-June-2009.

[862] "Israel toughens entry for foreigners with West bank ties", Amira Hass, *Ha'aretz,* 12 August 2009.

[863] The practices also restrict the movement of foreign passport holders of Palestinian origin; see "Why is Israel limiting movement of Palestinian-Canadian businessman?", Amira Hass, *Ha'aretz*, 19 August 2009.

A. Movement restrictions affecting the Mission's work

1515. At the public hearing in Geneva on 6 July 2009, Mr. Shawan Jabarin of Al-Haq reported that tens of thousands of Palestinians today are subject to a travel ban imposed by Israel, preventing them from travelling abroad. Mr. Jabarin, whom the Mission heard in Geneva by way of videoconference, had been subject to such a travel ban since he became the director of Al-Haq, the West Bank's oldest human rights organization. Mr Jabarin challenged his travel ban in the Israeli High Court after he was prevented from travelling to the Netherlands to receive a human rights prize, but the ban was upheld on the basis of 'secret evidence'.[864] Mr. Jabarin believed that the ban was imposed as punishment. On 3 July 2009, the Mission also spoke with Khalida Jarrar, a member of the Palestinian Legislative Council for the Palestinian Liberation Front Party, by telephone conference, as she too was unable to travel out of the West Bank because of an Israeli-imposed travel ban. Ms Jarrar, who prior to her election to the Palestinian Legislative Council in 2006 directed the prisoners' rights organization Addameer, told the Mission that she had not been allowed to travel out of the West Bank since attending the Human Rights Defenders Summit in Paris in 1998.[865]

1516. The Mission has already referred to the fact that the Palestinian Minister for Justice, Dr. Ali Khashan, was unable to leave the West Bank to meet the Mission in Amman, Jordan he had been prevented from crossing the border.[866]

B. Movement and access and the Israeli military operations in Gaza

1517. The Mission received reports that, during the Israeli offensive in Gaza, movement restrictions in the West Bank were tightened. For several days, Israel imposed a "closure" on the West Bank, a restrictive measure in addition to those already in place. Given that it is an ad hoc measure, people cannot plan their movements around it.

1518. It was also reported to the Mission that, during and following the operations in Gaza, Israel tightened its hold on the West Bank through more expropriation, an increase in house demolitions, demolition orders and permits granted for homes built in settlements, and increased exploitation of the West bank's natural resources. Various policies and decisions implemented in the first six months of 2009 relating to settlements, and Jerusalem's demography, affected the access and movement of Palestinians, while increasing the overall control by Israel over the West Bank.

1519. Following the operations in Gaza, the Mission received reports that Israel had amended the regulations determining the ability of persons with a Gaza identity card to move to the West

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[864] For the Israeli High Court decision of 10 March 2009 (Al-Haq translation), see www.alhaq.org/pdfs/Shawan-abarin-v.pdf; see also "Travel ban on Al-Haq General Director upheld: once again, the Israeli judiciary demonstrates its subservience to the military and security authorities", Al-Haq Press Release, 11 March 2009; "Dutch Foreign Minister condemns travel ban imposed by Israel on Al-Haq General Director", statement of the Foreign Ministry of the Netherlands, 11 March 2009; A/HRC/11/41/Add.1.

[865] For example E/CN.4/2006/95/Add.1.

[866] See chap. I.

Bank, and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

C. West Bank closures during the Israeli operations in Gaza

1520. Information received by the Mission showed that, in addition to the everyday restrictions on movement and access during the Israeli operations in Gaza, Israel implemented a full closure of the West Bank for six days.[867] During a closure, Palestinians with West Bank identity cards (see below) and valid permits to enter East Jerusalem or Israel are prevented from doing so.[868]

1521. The closures affected thousands of workers, students, people needing to have access to Palestinian hospitals in East Jerusalem, worshippers and those visiting family and friends. Furthermore, according to reports received by the Mission, the number of checkpoints in the West Bank, including in East Jerusalem, was increased during the operations, most being "flying" checkpoints (ad hoc checkpoints operating for anything between one hour and the duration of the operations in Gaza).[869] According to Shir Hever, an economist from the Alternative Information Centre, each day of closure costs the Palestinian economy $ 4.5 million and 276 jobs and drives 646 people below the poverty line.[870]

1522. The Office for the Coordination of Humanitarian Affairs reports that, on 2 January 2009, the Israeli army prevented males aged between 16 and 50 from crossing Huwara checkpoint to travel south.[871] Huwara checkpoint is the main checkpoint on the main north-south route in the West Bank and lies between the cities of Jenin, Tulkarm, Qalqilia and Nablus in the north, and Ramallah, Jericho, Bethlehem and Hebron in the middle and south. Closing Huwara checkpoint effectively prevents Palestinians from this region from going south, as there are no other accessible roads.

1523. In addition, according to the Office for the Coordination of Humanitarian Affairs, in January 2009, Israel declared the area between the Wall and the Green line in Hebron, parts of Salfit, Ramallah, and in between the Wall and the Jerusalem municipality borders a "closed military area", with serious consequences for the Palestinian population.[872] Prior to this, access to land beyond the Wall (the so-called "seam zone", between the Wall and the Green Line[873])

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[867] The dates were, 2, 3, 9,10, 16 and 17 January 2009.See Office for the Coordination of Humanitarian Affairs Weekly Report for 1-8 January 2009, 9-15 January and 16-20 January.

[868] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[869] Meeting with Al-Haq, and the Palestinian Centre for Human Rights, 2 July 2009.

[870] Submission to the Mission by Shir Hever, Alternative Information Centre,.

[871] Office for the Coordination of Humanitarian Affairs Weekly Report, 1-8 January 2009.

[872] Office for the Coordination of Humanitarian Affairs, The Humanitarian Monitor No. 33, January 2009.

[873] "Between Fences: The Enclaves Created by the Separation Barrier", Bimkom, at http://eng.bimkom.org/_Uploads/4GderotEng.pdf . For a general picture see Office for the Coordination of Humanitarian Affairs Closure Map, June 2009, at www.ochaopt.org/documents/ocha_opt_closure_map_west_bank_june_2009.pdf; some 85 per cent of the route of the Wall lies inside the West Bank, the area between the Wall and the Green line amounts to 8.5 per cent of the West Bank (including East Jerusalem) See "Five years after the International Court of Justice advisory opinion: A summary of the humanitarian impact of the Barrier", Office for the Coordination of Humanitarian Affairs, July 2009.

was already restricted as access required prior coordination with the Israeli army. The new measures meant that land owners had to provide proof of ownership (which is difficult to obtain) and apply for visitors' permits to be able to have access to their land. Applications for permits by farm labourers who are not land owners were routinely rejected. According to Mr. Shawan Jabarin, human rights monitors are not granted permits either.[874] Fewer than 20 per cent of those who used to farm their lands in 67 localities in the northern West Bank, which had been declared closed previously, are now reportedly granted permits. Those who do obtain permits face long waiting times, restricted gate opening hours, physical searches and restrictions on the kinds of farming equipment allowed to pass. In addition, thousands of people reside in the areas now or previously declared "closed military zones". They now require permits to live in their own homes and must often pass through gates in order to have access to work, health care, education and other services. The area declared a closed military zone in January includes the Jerusalem suburb of Dahiet al-Barid. According to the Applied Research Institute of Jerusalem, around 14,000 Palestinians in this suburb stand to lose their Jerusalem residency status as well as municipal services.[875]

D. New measures to formalize the separation of Gaza and the West Bank

1524. The Mission received reports about measures that further formalize the separation of Gaza and the West Bank. Following HaMoked's petition to the High Court, a new Israeli Ministry of Defense procedure has been revealed detailing the very strict conditions under which a resident of the Gaza Strip may change her or his residency to that of the West Bank.[876] The procedure of 8 March 2009states:

> Against the backdrop of the security/political situation in the Gaza Strip it has been decided on State level to limit the movement of residents between the Gaza Strip and the Judea and Samaria area to the necessary minimum, so that for all practical purposes entry of residents of Gaza into the Judea and Samaria areas shall only be allowed in the most exceptional humanitarian cases." … "the Deputy Minister of Defence…established that in every case involving the settlement of Gaza residents in the Judea and Samaria Area one should adopt the most restrictive policy, which is derived a fortiori from the general policy of restricting movement between the two Areas. The Deputy Minister clarified that a family relationship, in and of itself, does not qualify as a humanitarian reason that would justify settlement by Gaza residents in the Judea and Samaria Area.

1525. In the terms of the procedure, as reviewed by the Mission, one of the situations envisaged by the regulations, is where

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[874] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[875] "14,000 Palestinian Jerusalemites stand to lose their residency rights", Applied Research Institute, 5 January 2009 at http://www.poica.org/editor/case_studies/view.php?recordID=1802; for the issue of municipal services in East Jerusalem generally, see "Life in the garbage: a report on sanitation services in East Jerusalem", Association for Civil rights in Israel, June 2009 at www.acri.org.il/pdf/sanitationeng.pdf.

[876] Translation of the procedure by Gisha and HaMoked available from the website www.gisha.org/UserFiles/File/Legal%20Documents%20/WB_Gaza_Full_Procedure-Eng.pdf.

> A minor resident of Gaza who is under 16 years old, where one of his parents, who was a resident of Gaza, passed away and the other parent is a resident of the Judea and Samaria Area and there is no other family relative who is a resident of Gaza who is able to take the minor under his wings. In the event that it is necessary, the nature and scope of the existing relationship with the parent who is a resident of the Judea and Samaria Area shall be examined in relation to the degree, nature and scope of the relationship with other family relatives in Gaza (para. 10 B).

1526. Furthermore, according to paragraph 15 of the procedure, a successful application is subject to periodic renewal and a seven-year "naturalization" period, after which there is an examination "as to whether to grant a permit of settlement in the Judea and Samaria Area and a change of the registered address in the copy of the file of the Palestinian population registry, which is in the possession of the Israeli side".

1527. In the reports reviewed by the Mission, HaMoked and Gisha call this regulation an additional measure in a deliberate Israeli policy to deepen the separation between the West Bank and Gaza "in the pursuance by Israel of political goals at the expense of the civilian population, in blatant violation of international humanitarian law." It also "undermines the possibility of a two state solution", and "contradicts a long list of Israeli undertakings to conduct negotiations for the establishment of an independent, viable Palestinian State, including an explicit commitment in the Oslo Accords to preserve the status of the West Bank and Gaza Strip as a 'single territorial unit".[877]

E. Movement and access, current situation

1528. According to information available the Mission, in the past eight months certain measures by the Government of Israel have improved freedom of movement in certain places, in particular access to the cities of Nablus, Tulkarm, Hebron and Ramallah. For example, the permit requirement was removed for vehicles entering Nablus, two junctions near Hebron were opened and a checkpoint was removed outside Tulkarm. In Ramallah, a "fabric of life"[878] alternative route was opened for access from the West.[879]

1529. United Nations sources observe, however, that during this time the restrictions on Palestinian traffic and the ease of Israeli and settler traffic in the West Bank have become entrenched. Checkpoints have also been expanded and some temporary checkpoints have become more permanent (for example with gates instead of earth mounds). In addition, the improvement or opening of "fabric of life" roads alternative roads to closed main roads still necessitates the confiscation of land.

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[877] Gisha and HaMoked position paper, available at www.gisha.org/UserFiles/File/publications_/WB_Gaza_Procedure-PositionP-Eng.pdf.

[878] The concept of "fabric of life" was introduced by the Israeli army to denote alternative roads for Palestinians who are no longer allowed to use the "Israel only" main roads; see "Alternative roads for Palestinians", B'Tselem, at www.btselem.org/english/Freedom_of_Movement/Alternative_Roads_for_Palestinians.asp.

[879] Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

1530. The Office for the Coordination of Humanitarian affairs maps 613 physical obstacles, including 68 staffed checkpoints and 541 unstaffed obstacles such as roadblocks. This number excludes the 84 obstacles blocking Palestinian access and movement within the Israeli-controlled area of Hebron city ("H2"), 63 crossing points in the Wall and an average of 70 random (or "flying") checkpoints deployed every week since the beginning of 2009.[880] In addition to the road obstacles, the Wall continues to be built; large areas between the Wall and the Green Line (the "seam zone") have been declared closed to Palestinians.[881]

1531. Harsh military measures, such as prolonged curfews on individual villages in the northern West Bank, have further restricted movement, and approximately 28 per cent of the West Bank is now declared a closed military zone with recent stricter enforcement, especially affecting farmers and herders.

1532. The Mission has also received reports about the recent introduction by Israel of measures aimed at "modernizing" the access and movement restrictions which, by making monitoring and recording of movement of individuals easier, would have the effect of consolidating the restrictions. The measurers include the introduction of magnetic cards for use in automated checkpoints, the privatization of checkpoints and access gates and the computerization of certain checkpoints on or near the Green Line as of 1st May 2009.[882] The measures have raised a concern that permits for politically active individuals will be more frequently cancelled. In addition, considering the current open debate in international law on the liability of private security contractors, the privatization of checkpoints raises concerns about accountability.[883]

1533. Therefore, while there have been some (albeit limited) positive developments in the period between September 2008 and March 2009, the measures taken during this and previous periods indicate a further entrenchment of the system of movement and access restrictions, with the result that "the space available for Palestinian development is increasingly constrained".

1534. The Mission notes that it is misleading to look at the freedom of movement of the Palestinians of the West Bank without considering where they can actually. For example, recent reports have raised the Mission's concern about broader policies leading to the "silent transfer" of Palestinians out of Jerusalem. The first six months of 2009 saw a dramatic rise in demolition

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[880] Compared with a weekly average of 60 for the first four months of 2008, and 87 per week for June to September (Office for the Coordination of Humanitarian Affairs closure update, 30 April 2008 – 31 September 2008, at http://www.ochaopt.org/documents/ocha_opt_closure_update_2008_09_english.pdf).

[881] In the Salfit, Ramallah, Bethlehem and Hebron governorates. See Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

[882] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference). See Stop the Wall press release at http://stopthewall.org/latestnews/1931.shtml.

[883] See "The Privatization of Checkpoints and the Late Occupation", Eilat Maoz at www.whoprofits.org/Article%20Data.php?doc_id=705.

orders, including demolitions of entire villages and neighborhoods,[884] and approvals for new settlement construction in both East Jerusalem and the rest of the West Bank.

F. Jerusalem: accelerating the "silent transfer"

1535. In May 2009, the *New York Times* reported that the Office Israeli Prime Minister of Israel and the Israeli-defined Jerusalem municipality, in cooperation with the Jerusalem Development Authority and settler organizations, were implementing an eight-year "confidential" plan to create a string of nine parks, pathways and sites, incorporating new or existing settlements in and around East Jerusalem. The NGO Peace Now concluded that "the completion of the Israeli plan will change dramatically the map of East Jerusalem and might prevent a permanent status agreement and a compromise in Jerusalem."[885]

1536. In a report reviewed by the Mission, the Association for Civil Rights in Israel stated that, in Jerusalem "discrimination in planning and building, expropriation of lands, and minimal investment in physical infrastructure and government and municipal services - these are concrete expressions of an Israeli policy designed to secure a Jewish majority in Jerusalem and push Palestinian residents outside the city's borders."[886]

1537. In a report of April 2009, addressing "the failure of the Israeli authorities to provide adequate planning for Palestinian neighborhoods", the Office for the Coordination of Humanitarian affairs states that "some 60,000 Palestinians in East Jerusalem … are at risk of having their homes demolished by the Israeli authorities. This is a conservative estimate and the actual number may be much higher."[887]

G. New settlements, land expropriation and the demolition of villages in Area C

1538. In reports reviewed by the Mission, Peace Now stated in March 2009 that the Ministry of Housing and Planning was planning a further 73,000 settlement homes to be built in the West

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[884] For example, in the Jordan Valley, and a neighborhood in Jerusalem (al-Bustan in Silwan). On 4 June 2009, a village was almost entirely destroyed in the Jordan Valley. "Israeli authorities demolished 13 residential structures, 19 animal pens, and 18 traditional *taboun* ovens in the Bedouin community of Khirbet ar Ras al Ahmar in the Jordan Valley. A water tank, tractor, and trolley were also confiscated Eighteen households were displaced, including at least 67 children". Office for the Coordination of Humanitarian Affairs Protection of Civilians report (27 May-2 June 2009)

[885] "Parks fortify Israel's claims to Jerusalem", *New York Times*, 9 May 2009.

[886] The report concludes that "for decades, the legal possibility of issuing building permits for new construction on East Jerusalem has been practically non-existent. (…) The discrimination is clear, its purpose to limit legal construction in the Palestinian areas and constrict the space available for the development of Arab neighborhoods, The City's Outline Plan, 'Jerusalem 2000', approved in 2006 (…) perpetuates the discriminatory policies by failing to provide adequate housing units, employment sources, and infrastructure in East Jerusalem". "The state of human rights in East Jerusalem - Facts and Figures", Association for Civil Rights in Israel report, May 2009.

[887] "Special Focus: the planning crisis in East Jerusalem: understanding the phenomenon of 'illegal' construction", Office for the Coordination of Humanitarian Affairs, April 2009. The United Nations Special Coordinator, Robert Serry, stated that these "actions harm ordinary Palestinians, heighten tensions in the city, undermine efforts to build trust and promote negotiations, and are contrary to international law and Israel's commitments", 22 April 2009.

Bank.[888] According to Peace Now, the building of 15,000 of these homes had already been approved, and, if all the plans are realized, the number of settlers in the occupied Palestinian territory will double.[889]

1539. Construction works on Maskiyot, a new settlement, were reportedly commenced in the Jordan Valley as of May 2009.[890] At the same time, Palestinians in the Jordan Valley and more generally in Area C are at risk of displacement. On 26 January 2009, the High Court of Justice of Israel rejected a petition submitted by the Association for Civil Rights in Israel and Rabbis for Human Rights on behalf of the Palestinian residents of Khirbet Tana, "effectively allowing the State to destroy all of the village's houses but one, despite the lack of viable planning alternatives for the area's Palestinian residents".[891] In a recent report reviewed by the Mission, Bimkom concluded that the Israeli Civil Administration applied "a deliberate and consistent policy in Area C with the goal of restricting Palestinian construction and development and limiting its spatial dispersion".[892]

H. Connecting the dots

1540. According to reports reviewed by the Mission, aside from the settlements themselves, much new infrastructure is being built to service the settlements, including roads, rail and tram lines, tunnels and waste dumps. Notable examples of these are the Jerusalem ring road (eastern section) a four-lane highway which will connect Israeli settlements in East Jerusalem and run through Palestinian neighborhoods, requiring the confiscation of many dunums[893] of Palestinian land and demolitions of homes and businesses;[894]and the Jerusalem light rail project and train line between Tel Aviv and Jerusalem part of which will run through the West Bank.[895]

1541. Observers have noted that Israeli control over the movement and access of the West Bank Palestinians is necessary to maintain control over the West Bank's land and natural resources.

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[888] "Ministry of Housing's plans for the West Bank", Peace Now, March 2009 available at www.peacenow.org.il and on the website of the Israeli government at www.govmap.gov.il.

[889] An increase of approximately 300,000 people, based on an average of four people in each housing unit. According to the report, there are plans to double the size of some settlements, including Beitar Illit, Ariel, Givat Ze'ev, Maaleh Adumim, Efrat and Geva Binyamin, and approximately 19,000 housing units are planned in settlements that are beyond the constructed path of the Wall.

[890] "A new settlement starts to be constructed: Maskiyot" Peace Now, 18 June 2009. See also "Israel planning mass expansion of West Bank settlement bloc" *Ha'aretz*, 27 February 2009 and "Secret Israeli database reveals full extent of illegal settlement", *Ha'aretz*, 1 February 2009.

[891] Press release, Association for Civil Rights in Israel, 5 February 2009.

[892] "The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C", Bimkom.

[893] One dunum is equivalent to one square kilometre.

[894] "Carving up the Palestinian capital: The Israeli ring road around occupied East Jerusalem", Negotiations Support Unit of the Palestine Liberation Organization fact sheet, February 2008, available at www.nad-plo.org/facts/jerusalem/ringroad.pdf. See also the campaign by the Al-Quds University Human Rights Clinic atwww.stoptheringroad.net/q3.php and the briefing paper by Adalah available at www.adalah.org/features/land/Briefing%20Paper%20on%20the%20Eastern%20Ring%20Road.doc .

[895] Peace Now "An objection to expansion of Israel Railway's Jerusalem-Tel-Aviv line" Peace Now, 11 May 2009.

Easing Palestinian access on alternative roads and the removal of some checkpoints would allow Israel to offer "transportational", rather than territorial contiguity. At the same time, full Israeli access through the separate road system and full control over the border allow for a level of continuous population control. The increased movement and access limitations recently implemented by Israel in the West Bank, would seam to share with the military operations of December 2008 - January 2009 Israel's objective of "getting rid of Gaza in order to consolidate its permanent hold on the West Bank".[896]

I. Legal analysis and conclusions

1542. The occupying Power may restrict the right to free movement in certain circumstances, but it must safeguard the fundamental rights of the protected people at all times. Any movement restriction, to be lawful under international humanitarian law, however, must be necessary and proportionate to the harm caused to the protected people.

1543. The right to freedom of movement is enshrined in article 13 of the Universal Declaration of Human Rights, and in article 12 of the International Covenant on Civil and Political Rights. When the right is restricted, it affects the exercise of any number of other rights, including those set forth in the International Covenant on Economic, Social and Cultural Rights, such as the right to work (art. 6), the right to protection of family life (art. 10), the right to an adequate standard of living (art. 11), the right to health (art. 12) and the right to education (art. 13).

1544. If the decision to restrict movement is based on a person's belonging to an ethnic or national group, this constitutes unlawful discrimination contrary to articles 1 and 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights and article 75 of Additional Protocol I to the Geneva Conventions, which is part of customary international law. Israel allows Israeli citizens to move around the West Bank including the settlements, relatively freely. According to B'Tselem, the Israeli military has openly admitted that the restrictions on Palestinians are there to enable Jewish settlers to move about freely.[897]

1545. Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of article 75 (2) (b) of Additional Protocol I to the Geneva Conventions (which is part of customary international law), which outlaws "outrages upon personal dignity, in particular humiliating and degrading treatment".

1546. Settlements are contrary to article 49 (6) of the Fourth Geneva Convention.[898] Furthermore, they violate Palestinian property rights and the prohibition on the occupying Power of changing the nature and legal status of the Occupied Palestinian Territory (art. 55 of the Hague Regulations), may constitute direct discrimination against Palestinians, besides causing

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[896] Mission interview with Jeff Halper, Director of the Israeli Committee against House Demolition, 6 August 2009.

[897] "Restrictions on Movement", B'Tselem at www.btselem.org/English/Freedom_of_Movement/.

[898] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, [2004], International Court of Justice, rep. 136, para. 120; Security Council resolutions 904 (1994), 465 (1980), 452 (1979), 446 (1979) and General Assembly resolutions ES10/6, ES10/14, and 61/118and the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention,, Geneva, 5 December 2001.

restriction of movement, hindering economic and social development, and access to health, education and social services. In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, amount to a "grave breach" of article 147 of the Geneva Convention. The Wall, which, to the extent it is built inside the West Bank is contrary to international law,[899] the de facto annexation of the parts of the West Bank that fall on the "Israeli side" of the Wall (9.5 per cent of the West Bank),[900] five years since the advisory opinion of the International Court of Justice that the Wall must be dismantled, now amount to the acquisition of territory by force, contrary to the Charter of the United Nations.[901]

1547. From the facts ascertained by or available to it, the Mission believes that the movement and access restrictions to which West Bank Palestinians are subject are disproportionate to any military objective served, in general, particularly in light of the increased restrictions during and to some extent since the military operations in Gaza. The restrictions do not safeguard the fundamental rights of those protected as required by international humanitarian law and international human rights law.

1548. From the facts available to it, the Mission believes that in the movement and access policy there has been a violation of the right not to be discriminated against on the basis of race or national origin The Mission is concerned about the steps taken recently to formalize the separation of Gaza from the West Bank, and, as such, of two parts of the Occupied Palestinian Territory. The Mission is also concerned that the increasingly entrenched array of movement and access restrictions, both physical and non-physical, amount to a deliberate policy of closely controlling a population in order to make use of areas of its land. From the facts available, the Mission believes that these restrictions constitute violations of fundamental rights.

1549. Insofar that movement and access restrictions, the settlements and their infrastructure, demographic policies with regards to Jerusalem and Area C, and the separation of Gaza from the West Bank prevent a viable, contiguous and sovereign Palestinian State from being created, they are in violation of the *jus cogens* right to self-determination.

XXIII. INTERNAL VIOLENCE, TARGETING OF HAMAS SUPPORTERS AND RESTRICTIONS ON FREEDOM OF ASSEMBLY AND EXPRESSION BY THE PALESTINIAN AUTHORITY

1550. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the Preventive Security Service, the Military Intelligence and the General Intelligence, such as their unlawful arrest and detention, and ill-

[899] The International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] I.C.J. Rep. 136.

[900] Office for the Coordination of Humanitarian Affairs, "Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the Barrier", July 2009.

[901] Paragraph 121 of the advisory opinion states that the "Court considers that the construction of the wall and its associated régime create a "fait accompli" on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation".

treatment of political opponents while in detention. Other allegations are the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups[902] or the revocation and non-renewal of their licences,[903] the forcible replacement of board members of Islamic schools and other institutions and the dismissal of Hamas affiliated teachers.[904]

1551. There have also been allegations of the use of excessive force and the suppression by Palestinian security services of demonstrations, particularly those in support of the population of Gaza during the Israeli military operations.[905] On these occasions the Palestinian Authority's security services allegedly arrested many individuals[906] and prevented the media from covering the events, at times breaking cameras or erasing footage.[907] The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views of the Palestinian Authority.[908]

1552. The Mission noted the reluctance of some of the residents of the West Bank it approached to speak openly about these issues. A number of individuals expressed concern that there might be repercussions if they did so.[909]

1553. The Mission also received reports that highlight the lack of parliamentary oversight over acts and decisions by the executive. As noted in chapter XXIII, the arrest and detention by Israel of several members of the Palestinian Legislative Council has effectively curtailed such parliamentary oversight.[910] The executive has passed decrees and regulations[911] to enable it to

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[902] See, for instance, Al-Haq, "Overview of the internal human rights situation in the Occupied Palestinian Territory", June 2009; International Crisis Group, "Palestine divided", Middle East Briefing, No. 25, 17 December 2008, p. 12; ICHR, *Fourteenth Annual Report* (2008), pp. 152–168, PCHR, *Annual Report 2008*; Mission telephone interview with Al-Haq, 15 July 2009.

[903] PCHR, *Annual Report 2008*, pp. 93-96; *The Financial Times*, "West Bank 'tsunami' hits Hamas and allies", 29 July 2009.

[904] "Overview of the internal human rights situation…"; "Palestine divided…", p. 12; ICHR, *Fourteenth Annual Report*, pp. 103–111, PCHR, *Annual Report 2008*, p. 101; Mission telephone interview with Al-Haq, 15 July 2009.

[905] OCHA, "Protection of civilians weekly reports", 24–30 December 2008, 1-8 January 2009, 9-15 January 2009, 16–20 January 2009; Mission telephone interview with Al-Haq, 15 July 2009; Mission telephone interview with WB/02, 16 July 2009; Mission meeting with ICHR, Amman; ICHR, "Monthly report on violations of human rights in the PNA-controlled territory", January 2009; Al-Haq, "Field report", January–March 2009.

[906] Mission telephone interview with WB/02, 16 July 2009; Mission telephone interview with Al-Haq, 15 July 2009. Arrests reportedly include members or supporters of Islamic parties but also left-wing student leaders.

[907] "Monthly report on violations…", January 2009; Palestinian Center for Development and Media Freedoms (MADA), "Violations of media freedoms in OPT during January 2009"; Mission telephone interview with Muhammad Jaradat, 16 July 2009.

[908] See, for instance, MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*, which includes affidavits.

[909] Al-Haq notes in its "Field report" for January–March 2009 that there is a general reluctance on the part of West Bank Palestinians to testify on intra-Palestinian violence. Few complaints are filed, both because complainants have little confidence that the authorities will taken action (Mission telephone interview with WB/02, 16 July 2009) and because they fear negative repercussions.

[910] Mission interview with Ms. Khalida Jarrar, 30 July 2009; ICHR, *Fourteenth Annual Report*, p. 24.

continue its day-to-day operations. Palestinian human rights organizations have argued that this has resulted in the use of the security apparatus to suppress political opposition and of military courts to ignore any judicial challenge to arbitrary detention on political grounds.[912]

1554. The Mission asked the Palestinian Authority for information about the above allegations; however its reply does not address these issues.[913]

A. Crackdown by the Palestinian Authority on Hamas and other Islamic parties

1. Arrest and detention by the security forces

1555. Before the Israeli military operations in Gaza, domestic human rights organizations were already reporting a practice of arbitrary arrest by the Palestinian Authority of members and (suspected) supporters of Hamas in the West Bank.[914] The practice has reportedly continued. According to ICHR, over 400 persons arrested by the Palestinian Authority's security forces "primarily for reasons of political affiliation" were in detention, as of 31 May 2009. ICHR has confirmed the 400 cases individually through prison visits, but states that the total number is probably closer to 700,[915] The human rights NGO Al-Haq estimates that over 800 persons were being held as at mid-July 2009.[916] The Mission has asked the Palestinian Authority, inter alia, to confirm the numbers of persons held in detention by its Preventive Security Force, Military Intelligence and General Intelligence, and the legal basis for their detention, but has received no reply on this issue.

1556. The Palestinian Authority has a court system similar to most others, with civilian criminal and civil courts and a court of appeal, and military courts, which have jurisdiction over military matters.[917]

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[911] The executive has passed decrees to grant the Minister for Local Government the right to dissolve the local council or dismiss its head (Presidential Decree No. 9) and to limit the right to strike for civil servants (Decree No. 5) (ICHR, *Fourteenth Annual Report*, pp. 25–26) and see PCHR, "PCHR has reservations about regulations adopted in the context of ongoing political fragmentation", position paper, 23 June 2009.

[912] ICHR, *Fourteenth Annual Report*; Al-Haq, "Al-Haq calls upon the President of the Palestinian National Authority and the Higher Judiciary Council to restore exclusive civil jurisdiction over civilians", urgent call, 3 September 2008; ICHR, "The detention of civilians by Palestinian security agencies with a stamp of approval by the Military Judicial Commission", Special Report No. 64, December 2008; "Overview of the internal human rights situation…".

[913] Reply of the Palestinian Authority to the Mission, 5 August 2009.

[914] Al-Haq, "Field report", July–September 2008, and Mission interview with Al-Haq, 15 July 2009; PCHR, "PCHR gravely concerned over the deterioration of the human rights situation in the Occupied Palestinian Territory", press release, 30 July 2008.

[915] Mission telephone interview with ICHR, 30 July 2009.

[916] Mission telephone interview with Al-Haq, 15 July 2009. ICHR states that only a very small number of non-Hamas affiliated detainees are held by the Palestinian Authority's security forces (Mission telephone interview with ICHR, 30 July 2009).

[917] See, for instance, Birzeit University Institute of Law, "Legal system and legislative process in Palestine".

1557. The Mission has received reports that arrests are often carried out without an arrest warrant or with a warrant issued by the Military Judicial Commission (a military court) rather than by a civilian court.[918] The Amended Basic Law of 2003, article 101 (2), states that military courts "shall not have any jurisdiction beyond military affairs". On 30 August 2008, the Palestinian High Court of Justice confirmed that the Military Attorney General[919] and the Military Judicial Commission had no jurisdiction over civilians. In addition, in the past year many of its decisions have supported this view in individual cases relating to the arrest or detention of civilians. However, these civilian court rulings have mostly been ignored by the security forces and the military judiciary.[920]

1558. Information received by the Mission suggests that detainees held by the security forces do not know when they will be released, normally without being charged and tried, rarely have access to a lawyer or are allowed family visits.[921]

2. Torture and other ill-treatment

1559. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority's security forces, particularly the Preventive Security Force, Military Intelligence and the General Intelligence service, against several people in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. They have documented examples of such treatment during detention through testimonies of victims, some of whom have political affiliations with Hamas.[922] They have also reported a number of deaths in

[918] ICHR, *Fourteenth Annual Report*.

[919] ICHR refers to this person in English as the "Chief of the Military Judicial Commission".

[920] "Al-Haq calls upon the President…"; "The detention of civilians…"; "Overview of the internal human rights situation…" .

[921] ICHR, *Fourteenth Annual Report*; "The detention of civilians…".

[922] Various affidavits have been collected by Al-Haq, Addameer, PCHR and ICHR. For instance, Al-Haq's testimony taken from Marwan Khaled Saleh al-Khalili reports ill-treatment he received at the hands of the Preventive Security force, which included the "shabeh", a stress position involving a very small, slanted chair, to which he was bound for four days. He suffered two strokes and permanent injury, according to his testimony. He was released after being asked to sign a pledge to leave his work for the Hamas Social Committee (Al-Haq affidavit No. 4364/2008.). In another of Al-Haq's testimonies, relating to October 2008, Muhammad Suleiman Mahmoud Dagher reports on the torture, death threats and beatings he and another man received at the hands of an unknown Palestinian Authority security agency. At one point during his detention, he was made to stand on a chair while his interrogator placed a rope, which was suspended from the ceiling, around his neck. The interrogator then reportedly said "if you do not confess, we will kill you". He also had a gun put to his head and threatened (Al-Haq affidavit No. 4460/2008). An additional example of abuse and intimidation is recorded by a lawyer of the Addameer Prisoner Support and Human Rights Association, relating to a visit of a detainee who was also a lawyer. "They told him that when he will get out from the prison he will be handicapped and that 'you are no better than Majd al-Barghouti' [who died in General Intelligence Service (GIS) detention in February 2008] and also told him he should consider himself from now on fired from his work, and that his membership at the Bar association will be suspended. The interrogator reportedly said to X, 'don't you know that the President of the Bar Association is from Fatah?'" (affidavit received by the Mission from Addameer).

detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused.[923]

1560. According to these organizations, complaints of such practices have not been investigated and because of the failure of the competent authorities to oversee these agencies or hold them accountable for their practices, impunity for serious violations of human rights prevails. One organization asserts that, "Silence, connivance and a failure to prevent or oversee such acts all manifest a definitive presumption of the consent or acquiescence of public officials to inflict such pain and suffering."[924]

3. Freedom of association

1561. There have been reports that freedom of association, which is protected by the Palestinian Basic Law, has been violated with respect to several organizations, on the basis of their political views and affiliations. Hamas-affiliated organizations have been particularly targeted since 2008.[925] On 14 July 2008, PCHR issued a report describing the "interference of the Ministry of Interior and Security Forces in election affairs of the Women's Arab Union." The report described how a committee consisting of Ministry of Interior officials, Preventive Security and General Intelligence staff banned five candidates from standing for election to the board of the Union.[926] It has reportedly become common for the Palestinian Authority to disapprove of the appointment of board members with specific political affiliations, to request their replacement with its own nominees, and to refuse the (re-)registration of associations that do not comply with this request.[927] Human rights organizations are reportedly not exempt from interference by the Palestinian Authority's security forces. The Mission heard from one organization's staff member that he and his colleagues received physical threats from the security forces. Furthermore, reported complications in administrative processes, such as delays in the opening of bank

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[923] PCHR press releases: "PCHR calls for disclosure of circumstances of Palestinian death in custody in Jericho", 7 October 2008; "PCHR calls upon the Government in Ramallah to investigate death of a detainee in Jenin Preventive Security Service Headquarters", 9 February 2009; "Detainee dies in the GIS prison in Hebron", 15 June 2009; "PCHR calls for investigation into death of Palestinian held in custody by the Preventive Security Service in Hebron", 6 August 2009; "PCHR calls upon the Government in Ramallah to investigate death of Palestinian in GIS custody in Nablus", 11 August 2009.

[924] Al-Haq, *Torturing Each Other* (July 2008).

[925] In July 2008, the *Financial Times* reported that "with almost the entire West Bank leadership of Hamas in jail, the [Palestinian Authority] and Israel have now taken aim at what is widely seen as a crucial source of the group's political strength: the tight network of schools, orphanages, clinics, charities and businesses run by the Islamists" ("West Bank 'tsunami'…"). Entire boards of NGOs have been replaced with committees appointed by the Palestinian Authority ("Palestine divided…", p. 12.).

[926] PCHR, "PCHR condemns interference of the Ministry of Interior and security forces in election affairs of the Women's Arab Union in Nablus", press release, 14 July 2008.

[927] ICHR, *Fourteenth Annual Report*. PCHR reported the forceful closure on 10 August of a number of associations and printing workshops in Hebron ("PCHR condemns attacks on civil society organizations and the continued arrests against Hamas members in the West Bank", press release, 10 August 2008). ICHR reports that, on March 16, the Palestinian Preventive Security agency closed the Scientific Medical Association, a 24-hour medical centre housing a pharmacy, laboratory, dental clinic, osteopaths, gynaecologists and paediatricians, which had been operating for 17 years (ICHR, "Monthly report on violations…", March 2009).

accounts and in carrying out financial transactions, result in additional hindrances to the work of these organizations.[928]

4. Appointments

1562. According to ICHR, "the Caretaker Government continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of 'non-adherence to the legitimate authority' or 'non-obtainment of security approval' on their appointments, which has become a pre-requirement for enrolment in public service".[929] In effect, this measure excludes Hamas supporters or affiliates from public sector employment.[930]

1563. According to PCHR, at the start of the 2008 school year, "on 14 October, the Ministry of Education in Ramallah sent written notices to dozens of teachers, cancelling their employment contracts, and dismissing them without notice. The notices claimed that the Ministry of Education did not approve their employment any longer."[931] Al-Haq reported that some teachers were asked to sign pledges to refrain from political activity.[932] ICHR reported that 200 teachers were dismissed (not reappointed) at this time. ICHR petitioned the Palestinian High Court of Justice to seek the reappointment of around 50 of them, and is still waiting for a decision.[933]

B. Freedom of the press, freedom of expression and opinion

1564. Allegations of violations of press freedom by the Palestinian Authority in the West Bank in the past year are linked to reports of arrests of journalists, the closure of media offices, the forcible changing of newspaper and news website headlines,[934] attacks against photographers, some of whom have been forced to delete material and breaking or confiscating photographic equipment.[935] The journalists' association Palestinian Center for Development and Media Freedoms (MADA) reports a gradually worsening situation.[936]

1565. The Mission received several reports of direct or indirect interference in media coverage of demonstrations in the West Bank during the Israeli military operations in Gaza. The Mission

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[928] Mission interview with Al-Haq, 2 July 2009.

[929] ICHR, *Fourteenth Annual Report*, p. 21.

[930] Mission telephone interview with ICHR, 30 July 2009.

[931] PCHR, "PCHR calls upon the Palestinian Government to reverse decision to dismiss dozens of West Bank teachers", press release, 27 October 2008.

[932] Al-Haq affidavit No. 4439/2008, 27 October 2008.

[933] Mission telephone interview with ICHR, 30 July 2009.

[934] Mission telephone interview with Al-Haq, 15 July 2009.

[935] PCHR press releases: "PCHR condemns continued detention of journalists by Preventive Security Service in the West Bank", 12 February 2009; "Unknown persons shoot at offices of al-Hayat al-Jadeeda newspaper in al-Bireh, and car of Government official in Nablus", 9 February 2009; "PCHR condemns attacking journalists and media institutions in the West Bank and Gaza Strip", 30 November 2008.

[936] MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*. There are many other examples; see, for instance, "PCHR gravely concerned over deterioration…".

was informed, for example, that the Palestinian Authority censored television programmes and newspapers, and that editors were at times informed verbally not to use certain terms or words, or not to broadcast programmes that could be considered as incitement against the Palestinian Authority.[937]

1566. MADA reported that, on 2 January 2009, an Associated Press photographer covering a march in Ramallah in support of the people of Gaza was attacked by members of the Military Intelligence. The photographer said a security official in civilian clothing first shouted at him to stop taking pictures and then he was assaulted by two security agents and taken by force to a nearby building, where he was beaten until he lost consciousness. He was taken initially to the intelligence headquarters but then transferred to a hospital, where he was treated for a broken nose and subsequently released.[938]

1567. In another incident, on 18 January 2009, a well-known West Bank journalist was reportedly detained overnight at Preventive Security headquarters in Hebron and questioned about an interview he had given to the al-Quds Satellite Channel in which he was critical of the Palestinian Authority.[939] According to his affidavit, he was then brought before the Director of the Preventive Security in Hebron, who he said encouraged him to exercise self-censorship.[940]

1568. Between 24 and 27 January 2009, four correspondents of al-Quds Satellite Channel were arrested by the Preventiv'e Security Service, the Palestinian General Intelligence and the Palestinian Military Intelligence, and interrogated about their work.[941]

1569. On 22 April 2009, PCHR noted the arrest by the police in Nablus of a professor of political science at An-Najah University in Nablus who had expressed support for Hamas on a programme of the al-Aqsa television channel when asked to comment on the recent attack against members of the Palestinian Legislative Council by the security forces.[942]

1570. On 16 July 2009, the Prime Minister issued a decision to close the international television channel al-Jazeera in the West Bank, because it broadcast an interview with a senior Fatah leader, who accused senior Palestinian Authority officials of being implicated in the death of former President Arafat.[943] Although the ban was lifted on 18 July, the Prime Minister

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[937] Mission interview with Al-Haq, 2 July 2003.

[938] "Violations of media freedoms…".

[939] Al-Haq affidavit No. 4634/2009, 22 January 2009.

[940] Ibid. See also "Violations of media freedoms…".

[941] "Violations of media freedoms…".

[942] PCHR press releases: "PCHR notes with grave concern the arrest of Dr. Abdul Sattar Qasem by the Palestinian police in Nablus", 22 April 2009; "PCHR condemns attack on [Palestinian Legislative Council] member Sheikh al-Beetawi", 20April 2009.

[943] PCHR, "PCHR condemns decision to suspend al-Jazeera's work in the West Bank", press release, 16 July 2009; Human Rights Watch, "Palestinian Authority: lift the ban on al-Jazeera", 17 July 2009; International Federation of Journalists, "IFJ condemns Palestinian Authority over ban on al-Jazeera", 16 July 2009.

announced that he would pursue legal action against the channel "for its continuous incitement against the Palestinian National Authority."[944]

C. Freedom of assembly: repression of demonstrations during the Israeli military operations in Gaza of 27 December 2008-18 January 2009

1571. The Mission received information from various sources that demonstrations in support of Gaza were both prevented from taking place and, in some cases, violently repressed.[945]

1572. Security officers reportedly used excessive force during demonstrations on 2 January in Hebron and Ramallah. At both events, protestors suffered injuries after being beaten by security officers. Journalists at the Hebron protest were prevented from reporting on the event.[946]

1573. Al-Haq informed the Mission that a student demonstration at Birzeit on 5 January 2009, which had the stated aim of "showing the occupation forces that Palestinian students reject all aggression against Gaza", saw a heavy deployment of Palestinian Preventive Security, General Intelligence and Military Intelligence services personnel. Many students were reportedly beaten;[947] 50 were injured, 9 of whom were hospitalized. Many were also detained, although most were released later the same day. Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, informed the Mission that she had received a call from one of the students asking her to come to the hospital and witness the injuries.[948]

1574. According to Al-Haq, on 26 January, after the end of the Israeli military operations in Gaza, a peaceful sit-in was held near the security forces' headquarters in Hebron against detentions on political grounds. Reportedly, "security forces beat demonstrators, including children, with sticks. Although several demonstrators were injured, security forces impeded access of medical personnel."[949] The affidavit of one eyewitness states that "Palestinian security officers demanded that we disperse and take our banners down. As demonstrators refused to disband, a group of female security officers started beating them with sticks. The security officers addressed the demonstrators, saying: 'You are Shiite. In Gaza, you shot the legs of Fatah activists. You stole food supplies in Gaza.' Security officers also impeded access to a Palestinian ambulance and prevented medics from evacuating eight injured protestors."[950]

1575. In another serious incident, a former student leader who used to be a well-known political activist informed the Mission that he was tortured by the Palestinian Authority's security forces,

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[944] Al-Jazeera, "Al-Jazeera West Bank ban 'revoked'", 19 July 2009.

[945] Mission interview with PCHR, 2 July 2009; Mission interview with ICHR, 2 July 2009; Mission Interview with Al-Haq, 2 July 2009; "Monthly report on violations…", January 2009; "Field report", January-March 2009.

[946] "Monthly report on violations…", January 2009.

[947] Mission interview with Al-Haq, 2 July 2009; ICHR reported in similar terms on the event, Mission interview with ICHR, 2 July 2009.

[948] Mission interview with WB/02, 16 July 2009.

[949] "Field report", January–March 2009.

[950] Al-Haq affidavit No. 4692/2009, 7 February 2009; see also "Monthly report on violations…", January 2009.

apparently because of his protest activities. During the Israeli military operations in Gaza, he took part in daily protests and was stopped several times by the security services. He reported that on 2 January 2009, after the Friday midday prayers, he was stopped by security personnel in plain clothes and in uniform in the centre of Ramallah. He was pushed into a car carrying the emblem of the Palestinian Authority, where electrical shocks were applied to his body. He was then taken to the Military Intelligence office and interrogated. He alleges that a high-ranking Military Intelligence official threatened him with six months' arrest under the emergency law and warned him not to criticize the Palestinian Authority and to refrain from talking about the resistance, Hamas and Gaza.[951]

D. Legal analysis

1576. The Palestinian Authority, inasmuch as it exercises control over the territory and people, has an obligation to respect and enforce the protection of human rights.[952] When assessing the aforementioned alleged violations, the terms of international human rights law, to the extent that it forms part of customary international law, must be examined. Most provisions of the Universal Declaration of Human Rights are considered part of customary international law and would, therefore, apply. In addition, the Palestinian Authority has declared its commitment to respect international human rights law. The Palestinian Basic Law contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments.[953] Article 10 (2) states that "The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights". The Basic Law itself broadly encompasses the rights enshrined in the Universal Declaration of Human Rights.

1577. According to information received by the Mission, which it considers to be reliable, the Palestinian Authority has carried out arbitrary and unlawful arrests and detentions of political opponents in the West Bank, and regularly denied political detainees access to legal representation and basic due process rights, including the right to be brought promptly before a court and charged with a recognizable criminal offence, contrary to the norms contained in articles 9 and 10 of the Universal Declaration of Human Rights. Arresting individuals based on their political opinions also constitutes a discriminatory practice contrary to article 1.

1578. Subjecting detainees to acts of torture, cruel, inhuman or degrading treatment is prohibited by the customary international law norm reflected in article 5 of the Universal Declaration, and constitutes a violation of their right to security of the person as contained in article 3. Insofar as torture or other cruel, inhuman or degrading treatment can be established, individual criminal responsibility attaches to the perpetrator and any one else ordering, assisting or participating in the commission of the crime.

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[951] Mission telephone interview with WB/02, 16 July 2009.

[952] It is necessary to note in this respect that the Palestinian Authority's control and law enforcement ability extend only to "Area A", and that they are also subject to the ultimate control by the occupying Power, which thus retains overall control and responsibility (see Fourth Geneva Convention, art. 47).

[953] See chap. IV.

1579. Death in detention as a result of wilful killing, torture or other forms of abuse constitutes a violation of the right to life reflected in article 3 of the Universal Declaration.

1580. Excessive force in policing demonstrations in the instances reported above contravenes the requirements of the United Nations Code of Conduct for Law Enforcement Officials (art. 3) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principle 4) that law enforcement officials use force only when strictly necessary and to the extent required for the performance of their duty, and that they apply non-violent means first, using force only if other means remain ineffective or without any promise of achieving the intended result. In addition, it may violate the right to freedom of expression, the right to peaceful assembly (article 20 of the Universal Declaration of Human Rights) and the right not to be discriminated on the basis of political opinions.

1581. Reports that the Palestinian Authority interfered with the work of journalists and the media give rise to the concern that the right to freedom of opinion and expression has been interfered with. According to article 19 of the Universal Declaration of Human Rights, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1582. The Mission considers that the information it received about the requirement for security approval and recognition of the "legitimate authority" as a prerequisite for public office, as well as for teaching and other posts in public schools and membership on boards of associations, suggests a violation of the right to hold public office and of the right not to be discriminated on the basis of political beliefs.

1583. Interference with the constitution of boards of associations, or the registration of certain associations on grounds of political allegiance, would, if confirmed, indicate a violation of the right to form associations (article 20 of the Universal Declaration). Dismissal from public appointment on the basis of (presumed) political affiliation violates the right to work, to just and favourable conditions of work and to protection against unemployment (art. 23) and the right to non-discrimination (art. 1).

E. Conclusions

1584. From the information available to it, the Mission finds that there are features of the repressive measures against actual or perceived Hamas affiliates and supporters in the West Bank that would constitute violations of international law. Furthermore, in efforts to minimize the power and influence of Hamas, the protection and the promotion of human rights have generally been eroded. The Mission notes that these measures and their objectives are relevant to the context within which the Israeli offensive in Gaza was launched, as analysed in chapter II.[954]

1585. The Mission is concerned that, by failing to take action to put an end to the practices described above, the Palestinian executive and judicial authorities are contributing to the further

[954] "Leading security figures have taken to referring to Hamas in front of Israeli counterparts as a 'common enemy' and speak in crudely violent terms of how they plan to treat it" ("Palestine divided…").

deterioration of the fundamental rights and freedoms of Palestinians, the rule of law and the independence of the judiciary.

1586. It appears from the information the Mission received that the Palestinian Authority's actions against political opponents in the West Bank started in January 2006, intensified between 27 December 2008 and 18 January 2009, and is continuing until today.

1587. The Mission considers detentions on political grounds legally unacceptable for several reasons: the arrest and indefinite detention (without trial) by security services and under the military judiciary system are in violation of Palestinian law and international human rights law; and the arrests and detentions are apparently based on political affiliation, which would violate the right not to be arbitrarily detained, the right to a fair trial, and the right not to be discriminated against on the basis of one's political opinion, which are both part of customary international law. Moreover, the reports of torture and other forms of ill-treatment during arrest and detention, and the reports of deaths in detention raise further concerns and warrant proper investigation and accountability.

1588. The Mission is concerned about interference with the freedom of the media.

1589. It is a serious concern to the Mission that the normal system of checks and balances between the executive, the legislative and the judiciary branches in the area controlled by the Palestinian Authority appears to be flawed. There seems to be little evidence of a functioning accountability system to counter instances of torture and other forms of abuse of power. It is also of serious that, in the absence of governmental oversight, civil society organizations are receiving threats and being harassed and seeing their operations impeded by administrative obstacles.[955]

[955] Mission interview with Al-Haq, 2 July 2009.

PART THREE: ISRAEL

1590. The Mission, in examining, as required by its mandate, alleged violations occurring in the context of the Israeli military operations conducted in Gaza from 27 December 2008 to 18 January 2009, whether before, during or after, also considered allegations of violations against Israeli citizens and residents. The Mission focused on two areas that it considered particularly relevant: (a) the launching of rockets and mortars from the Gaza Strip into southern Israel by Palestinian armed groups, and their effects on the civilian population; (b) the action taken by the Government of Israel to repress dissent among its citizens and residents vis-à-vis its military operations in Gaza, and to limit independent and critical reporting on it by human rights organizations and media.

Methodology

1591. One consequence of the lack of cooperation by Israel with the Mission was that it was unable to visit Israel to investigate alleged violations of international law, and in particular to visit relevant sites and interview victims and witnesses. The Mission has, however, received many reports and other relevant materials from Israeli organizations and individuals, including Palestinians living in Israel, and from international human rights organizations and institutions. The Mission, also, met with representatives of a number of Israeli human rights organizations (see annex). The Mission conducted telephone interviews with people either living in or working with communities in southern Israel, including the Bedouin Palestinian community in the unrecognized villages in the Negev. It also interviewed many people in relation to the other matters within its mandate. Israeli victims, witnesses, experts and representatives of southern Israel local authorities appeared at the public hearings held in Geneva on 6 July 2009. Representatives of Israeli civil society and non governmental organizations working on human rights inside Israel were contacted either via video link or telephone. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1592. Owing to the lack of access, the chapters in the section below rely more broadly on secondary information than the previous sections.

1593. The Mission found the witnesses it heard in relation to the situation in Israel to be credible and reliable. The Mission has also written to the Gaza authorities and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in the section below. The information received by the Gaza authorities is taken into account in this chapter. The Government of Israel has not responded.

XXIV. THE IMPACT ON CIVILIANS OF ROCKET AND MORTAR ATTACKS BY PALESTINIAN ARMED GROUPS ON SOUTHERN ISRAEL

1594. The Mission conducted telephone interviews with people either living in or working with communities in southern Israel. Five residents of southern Israel appeared at the public hearings in Geneva on 6 July 2009 while three representatives of the Israel Trauma Center for Victims of Terror and War (NATAL) appeared via videolink from Tel Aviv. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1595. The Mission was unable to conduct on-site investigations owing to the decision of the Government of Israel not to cooperate with the Mission.

1596. The Mission addressed questions to the Government of Israel regarding individuals who have been affected by rocket and other fire from the Gaza Strip. The request of information included data about any psychological, social and economic harm caused by the rocket and mortar shells that have been launched into Israel. The Mission did not receive any reply to its questions.

1597. Since April 2001, Palestinian armed groups have launched more than 8,000 rockets and mortars from Gaza into southern Israel.[956] Communities such as Sderot, the surrounding kibbutzim and some of the unrecognized villages in the Negev have been in range since that time. During the Israeli military operations in Gaza in December 2008 and January 2009, the range of the rockets and mortars increased significantly to nearly 40 kilometres from the Gaza border, encompassing the Israeli towns of Yavne 30 kilometres to the north and Beersheba 28 kilometres to the southeast.

1598. Since the rocket and mortar fire does not often hit populated areas, and because of the precautions taken by the Government of Israel, the rockets and mortars have caused relatively few fatalities and physical injuries among the residents of southern Israel. Property damage, while by no means insignificant, has not been extensive. More widespread, however, has been the psychological trauma and the feeling of insecurity that living under rocket fire has caused and continues to cause, to people living in the affected towns and villages, as well as the erosion of the economic, social and cultural life of these communities.

1599. Every death and injury is not only a tragedy but a matter of utmost concern to the Mission. The Mission wishes to emphasize that the issues of concern, and indeed the consequences of any attack affecting civilians, cannot be reduced to a recitation of statistics, nor should they be.

A. Summary of rocket and mortar fire from 18 June 2008 to 31 July 2009

1. 18 June 2008-26 December 2008

1600. According to Israeli sources,[957] 230 rockets and 298 mortars were fired against Israel between 18 June and 26 December 2008; 227 rockets and 285 mortars struck territory inside the State of Israel. Media reports indicate that areas struck by rockets included the Western

[956] Statistics taken from the Report of the Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC), "Summary of rocket fire and mortar shelling in 2008"; available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf.

[957] These figures have been cross-referenced against those given in a report of the IICC entitled "The Six Months of the Lull Arrangement", December 2008. Available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e017.pdf.

Negev,[958] Sderot[959] and Ashkelon.[960] This includes the 157 rockets and 203 mortars that were fired during the ceasefire, which ended officially on 18 December 2008.[961]

1601. The Mission notes that 92 per cent (212) of the rockets and 93 per cent (279) of the mortars fired between 18 June and 26 December 2008 were fired after 5 November 2008.[962]

1602. While there were no fatalities inside Israel, two young Palestinian girls, aged 5 and 12 years, were killed when a rocket fell short, landing in northern Gaza on 26 December 2008.[963]

1603. Media reports indicated that, during this period, six Israelis and one foreign worker were wounded as a result of rockets landing in built-up areas in southern Israel. Where rockets did not land in open space, property damage was sustained. As is discussed below, an unknown number of people in southern Israel were treated for shock following the sounding of the early warning system and the subsequent rocket strikes.[964]

2. 27 December 2008-18 January 2009

1604. According to the Israeli authorities, armed groups in Gaza fired approximately 570 rockets and 205 mortars into Israel during the 22 days of the military operations in Gaza.[965] On their websites, the al-Qassam Brigades and Islamic Jihad claimed to have fired over 800 rockets into Israel during this time.[966]

1605. During the Israeli military operations in Gaza, the range of rocket and mortar fire increased dramatically, reaching towns such as Beersheba 28 kilometres to the south-east and Ashdod 24 kilometres to the north of the Gaza Strip. Rockets continued to fall in areas such as

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[958] On 24 June 2008, 3 Qassam rockets struck the Western Negev; see "End of Truce? 2 Kassam hit w. Negev", *Jerusalem Post,* 24 June 2008. On 27 November 2008, a rocket struck and damaged a house on a kibbutz in the western Negev; see "Kassams continue to strike Negev", *JTA,* 27 November 2008.

[959] On 24 June 2008, a rocket hit the yard of a house in Sderot; see "Rockets 'violated Gaza ceasefire'", *BBC News,* 24 June 2008.

[960] For example, on 14 November 2008, several rockets struck Ashkelon; The Times, "Hamas militants step up rocket attacks on Israel", 15 November 2008. Ashkelon is approximately 20 kilometres from the Gaza border.

[961] Ibid.

[962] On 5 November 2008, Israel made an incursion into Gaza claiming that its aim was to close a cross-border tunnel that Palestinian fighters intended to use to kidnap an Israeli soldier. During the incursion, a member of Hamas was killed and several Israeli soldiers were wounded. *See* "Gaza truce broken as Israeli raid kills six Hamas gunmen", *The Guardian,* 5 November 2008.

[963] 'Palestinian rockets kill 2 schoolgirls in Gaza', *Fox News.com*, 26 December 2008.

[964] The Mission notes that the submission of 9 August 2009 by Magen David Adom ('MDA') detailed 407 stress-related injuries in Sderot alone from 1 June to26 December 2008.

[965] See, Israel Ministry of Foreign Affairs at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm; see also "Rockets from Gaza", Human Rights Watch, 6 August 2009, p.8. According to HRW, the IDF stated that 650 rockets had been launched from Gaza, but only 570 rockets had struck Israel.

[966] HRW report of 6 August 2009, p. 2.

Sderot, the Eshkol Regional Council and the surrounding kibbutzim, which had experienced rockets strikes since 2001. A total of 90 rockets struck Sderot during the 22 days of military operations in Gaza.[967]

1606. During the period of the operations, three civilian fatalities and one military fatality were recorded in Israel resulting from the rocket and mortar strikes launched from Gaza. According to Magen David Adom, 918 people were injured (17 critically injured, 62 medium injuries and 829 lightly injured) in this time period.[968] There were also 1,595 people inside Israel treated for stress-related injuries.[969]

3. 19 January 2009-31 July 2009

1607. According to the Israeli authorities, more than 100 rockets and 65 mortars were fired into Israel after 19 January 2009.[970] No fatalities resulted from these rocket and mortar strikes. The Mission was unable to obtain any official statistics of civilians physically injured by rockets and mortars during this time. On 1 February 2009, one Israeli civilian was lightly wounded when mortar shells, fired from Gaza, exploded in the Sha'ar Hanegev region.

1608. The majority of the rockets and mortars were fired prior to 15 March 2009. On 12 March 2009, the Ministry of the Interior of the Gaza authorities stated that rockets were being "fired at the wrong time" and that the Gaza authorities were investigating those responsible.[971] On 20 April 2009, a member of Hamas called on other armed groups to stop firing rockets "in the interests of the Palestinian people".[972] On 19 July 2009, Xinhua News reported that Hamas had arrested two members of Islamic Jihad firing mortars at Israeli forces.[973]

1609. In July 2009, Hamas declared that it was entering a period of "cultural resistance", stating that it was suspending its use of rockets and shifting its focus to winning support at home and abroad through cultural initiatives and public relations.[974]

B. Relevant Palestinian armed groups

1610. The Palestinian armed factions operating in the Gaza Strip and claiming responsibility for the majority of the rocket and mortar launchings are the Izz al-Din al-Qassam Brigades[975], the al Aqsa Martyrs' Brigades and Islamic Jihad. A brief description of each group is given below.

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[967] Ibid, p.8.

[968] Submission to the Mission, 9 August 2009.

[969] Ibid.

[970] See, Israel Ministry of Foreign Affairs at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Palestinian_ceasefire_violations_since_end_Operation_Cast_Lead.htm.

[971] "Hamas criticizes Gaza rocket fire", *Al Jazeera* 13 March 2009.

[972] "Hamas discusses resistance regulation with Gaza groups", *Xinhua News Agency*, 22 April 2009.

[973] "Hamas reportedly arrests Gaza operatives firing at Israeli troops", Xinhua News Agency, 19 July 2009.

[974] The New York Times, "Hamas Shifts From Rockets to Culture War", 23 July 2009, available at http://www.nytimes.com/2009/07/24/world/middleeast/24gaza.html?scp=2&sq=hamas&st=cse.

1611. The 'al Qassam Brigades' are the armed wing of the Hamas political movement. According to a June 2007 report of Human Rights Watch, the al-Qassam brigades initiated the manufacture of rockets, now generically known as "Qassams", inside the Gaza Strip.[976] According to figures given on the Al-Qassam Brigades website, the group launched 335 Qassam rockets, 211 Grad rockets and 397 mortars into Israel during the Israeli military operations in Gaza.[977]

1612. The al-Aqsa Martyrs' Brigades were organized during the second intifada and claim affiliation with Fatah. This group too has claimed responsibility for rocket and mortar fire on Israel following the Egyptian brokered ceasefire (*tahdiya),* which started on 18 June 2008.

1613. Islamic Jihad wields considerably less political power than either Hamas or Fatah. Its military wing is known as Saraya al-Quds and the group calls the rockets it manufactures inside Gaza, 'al Quds'. Islamic Jihad has made numerous claims of responsibility for the launching of rockets into Israel,[978] including the first spate of rocket fire after 18 June 2008.

1614. On its website, the Abu Ali Mustafa Brigades,[979] the military wing of The Popular Front for the Liberation of Palestine also claimed responsibility for launching 177 rocket attacks and 115 mortars on several towns and villages inside Israel from 27 December 2008 to 18 January 2009.

1615. The al-Naser Salah ad-Din Brigades, the military wing of the Popular Resistance Committee has stated that it too has launched rockets into Israel.[980] The Committee is a coalition of different armed factions who oppose what they perceive as the Palestinian Authority and Fatah's conciliatory approach to Israel.

C. Type of rockets and mortars held by Palestinian armed groups[981]

1616. There is little independent confirmation of the types of weaponry held by Palestinian armed groups or the number of weapons that may be stockpiled. According to an Amnesty International report, of February 2009, the arsenals held by armed groups in the Gaza Strip include: al-Qassam (or al-Quds), 122mm Grad and 220 Fadjr-3 rockets as well as the al-Battar, the Banna 1 and Banna 2 anti-armour rockets.

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[975] The group was named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the Palestinian revolt of 1936-9.

[976] "Indiscriminate Fire", Human Rights Watch, 30 June 2007.

[977] See http://www.alqassam.ps/arabic/upload/forkan.pdf.

[978] According to statistics provided on its website, the Saraya al-Quds Brigades claimed responsibility for the firing of 235 mortar and rockets during the military operations , See http://www.israj.net/vb/t1839/.

See http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm.

[980] During the operations in Gaza, the group claimed responsibility for launching 132 rockets and 88 mortars. See http://www.moqawmh.com/moqa/view.php?view=1&id=300.

[981] See the Amnesty International report "Fuelling the Conflict: Foreign arms supplies to Israel/Gaza", 23 February 2009; p. 15-16 and p. 30-31.

1. al-Qassams

1617. There are thought to be at least three generations of Qassam rockets: (a) the Qassam 1, developed in 2001, with a range of 4.5 kilometres and an explosive load of 0.5 kilograms; (b) the Qassam 2, developed in 2002, with a range of 8-9.5 kilometres and an explosive load of 5-9 kilogram; and (c) the Qassam 3, developed in 2005, and with a range of 10 kilometres and an explosive load of 20 kilograms.[982]

1618. The rockets manufactured in the Gaza Strip are fashioned from rudimentary materials, such as hollow metal pipes. They are relatively unsophisticated weapons and lack a guidance system, and so cannot be aimed at specific targets.[983] Jane's Terrorism and Security Monitor has described them as "inaccurate, short-range and rarely lethal".[984] Even so, Qassam rockets have inflicted both fatalities and injuries to residents of southern Israel.

2. 122 mm Grad rocket

1619. 122 mm Grad rocket is a Russian-designed missile with a range of approximately 20 to25 kilometres. Given the higher level of technological sophistication and the fact that it is manufactured with material not easily (if at all) available in Gaza, it is likely that they are not made in Gaza.

1620. While most 122 mm Grad rockets have a range of about 20 kilometres, some have landed 40 kilometres inside Israel.[985] Global Security has concluded that on the basis of photographs, that the rockets that struck open space near Yavne and Bnei Darom on 28 December 2008 were Chinese-manufactured 122 mm WeiShei-1E rockets, which can travel distances of 20 to 40 kilometres.[986]

3. 220 mm Fadjr-3 rocket

1621. The 220 mm Fadjr-3 rocket is Iranian designed and is also thought to be smuggled into Gaza.

4. Anti-armour rockets

1622. Palestinian armed groups are also alleged to possess Chinese-designed rockets that have been smuggled into Gaza.[987] According to Jane's Defence Weekly, Hamas is also in possession

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[982] Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

[983] Ibid.

[984] Rocket powered 'Hamastan, Jane's Terrorism and Security Monitor, "11 July 2007.

[985] For example, in Beersheba on 30 and 31 December 2008: "Rockets reach Beersheba, cause damage", *Ynet News*, 30 December 2008,; "Rocket barrages hit Beersheba, Ashkelon; 5 lightly hurt", *Ynet News*, 31 December 2008.

[986] "Hamas Rockets", Global Security, available at http://www.globalsecurity.org/military/world/para/hamas-qassam.htm.

[987] "Hamas deploys rocket arsenal against Israel", Jane's Defence Weekly, 14 January 2009.

of several home-made anti–armour rockets, including the al-Battar, the Banna 1 and the Banna 2.[988]

5. Mortars

1623. Mortars are short-range weapons that are generally more accurate than rockets manufactured inside the Gaza Strip.[989] Mortars have rudimentary aiming systems, in which the coordinates of previous strikes can be used to better target subsequent launches. Most mortars have a range of 2 kilometres; according to the Jaffa Centre for Strategic Studies, however, the Palestinian Sariya-1 is a 240 mm mortar with 15 kilometre range.[990]

D. Rocket and mortar attacks by the Palestinian armed groups on Israel[991]

1624. The Mission is providing a brief history of rocket and mortars attacks, as it is relevant to an understanding of the breadth and depth of the psychological trauma suffered by residents of communities closest to the border, such as Sderot, that have been in range since 2001.

1625. The first recorded rocket launch took place on 16 April 2001. On 10 February 2002, the first rocket struck territory inside Israel, when a Qassam 2 rocket fired from Gaza landed in a field six kilometres from the border, near Kibbutz Sa'ad, in the Negev.[992] The first recorded strike of a rocket from Gaza on an Israeli city was on 5 March 2002, when two rockets struck Sderot.[993]

1626. According to statistics compiled by the Intelligence and Terrorism Information Centre at the Israel Heritage & Commemoration Center an organization with links to the Government of Israel, 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza from 16 April 2001 to 18 June 2008.

1627. The first civilian casualties from rocket fire were recorded on 28 June 2004 in Sderot, when Afik Zahavi (4 years old) and Mordehai Yosefof (49 years old) were killed by a Qassam rocket. Afik's mother, Ruthie Zahavi (28 years old) was critically injured and nine others were wounded. Hamas claimed responsibility.[994]

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[988] Ibid.

[989] Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

[990] http://www.weaponsurvey.com/missilesrockets.htm.

[991] Statistics are taken from the report by Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008".

[992] "The homemade rocket that could change the Mideast", *The Times*, 11 February 2002. .Note, however, that the al-Qassam Brigades website posted a press release on 26 October 2001, in which the group claimed responsibility for a rocket attack against an Israeli town inside Israel: http://www.alqassam.ps/ arabic/sinaat.php?id=16.

[993] http://www.israelemb.org/articles/2002/March/2002030500.html.

[994] "Israel steps up military action after Hamas rocket attack from Gaza strikes nursery", *The Independent*, 29 June 2004.

1628. From 28 June 2004, when the first fatalities from rocket fire were recorded, to 17 June 2008, 21 Israeli citizens, including two Palestinian citizens of Israel, two Palestinians and one foreign worker were killed inside Israel as a result of rocket attacks and mortar fire. In addition, a Palestinian was killed in Gaza when a rocket landed short of the border, and 20 Palestinians were killed when a vehicle transporting rockets exploded in Jabaliya refugee camp. Eleven of those killed inside Israel were killed in Sderot, a town of just over 20,000 people situated just over a kilometre from the Gaza Strip border.

E. Statements by Palestinian armed groups concerning their launching of rockets into Israel

1629. The al-Qassam Brigades, al-Aqsa Brigades, Islamic Jihad and Popular Resistance Committee all claimed responsibility for rocket and mortar attacks during the time period under review by the Mission. Palestinian armed groups generally justify these attacks as a legitimate form of resistance to Israeli occupation and as acts of self-defence and reprisals for Israeli attacks.[995]

1630. On 5 January 2009, Hamas member Mahmoud Zahar was quoted as saying that "the Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way".[996]

1631. On 6 January 2009, during the Israeli military operations in Gaza, Khaled Mashal, Chairman of the Hamas Political Bureau wrote in an open letter that the demand to stop the Palestinian resistance was 'absurd … our modest home made-rockets are our cry of protest to the world"[997]. Hamas, in a press release published on 28 December 2008,[998] declared:

> We appeal to all factions of the Palestinian resistance and its military arm, especially the Brigades of the Martyr Izz el-Din al-Qassam to declare a state of general alert … and take upon themselves the responsibility to protect the Palestinian people, by striking with all the strength it has the Zionists enemy, its military barracks and colonies, and by using all forms of resistance … including the martyrdom operations and striking the Zionist depths…"

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[995] For example, on 24 June 2008, Islamic Jihad fired three Qassam rockets from Gaza into the Western Negev following the targeted assassination of one of its members, Tarek Abu Ghally and another in Nablus earlier that day. Islamic Jihad stated ""we cannot keep our hands tied when this is happening to our brother in the West Bank" (The Jerusalem Post, 24 June 2008). See also chap. III.

[996] HRW report of 6 August 2009, p. 2.

[997] "This brutality will never break our will to be free" *The Guardian,* 6 January 2009. It should be noted that couple of month after the end of OCL and in an interview with *the New York Times*, Mashal stated that "not firing the rockets currently is part of an evaluation from the movement which serves the Palestinians' interest. After all, the firing is a method, not a goal. Resistance is a legitimate right, but practicing such a right comes under evaluation by the movement's leaders". *See* http://www.nytimes.com/2009/05/05/world/middleeast/05meshal.html.

[998] Press release, available at: http://www.palestine-info.info/Ar/default.aspx?xyz=U6Qq7k%2bcOd87MDI46m9rUxJEpMO%2bi1s7qWPRV4XDeu2%2fQ%2bDRjgQnm%2f7wZogCTxIzGTevVWJc5MsXTUO3OLNlY3YA5siKloAlZ6oS1ivXknPx%2fFToxPOB%2f8FLcGJbXOfO%2fHKW97wLT20%3d.

1632. A spokesperson for the Popular Front for the Liberation of Palestine (PFLP) stated two days before the end of the operations in Gaza that "the rockets are both practical and a symbolic representation of our resistance to the occupier".[999]

1633. On 25 May 2009, the Gaza authorities denied that they were preventing rocket attacks on Israel. A spokesman stated "we don't make such decision without agreeing with all the resistance factions in a national consensus…The factions have the right to respond to any Zionist crime using any sort of resistance and there is no lull with the [Israeli] occupation".[1000]

F. Statements by the Gaza authorities to the Mission

1634. In a meeting with the Mission on 1 June 2008, the Gaza authorities stated that they had taken the initiative to spare civilian lives when they renounced suicide attacks in April 2006.[1001] At the same meeting, a Government spokesperson stated that the resistance factions did not aim their rockets at civilians but rather at IDF artillery and other positions from which attacks against Gaza were launched.

1635. In response to questions by the Mission, on 29 July 2009, the Gaza authorities stated that they had "nothing to do, directly or indirectly, with al-Qassam or other resistance factions" and stated that they were able to exercise a degree of persuasion over the armed factions in relation to proposed ceasefires. While noting that the weaponry used by the armed factions was not accurate, the Gaza authorities discouraged the targeting of civilians.

1636. Despite various attempts, the Mission was unable to contact members of armed factions operating within the Gaza Strip.

G. Precautionary measures in effect in southern Israel

1. The Tseva Adom early warning system

1637. The *Tseva Adom* (or 'Red Colour') is an early warning radar system installed by the Israeli armed forces in towns in southern Israel. It was installed in Sderot in 2002 and in different areas of Ashkelon in 2005 and 2006.

1638. When the early warning system detects the signature of a rocket launch originating in Gaza, it automatically activates the public broadcast warning system in nearby Israeli communities and military bases. A two-tone electronic audio alert is broadcast twice, followed by a recorded female voice intoning the words "*Tseva Adom*". The entire programme is repeated until all rockets have hit and launches are no longer detected. During the public hearings held in Geneva on 6 July 2009, Noam Bedein of the Sderot Media Center screened footage of the

[999] http://www.pflp.ps/english/?q=pflp-interview-ma-news-agency-israeli-aggression-g.

[1000] Xinhua News, 25 May 2005.

[1001] The statement was widely reported in the international media. See, "Hamas in call to end suicide bombings", *The Guardian,* 9 April 2006.

sounding of the early warning system in Sderot and its effect on the community, for the benefit of the Mission.[1002]

1639. In Sderot, the system gives residents a warning of approximately 15 seconds before an incoming missile strikes. The further residents are from the Gaza Strip, the longer the warning period. Residents of Ashkelon interviewed by the Mission estimated that the system gives them a 20 second warning, while residents of the more northern city of Ashdod or of the town of Beersheba in the Negev estimate that the system gives them a warning of approximately 40 to 45 seconds.

1640. It should be noted that the *Tseva Adom* system is not 100 per cent effective; according to Noam Bedein, the system failed to detect a rocket that struck Sderot on 21 May 2007, killing one and wounding two others.[1003] Moreover, the system may also give false alerts, a fact which led authorities in Ashkelon to switch off the system in May 2008. Consequently, no warning was given when a rocket struck a shopping centre on 14 May 2008, seriously injuring three people (including Dr. Emilia Siderer, who appeared before the Mission at the public hearings held in Geneva on 6 July 2009).

1641. The sounding of the *Tseva Adom* system and the knowledge that it does not provide a guaranteed forewarning of a rocket strike, have, according to organizations providing mental health services, also had a profound, adverse psychological effect on the communities living within the range of rocket and mortar fire. This issue is discussed in detail below.

2. Construction of fortifications and shelters

1642. In recent years, the Government of Israel has fortified towns in southern Israel with bomb shelters. Some residential homes contain "secure rooms". In March 2008, the Government fortified 120 bus-stops in Sderot[1004] and, by January 2009, all schools in Sderot had been fortified against rocket attacks.

1643. According to an article published in *Haaretz*, approximately 5,000 residents of southern Israel, mostly elderly immigrants from the former Soviet Union, lacked proper reinforced rooms or reasonable access to public shelters.[1005] In interviews with residents of the affected communities in southern Israel, the Mission received reports of families abandoning the upper floors of their homes and living together in a room on the ground floor for fear of the failure of the early warning system and/or not being able to descend from the upper floors quickly enough reach a shelter.[1006]

[1002] "15 Seconds in Sderot", available at http://www.youtube.com/watch?v=ygb6VrW8WZw; "First day of School", available at http://www.youtube.com/watch?v=mFss6p5sTPE&feature=channel_page.

[1003] Telephone interview with Noam Bedein/ Sderot Media Centre, 28 June 2009. See also , 'Woman killed, two wounded in Qassam rocket strike on Sderot', *Haaretz*, 28 May 2007.

[1004] "Gov't places 120 fortified bus stops in rocket-plagued Sderot", *Haaretz*, 5 March 2008.

[1005] "5000 southerners, mostly elderly, lack access to rocket shelter", *Haaretz*, 4 February 2009,

[1006] Telephone interviews with Eric Yalin, 30 June 2009; Rachel Perez, 30 June 2009; Rachel Sushan, 30 June 2009; Naomi Benbassat- Lifshitz, 2 July 2009; Dina Cohen, 5 July 2009; Stewart Ganulin (Hope for Sderot), 8 July 2009.

1644. In March 2009, Sderot inaugurated a reinforced children's recreation centre, designed to provide a rocket-proof place for children to play.[1007] There are fortified playgrounds in Sderot, with concrete tunnels painted to look like caterpillars.[1008]

1645. The Government of Israel has stated that, on current information, spending on fortifications and shelters between 2005 and 2011 will amount to approximately $ 460 million.[1009] It should be noted, however, that the fortifications do not necessarily prevent rockets penetrating these buildings; for instance, on 3 January 2009, a Grad rocket penetrated the fortification of a school in Ashkelon, striking an empty classroom.[1010]

1646. The Mission is concerned about the lack of provision of public shelters and fortifications in the unrecognized villages in the Negev and in some of the recognized towns and villages populated by Palestinian citizens of Israel, living within the range of rocket and mortar fire (see paragraph X below).

H. Impact of rocket and mortar fire on communities in southern Israel

1647. The Mission notes that the impact on communities is greater than the numbers of fatalities and injuries actually sustained. The Mission also notes the information in the Government of Israel paper of July 2009, in which an article from *the Guardian* article was cited, stating that as at July 2009, 92 per cent of Sderot residents had seen or heard a rocket impact, 56 per cent had had shrapnel fall on their homes and 65 per cent knew someone who had been injured.[1011]

1. Fatalities

1648. Between 18 June 2008 and 31 July 2009, there were four fatalities in Israel as a consequence of rocket and mortar fire from Gaza, of which there were three civilian and one military casualties.

1649. On 27 December 2008, Beber Vaknin, 58 years of age, of Netivot was killed when a rocket fired from Gaza hit an apartment building in Netivot.

1650. On 29 December 2008, Hani al-Mahdi, 27 years of age, of Aroar, a Bedouin settlement in the Negev, was killed when a Grad-type missile fired from Gaza exploded at a construction site in Ashkelon. On the same day, in a separate incident, Irit Sheetrit, 39 years of age, was killed and several wounded when a Grad rocket exploded in the centre of Ashdod. The al-Qassam Brigades claimed responsibility for the attack.

[1007] "An Israeli playground, fortified against rockets", *The New York Times*, 12 March 2009.

[1008], "On Israel-Gaza border, teens learn legacy of hate", *Tampa Bay News*, 8 February 2009.

[1009] Government of Israel, "The Operation in Gaza: 27 December 2008 – 18 January 2009, Factual and Legal Aspects", July 2009"), para. 43 and fn. 23.

[1010] "Experts: Grads in Ashkelon were advanced", *Ynet News,* 1 March 2009.

[1011] "The operation in Gaza…", para. 46, citing statistics appearing in "Middle East Conflict", *the Guardian*, 15 July 2009.

1651. On 29 December 2008, a member of the military, Warrant Officer Lutfi Nasraladin, 38 years of age, of the Druze town of Daliat el-Carmel, was killed by a mortar attack on a military base near Nahal Oz.

2. Physical injuries

1652. According to Magen David Adom (MDA), during the period of the Israeli military operations in Gaza, a total of 918 civilians were wounded by rocket attacks. This figure includes 27 critically wounded, 62 moderately wounded and 829 lightly wounded.[1012] From 19 January to 19 March 2009, 10 people physically injured from rocket fire were treated by MDA.[1013]

3. Psychological trauma/ mental health

1653. In interviews with both residents of southern Israel and the organizations dealing with mental health issues, the issue of psychological trauma suffered by adults and children living in the zone of rocket fire was repeatedly raised. While news articles sometimes report on people being treated for shock following a rocket strike, both individuals and organizations have voiced a real frustration with the lack of focus on what they termed the "invisible damage" caused by rockets. According to MDA, 1,596 people were treated by health facilities in Israel between 27 December 2008 and 18 January 2009.[1014] From 19 January to 2 August 2009, 549 people from Sderot alone were treated for stress-related injuries.[1015]

1654. A study of October 2007, commissioned by NATAL, on the impact of the ongoing traumatic stress conditions on Sderot[1016] found that 28.4 per cent of adults and between 72 and 94 per cent of children in Sderot reported signs indicative of post-traumatic stress disorder.[1017] The study also found that children under the age of 12 years showed a high frequency of reported

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[1012] MDA communication to the Mission, 9 August 2009. The Mission notes the figures given in the HRW report of August 2009 which outlined the number of people treated by MDA: 770 people including 3 fatalities, 4 severely wounded, 11 moderately wounded and 167 lightly wounded. See HRW report of August 2009, p. 8.

[1013] HRW report of August 2009, p. 8.

[1014] MDA communication to the Mission, 9 August 2009. Human Rights Watch quotes reports from MDA that it had itself treated 570 cases of people suffering from stress-related injuries: see HRW report of August 2009, p. 8 This figure was confirmed in a meeting between MDA and representatives of the Mission in Geneva on 22 July 2009.

[1015] Ibid.

[1016] Available at http://www.theisraelproject.org/atf/cf/%7B84dc5887-741e-4056-8d91-a389164bc94e%7D/NATAL%20STATS%20FOR%20WEB.PPT#353,1, The Impact of the Ongoing Traumatic Stress Conditions on Sderot Research Survey for NATAL – The Israel Trauma Center for Victims of Terror and War: Initial Findings & Recommendations. See also "Study: Most Sderot kids exhibit post-traumatic stress symptoms" *Haaretz*, 17 January 2008.

[1017] Telephone interview with Orly Gal, NATAL, 28 June 2009; See also, "Study: Most Sderot kids exhibit post-traumatic stress symptoms", *Haaretz*, 17 January 2008; These findings were confirmed by Dr. Rony Berger who spoke at the public hearings in Geneva on 6 July 2009. Dr Berger also stated that consumption of tranquillisers was 2.5 times as high in Sderot than in communities of similar size and socio-economic status that did not live under bombardment. The Mission notes also the 29 July 2009 submission by Dr. Yechiel Lasry, Mayor of Ashdod in which he detailed similar symptoms in children in Ashdod following the rocket attacks on Ashdod during the military operations in Gaza.

symptoms including fear, avoidance, behavioural problems, problems at school, somatic problems, regression and difficulty in sleeping.[1018]

1655. In a submission to the Mission, Dr. Rony Berger, a clinical psychologist and Director of Community Services described a January 2009 visit to a family in Ofakim, a town 12-15 kilometres from the Gaza border, in the following terms:

> The family was referred to the Community Staff for treatment by the father, who works at one of the factories in the south. He said that his house had "turned into a madhouse", and that the level of stress was so high that "you could cut the air with a knife"….When I reached the family home in Ofakim, I found a house full of children (12 children, aged one year to 22 years). It was a large house, and full of life; perhaps more accurately – frantic. I arrived exactly as the siren was sounding, and I saw a range of anxiety-related responses, some of which were certainly extreme. The mother was screaming at the top of her voice, her sister turned completely white, the younger children cried, the eldest daughter (22) froze and had difficulty moving towards the secure room, while her younger brother (14) seemed almost catatonic. The father, who had called me, moved towards the reinforced room slowly and apathetically, as he turned towards me, pointing towards his family members, and said: "You see what I have to deal with every day." His daughter urged him, screaming, to move faster, but it seemed that the louder she shouted, the slower he moved towards the reinforced room. They started arguing very loudly, while all the rest of the family joined into the fray.[1019]

1656. Dalia Yosef of the Sderot Resiliency Center stated that the Center's 18 therapists provided counselling to over 300 people in Sderot during the military operations in Gaza and noted that trauma symptoms were particularly noticeable in children. Ms. Yosef stated that trauma was triggered not only by the rocket strikes but also by the sounding of the early warning system alerts, even where no rocket strike subsequently occurred.[1020]

1657. The observations made by the organizations dealing with treating trauma were borne out in the descriptions of daily life made in the interviews held with residents in the affected communities.[1021] The Community Manager of Kibbutz Gevim, near Sderot, stated that 60 per cent of children in the kibbutz were in touch with psychological services.[1022]A resident of

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[1018] At a meeting with the Mission on 22 July 2009, MDA described similar symptoms of stress-related injuries that their paramedics had observed and treated when called out following rocket and mortar attacks in southern Israel.

[1019] Submission by NATAL, 'Description of a recent home visit by NATAL's Dr Rony Berger to a family in Ofakim – January 2009, submitted to the Mission on 3 July 2009.

[1020] Telephone interview with Dalia Yosef, Sderot Resiliency Center, 2 July 2009.

[1021] For example, Ofer Shinar during the public hearings in Geneva on 6 July 2009 described his observation of psychological trauma of civilians, including his students, in Sderot following rocket attacks during the time of the operation in Gaza.

[1022] Telephone interview with Avi Kadosh, 26 June 2009.

Beersheba described how she was unable to sleep in her apartment because of panic attacks and how she now lived with relatives.[1023]

1658. In a telephone interview on 29 July 2009, Avirama Golan, a journalist for *Haaretz* who lived in Sderot from April 2008 to May 2009, commented on the psychological impact of living under rocket fire:

> You get used to it in a sense but it changes your perception of the world, of the way that the world functions. Your sense of what is normal becomes skewed. You cannot be sure of anything. All the authorities that children have - their mother, their father - they don't count. Nothing can keep you safe.

4. Damage to property

1659. Where rockets have landed in towns and villages in southern Israel, they have caused localized property damage. This has included private houses[1024] and cars.[1025] During the operations in Gaza, a total of nine schools and kindergartens in Sderot, Beersheba, Ashdod, Ashkelon and Kiryat Ha Hinoch were hit and damaged by rockets.[1026] Two kindergartens were struck and damaged by rocket fire in Ashdod.[1027] On 8 January 2009, a Grad rocket hit a school in Ashkelon.[1028]

1660. On 26 February 2009, a rocket launched from Gaza damaged two houses in Sderot.[1029] On 5 March 2009, a rocket hit a synagogue in Netivot, causing light damage.[1030]

1661. The Mission was not able to obtain an estimate of the financial cost of the damage to property caused by rocket and mortar fire. In its paper of July 2009, the Government of Israel stated, "for direct damage caused to buildings or property as a result of rocket or mortar attacks 2,400 claims, amounting to a total of 31 million NIS ($7.95 million) were submitted in 2008, in

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[1023] Telephone interview with Rachel Perez, 30 June 2009.

[1024] For example, a house in a kibbutz in the Negev was damaged by a rocket on 27 November 2008; see, "Kassams continue to strike Negev", *JTA*, 27 November 2008.

[1025] On 17 December 2008, a rocket landed in the carpark of a shopping centre in Sderot, injuring three people and causing serious damage to a supermarket and to cars. See "Three injured in Kassam attack", *JTA*, 17 December 2008.

[1026] Report of the Secretary-General on Children and Armed Conflict, delivered to the 63rd Session of the General Assembly, UN Doc S/2009/158, para. 90, dated 26 March 2009. Details of the damage to Ashkelon schools were also given by Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, in their presentation to the Mission at the public hearings in Geneva on 6 July 2009.

[1027] "Rocket slams into Ashdod kindergarten", *Jerusalem Post*, 6 January 2009.

[1028] "4 troops hurt in mortar attack; Grad hits Ashkelon school", *Ynet News*, 8 January 2009; Testimony of Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, to the Mission at the public hearings in Geneva on 6 July 2009.

[1029] "Kassam damages two Sderot home", *JTA*, 26 February 2009.

[1030] "Rocket hits synagogue in Netivot; IAF destroys Gaza tunnels", *Haaretz*, 9 March 2009.

addition to 2,300 additional claims between January and July 2009, of which a total of approximately 25 million NIS ($6.4 million) was granted thus far".[1031]

5. Impact on the right to education

1662. The combination of the early warning systems alarms (and the move to the shelters), the rockets strikes and the ongoing psychological trauma caused by the alerts and the strikes had an adverse impact on the right to education of children and young adults in the affected communities in southern Israel.[1032]

1663. Most obvious is the disruption caused to education caused by the closure of schools during heightened hostilities. During the operations in Gaza, educational institutions in Sderot, Ashkelon and Ashdod and across areas within rocket range were closed.

1664. Even when classes are held in more peaceful times, education is disrupted by students having to move to secure areas every time that the early warning system sounds, at time from 10 to 20 times a day, making it virtually impossible for classes to be held. When interviewed on 24 June 2009, Merav Moshe, a lecturer at Sapir College near Sderot, told the Mission:

> At Sapir, the atmosphere is tense. Both the faculty and the students are in a state of fear and are perpetually anxious. It is impossible to teach or for students to concentrate on their studies when they have to run back and forth to the shelters. Even in classes that are protected, the students need to move forward and herd in the front of the room away from the windows. It is not a good learning or teaching environment.

1665. Commenting on the impact of the education of children in the kibbutzim near Sderot, Avi Kadosh, during a telephone interview on 29 June 2009, stated

> Children here can't run around and play. They have to stay close to a secure place. The older ones have grown up with it and know the drills. They know they have 15 seconds to get inside to a protected place. Some children have been born into it and for them; they clap their hands and run to the safety room. It is also difficult for them to get to class. The rockets are disruptive and the atmosphere is not conducive to learning.

1666. Those who are experiencing symptoms of post-traumatic stress disorder have a diminished ability to learn. In a telephone interview on 29 June 2009, Batya Katar, the Director of the Parents' Committee concerned with schools and kindergartens in Sderot, told the Mission

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[1031] "The operation in Gaza…", footnote 27.

[1032] According to the Government of Israel, there were a total of 196,444 students within the rocket range; "The operation in Gaza…", para. 50.

> It is difficult to describe the suffering of the children when they hear the red alert. They do not even need to see the Qassam, just the alert is enough. Children start to cry, to wet themselves. Sometimes it is like people are having an epileptic fit: they start shaking uncontrollably. Immediately, when there is an alert near a school, a group of psychologists usually come to speak to the students.[1033]

1667. In their interviews, three lecturers at Sapir College spoke of students who, following repeated rocket attacks on the school, felt unable to continue their studies.[1034] Ofer Shinar, during the public hearings in Geneva on 6 July 2009, gave a description of a student at Sapir College who had assisted in escorting residents of Sderot during the time of the military operations in Gaza, and later suffered from psychological trauma and stopped attending most of her classes. The issue of students either dropping out of their courses or transferring to colleges outside rocket range has had significant financial implications for Sapir College, which depends, in part, on student fees to fund itself.[1035]

1668. Similar statements were made during a telephone interview on 26 June 2009, by the Community Director of Kibbutz Nir-Am and Kibbutz Gevim, Avi Kadosh, who stated that families with young children were increasingly leaving their homes in the kibbutzim to move to safer places and that this made it increasingly difficult to run the education system on the kibbutz.

1669. During a telephone interview on 2 July 2009, Dalia Yosef of the Sderot Resiliency Center stated:

> The children do not have a routine life, in a safe place, and it affects their ability to learn and to be educated. Schools are not safe places for them, nor are their homes. The stress affects their behaviour and how it impacts them. There is increasing violence in the schools as the children act out. There is a lot of stress in the air and it is difficult to exist for a long time in this situation without being affected. It is of course the same for the children in Gaza. They do not have a chance to have a normal life.

6. Impact on the economic and social life of communities

1670. In the interviews conducted by the Mission, it was clear that the impact on communities that had only recently come under the effect of rocket and mortar fire was different to that on those that had been living in that situation for the past five to eight years.

1671. In towns such as Ashdod, Yavne and Beersheba, which experienced rocket strikes for the first time during the military operations in Gaza, there was temporary displacement of some of its residents, who chose to move northwards out of the range of fire for the duration of the

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[1033] Mission also notes the submission of 29 July 2009 by Dr, Yechiel Lasry, mayor of Ashdod which quotes the head of the Ashdod Psychology Center, Mr. Haviv Galili, as saying that it took 6-8 weeks for a number of a classes "to return to stability and normal life".

[1034] Telephone interviews with Ofer Shinar and Julie Chaitin, 25 June 2009; Merav Moshe, 28 June 2009.

[1035] Telephone interview with Merav Moshe, 28 June 2009.

operations. In these towns, brief disruption to the economic and social life of the communities was experienced.

1672. In towns closer to the Gaza border, such as Sderot, the recent rocket fire has merely consolidated an exodus started in the previous years. In an interview with the Mission, Eli Moyal, former mayor of Sderot, stated:

> Over 15 per cent of the people living in Sderot have left, moved away permanently. Mainly it was the people who could afford to move and it meant that a lot of business closed down – almost half the businesses that existed in 2001 have closed down. It also meant that the municipality was losing its tax base and it made it much more difficult to supply the services that we are supposed to. This includes kindergartens and other educational services.

1673. Stewart Ganulin, on behalf of Hope for Sderot, a non-profit organization which assists, financially and practically, those injured by rocket fire and families who have lost a member, stated to the Mission on 8 July 2009, that the organization alone was helping 576 people from 133 families of the 3000 families on welfare in Sderot.

1674. The kibbutzim surrounding Sderot have also been particularly affected because tourists from abroad and other parts of Israel no longer come to stay there. Yeela Ranan, interviewed on 9 July 2009, stated that house prices in Sderot had fallen by 50 per cent. Both residents of Sderot and the surrounding kibbutzim commented on the downturn in their livelihood resulting from living in a community under rocket and mortar fire.

7. The unrecognized Palestinian Arab Bedouin villages of the Negev

1675. The unrecognized villages in the Negev are Palestinian Arab Bedouin villages that are not recognized by Israel[1036] and have been subjected to demolitions by the Israeli authorities. They are not marked on any commercial maps and are ineligible for municipal services such as connection to the electricity grid, water mains or for garbage collection. According to the Director of the Regional Council for the Unrecognized Villages, Atwa Abu Fraih, in an interview on 30 July 2009, approximately 90,000 people live in these villages, including 17,000 schoolchildren.

1676. According to Physicians for Human Rights - Israel, these villages are in range of rocket fire but have no early warning system, nor have any shelters been built to protect the residents who live there.[1037] As much was confirmed by the Director of the Regional Council of Unrecognized Villages, Atwa Abu Fraih, who told the Mission that most of the structures in the

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[1036] Between 1948 and 1966, Israel imposed a military administration on Palestinian Israelis in the region and designated 85 per cent of the Negev as "State land." All Bedouin habitation was retroactively termed illegal and consequently remains, with few exceptions, unrecognized under Israeli planning criteria and therefore subject to demolition and appropriation into regional plans under Jewish Agency criteria; (i.e., exclusively for "Jewish nationals").

[1037] Telephone interview with Wasim Abas, Physicians for Human Rights – Israel , 8 July 2009. See also "Israeli Arabs on Gaza firing line lack shelter", *MSNBC.com*, 4 January 2009.

villages were made of zinc, including all the schools and that none of the unrecognized villages had any shelters from rocket or mortar fire. He also pointed out that none of the unrecognized villages was equipped with the early warning alarm system though seven recognized villages did. Unrecognized villages close to either recognized villages with an early warning system or Jewish Israeli towns could hear the alarms. He stated, however, that the early warning system was of little use if there were no shelters. The Director of the Regional Council stated that, if a rocket landed in the unrecognized villages, the consequences would be "disastrous".

1677. While no fatalities or injuries have been recorded in these communities, Physicians for Human Rights – Israel has confirmed that a number of the residents of these villages have been referred for psychological treatment in the aftermath of rocket and mortar strikes.

8. Recognized Palestinian towns and villages in southern Israel

1678. Where the towns and villages predominantly populated by Palestinian citizens of Israel are recognized (and consequently eligible for municipal services such as electricity), they still lack the public shelters commonly found in towns and villages populated predominantly by Israel's Jewish citizens.

1679. Rahat is located 24 kilometres from Gaza and has a population of 45,000 residents. It has no public shelters and few houses have secure rooms. On 30 January 2009, a rocket exploded approximately half a mile from Rahat. The Government of Israel, in a report in the *Associated Press*, stated that it was conducting a public information campaign in Arabic in the broadcast and print media; according to residents, however, this was of little use if public shelters were not made available.[1038]

1680. In its recent paper, "The Operation in Gaza: Factual and Legal Aspects", the Government of Israel stated that the

> Israeli authorities took a variety of measures to protect its citizens and to reduce the risk to civilians, with special attention being given to sensitive facilities, such as educational institutions and hospitals. These efforts included the establishment of public shelters and fortifications of public institutions, as well as the instruction of the population in risk how to act in times of emergency.[1039]

1681. The Mission is concerned about the disparity in treatment of Jewish and Palestinian citizens by the Government of Israel in the installation of early warning systems and provision of public shelters and fortified schools between its Jewish and Palestinian citizens. This is particularly noticeable in the case of the unrecognized villages, some of which are within the now increased zone of rocket fire, and which have no means of protection from rocket and mortar attacks.

[1038] "Israeli Arabs on Gaza firing line lack shelter", *MSNBC.com,* 4 January 2009.

[1039] "The operation in Gaza…", para. 42.

I. Legal analysis and conclusions

1682. The Mission emphasizes the obligation of the Gaza authorities to respect international law (see chap. IV above), and is of the view that this requires the prevention and prosecution of violations of international law occurring within its area of de facto governmental authority.[1040] The issue of accountability is discussed below. The Mission considers that the international humanitarian law norms referred to below are relevant to an analysis of the situation described above.

1683. International law attributes a duty to parties to hostilities to protect and respect civilians. Such a duty is part of customary international law and is codified in treaty law through article 27, paragraph 1, of Geneva Convention IV. Furthermore, combatants have an obligation, under article 48 of Additional Protocol I, to distinguish between civilians and combatants and civilian objects and military objects during the conduct of hostilities. Article 51 (4) of Additional Protocol I explicitly prohibits indiscriminate attacks. Article 51 (6) of Additional Protocol I strictly prohibits reprisals against civilians. The relevant legal provisions are set out above in chapter XVI.

1684. Article 51(2) of Additional Protocol I prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". Article 13 (2) of Additional Protocol II contains a similar prohibition. Article 4 (2) (d) of Additional Protocol II prohibits acts of terrorism as a violation of the "fundamental guarantees" of humane treatment under the Additional Protocol.[1041] The same rule is considered a rule of customary law in international and non international armed conflicts.[1042] Such a crime has been charged in indictments both before the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone.

1685. At the Special Court for Sierra Leone, Trial Chamber 1, in the case of *Prosecutor* v. *Sesay et al.,* held that the elements of the above-mentioned offence were as follows:

(i) Acts or threats of violence;

(ii) The Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the objects of those acts or threats of violence;

[1040] The Mission draws attention to the 'Trail Smelter' arbitration in which the arbitration tribunal found that "under the principles of international law….no state has the right to use or permit the use of its territory in such a manner as to cause injury [by fumes] in or to the territory or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence"; Trail Smelter Arbitration, (1938/1941) 3 R.I.A.A. 1905.

[1041] This prohibition was, in turn, based on article 33 of Geneva Convention IV, which prohibited "all measures of intimidation or of terrorism" of or against protected persons.

[1042] Study on international humanitarian law, ICRC, Vol. 1, Rule 2.

(iii) The acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.[1043]

1686. The Appeals Chamber of the ICTY in *Prosecutor v. Galic* held that:

> The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern […] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.[1044]

J. Findings

1687. There is no justification in international law for the launching of rockets and mortars that cannot be directed at specific military targets into areas where civilian populations are located. Indeed, Palestinian armed groups, among them Hamas, have publicly expressed their intention to target Israel civilians. The al-Qassam Brigades, on their website, claimed responsibility for the deaths of each of the Israeli civilians killed by rocket fire during the operations in Gaza.[1045]

1688. From the facts it ascertained, the Mission finds that the Palestinian armed groups have failed in their duty to protect and respect civilians. Even though the al-Qassam Brigades and other armed groups in Gaza have recently claimed that they do not intend to harm civilians, the fact that they continue to launch rockets at populated areas without any definite military targets and are aware of the consequences to civilians indicates an intent to target civilians. Furthermore, the launching of unguided rockets and mortars breaches the fundamental principle of distinction: an attack must distinguish between military and civilian targets. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population.

1689. Given the apparent inability of the Palestinian armed groups to aim rockets and mortars at specific targets and, the fact that the attacks have caused very little damage to Israeli military assets, it is plausible that one of the primary purposes of these continued attacks is to spread terror – prohibited under international humanitarian law -among the civilian population of southern Israel.

[1043] *Prosecutor v. Sesay et al*., Trial Judgment, 2 March 2009.See also *Prosecutor v. Galic*, Trial Judgment, 5 December 2003 at para. 133 and Appeal Judgment, 30 November 2006 at para. 104. The *Galic* Judgments use the words "with the primary purpose", rather than with the " specific intent".

[1044] *Prosecutor v. Galic,* Appeal Judgment, 30 November 2006, para. 102. This position was endorsed by the Appeals Chamber of the SCSL in *Prosecutor v. Fofana et al.,* Appeal Judgment, 28 May 2008, para. 351.

[1045] http://www.alqassam.ps/arabic/statments1.php?id=4066; http://www.alqassam.ps/arabic/statments1.php?id=4088; http://www.alqassam.ps/arabic/statments1.php?id=4098. See also, "South under fire; 2 Israelis killed", Ynet News, "29 December 2008.

1690. The above view is supported by public statements of the armed groups, such as that made by Hamas on 5 November 2008. Following an Israeli raid in Gaza[1046] which resulted in the death of five Hamas militants[1047], a Hamas spokesman stated "The Israelis began this tension and they must pay an expensive price… They cannot leave us drowning in blood while they sleep soundly in their beds".[1048] As noted in chapter XVI, reprisal attacks cannot be carried out against a civilian population.

1691. From the facts available, the Mission finds that the rocket and mortars attacks, launched by Palestinian armed groups in Gaza, have caused terror in the affected communities of southern Israel and in Israel as a whole. Furthermore, it is the Mission's view that the mortars and rockets are uncontrolled and uncontrollable, respectively. This indicates the commission of an indiscriminate attack on the civilian population of southern Israel, a war crime, and may amount to crimes against humanity. These attacks have caused loss of life and physical and mental injury to civilians and damage to private houses, religious buildings and property and have eroded the economic and cultural life of the affected communities.

XXV. REPRESSION OF DISSENT IN ISRAEL, RIGHT TO ACCESS TO INFORMATION AND TREATMENT OF HUMAN RIGHTS DEFENDERS

1692. In the course of its investigations, including in meetings, submissions and public testimonies, the Mission received allegations that sources of criticism of actions by Israel during and following the military operations of December 2008-January 2009 from inside Israel were subjected to attempted or actual repression, and that the rights of freedom of association and expression for individuals and groups had been violated. In this regard, concerns were also raised about the denial of access to the media and to human rights monitors prior, during and after the military operations in Gaza.

1693. The Mission conducted telephone interviews with people who participated in protests or who worked for non-governmental organizations working on human rights inside Israel. Shir Hever of the Alternative Information Center appeared at the public hearings held in Geneva on 6 July 2009 to speak specifically about the issue of repression of dissent inside Israel. This issue was also discussed in meetings with and submissions by human rights organizations, journalists and other relevant individuals.

1694. The Mission was unable to conduct on-site investigations owing to the decision by the Government of Israel not to cooperate with the Mission. Accordingly, it was not able possible to obtain the views of the police and other State authorities involved in some of the incidents. The Mission has taken this into account in its assessment of the available information.

[1046] The Israeli forces declared that the incursion was aim at destroying a tunnel which they believed was being dug to kidnap Israeli soldiers.

[1047] One militant was killed in the fighting while four others were killed following an Israeli air strike on rocket launchers after 30 Qassam rockets had been launched into Israel following the Israeli incursion.

[1048] "Six die in Israeli attack over Hamas tunnel under border to kidnap soldier", *The Times,* 6 November 2008.

1695. The Mission addressed questions to the Government of Israel regarding Israeli citizens arrested during or as result of demonstrations during the military operations in Gaza. The Mission did not receive any reply to its questions.

1696. The Mission has identified five areas warranting further examination: (a) the matters arising from protests inside Israel; (b) the judicial responses to these actions; (c) the interrogation of political activists by the General Security Services (*Shabak*); (d) freedom of association and the treatment of human rights organizations inside Israel and (e) access of the media and of human rights monitors to Gaza prior to, during and after the military operations.

A. Protests inside Israel

1. General

1697. While the majority of Jewish citizens in Israel supported military action in Gaza,[1049] demonstrations and vigils were held across Israel – daily in some areas - against the military operations. As might be expected, smaller protests took place on weekdays, while larger ones were held on on the weekends. Protests took place in numerous towns and villages across Israel, the most important being: the demonstration of 150,000 people in Sakhnin,[1050] the largest demonstration of Palestinian Israelis since 1948; a 100,000-strong protest in Baqa al Gharbiyah in the "Triangle";[1051]a demonstration of 15,000 people in Naqab; a protest by more than 10,000 people in Tel Aviv and protests of a similar size in Haifa. Protests were also witnessed in southern localities, including Beersheba and Ararah.[1052] Daily protests took place not only in towns and villages populated mainly by Palestinian citizens of Israel, but also in Haifa[1053] and Tel Aviv.

1698. According to information received by the Mission, the protests against the Israeli military operations in Gaza were, in the main, attended by Palestinian Israelis; even though protests usually also included Jewish Israelis. In Tel Aviv, Jewish Israelis reportedly made up 30 to 40 per cent of the larger weekend demonstrations.[1054] The Mission took note of reports that in areas where mainly Jewish Israelis resided, such as Tel Aviv and Beersheba, counter protests were sometimes organized or spontaneously formed. While there were verbal confrontations between the two groups of protesters, physical violence was rare.

[1049] "Poll shows most Israelis back IDF action in Gaza", *Haaretz*, 15 January 2009; "Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained", *New York Times*, 20 January 2009.

[1050] "Worldwide protests denounce Israel", *Al Jazeera*, 3 January 2009.

[1051] The area commonly known as the "Triangle" is a concentration of Palestinian Israeli towns and villages adjacent to the Green Line, located in the eastern Sharon plain. From the air, the towns and villages form a triangle, thus the name.

[1052] Telephone interviews with Leah Shakdiel, 24 June 2009; Atwa Abu Fraih, 30 July 2009.

[1053] Significantly, Haifa has a sizeable Palestinian Israel population. In 2003, the Israeli Central Bureau of Statistics found that 9 per cent of the population of Haifa was Palestinian Israeli; see (www.cbs.gov.il/statistical/arab_pop03e.pdf_.

[1054] Telephone interview with Haggai Matar, 24 July 2009.

2. Police conduct

1699. According to information received by the Mission, in areas of northern Israel populated mainly by Israel's Palestinian citizens (such as Sakhnin, Nazareth and Baqa al-Gharbiyah), the police did not enter the town during the protests but remained on the outskirts. This decision was apparently taken in coordination with town authorities,[1055] on the agreed view that the protests would be more orderly if the police remained out of sight.

1700. In Tel Aviv and Haifa, the police tended to be visible to protesters.[1056] With a few exceptions (see below) police interference was limited. In Haifa, smaller demonstrations were attended by almost as many police officers as protesters, and the number of cameras being used by the police to record the protest had an intimidating effect.[1057] Police blocked off streets around the demonstrations in both cities, with the consequence that protests took place in near deserted areas; one protester remarked that "it was as though we were demonstrating to ourselves".[1058] While the media had free access, the Mission's attention was drawn to the fact that there was little coverage of the protests by the international or Israeli media.

1701. In the south, in towns populated by Palestinian Israelis, police action mirrored that taken in the North; remaining on the outskirts of the town while the protests continued inside. There were report**s**, however, of significant difficulties for protesters in obtaining permits, even where the protests were being staged in areas outside the military zone in effect in the areas around Gaza. This compared unfavourably with reports from Tel Aviv and Haifa, where police generally allowed protests, regardless of whether permits had been obtained.

1702. In areas in the south populated by Jewish Israelis, such as Beersheba, police maintained a presence near the demonstrators and were apparently less tolerant of the protests against the military operations in Gaza than their colleagues policing protests in the north. One protester stated that this was because dissent in the south was an embarrassment to Israel, which claimed that the military operations in Gaza were motivated by the need to defend southern Israel.[1059] It should be noted, however, that there were significant episodes of counter protest in Beersheba, which had come under rocket fire during the operations in Gaza.[1060]

[1055] Telephone interviews with Ameer Makhoul, 27 July 2009; Hassan Tabaja, 29 July 2009; "Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained", *New York Times*, 20 January 2009.

[1056] Telephone interviews with Ameer Makhoul, 27 July 2009; Sahar Abdo, 26 July 2009; Hakim Bishara, 29 July 2009.

[1057] Telephone interview with Sahar Abdo, 26 July 2009.

[1058] Telephone interview with Ronen Shamir, 22 July 2009. The Mission acknowledges that there may be legitimate public security and order concerns that require such action but has not been able to discuss them with the police authorities owing to the refusal of Israel to cooperate with the Mission.

[1059] Telephone interview with Haggai Matar, 24 July 2009.

[1060] Telephone interviews with Leah Shakdiel, 24 June 2009; Merav Moshe, 28 June 2009.

3. Arrests of protesters

1703. According to statistics that Adalah obtained from the police, 715 protesters were arrested inside Israel.[1061] This number included 277 people arrested in Jerusalem. Unfortunately, the statistics make no distinction between East and West Jerusalem.[1062]

1704. The Mission notes that, given the large number of people involved in the demonstrations, which it estimates to be in the hundreds of thousands, relatively few arrests were made. It was, however, struck by reports that no arrests seem to have been made of people participating in counter-demonstrations supporting the military operations in the Gaza Strip.

1705. According to the police statistics obtained by Adalah, 34 per cent of those arrested were under the age of 18.[1063] Of those charged with an offence, the majority were charged with "attacking police officers", "unlawful assembly" and "disturbing public order".[1064] While Adalah noted that only in a few cases were those arrested charged with "endangering life on a public road",[1065] the Meezan Center for Human Rights in Nazareth noted that a large number of those arrested in the northern areas mainly populated by Palestinian Israelis had been charged with that offence.[1066]

4. Physical violence against protesters

1706. The Mission received several submissions about the beating of protesters by the police. These incidents appeared to have been a disproportionate response by the police either when they believed that the protesters were not complying, or not complying fast enough, with their orders and, in some instances, where protesters were themselves breaking the law (for example, by throwing stones at the police).

Ben Gurion street, Haifa, 1 January 2009

1707. On 1 January 2009, a silent candle-light vigil was held on Ben Gurion street in Haifa. A number of prominent Palestinian Israeli actors were present at the vigil, including Hanan Helu and Saleh Bakri. In a telephone interview on 29 July 2009, Mr. Bakri stated that, the police and members of the Israeli special forces requested that the group move, which it did before sitting further down the street. Protesters were then confronted by the police and beaten about their lower bodies; some of them were arrested.[1067] According to Adalah, the police refused to provide

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[1061] Adalah, "Protest Prohibited: Restricting the Freedom of Speech by Law Enforcement Authorities during the Gaza Military Operation", (Hebrew), August 2009 (the "August 2009 Adalah report"), p. 2.

[1062] The Mission considers East Jerusalem part of the Occupied Palestinian Territories, with the consequence that had the Mission been able to distinguish arrests in East Jerusalem from those in West Jerusalem, the former would have been included in the statistics of arrest in protests occurring in the West Bank.

[1063] Adalah report of August 2009, p. 6.

[1064] Ibid.

[1065] Ibid, p. 2.

[1066] Telephone interview with Hassan Tabaja, 29 July 2009.

[1067] Telephone interview with Saleh Bakri, 29 July 2009.

medical assistance to the injured protesters who were detained.[1068] Those who were arrested and taken to the police station reported that the police verbally abused them and made sexual comments about female members of their families. At the police station, Mr. Bakri, well known in Israeli and Palestinian public life, was made to stand without moving for 30 minutes facing the Israeli flag while police officers took photographs and filmed him.[1069]

Egyptian embassy, Tel Aviv, 29 December 2008

1708. On 29 December 2008, approximately 120 people protested in the vicinity of the Egyptian embassy in Tel Aviv. They were protesting against what they believed to be Egyptian support for the action by Israel in Gaza. The demonstration was being held in a designated area, as indicated both by Israeli police and, reportedly, members of the Israeli special forces at the scene.[1070] According to one protester, soon after the protest started, people passing by started to verbally abuse the protesters and waved Israeli flags at them. The police and members of the special forces asked the protesters to leave.[1071] According to the same protester, the police started to hit the other protesters about the lower body with sticks in an apparent effort to disperse them.[1072] Another protester stated that she had been released by the police once they realized that she was Jewish, while the Palestinian Israeli protesters were arrested.[1073]

Kofor Cana and Umm al-Fahem (dates unknown)

1709. During the Israeli military operations in Gaza, protests were held in Kofor Cana[1074] and Umm al-Fahem, [1075] both throughout the week and on weekends. According to Hassan Tabaja, a lawyer at the Meezan Center for Human Rights, in both places there were instances of police violence and use of tear gas in reaction to stone throwing by some of the younger protesters. There were reports that the police also beat bystanders.[1076] Those arrested reported having been beaten both in police vans and at the police station, subjected to racial abuse and sexual comments made about female members of their families.[1077]

[1068] Adalah, news update, 2 January 2009.

[1069] Telephone interview with Saleh Bakri, 29 July 2009.

[1070] Telephone interview with Sahar Abdo, 26 July 2009.

[1071] Telephone interview with Sahar Abdo, 26 July 2009.

[1072] Telephone interview with Sahar Abdo, 26 July 2009; see also "6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv", *Haaretz,* available at http://www.haaretz.com/hasen/spages/1050980.html.

[1073] "6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv", *Haaretz*.

[1074] A Palestinian Israeli town in the Galilee with a population of approximately 20,000 people.

[1075] A Palestinian Israeli town in the Haifa District with a population of just under 45,000 people.

[1076] Telephone interview with Hassan Tabaja, 29 July 2009. Mr. Tabaja, as part of his work with the Meezan Center for Human Rights, helped arrange representation for those arrested.

[1077] Telephone interview with Hassan Tabaja, 29 July 2009.

5. Other inappropriate conduct

1710. The Mission was informed that permission was denied for or attempts were made to prevent demonstrations, such as the "Critical Mass" bicycle protest on 1 January 2009 in Tel Aviv which was barred from moving beyond Rabin Square;[1078] in another instance, a bus in which protesters were travelling to participate in demonstrations was prevented by the police from reaching its destinations in Tel Aviv;[1079] the bus driver was intimidated by the police, his licence confiscated and the bus was impounded. On 16 January 2009, two buses of protesters accompanying a truck of medical supplies for Gaza donated by Physicians for Human Rights Israel were stopped near Ashkelon and prevented from entering the military zone, where gatherings of more than four people were not permitted for security reasons. The police, however, confiscated the drivers' licences, told the drivers to follow them and took the licences to Tel Aviv, where the drivers could collect them.[1080] The drivers were reportedly told that, if they proceeded further, they would lose their licences.

1711. In the case of one demonstration planned in Tel Aviv, the police had placed a condition that no Palestinian flags would be allowed at the demonstration. The organizers approached the Court on the grounds that there was no such restriction in the law. The police issued a permit before the case was decided, and the demonstration was held with Palestinian flags.[1081] Other demonstrations with protesters holding Palestinian flags were also held in Tel Aviv without any interference by the police.[1082]

B. Judicial responses following the arrests of protesters

1. Detention pending trial

1712. In his public testimony before the Mission, Shir Hever of the Alternative Information Center highlighted a worrying new trend in the way that arrests of protestors were dealt with in the Israeli legal system. In many cases, the Prosecutor requests that the Court order that the protester be detained pending conviction or release and that these submissions are generally accepted by the courts. According to Hever, detention pending trial is usually reserved for defendants thought to be dangerous, not for people arrested during protests. This has resulted in protesters being detained for weeks and months at a time.[1083]

1713. Hassan Tabaja stated that those arrested often faced "super-charged" indictments, where the most serious possible charge had been selected by the Prosecution.[1084] For example, for protesting on a road, instead of being charged with disturbing the peace or an illegal gathering,

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[1078] Telephone interview with Haggai Matar, 24 July 2009.

[1079] Telephone interview with Sahar Abdo, 26 July 2009.

[1080] Telephone interview with Ran Yaron, 22 July 2009.

[1081] Telephone interviews with Haggai Matar, 24 July 2009; Avner Pinchuk (ACRI), 29 July 2009.

[1082] Telephone interview with Hakim Bishara, 29 July 2009.

[1083] Testimony of Shir Hever, Alternative Information Centre, Geneva Public Hearings, 6 July 2009; Yesh Gvul.

[1084] Telephone interview with Hassan Tabaja, 29 July 2009.

people were sometimes charged with "endangering life on a public road", a charge that carries a sentence of 20 years. The severity of the charge greatly increases the chance of being detained pending trial.

1714. On 12 January 2009, the Israeli Supreme Court decided that, given the ongoing military operations in Gaza, it could not allow certain persons to be released on bail.[1085] This decision was subsequently followed by those of the lower courts, where petitions demanding the release of individuals arrested in connection with the demonstrations were refused.[1086]

1715. It is clear from statistics obtained by Adalah from the Israeli police that, of all the protesters arrested; it was the Palestinian Israelis who were disproportionately held in detention pending trial. For example, of the 60 people arrested in the Northern District of Israel (mainly populated by Palestinian Israelis), all were detained pending trial; in Tel Aviv, of the 27 people arrested, none were detained pending trial. According to the Meezan Center for Human Rights in Nazareth, there are still people being detained pending trial following their arrest at the protests against the military operations in Gaza.[1087]

2. Bail conditions

1716. Where people were released, the courts sometimes set bail conditions that affected not only the individual's ability to attend protests, but also, in the case of students, their right to education.

1717. Ran Tzoref, arrested at a protest in Beersheba on 14 January 2009, was reportedly released on the condition that he did not leave his village in northern Israel for two to three months. Not only could he not attend subsequent protests, he could not attend classes at his university either.[1088]

1718. One of the protesters arrested in the demonstration near the Egyptian embassy in Tel Aviv on 29 December 2008 was a student from Tel Aviv University. As part of her bail conditions, the Mission was told that she was not allowed to enter Tel Aviv for one month, resulting in her being unable to attend classes.[1089]

C. The interrogation of political activists by the General Security Services

1719. During the Israeli military operations in Gaza, members of Arab political parties and activists in various non-governmental organizations were invited in for interrogation by the General Security Services, commonly known as the Shabak.

[1085] The State of Israel v. Anonymous, 12 January 2009, Supreme Court Decision, 459-09; August 2009 Adalah report, p. 35.

[1086] August 2009 Adalah report, p. 15.

[1087] Telephone interview with Hassan Tabaja, 29 July 2009.

[1088] Telephone interview with Haggai Matar, 24 July 2009.

[1089] Telephone interview with Sahar Abdo, 26 July 2009.

1720. According to Adalah, the Shabak incorrectly informed those invited that they were required by law to come. Ameer Makhoul, the Director of Ittijah and Chairperson of the Popular Committee for the Protection of Political Freedoms, declined the invitation to the interrogation because he was not legally required to do so. He stated that, shortly afterwards, police officers arrived at his office and took him to the interview.[1090]

1721. Mr. Makhoul was taken to the Shabak headquarters in Tel Aviv, where he was kept for four hours, during which time, he was questioned about the people he knew and their whereabouts. , On refusing to answer, he was told that, if he continued his political activities, he would be sent to prison and that, if he wished to go to Gaza, arrangements could be made to send him there. During his interview, it became apparent that the Shabak was aware of his address, and the car he drove, and referred to a speech that he had made in Haifa on 29 December 2008.

1722. The Mission received reports of 20 prominent activists and political figures within the Palestinian community being called in for interrogation by the Shabak and being questioned about their political activities.[1091] It has also received reports of younger political activists having been taken for interview and asked to collaborate with the Israeli authorities. In the case of student activists, the offer of collaboration was accompanied by the threat of arrest or of future difficulties in continuing their studies.[1092]

1723. According to those interviewed, the summoning and indeed taking of activists for interrogation by the Shabak created a climate of intimidation against dissent in Israel. Many activists appear to have been "invited" for interview following their attendance at protests against the military operations in Gaza and their presence at protests was noted by those interviewing them.[1093]

D. Freedom of association and treatment of human rights organizations inside Israel

1. New Profile

1724. Israeli authorities initiated an investigation into activists working with New Profile, a non-governmental feminist organization, accusing them of inciting Israelis to avoid military service. While "incitement to draft dodging" is an offence under Israeli law, it was the first time that any group had been investigated for that offence.[1094]

1725. On 26 April 2009, Israeli authorities raided the homes of six activists and seized their computers, detaining the activists and summoning 10 others for interrogation.[1095] Some activists

[1090] Telephone interview with Ameer Makhoul, 27 July 2009; *Adalah*, news update, 2 January 2009.

[1091] Telephone interview with Ameer Makhoul, 27 July 2009.

[1092] Telephone interview with Ameer Makhoul, 27 July 2009.

[1093] Telephone interview with Ameer Makhoul, 27 July 2009. See also *Adalah* news update, 2 January 2009.

[1094] "Web site for IDF draft dodgers faces criminal probe", *Haaretz*, 15 September 2008.

[1095] "Israel's war against youth", *The Guardian*, 5 May 2009.

were detained and interrogated about their ideological and political views; some were released on the condition that they have no contact with other members of their organization.[1096]

1726. As part of their investigation into New Profile, a search warrant was issued for the offices of HaMoked, a non-governmental human rights legal organization, for which a member of New Profile had previously worked. According to a published letter from New Profile's attorney to the Deputy Attorney General of Israel, the breadth of the warrant meant that the investigators were able to search through legally privileged material.[1097]

2. Breaking the Silence

1727. On 15 July 2009, Breaking the Silence, an Israeli non-governmental organization of veteran Israeli soldiers that collects the testimonies of soldiers who serve in the occupied territories, published a booklet entitled "Soldiers' Testimonies from Operation Cast Lead, Gaza, 2009". The booklet contained testimonies of 54 soldiers who had served in Gaza during the military operations. On its website, Breaking the Silence, stated that the testimonies revealed "gaps between the reports given by the army following January's events; the needless destruction of houses; firing phosphorous in populated areas and an atmosphere that encouraged shooting anywhere."[1098]

1728. Breaking the Silence's publication was widely reported in the media.[1099] The Government of Israel, through the IDF Spokesman Unit, stated that the report comprised "anonymous and general testimonies, without investigating their details or credibility", and that "a considerable number of the testimonies in this report are also based on hearsay and word of mouth".[1100] The Unit stated that the Israeli military authorities were committed to investigating thoroughly any claims made, where there was sufficient information to do so, and that "from testimonies which have been published, including those in this report, and from the investigations conducted by the IDF into the operation, it is clear that IDF soldiers operated in accord with international law and the orders they received, despite the complex and difficult fighting."[1101]

1729. On 17 July 2009, the *Jerusalem Post* reported that Breaking the Silence's published donor list included several European Governments.[1102] Later that week, *Haaretz* reported that the Israeli Ambassador to the Netherlands had met with the Director-General of the Foreign Ministry of the Netherlands to complain about that country's funding of Breaking the Silence, urging that the funding be terminated.[1103] On 29 July 2009, *Haaretz* reported that, in a meeting with the

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[1096] Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

[1097] Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

[1098] http://www.breakingthesilence.org.il/oferet/news_item_e.asp?id=1.

[1099] For example, "Breaking the silence on Gaza abuses", *BBC News*, 15 July 2009,; "Report claims Israelis used Palestinians as human shields", *CNN*, 15 July 2009.

[1100] www.mfa.gov.il/MFA/Government/Communiques/2009/Reaction_to_Breaking_Silence_report_15_Jul_2009.

[1101] Ibid.

[1102] "Europeans funding 'Breaking the Silence', *Jerusalem Post*, 17 July 2009.

[1103] "Group that exposed 'IDF crimes' in Gaza slams Israel bid to choke off its funds", *Haaretz,* 26 July 2009.

Ambassador of the United Kingdom to Israel, the Deputy Director-General of the Foreign Ministry of Israel asked "the reasons behind Britain's funding of the group and whether the money was used to fund the recent report on Operation Cast Lead."[1104]

1730. On 31 July 2009, the Jerusalem Post published an article in which it reported that senior Israeli officials were looking into whether it would be possible to ban donations from foreign governments to political NGOs.[1105] On 2 August 2009, *Haaretz* reported that Israel had asked the Government of Spain to terminate its funding of Breaking the Silence.[1106]

1731. Breaking the Silence issued a statement in which it accused the Foreign Ministry of a "witch-hunt", saying that it testified to the erosion of the "democratic culture" in Israel.[1107]

1732. The Mission is concerned that the actions of the Government of Israel with regard to these organizations may have the effect of intimidating other Israeli organizations working on documenting and reporting human rights violations. The Mission underlines the importance that these organizations, who carry out essential work in a difficult environment, be able to operate freely.

E. The access of the media and human rights monitors to Gaza prior to, during and after the military operations

1733. The decision by Israel to deny access to the media and international human rights monitors to Gaza during -and indeed prior- to the start of its military operations in Gaza on 27 December 2008, created a storm of protest from the international media and human rights NGOs.[1108] Some human rights organizations, including Human Rights Watch and B'Tselem, are still denied access to Gaza to this day.[1109]

1734. The Mission notes that, during the military operations in Gaza, there were a number of Palestinian human rights organizations conducting independent monitoring of international human rights and international humanitarian law. As noted elsewhere in the present report, the Mission found the work of these organizations to be of very a high professional standard and one that deserved recognition given the extremely difficult circumstances under which they usually operated, particularly during the Israeli military operations. The Mission is of the view that the presence of international human rights monitors would have been of great assistance in not only investigating and reporting but also in the publicizing of events on the ground.

[1104] "Israel targets U.K. funding of group that exposed 'IDF crimes' in Gaza", Haaretz, 29 July 2009.

[1105] "Israel aims to outlaw foreign gov't funds for subversive NGOs", Jerusalem Post, 31 July 2009.

[1106] "Israel asks Spain to stop funding group that reported IDF 'crimes' in Gaza", *Haaretz*, 2 August 2009.

[1107] "Israel aims to outlaw foreign gov't funds for subversive NGOs", *Jerusalem Post*, 31 July 2009.

[1108] For example, "Israel: allow media and rights monitors Access into Gaza", Human Rights Watch, 5 January 2009; "Israel puts Media Clamp on Gaza", *The New York Times*, 7 January 2009; and "Media Frustration over Gaza ban grows", *The Guardian*, 14 January 2009.

[1109] "Israel: end ban on human rights monitors", B'Tselem press release, 22 February 2009; Email communication between the Mission and Human Rights Watch, 2 August 2009.

1. Media

1735. Israeli military authorities stopped allowing foreign journalists into the Gaza Strip, without prior notification to media organizations, on 5 November 2008 when hostilities escalated.[1110] . Israeli citizens, including journalists, have been barred from entering the Gaza strip since the abduction in 2006 of Gilad Shalit, on security grounds. One journalist, Amira Hass, has been arrested on two occasions, in December 2008 and in May 2009, for being in Gaza illegally.[1111]

1736. After the closure, on 5 November 2008, of the Gaza Strip to journalists (among other groups, including human rights monitors), there was international and domestic protest; the ban was lifted briefly on 4 December 2008, but reinstated the following day. At the start of the military operations in Gaza, Israeli defence officials indicated that there would be a complete ban on access of the media to Gaza for the duration of the operations. On 27 December 2008, the day military operations started, the Israeli authorities imposed a closed military zone inside Gaza and through a 2-kilometre strip around its perimeter.

1737. On 19 November 2008, the heads of many international news organizations, including the BBC, CNN and Reuters, protested against the ban on media access to Gaza in a letter to the then President Ehud Olmert.[1112] On 24 November 2008, the Foreign Press Association petitioned the Supreme Court to rule on the legality of such a ban.[1113]

1738. In an open letter, dated 29 December 2008, the Foreign Press Association stated that the denial of media access to Gaza was

> an unprecedented restriction of press freedom. As a result, the world's media is unable to accurately report on events inside Gaza at this critical time… Despite our protests, the Israeli authorities have refused to let journalists in… Never before have journalists been prevented from doing their work in this way. We believe it is vital that journalists be allowed to find out for themselves what is going on in Gaza. Israel controls access to Gaza. Israel must allow professional journalists access to this important story.[1114]

1739. On 31 December 2008, the Supreme Court ruled on the Association's petition, ordering that the Government of Israel to grant 12 journalists entry into Gaza each time the Erez crossing opened.[1115] On 2 January 2009, the Court amended its order to state that eight journalists, rather than 12, should be admitted whenever the Erez crossing opened.[1116]

[1110] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1111] "Haaretz journalist Amira Hass arrested for illegal stay in Gaza", *Haaretz*, 2 December 2008; and "Haaretz reporter Amira Hass arrested upon leaving Gaza", *Haaretz*, 12 May 2009.

[1112] "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

[1113] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1114] Open Letter, Foreign Press Association, 29 December 2008, available at http://www.fpa.org.il/?categoryId=414

[1115] "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

[1116] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

1740. On 8 January 2009, the Israeli authorities briefly gave the BBC and two Israeli channels access to accompany Israeli forces into Gaza. On 22 January 2009, access was granted to eight journalists to accompany Israeli forces into Gaza. The media and non-governmental organizations continued to complain about the lack of independent, unfettered access to Gaza.[1117] On the same day, the United Nations Chief of Communications and Public Information called on the Government of Israel to ensure immediate access to the international media to Gaza, stressing the need for "full and independent" coverage of events.[1118]

1741. On 23 January 2009, five days after its unilateral ceasefire, Israel removed all restrictions put in place in early November 2008 and the media was given free access to Gaza.

1742. On 25 January 2009, the Supreme Court of Israel issued its final ruling, overturning the blanket ban and stating that reporters should have access to Gaza "unless the security situation changes drastically in such a way that the Erez crossing has to be closed completely for security reasons, and we assume that this will happen only in dire circumstances of concrete danger".[1119]

1743. There have been various explanations from the Government of Israel. A spokesman from the Embassy of Israel in London, speaking to *Press Gazette*, stated "Gaza is a war zone and so it is very difficult to allow people who are not soldiers in. Their presence might endanger both themselves and our operations there".[1120]

1744. The Director of Press Office of the Government of Israel, Daniel Seaman, stated "Any journalist who enters Gaza becomes a fig leaf and front for the Hamas terror organization, and I see no reason why we should help that".[1121] He was later quoted in the Associated Press as saying for foreign journalists were "unprofessional" and took "questionable reports at face value without checking".[1122]

1745. On 7 January 2009, the Ambassador for Israel to the United Kingdom, Ron Proser, claimed that infighting at the Foreign Press Association about which journalists should be admitted was responsible for the press not entering Gaza;[1123] this was categorically denied by the Association.[1124] On 22 January 2009, *Haaretz* reported a split in the Government of Israel over press access to Gaza, stating the Ministry of Defense and the army had withdrawn their

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[1117] "Allow the news media into the Gaza Strip! Appeal by the world's media and Reporters Without Borders to the Israeli authorities", Reporters Without Borders, 9 January 2009.

[1118] "UN calls on Israel for immediate media access to Gaza", *Merco Press,* 9 January 2009.

[1119] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1120] "Foreign Journalists continue to fight for Gaza access", *Press Gazette*, 7 January 2009.

[1121] "Israel puts media clamp on Gaza", *The New York Times*, 7 January 2009.

[1122] "Foreign Journalists continue to fight for Gaza access", *Press Gazette*, 7 January 2009.

[1123] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1124] Foreign Press Association, 13 January 2009, available at http://www.fpa.org.il/?categoryId=406.

opposition to media entry into Gaza, but that the Prime Minister's Office had ordered that the media ban be maintained.[1125]

1746. The media ban, coupled with the comments made by the Director of the Government's Press Office have raised concerns, aired in the media, that the ban was aimed at controlling the narrative of the conflict for political reasons.[1126]

2. International human rights monitors

1747. The denial of access to Gaza had an impact not only on the media, but also international human rights monitors, who required access to report violations and, like journalists, make events in Gaza known to the public. The Mission also notes that the presence of international human rights monitors is likely to have a deterrent effect, dissuading parties to a conflict from engaging in violations of international law.

1748. On 31 December 2008, Amnesty International issued a statement calling for Israel to allow "humanitarian workers and observers" immediate access to Gaza.[1127]

1749. Human Rights Watch requested permission from the Israel military authorities to enter Gaza on 5 January 2009. The request was rejected on 9 February 2009 on the grounds that Human Rights Watch was not registered with the Ministry of Social Affairs.[1128] Human Rights Watch asked for clarification, given that it had never heard of such a requirement, even though it had received permission to enter Gaza on previous occasions, and was unsure of the basis in Israeli law or regulation for such a requirement. To date, Human Rights Watch has yet to receive a response from the Israeli authorities.[1129] At 2 August 2009, it had still not been granted permission by the Israeli authorities to enter Gaza to conduct investigations.[1130]

1750. On 20 January 2009, B'Tselem requested permission from the Israel military authorities for its fieldwork director to enter Gaza; the application was rejected on 29 January 2009.[1131] In a news update dated 19 January 2009, Amnesty International stated that it had made numerous applications to the Israeli authorities to enter Gaza, but had received no response.[1132]

[1125] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1126] For example, "Israel puts media clamp on Gaza", *The New York Times*, 7 January 2009; and "Media frustration over Gaza ban grows", *The Guardian*, 14 January 2009.

[1127] "Israel/ OPT: Immediate access to humanitarian workers and observers essential", Amnesty International, 31 December 2008.

[1128], "Israel: End ban on human rights monitors", B'Tselem press release, 22 February 2009; and Email communication between the Mission and Human Rights Watch, 2 August 2009.

[1129] Ibid.

[1130] Ibid.

[1131] Ibid.

[1132] "Amnesty International team gains access to Gaza", Amnesty International, 19 January 2009.

1751. To date, Amnesty International, Human Rights Watch and B'Tselem have been denied access to Gaza to collect data for their independent investigations into allegation of war crimes committed by both the Israeli forces and Palestinian armed groups.

F. Legal analysis and conclusions

1752. International human rights law, applicable during armed conflict, upholds the right to freedom of expression.

International Covenant on Civil and Political Rights

1753. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides that

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

1754. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

> 1. For respect of the rights or reputations of others.
>
> 2. For the protection of national security or of public order (ordre public), or of public health or morals.

1755. Articles 21 and 22 of ICCPR recognize the right to peaceful assembly and the right to freedom of association, respectively.

1756. Furthermore, article 10 provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

1757. This Declaration is also known by its abbreviated name "The Declaration on Human Rights Defenders".

1758. Article 5 of the Declaration recognizes the right (a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations.

1759. Article 6 states that

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

1760. Article 12 states

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

1761. Article 13 of the Declaration recognizes that "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration."

1. Protests

1762. The information received by the Mission indicates that there was no systematic policy to prevent street demonstrations against the military action being pursued in Gaza. The Mission notes, however, that there were occasions when protesters, reportedly, had difficulty in obtaining permits, particularly in areas populated mainly by Palestinian Israelis, and where the police placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech.

1763. Owing to the failure to cooperate by the Government of Israel, the Mission does not have sufficient information to determine whether there were sound public order or security reasons for the decisions made by the police. It however takes note of the reports received and urges the Government of Israel to ensure that the police authorities, throughout Israel, respect the rights of all its citizens, without discrimination, including the freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

1764. The Mission views with particular concern the reported instances of physical violence against protesters and other forms of humiliation suffered by protesters at the hands of the police. It reminds the Government of Israel that those deprived of their liberty shall, as provided by article 10 of ICCPR, be treated with humanity and respect for the inherent dignity of the human person.

2. Judicial responses

1765. The Mission does not have sufficient information about individual cases brought to its attention to come to a definitive finding. Nevertheless, the element of discrimination between the and differential treatment of Palestinian and Jewish citizens of Israel by the judicial authorities, as reflected in the reports received, is a substantial cause for concern.

3. Interrogations by the General Security Services

1766. The Mission is concerned about activists being compelled to attend interviews with the General Security Services, in the absence of any legal obligation to do so. More broadly, the Mission expresses its concern at the alleged interrogation of political activists about their political activities. Of the interviews conducted by the Mission, the issue of interrogation by the Shabak was cited most prominently as creating intolerance of dissent in Israel.

4. Freedom of association and treatment of human rights organizations

1767. The Mission is greatly concerned about allegations of hostile retaliatory actions taken against civil society organizations for criticism of the Israeli authorities and for exposing alleged violations of international human rights and humanitarian law during the military operations.

1768. In the case of alleged attempts to interfere with the funding of Breaking the Silence, the Declaration on Human Rights Defenders guarantees the right “to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”. While lobbying foreign Governments to terminate funding does not directly violate this right, such an action, if motivated by a reaction to the organization’s exercise of its freedom of expression, would be contrary to the spirit of the Declaration.

5. Access to information: access of media and human rights monitors to Gaza

1769. With regard to the denial of media access to Gaza during the military operations there and the continued denial of access to Gaza to various international human rights monitors to the present day, the Mission notes that the presence of journalists and international human rights monitors aides the investigation and broad public reporting on the conduct of the parties to the conflict and that their presence can dissuade misconduct.

1770. According to the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information[1133], Governments

> may not prevent journalists or representatives of intergovernmental or non-governmental organizations which monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict, except where their presence would pose a clear risk to the safety of others.

1771. The Mission is concerned about the near total exclusion of the media and human rights monitors from Gaza since 5 November 2008. While the media have been permitted access since 23 January 2009, the Mission is very concerned that groups such as Human Rights Watch, Amnesty International and B'Tselem continue to be denied access to the Gaza Strip by the Israeli military authorities and therefore are obstructed in their investigations into alleged violations of law during the military operations. The Mission can see no viable reason for this denial of access.

1772. The Mission observes that Israel, in its actions against political activists, NGOs and the media, has attempted to minimise public scrutiny of its conduct both during its military operations in Gaza and the consequences that these operations have had for the residents of Gaza. The perception that the Israeli authorities, by denying access to the media and human rights monitors, sought to prevent investigation and reporting of the conduct of the operations by the Israeli military seems warranted. The burden of dispelling such a perception rests on the Government of Israel.

[1133] The Principles (E/CN.4/1996/31)were endorsed by the United Nations Special Rapporteur on freedom of opinion and expression, in his reports to the Commission on Human Rights at its fifty-second, fifty-fourth, fifty-fifth and fifty-seventh sessions, and referred to by the Commission in its annual resolutions on freedom of expression every year from 1996.

PART FOUR: ACCOUNTABILITY AND JUDICIAL REMEDIES

XXVI. PROCEEDINGS AND RESPONSES BY ISRAEL TO ALLEGATIONS OF VIOLATIONS BY ITS ARMED FORCES AGAINST PALESTINIANS

1773. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

1774. As seen in the preceding chapters, the Mission has investigated a large number of allegations of violations and has found that many of them have substance. The Mission was thus obliged to consider the extent to which Israel has complied with its obligations under international law to investigate those alleged violations. The Mission requested information from the Government of Israel on any inquiry it had conducted into the incidents the Mission had investigated, and the conclusions of such inquiries, if any, but did not receive any reply.

1775. Allegations concerning alleged serious violations of human rights law and international humanitarian law emerged almost as soon as the military operations began. Israel claims to have carried out limited investigations into these allegations, some of which are ongoing.

1776. In the aftermath of the military operations, a group of eight Israeli NGOs wrote to the Attorney General, Mr. Meni Mazuz, requesting the establishment of an independent and effective mechanism to investigate allegations of grave violations of the laws of war during the Gaza offensive. They requested that the investigation should also address "the legality of the actual orders and directives given to forces in the field" and held that the Military Advocate General's office was not in a position to carry out a proper investigation because of his personal involvement and that of his office's personnel "during stages of decision-making" in the conflict, which would compromise the neutrality and independence of the investigation.[1134]

1777. In replying to the letter, the office of the Attorney General explained that after the conclusion of the military operations "the IDF began to carry out its operational briefings", which would also examine various events in which civilians were harmed. It did not accept the assertion that the Military Advocate General's dual position, as legal adviser to the military authorities and as a person tasked with ensuring that military personnel charged with breaking the law are tried, disqualified him from participating in the investigation.[1135]

1778. The NGOs sent another letter,[1136] but this time the Attorney General did not reply.

[1134] ACRI letter to the Attorney General of Israel, Mr. Menachem Mazuz, on behalf of nine human rights organizations, dated 20 January 2009, available at: http://www.acri.org.il/pdf/Gaza200109.pdf.

[1135] Reply of Attorney Raz Nizri on behalf of the Attorney General of Israel, dated 24 February 2009, available at: http://www.acri.org.il/pdf/Gaza240209.pdf.

[1136] Second letter to the Attorney General, on behalf of 11 human rights organizations, dated 19 March 2009, available at: http://www.acri.org.il/pdf/gaza190309.pdf.

1779. On 5 February 2009, a group of Israeli scholars and jurists wrote to the Attorney General also requesting the establishment of an independent body to investigate the actions that had taken place during the military operations. The Mission is not aware that they received any reply.

1780. The Mission also saw press statements regarding the opening of investigations into allegations reportedly made by soldiers at the "Rabin" Preparation Program. On 19 March 2009, the Military Advocate General, Brig. Gen. Avichai Mendelblit, instructed the Criminal Investigation Division of the military police to investigate alleged actions by soldiers during the military operations. The decision came in response to a letter sent to him a few weeks earlier by the head of the Rabin program reporting claims made by soldiers about firing at civilians.[1137] Eleven days later the investigation was closed on the basis that the crucial components of the allegations "were based on hearsay and not supported by facts". According to the Israeli armed forces, the investigation found that the soldiers in question had not actually witnessed the alleged events.[1138] In a report released by the Government of Israel in July 2009, two of the incidents investigated were briefly discussed. Not having had access to the outcome of these investigations, the Mission is unable to evaluate the report.[1139]

1781. On 22 April the Israeli armed forces released publicly the results of five investigations carried out by teams headed by officers of the rank of colonel. The same information was later on reproduced in the report issued by the Government of Israel.[1140] The Israeli armed forces stated that the members of the team had had no direct involvement in the chain of command during the military operations in Gaza and had acted with independence, enjoying full access to information, persons and evidence. The process was described as involving "a series of operational investigations".[1141]

1782. According to the same source, the five investigations addressed:

(a) Claims regarding incidents where United Nations and international facilities were fired upon and damaged;

(b) Incidents involving shooting at medical facilities, buildings, vehicles and crews;

(c) Claims regarding incidents in which many uninvolved civilians were harmed;

(d) The use of weaponry containing phosphorous;

(e) Damage to infrastructure and destruction of buildings by ground forces.

[1137] "The IDF Chief of the General Staff refers to claims made at the Rabin preparation center", 23 March 2009; "The IDF Chief Advocate general orders investigation of claims made at the Rabin preparation center", 19 March 2009; both available at http://dover.idf.il/IDF/English/Press+Releases/default.htm.

[1138] "Military Police investigation concerning statements made at the Rabin Center: Based on hearsay", 30 March 2009, available at http://dover.idf.il/IDF/English/Press+Releases/default.htm.

[1139] "The operation in Gaza…", paras. 324-329.

[1140] Ibid., paras. 318-320.

[1141] "Conclusion of investigations…".

1783. The observations and conclusions of these investigations have been addressed elsewhere in this report. The conclusion, as stated in the Israeli armed forces' press release, was that "throughout the fighting in Gaza, the IDF operated in accordance with international law". However, the "investigations revealed a very small number of incidents in which intelligence or operational errors took place during the fighting".

1784. The Israeli armed forces stated that the investigation was lengthy and that some specific issues were still being checked and additional allegations were being investigated. The "experts' investigations", it was emphasized, were not a replacement for the central Israeli armed forces' operational investigation into the entire operation, which was under way and to be concluded in June 2009.

1785. In its response to a report by Amnesty International,[1142] the Israeli armed forces recalled the "number of investigations" it has conducted following the military operations. In addition to those ordered by the Chief of the General Staff, Lt. Gen. Gabi Ashkenazi, the Israeli armed forces stated it was looking at complaints from various sources, and that "in certain cases, the Chief Military Advocate has already ordered the opening of a criminal investigation".[1143]

1786. On 30 July 2009 there were media reports that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out of nearly 100 complaints against soldiers about criminal conduct during the military operations. An official comprehensive report publicly released on the same day spoke of 13 cases, but no details of the cases were offered.[1144]

1787. The Mission is not aware of any other investigation or of any other action taken either by the Military Advocate General or the Attorney General in connection with the military operations.

1788. Regarding violence against Palestinians outside the Gaza Strip but in relation to the military operations of December 2008 – January 2009, the Mission has been unable to gather information about any investigations that may be taking place.

A. Israel's system of investigation and prosecution

1789. The Mission considers that in assessing Israel's fulfilment of its duty to investigate regard should be had to its internal legal and judicial systems. In cases of suspected wrongdoing the Israeli armed forces may, by law, carry out investigations through: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special

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[1142] *Israel/Gaza: Operation "Cast Lead": 22 days….*

[1143] "IDF response to Amnesty report", 2 July 2009, available at: http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-7TL866?OpenDocument.

[1144] *The Jerusalem Post*, "IDF orders criminal probes into 14 cases of alleged misconduct", 30 July 2009; "The operation in Gaza…", para. 12.

investigations, by a senior officer at the request of the chief of staff; and (d) military police investigations, by the Criminal Investigation Division of the military police.[1145]

1. Disciplinary proceedings

1790. Disciplinary proceedings are usually instituted for minor infractions of military discipline and rules, and do not apply to investigations into serious violations of human rights or humanitarian law. They are not relevant to the alleged violations with which the Mission is concerned.

1791. Several actors play a role in this system of investigation and prosecution: the army, the military police, the Military Advocate General and the courts martial.

1792. The Israeli armed forces officially describe the mission of the Military Advocate General's corps as follows:

> The Military Advocate General's Corps' supervises and enforces the rule of law throughout the IDF and provides legal advice to the Chief of Staff and all divisions of the IDF in areas relating to military, domestic and international law. Its mission is to instil the general principles of law and the values of justice in the IDF.[1146]

1793. The Mission notes that the Military Advocate General is a military officer, who provides legal advice to the military and at the same time investigates and prosecutes these same military. It also notes that the Government of Israel insists that, despite being part of the military corps, the Military Advocate General acts with full functional independence.

2. Operational debriefings

1794. Article 539 (A) (a) of the Law on Military Justice defines an operational debriefing as: "a procedure held by the army, according to the army orders and regulations, with respect to an incident that has taken place during a training or a military operation or with connection to them".

1795. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes. Following every military operation "of any kind, a field investigation is conducted in order to examine the performance of the forces and to learn what aspects should be preserved and what aspects should be improved".[1147] They are supposed to be confidential so that soldiers speak openly. The findings are forwarded to the Military Advocate General's office, which may or may not find that there are grounds to suspect that a crime has been committed and order a full criminal investigation. However, if a criminal investigation is opened and the case

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[1145] Law on Military Justice 1954/1955. See also Human Rights Watch, *Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing* (June 2005), pp. 39 ff.

[1146] http://dover.idf.il/IDF/English/units/other/advocate/Mission/default.htm.

[1147] "The operation in Gaza…", para. 291.

goes to trial the debriefing cannot be used as evidence in subsequent proceedings (article 539 (A) of the Military Justice Act).

1796. The use of military debriefings as a regular tool to address incidents emerging from military operations became the rule after an official change of policy was introduced in 2000.[1148] The new policy was consistent with a shift to armed conflict paradigm in addressing the intifada. This change of policy meant that criminal investigations were not necessarily the first step even in the face of credible allegations of serious offences committed by military personnel.

1797. The office of the Military Advocate General can consult the operational debriefing and if it considers that a criminal investigation is warranted on the basis of the testimony of soldiers during the debriefing, it can issue orders to that effect. A criminal investigation must start de novo.

3. Special investigations

1798. The Minister of Defense and the Chief of the General Staff may also appoint an officer or group of officers – often high-ranking officers – to investigate high-profile or sensitive matters. The material gathered in special investigations also remains confidential and may not be used as evidence in court proceedings. However, the special investigator makes findings and formulates recommendations. Criminal investigations can be initiated only after the special investigator's work is complete.

4. Criminal investigations

1799. The Military Advocate General may order the Criminal Investigation Division to open a criminal investigation if he finds that there is "reasonable suspicion" that an offence may have been committed by military personnel.

1800. A summary of the operational debriefings is normally sent to the Military Advocate General's office, but he may ask to view the full notes. To order the opening of a criminal investigation, the Military Advocate General normally consults with a major general (article 539 (A)(b)(4)(b) of the Law on Military Justice). The materials of the operational debriefing will not serve in such a criminal investigation and will remain confidential from the investigative authorities (art. 539 (A)(b)(4)).

1801. A decision by the Military Advocate General to open or not to open a criminal investigation and his decision to indict or not to indict the suspects may be reviewed by the Attorney General. A complainant or an NGO can trigger this process by simply sending a letter

[1148] Mission interview with Col. (ret.) Daniel Reisner in Geneva, on 6 July 2009. See also an interview with him when he was Assistant Military Advocate General for international law and head of the Israeli armed forces' International Law Department, in *Promoting Impunity*..., p. 41; see also B'Tselem, "Military police investigations during the al-Aqsa intifada", available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp

directly to the Attorney General. The Supreme Court may be petitioned to review the Military Advocate General's or the Attorney General's decisions.[1149]

1802. The investigation by the Criminal Investigation Division should produce a file, which is sent to the Military Advocate General's office for completion. The Military Advocate General may decide to close the file for lack of evidence, return it for further investigation or issue an indictment. If an indictment is issued, the case proceeds to a court martial before the district and the special military courts, which are formed by three to five judges, the majority of whom have to be officers. Decisions are taken by majority vote and need not be reasoned "unless the Military Justice Law prescribes otherwise" (arts. 392–393).

1803. A decision by a district or special court martial can be appealed to the Military Court of Appeals, whose final decision may need to be confirmed by the Chief of General Staff after consultation with the Military Advocate General. Israel reported that in the past the Chief of General Staff had confirmed all sentences presented to him.[1150] Victims or their legal representatives may appeal decisions not to indict to the Military Advocate General and, if unsuccessful, to the High Court of Justice.

B. Legal assessment

1804. Both international humanitarian law and international human rights law establish a clear obligation for States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel whether during military operations or not. This rule finds expression in articles 49 of the First Geneva Convention, article 50 of the Second Geneva Convention, article 129 of the Third Geneva Convention and article 146 of the Fourth Geneva Convention; in articles 2 and 6 of ICCPR and article 6 of the Convention against Torture. The Mission considers the obligations on States to investigate and, if appropriate, to prosecute war crimes and other crimes allegedly committed by their armed forces or in their territory as a norm of international customary law.[1151]

1805. International humanitarian law contains an obligation to investigate grave breaches of the Geneva Conventions. This obligation flows generally from their common article 1, but more specifically from their foregoing provisions. Article 146 (2) of the Fourth Geneva Convention provides that each High Contracting Party shall be under the obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts…".

1806. There is a parallel obligation to investigate under international human rights law. Article 2 of ICCPR requires a State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in it and also to ensure an effective remedy for any person whose rights have been violated. Failure to ensure the rights as required by article 2 would give rise to an independent violation,

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[1149] "The operation in Gaza…", para. 300.

[1150] Ibid.

[1151] *Customary International Humanitarian Law*..., rule 158, p. 607; E/CN/4/2006/53, paras. 33-43.

> … as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.
>
> […]
>
> A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant...[1152]

1807. In several decisions on individual communications concerning offences against the right to life and physical integrity, the Human Rights Committee has held that the failure to investigate and punish the perpetrators constitutes a violation of the Covenant. For instance, in Bautist*a de Arellana* v. *Colombia*, the Committee held:

> … that the State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified.[1153]

1808. This obligation to investigate under human rights law applies equally to actions that take place during armed conflict. In *Isayeva* v. *Russia*, a case concerning a woman whose relatives were killed by indiscriminate shelling in Chechnya by Russian forces, the European Court of Human Rights held that the requirements of article 2 of the European Convention applied. This provision, read with article 1 ("to secure to everyone… the rights and freedoms defined in [the] Convention") would require "by implication that there should be some form of effective judicial investigation when individuals have been killed as a result of the use of force".[1154]

1809. The Court laid down a series of principles which such an investigation should observe: inter alia, that authorities must act on their own motion, act with independence, be effective and prompt.

1810. The Inter-American Court of Human Rights has established similar jurisprudence.[1155]

1811. The Mission holds the view that the duty to investigate allegations of serious violations of the right to life and physical integrity under ICCPR extends equally to allegations about acts committed in the context of armed conflict.

[1152] Human Rights Committee, general comment 31 (2004), paras. 8 and 15.

[1153] *Bautista de Arellana* v. *Colombia*, communication No. 563/1993, views of 27 October 1995, para 8.6; See also, *José Vicente and Amado Villafañe Chaparro, Luís Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres* v. *Colombia*, communication No. 612/1995, views of 29 July 1995, para 8.8; *Rajapakse* v. *Sri Lanka*, communication No. 1250/2004, views of 14 July 2006, para. 9.3.

[1154] Case *Isayeva* v. *Russia*, application no. 57950/00, Judgement of 24 February 2005, para. 209.

[1155] See *Case of the Ituango Massacres* v. *Colombia*, *Case of the Mapiripán Massacre* v. *Colombia*,

1812. The State's duty to investigate is also firmly established in the jurisprudence of the Supreme Court of Israel. Thus, in the *Targeted killings* case, which addresses the use of armed force in a context regarded as armed conflict, it held:

> … after an attack on a civilian suspected of taking an active part, at such time, in hostilities, a thorough investigation regarding the precision of the identification of the target and the circumstances of the attack upon him is to be performed (retroactively). That investigation must be independent[1156]

1813. The Mission notes that Israel does not question its duty to investigate allegations of serious offences by its armed forces. On the contrary, it has repeatedly stated that the investigation system that it has put in place is effective.[1157]

1814. It remains to be considered whether, in carrying out its duty to investigate allegations of serious violations, Israel has observed the universal principles of independence, effectiveness, promptness and impartially. These principles have been developed in the jurisprudence of international courts of human rights and are agreed upon by the States represented within the relevant United Nations bodies.[1158]

1815. The Mission finds that the system put in place by Israel, and described above, to deal with allegations of serious wrongdoing by armed forces personnel does not comply with all those principles.

1816. The system is not effective in addressing the violations and uncovering the truth. In this respect the Mission recalls the statements of Col. (res.) Ilan Katz, until March 2003 the Deputy Military Advocate General, criticizing the use of operational debriefings by commanders in order to prevent criminal investigations. In a meeting of the Israel Bar Association's Military and Security Committee, Col. (res.) Katz was reported to have stated:

> From the beginning of the uprising and as of August 2004, about 90 [Military Police Criminal Investigation Division] investigations were opened into the injuries and deaths of Palestinians. About 70 investigations were opened in the last year alone. That shows that they saw that the Operational Debriefing did not lead to uncovering the truth and then the [Military Advocate General] gave an order to begin [Military Police Criminal Investigation Division] investigations. I used to be part of the policy that allowed the Army to use the military debriefing, but the Army did not use the Operational Debriefing appropriately because of a failure to comply with regulations and orders. That tool did not prove itself.

[1156] *Public Committee against Torture in Israel et al.* v. *Government of Israel et al.*, case No. 769/02, 13 December 2006, para. 40.

[1157] "The operation in Gaza…", paras. 283 ff.

[1158] *Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions* (Economic and Social Council resolution 1989/65, annex), and *the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 55/89, annex).

1817. Col. (res.) Katz appears to admit that the system does not comply with the requirement of promptness. Even if a decision is made by the Military Advocate General to order the opening of criminal investigations, investigation is usually nearly impossible at that point:

> The reason is that when the commanders conduct an operational debriefing they destroy the scene of the crime, and months later it is difficult to find traces of evidence on the ground. You cannot even check the gun from which the shots were fired because by the time the [Military Police Criminal Investigation Division] investigation begins many more shots have been fired by the same gun, or in some cases the gun changes hands and it is very hard to trace it. The debriefing law has a certain logic because it raises the level of credibility of the operational debriefings, but the way it is exploited by commanders in order to prevent [Military Police Criminal Investigation Division] investigations is not reasonable.[1159]

1818. The Mission notes that the report in which the above statements appear has not been contradicted by the Government of Israel. The statements are also consistent with other assessments. Human Rights Watch studied the cases that were investigated between 2000 and 2004, and concluded that very few had actually gone to full criminal investigations and that even fewer had ended in indictments. When convictions did follow, the penalties were noticeably more lenient than those imposed on Palestinian offenders. The organization Yesh Din came to similar conclusions in its study of cases from 2000 to the end of 2007.[1160]

1819. Operational debriefing, to review operational performance, is not an appropriate tool to conduct investigations of allegations of serious violations of human rights and humanitarian law. It appears to the Mission that established methods of criminal investigations such as visits to the crime scene, interviews with witnesses and victims, and assessment by reference to established legal standards have not been adopted. The operational debriefings as well as the five "expert " investigations carried out by the Israeli armed forces into events during the December–January military operations in Gaza appear to have relied exclusively on interviews with Israeli officers and soldiers. As such, these investigations did not comply with required legal standards.

1820. The Israeli armed forces stated that it had conducted more than 100 "military investigations" into allegations of wrongdoing during the military operations in Gaza. Some 13 criminal investigations have been opened. On the basis of the facts available to it and on the circumstances, the Mission finds that a delay of six months to start these criminal investigations constitutes undue delay in the face of the serious allegations that have been made by many people and organizations.

1821. Amnesty International has said about the public outcomes of Israeli armed forces' investigations into events during the military operations:

[1159] *Maariv*, "The MPCID does not know how to do its job", 1 January 2005, cited in Yesh Din: Volunteers for Human Rights, *Exceptions: Prosecution of IDF Soldiers during and after the Second Intifada, 2000–2007* (September 2008), p. 23.

[1160] *Promoting Impunity*…, pp. 100 ff.; *Exceptions: Prosecution…,* pp. 33 ff.; see also B'Tselem, "Military police investigations during the al-Aqsa intifada", available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp.

> The information made public only refers to a handful of cases and lacks crucial details. It mostly repeats claims made by the army and the authorities many times since the early days of Operation "Cast Lead", but does not provide evidence to back up the allegations. It does not even attempt to explain the overwhelming majority of civilian deaths nor the massive destruction caused to civilian buildings in Gaza.[1161]

1822. In this regard, the Mission recalls the recommendations made to Israel by the Committee against Torture to "conduct an independent inquiry to ensure a prompt, independent and full investigation" into the responsibility of the State and non-State actors during the war. This recommendation was issued after Israel released the results of five "special investigations" in April 2009.[1162]

1823. On the basis of the information before it and the above considerations the Mission finds that the failure of Israel to open prompt, independent and impartial criminal investigations even after six months have elapsed constitute a violation of its obligation to genuinely investigate allegations of war crimes and other crimes, and other serious violations of international law.

1824. The obligation on Israel to prevent, investigate and punish violations of human rights applies also to its actions or omissions in the West Bank. Such obligation includes the duty to take appropriate measures or to exercise due diligence to prevent, investigate or redress harm caused by private persons.[1163] As stated above, the Mission has not received any information indicating the initiation of criminal or other investigations into violence against Palestinians in the West Bank, including East Jerusalem, related to the military operations in the Gaza Strip. Israel appears to do little to protect Palestinians from settler violence and, if investigations into such violence are opened, they are reported to be prolonged and usually result in no action. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an indictment being filed.

1825. If settlers are convicted, the sentences are reported to be very light.[1164] This practice should be contrasted with the harsh treatment and punishment meted out to Palestinians who harm Israelis. This has been described as a discriminatory policy.[1165] Similarly, action against members of security forces who commit acts of violence, including killings, serious injuries and other abuses, against Palestinians is very rare. Information available to the Mission points to a systematic lack of accountability of members of the security forces for such acts.[1166]

1826. The Government of Israel also reports that, in October 2007, the Office of the Military Advocate for Operational Affairs was established to investigate cases of operational misconduct

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[1161] *Israel/Gaza: Operation "Cast Lead": 22 days…*, p. 93.

[1162] CAT/C/ISR/CO/4, para. 29.

[1163] Human Rights Committee, general comment No. 31 (2004), para. 8.

[1164] Yesh Din, "Law enforcement upon Israeli civilians in the OPT: Yesh Din's monitoring", data sheet, July 2008.

[1165] B'Tselem, "Handling of complaints of settler violence", available at: http://www.btselem.org/english/Settler_Violence/Law_Enforcement.asp

[1166] See chap. XXI.

by Israeli armed forces soldiers against Palestinian civilians. This special military prosecution unit allows the automatic opening of criminal investigations in all cases. As a result, the Government reports, the numbers of criminal investigations launched in 2007 and 2008 in relation to abuse against Palestinians have more than doubled, from 152 in 2006 to 351 in 2007 and 323 in 2008.[1167] However, no figures are provided about how many of those investigations resulted in indictments and in convictions, and the offence for which the concerned persons were finally convicted.

1827. The same paper by the Government of Israel states that, in military courts as a whole, from January 2002 to December 2008 inclusive, there have been 1,467 criminal investigations, leading to 140 indictments. As of December 2008, 103 defendants had been convicted and 10 cases were still pending. During the first six months of 2009, 123 criminal investigations were opened, leading to 10 indictments so far.[1168] This information is contradicted, in addition to being incomplete.

1828. Yesh Din points out that the limited number of indictments leads, in practice, to even fewer convictions. Most of those convictions are for offences that do not reflect the degree of gravity of the action. For instance, from September 2000 to the end of 2007, only 135 soldiers were indicted, of whom some 113 had been convicted by mid-2008. Only 22 underwent full criminal trials in courts martial and 95 were convicted on the basis of their confessions. But as many as 73 confessed to amended indictments and were therefore convicted of less serious offences than the original charges. This situation has been attributed partially to the system of plea-bargaining officially used in Israel and to the willingness of the Military Prosecutor to agree to lesser offences and penalties having due regard, inter alia, to the difficulties encountered in gathering sufficient evidence to back up the original charge.[1169]

1829. Another contributing factor is the unprofessional way in which criminal investigations are carried out, making it virtually impossible to prove the charges beyond reasonable doubt. Courts martial have criticized those investigations on several occasions. Military criminal investigators do not seem interested in interviewing victims or witnesses and the quality of evidence gathered is low.[1170]

1830. The change of policy instituted in 2000 determining that full criminal investigations are possible only after "operational debriefings" have been carried out means that in practice criminal investigations do not begin before six months after the events in question. By that time evidence may be corrupted or no longer available.

1831. The Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of independence, impartiality,

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[1167] "The operation in Gaza…", paras. 294-295.

[1168] Ibid., para. 293.

[1169] *Exceptions: Prosecution…*, pp. 33-35.

[1170] Ibid., pp. 27-28.

effectiveness and promptness in investigations. The fact that proper criminal investigations can start only after the "operational debriefing" is over is a major flaw in the Israeli system of investigation.

1832. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult.

1833. In this context, the Mission notes that on 21 January 2009 the Office of the Prosecutor of the International Criminal Court received a declaration in the following terms:

> 'Pursuant to the provisions of article 12, paragraph 3, of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002.'

1834. Article 12 of the Rome Statute - Preconditions to the exercise of jurisdiction - reads as follows:

> 1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
>
> 2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
>
> (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
>
> (b) The State of which the person accused of the crime is a national.
>
> 3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

1835. The Prosecutor may determine that for the purposes of article 12, paragraph 3, under customary international law, Palestine qualifies as "a State".

XXVII. PROCEEDINGS BY PALESTINIAN AUTHORITIES

A. Proceedings related to actions in the Gaza Strip

1836. The Gaza authorities are responsible for ensuring that effective measures for accountability for violations of IHRL and IHL committed by armed groups acting in or from the

Gaza Strip are established. The Mission points out that such responsibility would continue to rest on any authority exercising government-like functions in the Gaza Strip.

1837. ICHR reports that actions in the Gaza Strip in respect of accountability are limited to the formation of committees to monitor and report on a number of human rights violations.[1171]

1838. However, there is no evidence of any system of public monitoring or accountability for serious IHL and IHRL violations. The Mission has heard credible reports of such violations that are discussed in other parts of this report. In particular, the Mission is concerned about the consistent disregard of IHL with which all armed groups in the Gaza Strip conduct their armed activities directed against Israel.

1839. The Mission notes that:

(a) On 10 July 2008, it was reported by BBC that "Hamas security forces" had arrested two members of al-Aqsa Martyrs' Brigades who had launched rocket attacks on Israel the day before.[1172] According to the same report, al-Aqsa Martyrs' Brigades said members of Hamas' security forces had chased and "abducted" two of their members. Reuters, later on 10 July 2008, reported that an additional four members of al-Aqsa Martyrs' Brigades were arrested by Hamas as they tried to fire rockets into Israel;[1173]

(b) On 9 March 2009, Islamic Jihad stated that the Internal Security had arrested 10 of its members and forced them to sign statements prior to their being released pledging that they would cease rocket fire on Israel;[1174]

(c) On 13 March 2009, an official of the Gaza authorities was reported as saying that security forces would track and arrest anyone suspected of firing rockets into Israel, stating "the rockets have been fired at the wrong time";[1175]

[1171] ICHR, *Fourteenth Annual Report*, pp. 179 ff. In relation to internal violence, Al-Mezan pointed out that "previous commissions of inquiry that were established to investigate these violations failed to make public their findings, which has contributed to the reoccurrence of violations" ("Al-Mezan welcomes decision of Prime Minister in Gaza to approve Commission of Inquiry recommendation to dismiss and bring to justice perpetrators of law and human rights violations", 1 April 2009). Similarly, PCHR lamented "the failure of the Palestinian authorities to take any action to prosecute the perpetrators or to make available the results of any investigations. This contributes to the proliferation of such crimes" ("PCHR demands investigation into death of a civilian tortured by members of the Intelligence Services in Gaza", press release, 25 March 2009).

[1172] BBC News, "Gaza militants fire two rockets", 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm.

[1173] Reuters, "Hamas arrests militants after rocket fire", 10 July 2008, available at: http://www.reuters.com/article/latestCrisis/idUSL103182282.

[1174] Ynet News, "Islamic Jihad: Hamas arrested 10 of our men", 9 March 2009, available at: http://www.ynetnews.com/articles/0,7340,L-3683385,00.html; see also BBC News, "Hamas threatens rocket militants", 12 March 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7940371.stm.

[1175] *World Tribune*, "Hamas cracks down on the unauthorized, random firing of rockets at Israel", 13 March 2009.

(d) On 11 July 2009, the Islamic Jihad released a statement in which asserted that two of its members had been arrested by "interior security officials" as they had been preparing to fire mortars into Israel.[1176]

1840. As far as incidents of killing, torture and mistreatment within the Gaza Strip in connection with or in the context of the military operations are concerned,[1177] the Gaza authorities stated that they had investigated allegations of abuse and found that the incidents were "family revenge cases" or individual acts motivated by revenge. Through its competent agencies, the authorities stated that they "had opened investigations into these events immediately after the war" and submitted charges before the competent courts.[1178] Notwithstanding this statement and any action that the Gaza authorities may have taken, of which the Mission is unaware, the Mission considers that allegations in this respect have gone largely without investigation.

1841. The Mission has taken into account the media reports referred to above, but remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of IHL in the conduct of armed activities by militant groups in the Gaza Strip. The Mission was also given no evidence of any arrests, investigation or prosecution connected with the serious violations of the peremptory norms of international law that have been alleged in information presented in other parts of this report, be these against Palestinian civilians in Gaza or against Israeli civilians.

1842. The Mission is aware that Hamas continues to view all armed activities directed against Israel as resistance to occupation and practices of the occupation, and, therefore, a legitimate right of the Palestinian people. The Mission fully recognizes the Palestinian people's right to self-determination, in accordance with the Charter of the United Nations and international human rights conventions. It also acknowledges that United Nations bodies and others have repeatedly pointed out practices of the Israeli occupation that deprive Palestinians of their human rights and fundamental freedoms. Nevertheless, the Mission forcefully reiterates that the peremptory norms of customary international law, both of human rights law and humanitarian law, apply to all actions that may be undertaken in response to, or to oppose, human rights violations.

B. Proceedings related to actions in the West Bank

1843. The Palestinian Authority has a duty to respect and ensure respect for human rights and humanitarian law in the areas under its authority and control. The duty to investigate and, if appropriate, prosecute alleged perpetrators of serious crimes is also incumbent upon it. It has a general duty to provide an effective remedy to those who allege that their rights have been infringed.

1844. Article 32 of the Palestinian Basic Law provides:

[1176] *Haaretz*, "Hamas nabs two Islamic Jihad preparing to fire mortars at Israel", 11 July 2009.

[1177] See chap. XX.

[1178] Written reply to list of questions formulated by the Mission, July 2009, on file with the Mission secretariat.

> Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by the law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.

1845. In its 2008 report, ICHR addresses the system of accountability in the Occupied Palestinian Territory, including the West Bank and the Gaza Strip. Victims of violations may submit a petition to the Attorney General, who should start investigations according to the law. Compensation can also be requested and obtained from the Palestinian Authority through a civil suit. The 1960 Jordanian Penal Code still applies in the West Bank. There is also provision for the enforceability of judicial rulings and sentences (article 106 of the Basic Law).

1846. The Basic Law grants the Palestinian Legislative Council the power to set up fact-finding committees to inquire into any matter of public concern (art. 58), including human rights and freedoms. ICHR observes that, of the few committees established to address human rights issues, none has found its recommendations or findings translated into criminal prosecutions.[1179] With few exceptions, it appears that there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions.[1180]

1847. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration. The police put in place an internal disciplinary mechanism under which a total of 430 police were sanctioned during 2008. But the Preventive Security agencies and the General Intelligence agencies have not taken any similar measures.[1181]

1848. The Mission requested information from the Palestinian Authority about any investigation it had initiated into allegations of violations by members of Palestinian security forces in areas under its jurisdiction. In its reply to the list of questions formulated by the Mission, the Palestinian Authority did not provide any information in this respect. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment.

XXVIII. UNIVERSAL JURISDICTION

1849. In their search for justice, victims of serious violations of human rights have often looked for accountability mechanisms in other countries when there were none at home or the existing ones did not offer an effective remedy. The principle of universality, which says that international crimes that violate fundamental human values are a concern for the entire

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[1179] ICHR, *Fourteenth Annual Report*, p. 182.

[1180] See chap. XXIII.

[1181] ICHR, *Fourteenth Annual Report*, p. 185.

international community, underpins the exercise of criminal jurisdiction in many States. The exercise of criminal jurisdiction on the basis of the universality principle concerns especially serious crimes regardless of the place of commission, the nationality of the perpetrator or the nationality of the victim. This form of jurisdiction is concurrent with others based on more traditional principles of territoriality, active and passive nationality, and it is not subsidiary to them.

1850. It is uncontroversial today that States may confer upon their courts the right to exercise universal jurisdiction over international crimes, including war crimes, crimes against humanity and genocide.[1182] However, there is lingering controversy about the conditions or requirements for the exercise of that jurisdiction and, in particular, about whether the alleged perpetrator should be physically in the territory of the prosecuting State or not.

1851. Universal jurisdiction is also established under certain conventions as an obligation for their States parties. Such is the case of the Fourth Geneva Convention, whose article 146 requires each high contracting party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches" and to bring such persons, regardless of their nationality, before its own courts.

1852. Article 5 of the Convention against Torture requires States parties to take measures to establish jurisdiction over the offence of torture and of complicity or participation in torture when the alleged offender is in a territory under its jurisdiction.

1853. Many countries around the world incorporate the principle of universal jurisdiction into their national legislation, including Australia, Bangladesh, Belgium, Costa Rica and Spain.

1854. In connection with past events in the Occupied Palestinian Territory, the Mission is aware of one case pending before the Spanish courts. It concerns the killing of Hamas leader Salah Shehadeh on 22 July 2002 by a one-ton bomb fired from an Israeli F-16 aircraft. The strike also killed a number of other people in the same house and in the house next door. The investigating judge admitted the case for investigation on the basis of the universality principle and after determining that the Israeli internal investigation system did not satisfy the requirements of the right to an effective remedy. This decision was overturned by the Appeals Chamber, whose decision is, in turn, being appealed now to the Supreme Court.[1183]

1855. There are other cases pending before national courts of several European States, such as the Netherlands[1184] and Norway.[1185] In South Africa, a request for prosecution is being considered by the National Prosecuting Authority.[1186]

[1182] See *Customary International Humanitarian Law*..., rule 157, p. 604.

[1183] Auto, 4 May 2009, Juzgado Central de Instrucción No. 4, Audiencia Nacional; Auto No. 1/09, 9 July 2009, Sala de lo Penal Pleno, Audiencia Nacional.

[1184] PCHR, "Torture victim seeks prosecution of former head of Israeli general security services", press release, 6 October 2008, available at http://www.pchrgaza.org/files/PressR/English/2008/92-2008.html. This case is brought under articles 6 and 7 of the Convention against Torture.

1856. Criminal investigations and prosecutions by countries other than Israel are possible on the basis of the principle of nationality of the offender. Several countries provide their courts with jurisdiction over their own nationals regardless of the place where the offence has been committed. For instance, article 5 of the Convention against Torture requires States parties to establish jurisdiction over offences defined in it when the offender is a national.

1857. It is the view of the Mission that universal jurisdiction is a potentially efficient tool for enforcing international humanitarian law and international human rights law, preventing impunity and promoting international accountability. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards and establish judicial accountability over its military actions in the Occupied Palestinian Territory, and until such a time as clarity is achieved as to whether the International Criminal Court will exercise jurisdiction over alleged crimes committed in the Occupied Palestinian Territory, including in Gaza, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of grave breach provisions of the Geneva Convention of 1949, prevent impunity and promote international accountability.

XXIX. REPARATION

1858. The extent of the damage and destruction inflicted on Palestinian lives and property, and on Palestinian civilian objects has been substantial. The Palestinian Authority estimated the total cost of early recovery and reconstruction at US$ 1,326 million in March 2009.[1187] To this amount should be added the indirect costs of the impact on human and animal health, the environment and market opportunities. These losses are still to be estimated.

1859. The international community, bilateral donors and multilateral agencies (including the United Nations specialized agencies, programmes and funds) have been responsive to the urgent needs of the Palestinian people in the Gaza Strip. A number of development NGOs operating in the Gaza Strip have redoubled their efforts. The Gaza Flash Appeal 2009,[1188] prepared by aid agencies operating in the Gaza Strip, called for US$ 613 million to meet the requirements of urgent life-saving projects and initial crucial repairs to infrastructure over a period of nine months. By the middle of 2009 only a fraction of those requirements had been met. The United Nations Resident/Humanitarian Coordinator in the Occupied Palestinian Territory has said that although donor countries had pledged billions of dollars for Gaza's reconstruction, it cannot begin because of the ongoing Israeli blockade.[1189] In addition, some international donors are

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[1185] Spiegel Online International, "War crimes in Gaza? Palestinian lawyers take on Israel", 6 May 2009, available at: http://www.spiegel.de/international/world/0,1518,628773,00.html. Lawyers in Norway are seeking an arrest warrant against several senior Israeli officials.

[1186] The request, against more than 70 persons, was submitted by civil society organizations under a South African law which gives effect to the Rome Statute and makes the prosecution of war crimes and crimes against humanity a legal obligation.

[1187] *Palestinian National Early Recovery and Reconstruction Plan…*, p. 11.

[1188] Occupied Palestinian Territory: Gaza Flash Appeal, Consolidated Appeal Process, 2009.

[1189] United Nations News Centre, "Unresolved Gaza crisis hampering efforts to advance Mid-East peace – UN envoy", 23 June 2009.

reluctant to disburse funds in the current climate of uncertainty created by the rift between the two rival Palestinian political groups in Gaza and the West Bank.[1190]

1860. Notwithstanding the response by the Palestinian Authority and the international community to the crisis resulting from the combined effect of the blockade and the military operations of December 2008–January 2009, the Mission is more concerned about the individuals (women, men, children and the elderly) and their families, and their ability to rebuild their lives after this traumatic experience. The Mission is conscious that rebuilding Palestinian lives and livelihoods will not be fully possible until the effects of the occupation, the blockade and successive military incursions are eliminated. One should not lose sight, however, of the individual human dimension. That dimension flows from the right to a remedy and reparation that the Palestinian people and individual Palestinians have under international law. Palestinian lives, physical integrity and health have been affected, in many cases very seriously and irreparably. In addition to the loss of life and limb, considerable mental harm has been inflicted on many people who have lost relatives and often financial support. The psychological harm caused to the Palestinians in Gaza is still to be assessed and also requires reparation measures; so, too, the destruction of houses and private property.

A. The right to a remedy and reparation under international law

1861. The obligation to make full reparation for the loss or injury caused is an international obligation incumbent upon a State responsible for an unlawful act. International law also recognizes victims' rights to an effective remedy and reparations for damage or loss resulting from violations of their human rights. This obligation and these rights are recognized in international treaties and customary international law.

1862. As early as 1927, the Permanent Court of International Justice established the provision of reparation for the injury caused by an international wrongful act as a principle of international law: "Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself".[1191]

1863. This principle was codified by the International Law Commission in article 31 of its draft articles on responsibility of States for internationally wrongful acts.[1192]

1864. The principle that a State responsible for breaching an international obligation should repair the damage or loss caused can also be found in international humanitarian law conventions and human rights treaties. These include article 3 of the 1907 Fourth Hague Convention, article 51 of the First Geneva Convention, article 52 of the Second Geneva Convention, article 131 of the Third Geneva Convention and article 148 of the Fourth Geneva Convention. A similar rule is provided for in article 91 of Additional Protocol I to the Geneva Conventions.

[1190] *The New York Times*, "Makeshift repairs not enough for battered Gaza", 17 August 2009.

[1191] Chorzów Factory case, 1927, P.C.I.J. (Ser. A) No. 9, p. 21.

[1192] General Assembly resolution 56/83, annex; see also *Customary International Humanitarian Law…*, rule 150, p. 537.

1865. Reparation as part of the right to a remedy has been enshrined in article 2 (3) of ICCPR, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and article 39 of the Convention on the Rights of the Child. The Rome Statute also provides for the right of victims to participation in the proceedings (art. 68 (3)) and to reparations (art. 75).[1193]

1866. Reparation can take the form of restitution, compensation or satisfaction, but may also include measures of rehabilitation of victims and guarantees of non-repetition.[1194]

B. Compensation and reparations to the Palestinian people in the Gaza Strip

1867. According to news reports, UNDP and the Palestinian Authority signed an agreement allocating US$ 270 million for the restoration of the agricultural sector in Gaza. This will allow for the payment of a compensation package to Palestinian farmers for property damaged during the most recent military operations in Gaza, repair of the damaged infrastructure, damaged orchards, fisheries, livestock, greenhouses, irrigation networks and roads.[1195] Cash assistance was also to be provided to some 10,000 non-refugee Palestinians whose houses have been destroyed or damaged.[1196] While in Gaza City, the Mission learnt that such compensation schemes were being implemented.

1868. These assistance and compensation schemes notwithstanding, the Mission is of the view that international law requires the State responsible for the internationally wrongful act to provide reparation and compensation to the victim. To the Mission's knowledge, Israel has to date considered compensation to be paid only to the United Nations for the damage inflicted on United Nations personnel and facilities, without acknowledging responsibility.[1197] At the very least, similar compensation should be offered to Palestinian individuals.

1869. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice affirmed that "Israel has the

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[1193] See also principle 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147):

> Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:
>
> (*a*) Equal and effective access to justice;
>
> (*b*) Adequate, effective and prompt reparation for harm suffered;
>
> (*c*) Access to relevant information concerning violations and reparation mechanisms.

[1194] See article 34 of the draft articles on responsibility of States for internationally wrongful acts. Rehabilitation and guarantees of non-repetition are listed as forms of reparation in the above-mentioned Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[1195] UNDP, "Farmers to receive compensation for damaged property in Gaza", news release, 26 February 2009.

[1196] UNDP, "10,000 families in Gaza to receive cash assistance for damaged homes", news release, 10 February 2009.

[1197] Agence France-Presse, "Israel offering compensation for UN Gaza damage: official", 3 July 2009.

obligation to make reparation for the damage caused to all natural and legal persons concerned."[1198] The United Nations has established the United Nations Registry of Damages, which collects data on damage caused to Palestinians by the construction of the Wall.[1199] Domestic law of Israel would be one vehicle to make possible reparations for affected Palestinians.

1870. The possibilities for obtaining reparation and compensation in the Israeli legal system have been limited. A 2001 amendment to the Civil Wrongs Act extended the definition of "acts of war" and set procedural limitations on Palestinians' ability to bring claims against Israel. These limitations include the shortening of the period before the statute of limitations applies and the requirement to submit a "notice" of damage to the Israeli Defense Minister in advance of the claim and within two months after the damage occurred.[1200] Additional amendments passed in 2002 and 2005 prevent the courts from hearing claims relating to actions by security forces in "conflict zones" proclaimed as such by the Minister of Defense, and give immunity to the State against claims by subjects of enemy States or members of "terrorist organizations".[1201] Under the last two amendments the character of the harmful act, the circumstances under which harm was suffered and the causality link between the perpetrator and the harm have become irrelevant. The Mission received information that the amendments allowed the Minister of Defense to declare areas in the Occupied Palestinian Territory as "conflict zones" retroactively.

1871. The 2005 amendment No. 7 was challenged before the Supreme Court of Israel, which ruled in 2006 that section 5C of the Civil Wrongs Law (as amended in 2005) was not constitutional. Therefore, the provision that makes Israel immune from civil liability for acts of security forces in declared "zones of conflict" was struck down. However, the ruling did not pronounce on the constitutionality of section 5B of the Law, which grants immunity to the State against civil claims brought by subjects of a State enemy of Israel and persons active in or members of a terrorist organization.[1202] At the same time, other amendments passed prior to 2005 have not been challenged and stand as law in force in the land.

1872. The Mission is concerned that the possibilities for civil compensation for damage and loss of property suffered by Palestinians during military operations are limited in Israeli domestic law since that damage is generally seen as the result of "acts of war" regardless of the nature of the action. In a recent decision concerning a claim on behalf of a Palestinian killed by helicopter fire on 16 April 2002 during the so-called Operation Defensive Shield, in Nablus, the Court ruled that this was an "act of war" designed to "vanquish the terrorist infrastructure". The Jerusalem Magistrate's Court held that an air strike is clearly an act of war "that the legislator intended to

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[1198] *Legal Consequences* ..., para. 152.

[1199] Its mandate is limited to the registration of the damage or loss suffered as a result of the construction of the Wall in the Occupied Palestinian Territory.

[1200] Civil Wrongs (Liability of the State) (Amendment – Claims Arising from Activity of Security Forces in Judea and Samaria and the Gaza Strip) Law, 2001, sections 2 and 3, available at: www.hamoked.org.il.

[1201] Civil Wrongs (Liability of the State) (Amendment No. 5) (Filing of Claims against the State by a Subject of an Enemy State or Resident of a Zone of Conflict) Law, 2002, and Civil Wrongs (Liability of the State) (Amendment No. 7) Law, 2005, sections 5B and 5C.

[1202] *Adalah et al.* v. *Minister of Defense et al.*, case No. 8276/05, Judgement of 12 December 2006.

make immune to prosecution" even when the plaintiffs showed that the victim was a civilian standing on the roof of his house.[1203]

1873. It is the view of the Mission that the current constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide an additional or alternative mechanism of compensation by Israel for damage or loss incurred by Palestinian civilians during the military operations. In this regard, the Mission notes that the International Commission of Inquiry on Darfur and the Commission of Inquiry on Lebanon expressed similar concerns about the need for compensation for the victims.[1204]

[1203] *Odah et al.* v. *The State of Israel*, case No. C/007798/04, Judgement of June 2009 not yet reported.

[1204] "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-general, pursuant to Security Council resolution 1564 of 18 September 2004", para. 601; "Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1" (A/HRC/3/2, para. 349).

PART FIVE: CONCLUSIONS AND RECOMMENDATIONS

XXX. CONCLUSIONS

A. Concluding observations

1874. **An objective assessment of the events it investigated and their causes and context is crucial for the success of any effort to achieve justice for victims of violations and peace and security in the region, and as such is in the interest of all concerned and affected by this situation, including the parties to the continuing hostilities. It is in this spirit, and with full appreciation of the complexity of its task, that the Mission received and implemented its mandate.**

1875. **The international community as well as Israel and, to the extent determined by their authority and means, Palestinian authorities, have the responsibility to protect victims of violations and ensure that they do not continue to suffer the scourge of war or the oppression and humiliations of occupation or indiscriminate rocket attacks. People of Palestine have the right to freely determine their own political and economic system, including the right to resist forcible deprivation of their right to self-determination and the right to live, in peace and freedom, in their own State. The people of Israel have the right to live in peace and security. Both peoples are entitled to justice in accordance with international law.**

1876. **In carrying out its mandate, the Mission had regard, as its only guides, for general international law, international human rights and humanitarian law, and the obligations they place on States, the obligations they place on non-State actors and, above all, the rights and entitlements they bestow on individuals. This in no way implies equating the position of Israel as the occupying Power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or to protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary. What requires equal attention and effort, however, is the protection of all victims in accordance with international law.**

B. The Israeli military operations in Gaza: relevance to and links with Israel's policies vis-à-vis the Occupied Palestinian Territory

1877. **The Mission is of the view that Israel's military operation in Gaza between 27 December 2008 and 18 January 2009 and its impact cannot be understood or assessed in isolation from developments prior and subsequent to it. The operation fits into a continuum of policies aimed at pursuing Israel's political objectives with regard to Gaza and the Occupied Palestinian Territory as a whole. Many such policies are based on or result in violations of international human rights and humanitarian law. Military objectives as stated by the Government of Israel do not explain the facts ascertained by the Mission, nor are they congruous with the patterns identified by the Mission during the investigation.**

1878. **The continuum is evident most immediately with the policy of blockade that preceded the operations and that in the Mission's view amounts to collective punishment**

intentionally inflicted by the Government of Israel on the people of the Gaza Strip. When the operations began, the Gaza Strip had been under a severe regime of closures and restrictions on the movement of people, goods and services for almost three years. This included basic necessities of life, such as food and medical supplies, and products required for the conduct of daily life, such as fuel, electricity, school items, and repair and construction material. These measures were imposed by Israel purportedly to isolate and weaken Hamas after its electoral victory in view of the perceived continuing threat to Israel's security that it represented. Their effect was compounded by the withholding of financial and other assistance by some donors on similar grounds. Adding hardship to the already difficult situation in the Gaza Strip, the effects of the prolonged blockade did not spare any aspect of the life of Gazans. Prior to the military operation, the Gaza economy had been depleted, the health sector beleaguered, the population had been made dependent on humanitarian assistance for survival and the conduct of daily life. Men, women and children were psychologically suffering from long-standing poverty, insecurity and violence, and enforced confinement in a heavily overcrowded territory. The dignity of the people of Gaza had been severely eroded. This was the situation in the Gaza Strip when the Israeli armed forces launched their offensive in December 2008. The military operations and the manner in which they were conducted considerably exacerbated the aforementioned effects of the blockade. The result, in a very short time, was unprecedented long-term damage both to the people and to their development and recovery prospects.

1879. **An analysis of the modalities and impact of the December-January military operations also sets them, in the Mission's view, in a continuum with a number of other pre-existing Israeli policies with regard to the Occupied Palestinian Territory. The progressive isolation and separation of the Gaza Strip from the West Bank, a policy that began much earlier and which was consolidated in particular with the imposition of tight closures, restrictions on movement and eventually the blockade, are among the most apparent. Several measures adopted by Israel in the West Bank during and following the military operations in Gaza also further deepen Israel's control over the West Bank, including East Jerusalem, and point to a convergence of objectives with the Gaza military operations. Such measures include increased land expropriation, house demolitions, demolition orders and permits to build homes in settlements, greater and more formalized access and movement restrictions on Palestinians, new and stricter procedures for residents of the Gaza Strip to change their residency to the West Bank. Systematic efforts to hinder and control Palestinian self-determined democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. The cumulative impact of these policies and actions make prospects for political and economic integration between Gaza and the West Bank more remote.**

C. Nature, objectives and targets of the Israeli military operations in Gaza

1880. **Both Palestinians and Israelis whom the Mission met repeatedly stressed that the military operations carried out by Israel in Gaza from 27 December 2008 until 18 January 2009 were qualitatively different from any previous military action by Israel in the Occupied Palestinian Territory. Despite the hard conditions that have long been prevailing**

in the Gaza Strip, victims and long-time observers stated that the operations were unprecedented in their severity and that their consequences would be long-lasting.

1881. **When the Mission conducted its first visit to the Gaza Strip in early June 2009, almost five months had passed since the end of the Israeli military operations. The devastating effects of the operations on the population were, however, unequivocally manifest. In addition to the visible destruction of houses, factories, wells, schools, hospitals, police stations and other public buildings, the sight of families, including the elderly and children, still living amid the rubble of their former dwellings – no reconstruction possible due to the continuing blockade – was evidence of the protracted impact of the operations on the living conditions of the Gaza population. Reports of the trauma suffered during the attacks, the stress due to the uncertainty about the future, the hardship of life and the fear of further attacks, pointed to less tangible but not less real long-term effects.**

1882. **Women were affected in significant ways. Their situation must be given specific attention in any effort to address the consequences of the blockade, of the continuing occupation and of the latest Israeli military operations.**

1883. **The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.**

1884. **In this respect, the operations were in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and possibly with the intent of forcing a change in such support. The Mission considers this position to be firmly based in fact, bearing in mind what it saw and heard on the ground, what it read in the accounts of soldiers who served in the campaign, and what it heard and read from current and former military officers and political leaders whom the Mission considers to be representative of the thinking that informed the policy and strategy of the military operations.**

1885. **The Mission recognizes that the principal focus in the aftermath of military operations will often be on the people who have been killed – more than 1,400 in just three weeks. This is rightly so. Part of the functions of reports such as this is to attempt, albeit in a very small way, to restore the dignity of those whose rights have been violated in the most fundamental way of all – the arbitrary deprivation of life. It is important that the international community asserts formally and unequivocally that such violence to the most basic fundamental rights and freedoms of individuals should not be overlooked and should be condemned.**

1886. **In this respect, the Mission recognizes that not all deaths constitute violations of international humanitarian law. The principle of proportionality acknowledges that, under certain strict conditions, actions resulting in the loss of civilian life may not be unlawful. What makes the application and assessment of proportionality difficult in respect of many of the events investigated by the Mission is that deeds by the Israeli armed forces and words of military and political leaders prior to and during the operations indicate that, as a**

whole, they were premised on a deliberate policy of disproportionate force aimed not at the enemy but at the "supporting infrastructure." In practice, this appears to have meant the civilian population.

1887. **The timing of the first Israeli attack, at 11.30 a.m. on a weekday, when children were returning from school and the streets of Gaza were crowded with people going about their daily business, appears to have been calculated to create the greatest disruption and widespread panic among the civilian population. The treatment of many civilians detained or even killed while trying to surrender is one manifestation of the way in which the effective rules of engagement, standard operating procedures and instructions to the troops on the ground appear to have been framed in order to create an environment in which due regard for civilian lives and basic human dignity was replaced with disregard for basic international humanitarian law and human rights norms.**

1888. **The Mission recognizes fully that the Israeli armed forces, like any army attempting to act within the parameters of international law, must avoid taking undue risks with their soldiers' lives, but neither can they transfer that risk onto the lives of civilian men, women and children. The fundamental principles of distinction and proportionality apply on the battlefield, whether that battlefield is a built-up urban area or an open field.**

1889. **The repeated failure to distinguish between combatants and civilians appears to the Mission to have been the result of deliberate guidance issued to soldiers, as described by some of them, and not the result of occasional lapses.**

1890. **The Mission recognizes that some of those killed were combatants directly engaged in hostilities against Israel, but many were not. The outcome and the modalities of the operations indicate, in the Mission's view, that they were only partially aimed at killing leaders and members of Hamas, al-Qassam Brigades and other armed groups. They were also to a large degree aimed at destroying or incapacitating civilian property and the means of subsistence of the civilian population.**

1891. **It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.**

1892. **Allied to the systematic destruction of the economic capacity of the Gaza Strip, there appears also to have been an assault on the dignity of the people. This was seen not only in the use of human shields and unlawful detentions sometimes in unacceptable conditions, but also in the vandalizing of houses when occupied and the way in which people were treated when their houses were entered. The graffiti on the walls, the obscenities and often racist slogans, all constituted an overall image of humiliation and dehumanization of the Palestinian population.**

1893. **The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It**

is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.

1894. **The Mission has noted with concern public statements by Israeli officials, including senior military officials, to the effect that the use of disproportionate force, attacks on civilian population and the destruction of civilian property are legitimate means to achieve Israel's military and political objectives. The Mission believes that such statements not only undermine the entire regime of international law, they are inconsistent with the spirit of the Charter of the United Nations and, therefore, deserve to be categorically denounced.**

1895. **Whatever violations of international humanitarian and human rights law may have been committed, the systematic and deliberate nature of the activities described in this report leave the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations.**

D. Occupation, resilience and civil society

1896. **The accounts of more severe violence during the recent military operations did not obscure the fact that the concept of "normalcy" in the Gaza Strip has long been redefined owing to the protracted situation of abuse and lack of protection deriving from the decades-long occupation.**

1897. **As the Mission focused on investigating and analysing the specific matters within its mandate, Israel's continuing occupation of the Gaza Strip and the West Bank emerged as the fundamental factor underlying violations of international humanitarian and human rights law against the protected population and undermining prospects for development and peace. Israel's failure to acknowledge and exercise its responsibilities as the occupying Power further exacerbated the effects of occupation on the Palestinian people, and continue to do so. Furthermore, the harsh and unlawful practices of occupation, far from quelling resistance, breed it, including its violent manifestations. The Mission is of the view that ending occupation is a prerequisite for the return of a dignified life for Palestinians, as well as development and a peaceful solution to the conflict.**

1898. **The Mission was struck by the resilience and dignity shown by people in the face of dire circumstances. UNRWA Director of Operations, John Ging, relayed to the Mission the answer of a Gaza teacher during a discussion after the end of the Israeli military operations about strengthening human rights education in schools. Rather than expressing scepticism at the relevance of teaching human rights in a context of renewed denial of rights, the teacher unhesitantly supported the resumption of human rights education: "This is a war of values, and we are not going to lose it".**

1899. **The assiduous work of Palestinian non-governmental and civil society organizations in providing support to the population in such extreme circumstances, and in giving voice to the suffering and expectations of victims of violations deserves to be fully acknowledged. Their role in helping to sustain the resilience and dignity of the population cannot be**

overstated. The Mission heard many accounts of NGO workers, doctors, ambulance drivers, journalists, human rights monitors, who, at the height of the military operations, risked their lives to be of service to people in need. They frequently relayed the anxiety of having to choose between remaining close to their own families or continuing to work to assist others in need, thereby often being cut off from news about the safety or whereabouts of family members. The Mission wishes to pay tribute to the courage and work of the numerous individuals who so contributed to alleviating the suffering of the population and to report on the events in Gaza.

E. Rocket and mortar attacks in Israel

1900. **Palestinian armed groups have launched thousands of rockets and mortars into Israel since April 2001. These have succeeded in causing terror within Israel's civilian population, as evidenced by the high rates of psychological trauma within the affected communities. The attacks have also led to an erosion of the social, cultural and economic lives of the communities in southern Israel, and have affected the rights to education of the tens of thousands of children and young adults who attend classes in the affected areas.**

1901. **Between 27 December 2008 and 18 January 2009, these attacks left four people dead and hundreds injured. That there have not been more casualties is due to a combination of luck and measures taken by the Israeli Government, including the fortification of public buildings, the construction of shelters and, in times of escalated hostilities, the closure of schools.**

1902. **The Mission notes, with concern, that Israel has not provided the same level of protection from rockets and mortars to affected Palestinian citizens as it has to Jewish citizens. In particular, it has failed to provide public shelters or fortification of schools, for example, to the Palestinian communities living in the unrecognized villages and some of the recognized villages. It ought to go without saying that the thousands of Palestinian Israelis– including a significant number of children – who live within the range of rocket fire, deserve the same protection as the Israeli Government provides to its Jewish citizens.**

F. Dissenting voices in Israel

1903. **While the Israeli military offensive in Gaza was widely supported by the Israeli public, there were also dissenting voices, which expressed themselves through demonstrations, protests, as well as public reporting on Israel's conduct. The Mission is of the view that actions of the Israeli Government during and following the military operations in the Gaza Strip, including interrogation of political activists, repression of criticism and sources of potential criticism of Israeli military actions, in particular NGOs, have contributed significantly to a political climate in which dissent with the Government and its actions in the Occupied Palestinian Territory is not tolerated. The denial of media access to Gaza and the continuing denial of access to human rights monitors are, in the Mission's view, an attempt both to remove the Government's actions in the Occupied Palestinian Territory from public scrutiny and to impede investigations and reporting of the conduct of the parties to the conflict in the Gaza Strip.**

1904. **In this context of increased intolerance for dissenting opinions in Israel, the Mission wishes to acknowledge the difficult work of NGOs in Israel, which courageously continue to express criticism of Government action that violates international human rights and humanitarian law. The work of these organizations is essential not only to ensure independent information to the Israeli and international public, but also to encourage a facts-based debate about these issues within Israeli society.**

G. The impact of dehumanization

1905. **As in many conflicts, one of the features of the Palestinian-Israeli conflict is the dehumanization of the other, and of victims in particular. Palestinian psychiatrist Dr. Iyad al-Sarraj explained the cycle of aggression and victimization through which "the Palestinian in the eyes of the Israeli soldier is not an equal human being. Sometimes […] even becomes a demon […]" This "culture of demonization and dehumanization" adds to a state of paranoia. "Paranoia has two sides, the side of victimization, I am a victim of this world, the whole world is against me and on the other side, I am superior to this world and I can oppress it. This leads to what is called the arrogance of power." As Palestinians, "we look in general to the Israelis as demons and that we can hate them, that what we do is a reaction, and we say that the Israelis can only understand the language of power. The same thing that we say about the Israelis they say about us, that we only understand the language of violence or force. There we see the arrogance of power and [the Israeli] uses it without thinking of humanity at all. In my view we are seeing not only a state of war but also a state that is cultural and psychological and I hope, I wish that the Israelis would start, and there are many, many Jews in the world and in Israel that look into themselves, have an insight that would make them, alleviate the fear that they have because there's a state of fear in Israel, in spite of all the power, and that they would start to walk on the road of dealing with the consequences of their own victimization and to start dealing with the Palestinian as a human being, a full human being who's equal in rights with the Israeli and also the other way around, the Palestinian must deal with himself, must respect himself and respect his own differences in order to be able to stand before the Israeli also as a full human being with equal rights and obligations. This is the real road for justice and for peace."**

1906. **Israeli college teacher Ofer Shinar offered a similar analysis: "Israeli society's problem is that, because of the conflict, Israeli society feels itself to be a victim and to a large extent that's justified and it's very difficult for Israeli society to move and to feel that it can also see the other side and to understand that the other side is also a victim. This I think is the greatest tragedy of the conflict and it's terribly difficult to overcome it […] I think that the initiative that you've taken in listening to […] people […] is very important. The message that you're giving Israeli society is absolutely unambiguous that you are impartial that you should be able to see that the feeling of being a victim is something that characterizes both sides. What requires you to take this responsibility is the fact that you have to understand how difficult it is to get this message through to Israeli society, how closed the Israeli society is, how difficult it is for Israeli society to understand that the other side is not just the party which is infringing our own human rights, but how they are having their human rights infringed, how they are suffering as well."**

1907. **The Mission, in fulfilling its mandate to investigate alleged violations of international law that occurred in the context of the December 2008 – January 2009 military operations in Gaza, spoke predominantly to those most affected by the most recent events in a conflict that has spanned decades. As may be expected, the Mission found societies scarred by living in conflict with significant psychological trauma stemming from a life that may rightly seem to those living in more peaceful countries to be unbearable.**

1908. **Both the Palestinians and the Israelis are legitimately angered at the lives that they are forced to lead. For the Palestinians, the anger about individual events – the civilian casualties, injuries and destruction in Gaza following from military attacks, the blockade, the continued construction of the Wall outside of the 1967 borders – feed into an underlying anger about the continuing Israeli occupation, its daily humiliations and their as-yet-unfulfilled right to self-determination. For the Israelis, the public statements of Palestinian armed groups celebrating rocket and mortar attacks on civilians strengthen a deep-rooted concern that negotiation will yield little and that their nation remains under existential threat from which only it can protect its people. In this way, both the Israelis and the Palestinians share a secret fear – for some, a belief – that each has no intention of accepting the other's right to a country of their own. This anger and fear are unfortunately ably represented by many politicians.**

1909. **Some Israelis pointed out to the Mission that policies of the Israeli Government relating to the isolation of the Gaza Strip and the tighter restrictions on the movement of Palestinians within the Occupied Palestinian Territory and between the Occupied Palestinian Territory and Israel, have contributed to increasing the distance between Palestinians and Israelis, reducing the opportunities to interact other than in situations of control and coercion such as checkpoints and military posts.**

1910. **In this context, the Mission was encouraged by reports of exchange and cooperation between Palestinians and Israelis, for example with regard to mental health specialists working with Palestinians from Gaza and southern Israel's communities, and with regard to cooperation between Magen David Adom and the Palestinian Red Crescent Society, especially in the West Bank, as they fulfil a shared commitment to providing humanitarian assistance to the communities in which they work, regardless of the ethnicity of the patient who lies before them.**

H. The intra-Palestinian situation

1911. **The division and violence between Fatah and Hamas, which culminated in the establishment of parallel governance entities and structures in the Gaza Strip and the West Bank, is having adverse consequences for the human rights of the Palestinian population in both areas, as well as contributing to erode the rule of law in the Occupied Palestinian Territory in addition to the threats already linked to foreign occupation. Even with the narrow focus of the Mission on violations relevant to the context of the December-January military operations, the diminishing protections for Palestinians are evident from the cases of arbitrary deprivation of life, arbitrary detention of political activists or sympathizers, limitations on freedom of expression and association, and abuses by security forces. The situation is compounded by the ever reducing role of the judiciary in ensuring the rule of law and legal remedies for violations. A resolution of the internal divisions based on the**

free will and decisions of Palestinians and without external interference would strengthen the ability of Palestinian authorities and institutions to protect the rights of the people under their responsibility.

I. The need for protection and the role of the international community

1912. **International law sets obligations on States not only to respect but also to ensure respect for international humanitarian law. The International Court of Justice stated in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that "all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention".**

1913. **The 2005 World Summit Outcome document recognized that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from, inter alia, war crimes and crimes against humanity. The document stressed that the Members of the United Nations are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2009, the Secretary-General, in his report on implementing the responsibility to protect, noted that the enumeration of these crimes did not "detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law."**

1914. **After decades of sustained conflict, the level of threat to which both Palestinians and Israelis are subjected has not abated, but if anything increased with continued escalations of violence, death and suffering for the civilian population, of which the December-January military operations in Gaza are only the most recent occurrence. Israel is therefore also failing to protect its own citizens by refusing to acknowledge the futility of resorting to violent means and military power.**

1915. **Israeli incursions and military actions in the Gaza Strip did not stop after the end of the military operations of December – January.**

1916. **The Security Council has placed the protection of civilian populations on its agenda as a regular item, recognizing it as a matter falling within its responsibility. The Mission notes that the international community has been largely silent and has to date failed to act to ensure the protection of the civilian population in the Gaza Strip and generally the Occupied Palestinian Territory. Suffice it to notice the lack of adequate reaction to the blockade and its consequences, to the Gaza military operations and, in their aftermath, to the continuing obstacles to reconstruction. The Mission also considers that the isolation of the Gaza authorities and the sanctions against the Gaza Strip have had a negative impact on the protection of the population. Immediate action to enable reconstruction in Gaza is**

no doubt required. However, it also needs to be accompanied by a firmer and principled stance by the international community on violations of international humanitarian and human rights law and long delayed action to end them. Protection of civilian populations requires respect for international law and accountability for violations. When the international community does not live up to its own legal standards, the threat to the international rule of law is obvious and potentially far-reaching in its consequences.

1917. **The Mission acknowledges and emphasizes the impressive and essential role played by the staff of the numerous United Nations agencies and bodies working to assist the population of the Occupied Palestinian Territory in all aspects of daily life. An additional disturbing feature of the December-January military operations was the disregard in several incidents, some of which are documented in this report, for the inviolability of United Nations premises, facilities and staff. It ought to go without saying that attacks on the United Nations are unacceptable and undermine its ability to fulfil its protection and assistance role vis-à-vis a population that so badly needs it.**

J. Summary of legal findings

1918. **Detailed legal findings by the Mission are included in each of the chapters of the report where specific facts and events are analysed. The following is a summary of those findings.**

1. Actions by Israel in Gaza in the context of the military operations of 27 December 2008 to 18 January 2009

(a) Precautions in launching attacks

1919. **The Mission finds that in a number of cases Israel failed to take feasible precautions required by customary law reflected in article 57 (2) (a) (ii) of Additional Protocol I to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. The firing of white phosphorus shells over the UNRWA compound in Gaza City is one of such cases in which precautions were not taken in the choice of weapons and methods in the attack, and these facts were compounded by reckless disregard for the consequences. The intentional strike at al-Quds hospital using high-explosive artillery shells and white phosphorous in and around the hospital also violated articles 18 and 19 of the Fourth Geneva Convention. With regard to the attack against al-Wafa hospital, the Mission found a violation of the same provisions, as well as a violation of the customary law prohibition against attacks which may be expected to cause excessive damage to civilians and civilian objects.**

1920. **The Mission finds that the different kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law as reflected in Additional Protocol I, article 57 (2) (c). While some of the leaflet warnings were specific in nature, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of the military campaign, meet the threshold of effectiveness. Firing missiles into or on top of buildings as a "warning" is essentially a dangerous practice and a form of attack rather than a warning.**

(b) Incidents involving the killing of civilians

1921. **The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention and articles 6 and 7 of the International Covenant on Civil and Political Rights. In some cases the Mission additionally concluded that the attack was also launched with the intention of spreading terror among the civilian population. Moreover, in several of the incidents investigated, the Israeli armed forces not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law reflected in article 10 (2) of Additional Protocol I, but they arbitrarily withheld such access.**

1922. **With regard to one incident investigated, involving the death of at least 35 Palestinians, the Mission finds that the Israeli armed forces launched an attack which a reasonable commander would have expected to cause excessive loss of civilian life in relation to the military advantage sought, in violation of customary international humanitarian law as reflected in Additional Protocol I, articles 57 (2) (a) (ii) and (iii). The Mission finds a violation of the right to life (ICCPR, article 6) of the civilians killed in this incident.**

1923. **The Mission also concludes that Israel, by deliberately attacking police stations and killing large numbers of policemen (99 in the incidents investigated by the Mission) during the first minutes of the military operations, failed to respect the principle of proportionality between the military advantage anticipated by killing some policemen who might have been members of Palestinian armed groups and the loss of civilian life (the majority of policemen and members of the public present in the police stations or nearby during the attack). Therefore, these were disproportionate attacks in violation of customary international law. The Mission finds a violation of the right to life (ICCPR, article 6) of the policemen killed in these attacks who were not members of Palestinian armed groups.**

(c) Certain weapons used by the Israeli armed forces

1924. **In relation to the weapons used by the Israeli armed forces during military operations, the Mission accepts that white phosphorous, flechettes and heavy metal (such as tungsten) are not currently proscribed under international law. Their use is, however, restricted or even prohibited in certain circumstances by virtue of the principles of proportionality and precautions necessary in the attack. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings, while, in the Mission's view, the use of white phosphorous as an obscurant at least should be banned because of the number and variety of hazards that attach to the use of such a pyrophoric chemical.**

(d) Treatment of Palestinians in the hands of the Israeli armed forces

(i) Use of human shields

1925. **The Mission investigated several incidents in which the Israeli armed forces used local Palestinian residents to enter houses which might be booby-trapped or harbour enemy combatants (this practice, known in the West Bank as "neighbour procedure", was called "Johnnie procedure" during the military operations in Gaza). The Mission found that the practice constitutes the use of human shields prohibited by international humanitarian law. It further constitutes a violation of the right to life, protected in article 6 of ICCPR, and of the prohibition against cruel and inhuman treatment in its article 7.**

1926. **The questioning of Palestinian civilians under threat of death or injury to extract information about Hamas and Palestinian combatants and tunnels constitutes a violation of article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons.**

(ii) Detention

1927. **The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds that their detention cannot be justified either as detention of "unlawful combatants" or as internment of civilians for imperative reasons of security. The Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israeli armed forces and in detention in Israel, constitute a failure to treat protected persons humanely in violation of article 27 of the Fourth Geneva Convention, as well as violations of articles 7 and 10 of the International Covenant on Civil and Political Rights regarding torture and the treatment of persons in detention, and of its article 14 with regard to due process guarantees. The treatment of women during detention was contrary to the special respect for women required under customary law as reflected in the article 76 of Additional Protocol I. The Mission finds that the rounding-up of large groups of civilians and their prolonged detention under the circumstances described in this report constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation or terror prohibited by article 33 of the Fourth Geneva Convention.**

(e) Destruction of property

1928. **The Mission finds that the attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.**

1929. **The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food-processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction. From the facts**

ascertained by it, the Mission finds that this destruction was carried out with the purpose of denying sustenance to the civilian population, in violation of customary law reflected in article 54 (2) of the First Additional Protocol. The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly.

1930. **In addition to being violations of international humanitarian law, these extensive wanton acts of destruction amount to violations of Israel's duties to respect the right to an adequate standard of living of the people in the Gaza Strip, which includes the rights to food, water and housing, as well as the right to the highest attainable standard of health, protected under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.**

(f) Impact of the blockade and the military operations on the Gaza population

1931. **The Mission concludes that the blockade policies implemented by Israel against the Gaza Strip, in particular the closure of or restrictions imposed on border crossings in the immediate period before the military operations, subjected the local population to extreme hardship and deprivations that amounted to a violation of Israel's obligations as an occupying Power under the Fourth Geneva Convention. These measures led to a severe deterioration and regression in the levels of realization of economic and social rights of Palestinians in the Gaza Strip and weakened its social and economic fabric, leaving health, education, sanitation and other essential services in a very vulnerable position to cope with the immediate effects of the military operations.**

1932. **The Mission finds that, despite the information circulated by Israel about the humanitarian relief schemes in place during the military operations, Israel has essentially violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing that were needed to meet the urgent humanitarian needs of the civilian population in the context of the military operations, which is in violation of article 23 of the Fourth Geneva Convention.**

1933. **In addition to the above general findings, the Mission also considers that Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, including the rights to peace and security, free movement, livelihood and health.**

1934. **The Mission concludes that the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.**

(g) Grave breaches of the Geneva Conventions and acts raising individual criminal responsibility under international criminal law

1935. **From the facts gathered, the Mission found that the following grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza: wilful**

killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility. The Mission notes that the use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court.

1936. **The Mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.**

2. Actions by Israel in the West Bank in the context of the military operations in Gaza from 27 December 2008 to 18 January 2009

(a) Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

1937. **With regard to acts of violence by settlers against Palestinians, the Mission concludes that Israel has failed to fulfil its international obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances security forces acquiesced to the acts of violence in violation of the prohibition against cruel, inhuman or degrading treatment. When this acquiescence occurs only in respect of violence against Palestinians by settlers and not vice versa, it would amount to discrimination on the basis of national origin, prohibited under ICCPR.**

1938. **Israel also violated a series of human rights by unlawfully repressing peaceful public demonstrations and using excessive force against demonstrators. The use of firearms, including live ammunitions, and the use of snipers resulting in the death of demonstrators are a violation of article 6 of ICCPR as an arbitrary deprivation of life and, in the circumstances examined by the Mission, appear to indicate an intention or at least a recklessness towards causing harm to civilians which may amount to wilful killing.**

1939. **Excessive use of force that resulted in injury rather than death constitutes violations of a number of standards, including articles 7 and 9 of ICCPR. These violations are compounded by the seemingly discriminatory "open fire regulations" for security forces dealing with demonstrations, based on the presence of persons with a particular nationality, violating the principle of non-discrimination in ICCPR (art. 2) as well as under article 27 of the Fourth Geneva Convention.**

1940. **The Mission finds that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights law.**

1941. **The Mission was alarmed at the reported increase in settler violence in the past year and the failure of the Israeli security forces to prevent settlers' attacks against Palestinian civilians and their property. These are accompanied by a series of violations by Israeli**

forces or acquiesced by them, including the removal of residential status from Palestinians, which could eventually lead to a situation of virtual deportation and entail additional violations of other rights.

(b) Detention of Palestinians by Israel

1942. **The Mission analysed information it received on the detention of Palestinians in Israeli prisons during or in the context of the military operations of December 2008–January 2009 and found those practices generally inconsistent with human rights and international humanitarian law. The military court system to which Palestinians from the Occupied Palestinian Territory are subjected deprives them of due process guarantees in keeping with international law.**

1943. **The Mission finds that the detention of members of the Palestinian Legislative Council by Israel violates the right not to be arbitrarily detained, as protected by article 9 of ICCPR. Insofar as it is based on political affiliation and prevents those members from participating in the conduct of public affairs, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law. Insofar as their detention is unrelated to their individual behaviour, it constitutes collective punishment, prohibited by article 33 of the Fourth Geneva Convention. Information on the detention of large numbers of children and their treatment by Israeli security forces point to violations of their rights under ICCPR and the Convention on the Rights of the Child.**

(c) Violations of the right to free movement and access

1944. **The Mission finds that the extensive restrictions imposed by Israel on the movement and access of Palestinians in the West Bank are disproportionate to any legitimate objective served and in violation of article 27 of the Fourth Geneva Convention and article 12 of ICCPR, guaranteeing freedom of movement.**

1945. **Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of the customary law rule reflected in article 75 (2) (b) of Additional Protocol I.**

1946. **The continued construction of settlements in occupied territory constitutes a violation of article 49 of the Fourth Geneva Convention. The extensive destruction and appropriation of property, including land confiscation and house demolitions in the West Bank, including East Jerusalem, not justified by military necessity and carried out unlawfully and wantonly, amounts to a grave breach under article 147 of the Fourth Geneva Convention.**

1947. **Insofar as movement and access restrictions, the settlements and their infrastructure, demographic policies vis-à-vis Jerusalem and "Area C" of the West Bank, as well as the separation of Gaza from the West Bank, prevent a viable, contiguous and sovereign Palestinian State from arising, they are in violation of the *jus cogens* right to self-determination.**

3. Actions by Israel in Israel

1948. **In relation to alleged violations within Israel, the Mission concludes that, although there does not appear to be a policy in this respect, there were occasions when reportedly the authorities placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech to criticize Israel's military actions in the Gaza Strip. These rights are protected by the International Covenant on Civil and Political Rights. Instances of physical violence against protesters and other humiliations, not rising to the level of physical violence, of the protesters by the police violated Israel's obligations under article 10 of the Covenant. The Mission is also concerned about activists being compelled to attend interviews with the General Security Services (*Shabak*), which reportedly creates an atmosphere intolerant of dissent within Israel. Hostile retaliatory actions against civil society organizations by the Government of Israel for criticisms of the Israeli authorities and for exposing alleged violations of international human rights law and international humanitarian law during the military operations are inconsistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.**

1949. **The Mission finds that the imposition of a near blanket exclusion of the media and human rights monitors from Gaza since 5 November 2008 and throughout the operations is inconsistent with Israel's obligations with regard to the right to access to information.**

4. Actions by Palestinian armed groups

1950. **In relation to the firing of rockets and mortars into southern Israel by Palestinian armed groups operating in the Gaza Strip, the Mission finds that the Palestinian armed groups fail to distinguish between military targets and the civilian population and civilian objects in southern Israel. The launching of rockets and mortars which cannot be aimed with sufficient precisions at military targets breaches the fundamental principle of distinction. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population. These actions would constitute war crimes and may amount to crimes against humanity.**

1951. **The Mission concludes that the rocket and mortars attacks, launched by Palestinian armed groups operating from Gaza, have caused terror in the affected communities of southern Israel. The attacks have caused loss of life and physical and mental injury to civilians as well as damaging private houses, religious buildings and property, and eroded the economic and cultural life of the affected communities and severely affected economic and social rights of the population.**

1952. **With regard to the continuing detention of Israeli soldier Gilad Shalit, the Mission finds that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention and should be protected, treated humanely and be allowed external communication as appropriate according to that Convention.**

1953. **The Mission also examined whether the Palestinian armed groups complied with their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population in Gaza among whom the hostilities were being conducted. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks – whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza – close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. The Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks. The Mission also found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. Although in the one incident of an Israeli attack on a mosque it investigated the Mission found that there was no indication that that mosque was used for military purposes or to shield military activities, the Mission cannot exclude that this might have occurred in other cases.**

5. Actions by responsible Palestinian authorities

1954. **Although the Gaza authorities deny any control over armed groups and responsibility for their acts, in the Mission's view, if they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population, the Gaza authorities would bear responsibility for the damage arising to the civilians living in Gaza.**

1955. **The Mission finds that security services under the control of the Gaza authorities carried out extrajudicial executions, arbitrary arrests, detentions and ill-treatment of people, in particular political opponents, which constitute serious violations of the human rights to life, to liberty and security of the person, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to be protected against arbitrary arrest and detention, to a fair and impartial legal proceeding; and to freedom of opinion and expression, including freedom to hold opinions without interference.**

1956. **The Mission also concludes that the Palestinian Authority's actions against political opponents in the West Bank, which started in January 2006 and intensified during the period between 27 December 2008 and 18 January 2009, constitute violations of human rights and of the Palestinians' own Basic Law. Detentions on political grounds violate the rights to liberty and security of person, to a fair trial and the right not to be discriminated against on the basis of one's political opinion, which are all part of customary international law. Reports of torture and other forms of ill-treatment during arrest and detention and of death in detention require prompt investigation and accountability.**

K. The need for accountability

1957. **The Mission was struck by the repeated comment of Palestinian victims, human rights defenders, civil society interlocutors and officials that they hoped that this would be the last investigative mission of its kind, because action for justice would follow from it. It**

was struck, as well, by the comment that every time a report is published and no action follows, this "emboldens Israel and her conviction of being untouchable". To deny modes of accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community. The Mission believes these comments ought to be at the forefront in the consideration by Members States and United Nations bodies of its findings and recommendations and action consequent upon them.

1958. **The Mission is firmly convinced that justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.**

1959. **After reviewing Israel's system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity, the Mission found major structural flaws that, in its view, make the system inconsistent with international standards. With military "operational debriefings" at the core of the system, there is no effective and impartial investigation mechanism and victims of such alleged violations are deprived of any effective or prompt remedy. Furthermore, such investigations, being internal to the Israeli military authority, do not comply with international standards of independence and impartiality. The Mission believes that the few investigations conducted by the Israeli authorities on alleged serious violations of international human rights and humanitarian law and, in particular, alleged war crimes, in the context of the military operations in Gaza between 27 December 2008 and 18 January 2009, are affected by the defects in the system, have been unduly delayed despite the gravity of the allegations, and, therefore, lack the required credibility and conformity with international standards. The Mission is concerned that investigations of relatively less serious violations that the Government of Israel claims to be investigating have also been unduly protracted.**

1960. **The Mission noted the pattern of delays, inaction or otherwise unsatisfactory handling by Israeli authorities of investigations, prosecutions and convictions of military personnel and settlers for violence and offences against Palestinians, including in the West Bank, as well as their discriminatory outcome. Additionally, the current constitutional and legal framework in Israel provides very few possibilities, if any, for Palestinians to seek compensation and reparations.**

1961. **In the light of the information it reviewed and its analysis, the Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the system presents inherently discriminatory features that make the pursuit of justice for Palestinian victims extremely difficult.**

1962. **With regard to allegations of violations of international humanitarian law falling within the jurisdiction of responsible Palestinian authorities in Gaza, the Mission finds that these allegations have not been investigated.**

1963. **The Mission notes that the responsibility to investigate violations of international human rights and humanitarian law, prosecute if appropriate and try perpetrators belongs in the first place to domestic authorities and institutions. This is a legal obligation**

incumbent on States and State-like entities. However, where domestic authorities are unable or unwilling to comply with this obligation, international justice mechanisms must be activated to prevent impunity.

1964. **The Mission believes that, in the circumstances, there is little potential for accountability for serious violations of international humanitarian and human rights law through domestic institutions in Israel and even less in Gaza. The Mission is of the view that long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict.**

1965. **The Mission considers that several of the violations referred to in this report amount to grave breaches of the Fourth Geneva Convention. It notes that there is a duty imposed by the Geneva Conventions on all high contracting parties to search for and bring before their courts those responsible for the alleged violations.**

1966. **The Mission considers that the serious violations of international humanitarian law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court. The Mission notes that the United Nations Security Council has long recognized the impact of the situation in the Middle East, including the Palestinian question, on international peace and security, and that it regularly considers and reviews this situation. The Mission is persuaded that, in the light of the long-standing nature of the conflict, the frequent and consistent allegations of violations of international humanitarian law against all parties, the apparent increase in intensity of such violations in the recent military operations, and the regrettable possibility of a return to further violence, meaningful and practical steps to end impunity for such violations would offer an effective way to deter such violations recurring in the future. The Mission is of the view that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to ending such violations, to the protection of civilians and to the restoration and maintenance of peace.**

XXXI. RECOMMENDATIONS

1967. **The Mission makes the following recommendations related to:**

(a) Accountability for serious violations of international humanitarian law;

(b) Reparations;

(c) Serious violations of human rights law;

(d) The blockade and reconstruction;

(e) The use of weapons and military procedures;

(f) The protection of human rights organizations and defenders;

(g) Follow-up to the Mission's recommendations.

1968. **To the Human Rights Council,**

(a) The Mission recommends that the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions;

(b) In view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported, the Mission recommends that the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations below;

(c) The Mission further recommends that the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court;

(d) The Mission recommends that the Human Rights Council should submit this report to the General Assembly with a request that it should be considered;

(e) The Mission recommends that the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process.

1969. **To the United Nations Security Council,**

(a) The Mission recommends that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations:

(i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention;

(ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations;

(b) The Mission further recommends that the Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations. Such

committee of experts should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights;

(c) The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of the State of Israel, again acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;

(d) The Mission recommends that the Security Council should require the independent committee of experts referred to in subparagraph (b) to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary;

(e) The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities in Gaza, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;

(f) The Mission recommends that lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee.

1970. **To the Prosecutor of the International Criminal Court, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, the Mission considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible.**

1971. **To the General Assembly,**

(a) The Mission recommends that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain appraised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace;

(b) The Mission recommends that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December–January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund;

(c) The Mission recommends that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1;

(d) The Mission recommends that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommends that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip.

1972. **To the State of Israel,**

(a) The Mission recommends that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip;

(b) The Mission recommends that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel;

(c) Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law;

(d) The Mission recommends that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory - within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world - in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommends that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities;

(e) The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume;

(f) The Mission recommends that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning;

(g) The Mission recommends that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken;

(h) The Mission recommends that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel;

(i) The Mission recommends that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future. It further recommends that reparation to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider this matter.

1973. **To Palestinian armed groups,**

(a) The Mission recommends that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities;

(b) The Mission recommends that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

1974. **To responsible Palestinian authorities,**

(a) The Mission recommends that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians;

(b) The Mission recommends that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law;

(c) The Mission recommends that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights.

1975. **To the international community,**

(a) The Mission recommends that the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice;

(b) International aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population;

(c) In view of their crucial function, the Mission recommends that donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law;

(d) The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives;

(e) In view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

1976. **To the international community and responsible Palestinian authorities,**

(a) The Mission recommends that appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and efficiently disbursed, and urgently put to use for the benefit of the population of Gaza;

(b) In view of the consequences of the military operations, the Mission recommends that responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

1977. **To the international community, Israel and Palestinian authorities,**

(a) The Mission recommends that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and

Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000);

(b) The Mission recommends that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

1978. **To the United Nations Secretary-General, the Mission recommends that the Secretary-General should develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide the expertise required to implement this recommendation.**

1979. **To the Office of the United Nations High Commissioner for Human Rights,**

(a) The Mission recommends that the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate;

(b) The Mission recommends that the Office of the High Commissioner for Human Rights should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

Annex I

List of meetings held by the United Nations Fact Finding Mission on the Gaza Conflict

Diplomatic Missions

- Diplomatic Community in the Gaza Strip, West Bank and East Jerusalem[1205]
- Permanent Mission of the Arab Republic of Egypt to the United Nations in Geneva, chair of the African Group
- Permanent Mission of France to the United Nations in Geneva
- Permanent Mission of the Islamic Republic of Pakistan to the United Nations in Geneva, chair of the Organisation of the Islamic Conference Group
- Permanent Mission of the Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva
- Permanent Observer Mission of Palestine to the United Nations in Geneva
- Permanent Mission of the Republic of Cuba to the United Nations in Geneva, chair of the Non-aligned Movement Group
- Permanent Mission of the Republic of Yemen to the United Nations in Geneva, chair of the Arab Group
- Permanent Mission of the Russian Federation to the United Nations in Geneva
- Permanent Mission of Sweden to the United Nations in Geneva
- Permanent Mission of Switzerland to the United Nations in Geneva
- Permanent Mission of the United States of America to the United Nations in Geneva

Domestic authorities

- Palestinian Authority, Minister of Health
- Palestinian Authority, Negotiation Support Unit
- Members of the Palestinian Legislative Council (PLC)
- Gaza authorities

United Nations and International Organizations

- International Committee of the Red Cross

[1205] Australia, Austria, Belgium, Canada, Chile, Egypt, Germany, Ireland, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and United Kingdom.

- League of Arab States Gaza Fact Finding Mission
- United Nations High Commissioner for Human Rights
- Office of the High Commissioner for Human Rights (OHCHR), Director, Field Operations and Technical Cooperation Division
- Office of the High Commissioner for Human Rights (OHCHR), Middle East and North Africa Unit
- Office of the High Commissioner for Human Rights (OHCHR), OPT
- Office of the High Commissioner for Human Rights (OHCHR), New York Office
- United Nations Special Coordinator for the Middle East Peace Process and UNSCO staff
- United Nations Country Team in the Gaza Strip[1206]
- United Nations Department of Safety and Security (UNDSS)
- United Nations Development Programme (UNDP)
- United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, Head
- United Nations Human Rights Council, President
- United Nations Institute for Training and Research (UNITAR) Operational Satellite Applications Programme (UNOSAT)
- United Nations Secretary General
- United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Commissioner General
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Director Gaza Operations
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Field Legal Office, Gaza
- Special Representative of the United Nations' Secretary General on Children in Armed Conflict
- World Health Organization (WHO)

Non-governmental organizations

- Town hall meeting with Geneva based NGOs[1207]

[1206] FAO, OCHA, OHCHR, UNDP, UNESCO, UNFPA, UNICEF, UNIFEM, UNSCO, UNOPS, UNRWA, WHO and WFP.

- AlAtaa Charitable Association
- Al-Dameer Association for Human Rights
- Adalah, The Legal Centre for Arab Minority Rights in Israel
- Addameer, Prisoners Support and Human Rights Association
- Agricultural Development Association (PARC)
- Al-Haq
- Al-Mezan Center for Human Rights
- Alternative Information Centre
- Amnesty International
- B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories
- Center for Women's Legal Research and Consulting
- Culture and Free Thought Association
- Defense of Children International – Palestine Section (DCI)
- Gaza Mental Health Program (GMHP)
- General Union of Palestinian Women
- Gisha, Legal Center for Freedom of Movement
- Human Rights Watch
- Ma'an Development Center
- Magen David Adom in Israel
- Mandela Institute
- Palestinian Agricultural Development Society
- Palestinian Center for Human Rights (PCHR)
- Palestinian International Campaign to End the Siege on Gaza
- Palestinian Medical Relief Society

[1207] The following NGOs confirmed participation: Al-Hakim Foundation to ONUG, Amnesty International, Arab Commission for Human Rights, Asian Forum for Human Rights and Development, CETIM Centre Europe-tiers monde, Defence for Children International, EAFORD, Genève peoples, Human Rights Watch, ICTJ Geneva and Program on Peace and Justice, International Alliance Women, International Commission of Jurists, International Council of Jewish Women, International Secretariat of the Conference of NGOs, International Service for Human Rights, Istituto Internazionale Maria Ausiliatrice and VIDES, Lawyers' Rights Watch Canada, Mouvement contre le racisme et pour l'amitié entre les peoples, Oxfam International Geneva, Pax Christi International, , The Lutheran World Federation, UN WATCH, WFW, WILPF, Women's International League for Peace and Freedom, World Alliance of YMCAs, WVI, WWSF.

- Palestinian Network of NGOs
- Palestinian Red Crescent Society (PRCS)
- Palestinian Woman Developmental Studies Association
- Palestinian Woman Information and Media Centre
- Physicians for Human Rights – Israel
- Society for Disabled in the Gaza Strip
- Stop the Wall
- Yesh Gvul
- Union of Agricultural Work Committees
- Union of Health Care Committees
- Union of Health Work Committees
- Women's Affairs Centre

National human rights institutions

- Palestinian Independent Commission for Human Rights (ICHR)

Other organizations

- General Syndicate of Fishers
- Palestinian Bar Association in Gaza
- Palestinian Businessmen Association
- Palestinian Federation of Industry
- Palestinian Trade Center

Annex II

Correspondence between the United Nations Fact Finding Mission on the Gaza Conflict and the Government of Israel regarding Access and Cooperation

NATIONS UNIES UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION ESTABLISHED BY RESOLUTION S-9/1

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3 April 2009

Dear Ambassador,

I was hoping to have the opportunity of meeting with you this morning and especially prior to the press conference at which the Members of the Fact Finding Mission are to be announced. I am disappointed to learn that this will not be possible.

I wished personally to assure you that prior to considering the invitation to lead the Mission, I satisfied myself that it would be given unbiased and even-handed terms of reference. In particular, it seemed to me that it was crucial, in order to assess the military actions conducted by Israel, and in particular to investigate the effects on Israeli citizens of the rocket attacks that emanated from Gaza. It is also clearly necessary to take into account all relevant contextual facts that might be relevant to assess the actions that were taken by Israel in response to the attacks.

It is my earnest wish that the Mission should visit the areas that were effected by the rocket attacks and, if possible, to meet with some of the victims of those attacks, to ascertain the physical damage caused by them, as well as the effect that they had on an on-going basis upon the civilian population in the effected areas of Israel. I need hardly add that it would also be important for the Mission to have access to the relevant officials in the Israeli Government and, of course, relevant military officials.

As a completely independent body, the Mission will now be determining its own terms of reference. I would hope that I could consult with the Government of Israel and take into account its views with regard to the terms of reference. Your advice in this regard would be much appreciated.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I am willing to come to Geneva to meet with you at a mutually convenient time or, if that would be more helpful, to travel to Jerusalem to meet with Israeli Government officials there.

I do hope that you will find it possible to respond to this communication at your earliest convenience.

Please accept, Excellency, the assurances of my highest consideration.

Richard Goldstone
Head of the Fact-Finding Mission
established under HRC resolution S-9/1

Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
OHCHR
Palais des Nations
1211 Geneva 10
Fax 022 928 9003

Geneva, 7 April 2009

Dear Justice Goldstone,

Thank you for your letter dated April 3, 2009, concerning the HRC Fact-Finding Mission.

It is with regret that I have to inform you that Israel will not be able to cooperate with the proposed Fact-Finding Mission. While I appreciate your efforts to obtain assurances that the Mission would be unbiased and even-handed, it remains the fact that the legal basis of the mission is HRC Resolution S-9/1. This grossly politicized resolution prejudges the issue at hand, determining at the outset that Israel has perpetrated grave violations of human rights and implying that Israel has deliberately targeted civilians and medical facilities, and systematically destroyed the cultural heritage of the Palestinian people. It calls for urgent international action directed only against Israel and, as regards the proposed Fact-Finding Mission, makes clear that it regards its mandate as exclusively focused on Israeli violations of human rights and humanitarian law. The fact that several distinguished individuals approached to head the Mission declined reflects the problematic nature of the Mission and its mandate.

The hopelessly one-sided nature of the HRC resolution was reflected in the Explanations of Vote of numerous states, including the European Union - which stated that it found the mandate of the proposed Mission to be unbalanced, and noted that investigations were currently being conducted under the leadership of the UN Secretary-General, as well as by Israel. Indeed, as you may be aware, Israel is engaged in a series of far-reaching investigations regarding many aspects of the "Cast Lead" Operation, and has cooperated intensively with the UN Secretary-General's Board of Inquiry.

I have no doubts regarding your genuine desire to ensure that the proposed HRC Mission would be balanced, but am concerned that neither your own commitment to ensure impartiality nor any assurance given to you by any individual have the force to change its legal basis.. Even if the Mission were to choose to operate in accordance with its own terms of reference, resolution S-9/1 would still provide the basis for the Council's treatment of the Mission's report and any subsequent proceedings.

...2/

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E-mail: mission-israel@geneva.mfa.gov.il

0041227160555

I wish to stress that Israel's decision in this matter is not intended in any way to reflect on its sincere respect for you personally, or on your longstanding commitment to ensuring respect for the rights and welfare of Israelis and Palestinians alike. Rather it derives solely from a reluctant recognition of the politicization that has so deeply infected the Human Rights Council.

With sincere best wishes,

Aharon Leshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION

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8 April 2009

Dear Ambassador,

I wish to thank you for your letter of 7 April, 2009. I have taken note of the arguments put forward in the letter on the basis of which your Government is of the view that it is prevented from cooperating with the Fact Finding Mission that I have been designated to lead. In this respect, I would like to point out that the Mission has been requested and established by the President of the UN HRC to "investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." As such, the scope of the Mission's investigation is not the result of its own deliberations or personal convictions, however legitimate or authoritative. It is a clear mandate, legally and formally given to it.

As I mentioned in my previous letter, the Fact Finding Mission will be guided by its mandate, and conduct its work independently and impartially. I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I would greatly appreciate it if this letter could be brought to the attention of your Government, and your Government's position reconsidered in light of the above clarifications.

I remain available for any further discussions and meetings with you or other Government representatives as may be appropriate.

Please accept, Excellency, the assurances of my highest consideration.

Richard Goldstone
Head of the International Independent
Fact-Finding Mission

cc: H.E. Ambassador Martin Ihoeghian Uhomoibhi
President of the Human Rights Council

NATIONS UNIES UNITED NATIONS

UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: fmarotta@ohchr.org

GFFM/O-10/090429RG

29 April 2009

Dear Ambassador,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi, to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. As you are aware, Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission will convene in Geneva during the first week of May to start its work. We would appreciate the opportunity of meeting with you to discuss any issue of relevance to the implementation of the Mission's mandate. We also look forward to discussing the contents of our previous correspondence on this issue.

Should this be convenient to you, I would like to propose Tuesday 5 May at 9:00 AM.

Please accept, Your Excellency, the assurances of my highest consideration

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
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GFFM/O-23/090429FM

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict presents its compliments to the Permanent Mission of Israel and has the honour to forward herewith a letter from the Head of the United Nations Fact Finding Mission on the Gaza Conflict, Justice Richard Goldstone addressed to His Excellency, Mr. Benjamin Netanyahu, Prime Minister of the Government of Israel.

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict should be grateful if the Permanent Mission could transmit the attached letter to His Excellency, the Prime Minister.

Geneva, 5 May 2009

Permanent Mission of Israël
Avenue de la Paix 1-3
1202 Geneva

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
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GFFM/O-22/090429RG

4 May 2009

Dear Mr. Prime Minister,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission on the Gaza conflict appointed on 3 April 2009 by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi. Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. The Mission will conduct its work independently and impartially.

Since the official announcement of its establishment, the Mission has received numerous attestations of support by international scholars and legal practitioners, academic and professional institutions, international and domestic human rights and civil society organisations - including Israeli and Palestinian organisations – as well as member states of the United Nations.

I am writing to seek your Government's cooperation in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip, the West Bank including East Jerusalem to enable the Mission to meet with victims of alleged violations and relevant authorities, including military officials, and access to documentation relevant to our inquiry.

I believe that it is crucial, in order to assess the military actions conducted by Israel, including the investigation of the effects on Israeli citizens of the rocket attacks that emanated from Gaza, that the Mission should visits the areas that were effected by those attacks. It is the earnest wish of the Mission to meet, if possible, with some of the victims of the rocket attacks, to ascertain the physical damage, as well as the effect that they had on an on-going basis upon the civilian population in the effected areas of Israel.

I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

His Excellency Benjamin Netanyahu
Prime Minister
Jerusalem, Israel

We would also respectfully seek an opportunity to meet with you and with other relevant members of your Government.

I look forward to hearing from you and your support for the implementation of our tasks.

Please accept, Mr. Prime Minister, the assurances of my highest consideration.

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on
the Gaza Conflict

cc: H.E. Ambassador Aharon Leshno-Yaar Permanent Representative of Israel to the United Nations in Geneva
H.E. Ambassador Martin I. Uhomoibhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

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GFFM/O-33/090520RG

Geneva, 20 May 2009

Dear Ambassador,

I refer to our previous correspondence with regard to the United Nations Fact Finding Mission on the Gaza Conflict, that was established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi, and that I am heading. As you are aware, the Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

In my letters of 3 and 8 April 2009 addressed to you, and in my letter of 4 May 2009 addressed to Prime Minister Netanyahu, I requested the cooperation of the Government of Israel in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip and the West Bank, including East Jerusalem, to enable the Mission to meet with victims of alleged violations and relevant authorities. I also requested access to documentation relevant to our inquiry.

To-date, I have received no reply to my request. I had hoped to be able to discuss this issue during the first meeting of the Fact Finding Mission in Geneva in early May; however my letter of 29 April 2009 inviting you to meet with the Mission Members went unanswered.

The Mission is required to submit its report by early August, and is thus working under a very tight timeline. In order to accomplish our task within the expected deadline, we are planning to complete field investigations by end June. Accordingly, we need to proceed expeditiously in the implementation of the various phases of our work.

In view of the lack of answers to my various communications, and in order to be able to fulfil the mandate entrusted to the Fact Finding Mission, I have sought the assistance of the Government of Egypt to facilitate entry into Gaza through the Rafah crossing.

I would like to reiterate that the Mission's preferred option would be to carry out field investigations in Israel, the West Bank and Gaza. We are also planning to hold public hearings of victims of alleged violations and experts and would like to hold those on-site. Should this not be possible due to a refusal of the Government of Israel to cooperate, or even to provide access to its territory, the West Bank and Gaza, we will however proceed with alternative arrangements. These will include arranging for meetings with victims from Israel and the West Bank and for public hearings outside Israel and the Occupied Palestinian Territory.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I would appreciate receiving a reply to my request by Friday 21st May, failing which the Mission will proceed with alternative arrangements.

I would like to underline again that the Mission would very much regret not to be able to meet with victims of alleged violations and visit relevant sites as we firmly believe that it would be in the interest of Israeli and Palestinian victims alike for us to be able to do so.

Please accept, Your Excellency, the assurances of my highest consideration

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

cc: H.E. Ambassador Martin I. Uhomoibhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict

Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
Head of the UN Fact-Finding Mission
On the Gaza Conflict
OHCHR
Palais des Nations
1211 Geneva 10

Geneva, 2 July 2009

Dear Justice Goldstone,

Thank you for your letter dated 20 May 2009. I have been asked in this response to respond also to your letter dated 4 May 2009 to Prime Minister Netanyahu.

I regret your impression that you have received no reply to your request for cooperation with the proposed Mission. I reiterate the official response to your request contained in my previous letter to you, dated 7 April 2007, that regrettably Israel will not be able to cooperate with the proposed Mission.

I also reiterate that this decision does not reflect in any way on you personally or the regard with which you are held in Israel. It is simply a recognition that the legal basis of the proposed mission is HRC Resolution S-9/1. This resolution, beyond its inflammatory and prejudicial language, clearly provides that the mandate of the Mission is limited to investigating "violations" by "the occupying Power, Israel against the Palestinian people" (OP14).

You will understand Israel's reluctance to cooperate with or give legitimacy to a Mission mandated to investigate the lawful use of force by a State to protect its citizens, yet required to ignore the illegal use of force by terrorist groups which made such action necessary.

Indeed it was this prejudicial and one-sided mandate which prompted many States, including the European Union, Canada, Japan and Switzerland, to refuse to support the Resolution and which led a distinguished list of human rights experts to decline the invitation to head the proposed Mission. As Mary Robinson, former High Commissioner for Human Rights, stated in explaining her refusal to serve as Head of the Mission:

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"I am afraid the resolution is not balanced because it focuses on what Israel did, without calling for an investigation on the launch of the rockets by Hamas. This is unfortunately a practice by the Council: adopting resolutions guided not by human rights but by politics. This is very regrettable." (*Le Temps*, 4 February 2009).

I note your assurances that the mandate of the Mission as expressed to you by the President of the Council is not as set out in the Council Resolution. I note also that you yourself have distanced yourself from this text. (In our correspondence you have ceased signing your letters as Head of the "Fact-finding Mission ***established under HRC Resolution S-9/1***" and now use the term "International Independent Fact Finding Mission" or United Nations Fact Finding Mission on the Gaza Conflict" - though the term "Gaza Conflict" would itself seem to exclude the relevance of attacks on Southern Israel.)

However, as a matter of law, no statement by any individual, including the President of the Council, has the force to change the mandate of the Mission. Moreover, even subsequent to his supposed clarifications, in a press conference on 16 April 2009, Ambassador Uhomoibhi stated clearly that it is operative paragraph 14 of Resolution S-9/1 which "spells out the mandate".

This accords with the provisions of the UN General Assembly's Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/RES/46/59) which provides that: "The decision by the competent United Nations organ to undertake fact-finding ***should always contain a clear mandate for the fact-finding Mission***" (para. 17, emphasis added). And indeed Resolution S-9/1 does contain a clear mandate, albeit one which is hard to reconcile with the Declaration on Fact-finding's requirement that "Fact-finding should be comprehensive, objective, impartial and timely" (para.3).

I also note that, even should the Mission choose to operate in accordance with terms of reference which it has devised for itself, the Council's treatment of its report and any subsequent proceedings would still be based on the terms of Resolution S-9/1. And indeed there is nothing in the practice of the Council as it relates to Israel to date, that suggests it would not continue with its wholly one-sided approach.

Israel's decision not to cooperate with the Mission is, I should emphasize, without prejudice to its conviction that any allegations of wrongdoing by Israeli forces in the course of the conflict must be investigated, and where appropriate, prosecuted. It is for this reason that the IDF initiated a series of far-reaching command investigations into a wide range of incidents and operational aspects of the conflict. In the past such investigations have led to criminal prosecutions. The findings are currently being examined by the Military Advocate General, and will also be examined by the Attorney General. Both the decisions of the Military Advocate General and of the Attorney General can be appealed – by Israelis or Palestinians alike – to the Supreme Court sitting as the High Court of Justice.

Israel's decision was prompted purely by the legal basis of the Mission and its mandate, and without regard to the personalities involved. (In passing, however, I am obliged to register serious concern that one member of the Mission was signatory during the conflict to a public letter which made a number of clearly political and

prejudgmental assertions, including that "the rocket attacks on Israel by Hamas do not amount to an armed attack entitling Israel to rely on self-defence(!)" [*Sunday Times Letters Page*, 11, January 2009]).

Some aspects of the conduct of the Mission have, in Israel's view, supported its decision not to cooperate with this initiative. Reports that the members of the Mission were accompanied at every stage of their visit to Gaza by Hamas officials gives serious reason to doubt that any true picture of the situation in Gaza, and especially of the cynical abuse of the civilian population by Hamas, can possibly emerge.

Israel is also concerned and confused by the decision to hold public hearings, broadcast on television and internet, as part of the fact-finding process. As you yourself have noted, this procedure is unprecedented as part of fact-finding operations. The very point of a fact-finding mission is that a team of experts bring their experience and judgment to bear in assessing the available evidence and drawing responsible conclusions – not that raw evidence, perhaps of questionable authenticity, is directly broadcast into the public arena. Such a trial by public opinion, which of necessity cannot give any weight to confidential or sensitive information, can serve little purpose in ascertaining the truth, and is only likely to prejudice public opinion in advance of any other conclusions.

I take this opportunity to emphasize once again that Israel's decision should not be interpreted in any way as an aspersion on your own integrity or commitment to impartiality. To the contrary, your involvement prompted Israel to give closer and more considered thought to its response to this initiative and increases our regret that it is not one we can cooperate with or support.

Sincerely,

Aharon Leshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES UNITED NATIONS

UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
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GFFM/O-80/090717RG

17 July 2009

Dear Ambassador Yaar,

Thank you for your letter dated 2 July 2009.

At the outset, I would like to record that the reason for my impression that no final word was given by your Government to my request for its cooperation was the terms of sometimes conflicting statements coming from your Foreign Office and the lack of response to my letters to Prime Minister Netanyahu of 4 May 2009 and to you of 8 April and 20 May 2009.

I had hoped that the terms of the mandate that I received from the President of the Human Rights Council and the absence of objections by the Human Rights Council when informed of this mandate would constitute a reason for Israel to support this opportunity, rather than undermine it. Governments that were unhappy with the terms of Resolution S-9/1 subsequently offered their support to the mandate given to my Mission.

In the light of the decision of your Government not to cooperate, there is little point in my responding to all the issues raised in your letter. I must, however, categorically deny the allegation that Hamas officials accompanied the Members of the Fact Finding Mission at all, let alone "at every stage of their visit to Gaza". Reports to that effect are denial of truth, as I have already publicly stated. I would have found this to be quite unacceptable.

I have made public the motivation for holding public hearings. The fact that this kind of hearing is unprecedented is hardly a reason for criticism and it is incorrect to suggest that it is 'trial by public opinion'. The hearings are no more than an attempt to allow the voices and faces of victims from all sides to be heard and seen by the public and especially in Israel and the occupied Palestinian territory, including Gaza and the West Bank. The facts that might emerge from the hearings are one part of our fact finding activities and will be evaluated in the same way as will all other information obtained by the Mission.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

Notwithstanding the decision by your Government not to cooperate, we have sent you for onward transmission to your Government a series of questions on issues that concern our Mission, based on information gathered during the course of our work. I would welcome a response from your Government to our letter of 10 July 2009. We are similarly transmitting questions on matters of concern to the Palestinian Authority and to the Gaza authorities.

I am appreciative of your Government's acknowledgement of my personal commitment to impartiality with regard to all aspects of the Mission's work. This commitment is shared by all Members of the Mission and will be fully reflected in our report. It is my hope and assumption that the Human Rights Council will accept it accordingly.

Please accept, Your Excellency, the assurances of my highest consideration.



Richard Goldstone
Head
United Nations Fact Finding Mission on the Gaza Conflict

Annex III

Replies to Mission's Call for Submissions of 8 June 2009[1208]

1) Al Mezan, Gaza
2) Adalah ; ACRI ; Gisha ; HaMoked ; Physicians for Human Rights ; PCATI ; Yesh Din (Joint Submission), Israel
3) Alternative Information Center, Israel
4) Australia Lawyer Group, Australia
5) B'nai B'rith International, United States of America
6) Busby, Chris, United Kingdom
7) Central Committee for Documentation and Pursuit of Israeli War Criminals – *Tawtheq*, Gaza
8) Centre on Housing Rights and Evictions COHRE, Geneva
9) Defence for Children International (DCI) – Palestine, Jerusalem
10) Diakonia – Humanitarian Law, Jerusalem
11) Eyre, Peter (location unknown)
12) Euro-Mediterranean Human Rights Network (EMHRN), Brussels
13) Green, Yvonne, United Kingdom
14) Housing and Land Rights Network – Habitat International Coalition, Egypt
15) Inge Genefke and Bent Sorensen Anti-Torture Support Foundation, Brussels
16) Iranian Islamic Human Rights Commission (IHRC), Tehran
17) Jerusalem Centre for Public Affairs, Jerusalem
18) Lacey, Ian, Australia
19) Leas, James Marc, United States of America
20) Matas, David, Winnipeg
21) National Lawyers Guild, New York
22) National Lawyers Guild, New York
23) NGO Monitor, Jerusalem
24) Ostroff, Maurice (location unknown)
25) Ostroff, Maurice (location unknown)
26) Richter, Elihu, Israel

[1208] The list only includes information formally submitted to the Mission in reply to the Call for Submission of 8 June 2009. The list is not inclusive of other information and material provided to the Mission by organizations and individuals.

27) Richter, Elihu, Israel

28) Shinar, Ofer, Israel

29) Take-a-Pen, Israel

30) The 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory

31) World Health Organization-West Bank and Gaza, Jerusalem.

United Nations A/HRC/15/50

General Assembly

Distr.: General
23 September 2010

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Human Rights Council
Fifteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Report of the Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards*

Summary

This report is submitted to the Human Rights Council pursuant to its resolution 13/9. The Committee reviewed numerous reports, including the official reports submitted to the United Nations Secretary-General by the Government of Israel and the Palestinian side pursuant to General Assembly resolution 64/254, as well as other documents, reports and articles by non-governmental organizations and military justice experts. The Committee undertook two field missions, to Amman and to the Gaza Strip, to interview victims and witnesses, Government officials and human rights organizations. The Committee was not granted access to Israel and the West Bank.

The Committee sought to assess investigations for compliance with international standards of independence, impartiality, effectiveness, thoroughness and promptness.

* Late submission.

Please recycle

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I. Introduction

1. By its resolution 13/9, the Human Rights Council decided, in the context of the follow-up to the report of the International Independent Fact-Finding Mission (hereinafter FFM report),[1] "to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards".

2. On 14 June 2010, the High Commissioner for Human Rights announced the appointment of Mr. Christian Tomuschat, Professor Emeritus at Humboldt University Berlin, former member of the United Nations Human Rights Committee and the International Law Commission (President in 1992), as Chair of the Committee. The other two members were: Judge Mary McGowan Davis, former Justice of the Supreme Court of the State of New York and former federal prosecutor, who has advised widely on international justice issues, including for the International Criminal Tribunal for Rwanda and the International Criminal Court; and Mr. Param Cumaraswamy, jurist and former Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers.

3. The Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Committee.

4. The present report is submitted to the Human Rights Council pursuant to its resolution 13/9.

II. Mandate and approach

A. Mandate

5. The Committee interpreted its mandate by reading Human Rights Council resolution 13/9 in conjunction with General Assembly resolution 64/254, in which the General Assembly reiterated its call upon the Government of Israel and the Palestinian side to conduct investigations "that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the [United Nations] Fact-Finding Mission [on the Gaza Conflict], towards ensuring accountability and justice".

6. The Committee understood "domestic, legal or other proceedings" to refer to investigations, disciplinary proceedings and prosecutions undertaken by either military or civil justice systems. In accordance with the General Assembly's resolution, the Committee's primary focus was on those proceedings related to the serious violations alleged in the FFM report. However, the reference to "any" proceedings in the Human Rights Council's resolution meant that the Committee was not restricted to the allegations in the FFM report but could review proceedings pertaining to any incident connected to the military operations in Gaza. Additionally, the Committee looked into specific legal issues of institutional responsibility and reform processes relating to the legal regime of armed

[1] A/HRC/12/48.

conflict in the aftermath of these operations, which Israel codenamed "Operation Cast Lead".

7. Regarding the temporal scope of the mandate, the Committee considered that any proceedings initiated by Israel or the Palestinian side which commenced on or after 18 December 2008 were relevant to its task.

B. Methods of work

8. The Committee sought to discharge its mandate by analysing information in the public domain and supplementing this information through consultations with stakeholders. It relied primarily on the FFM report, the three reports on the Gaza conflict prepared by the Government of Israel,[2] the report of the Independent Investigation Commission of the Palestinian Authority,[3] and the reports of the Government Committee and the subsequent Independent Legal Committee established by the de facto Gaza authorities in response to the recommendations set forth in the FFM report.[4]

9. The Committee also consulted Governments, witnesses and victims, non-governmental organizations (NGOs), a national human rights institution, and experts in international law and military justice (see annex I). The Committee held three consultations in Geneva on 28-30 June, 11-12 August and 1-3 September 2010, and one in Brussels on 1 July 2010. They included meetings with civil society organizations and military justice and international law experts. The Committee undertook a mission to Amman on 26-30 July 2010 and another to Gaza on 15-16 August 2010 to meet representatives from Governments and NGOs as well as witnesses and victims of the incidents mentioned in the FFM report.

10. The Committee views the relevant government authorities as among the most important sources of information about the progress of investigations mandated by the General Assembly and so sought their cooperation from the initial stages of its work. On 22 June 2010, its Chair wrote to the Permanent Representative of the Permanent Observer Mission of Palestine, on behalf of the Committee, seeking a meeting and on 30 June 2010 the Committee met a representative of the Permanent Observer Mission. With the assistance of the Permanent Observer Mission, the Committee was able to meet three members of the Independent Investigation Commission Established Pursuant to the Goldstone Report on 28 July 2010. The Committee met the representative of the Permanent Observer Mission again on 12 August 2010 and the Permanent Representative himself on 1 September 2010. The Committee is grateful to the Palestinian Authority for the cooperation extended to it throughout its term.

11. To access the fullest information available on investigations undertaken by the Palestinian side, the Committee met the Chair of the Government Committee for Follow-up

[2] "The operation in Gaza: factual and legal aspects—27 December 2008 – 18 January 2009", July 2009 (hereinafter "The operation in Gaza"); "Gaza operation investigations: an update", January 2010 (hereinafter "January update") (A/64/651, annex I); "Gaza operation investigations: second update", July 2010 (hereinafter "Second update") (A/64/890, annex I).

[3] "Report of the Palestinian Independent Investigation Commission established pursuant to the Goldstone Report", August 2010 (A/64/890, annex II).

[4] "Case of applying recommendations of the United Nations Fact-Finding Mission report in relation to the Israeli aggression against Gaza (December 2008 to January 2009)" prepared by the Government Committee for Follow-up to the Implementation of the United Nations Fact-Finding Mission Report of the de facto Gaza authorities; "Report of the Independent Legal Committee to Monitor Implementation of the United Nations Fact-Finding Report Recommendation on Gaza Conflict", presented to the Committee in Gaza on 15 August 2010.

to the Implementation of the United Nations Fact-Finding Mission Report in Gaza. In addition, it met the three national members of a second investigation committee, the Independent Legal Committee to Monitor Implementation of the United Nations Fact-Finding Report Recommendation on Gaza Conflict, as well as the Prosecutor-General. The Committee is grateful for the assistance extended to it while in Gaza.

12. The Committee also sought the cooperation of the Government of Israel. On 22 June 2010, its Chair wrote to the Permanent Representative of Israel requesting a meeting and they met, on 30 June 2010. As the possibility of cooperation between Israel and the Committee was left open at that meeting, the Chair wrote again to the Permanent Representative on 30 June seeking Israel's cooperation, including by providing access to Israel, the Gaza Strip, the West Bank and East Jerusalem. The Chair requested a response by 6 July 2010. On 8 July 2010, the Chair wrote to the Permanent Representative inviting the Government of Israel to make official submissions to the Committee describing the domestic, legal and other proceedings it had undertaken in response to the FFM report. The Chair wrote again to the Permanent Representative on 12 July 2010 reiterating his request for cooperation and asking for a response to the letter of 30 June by 15 July 2010. The Committee did not receive a response. On 3 August 2010, the Chair wrote to the Permanent Representative noting the Committee's intention to travel to the Gaza Strip through an alternative route, given its inability to enter Gaza through Israel. On 5 August 2010, the Chair sent a letter to the Permanent Representative requesting a meeting and, on 12 August 2010, they met to discuss the Committee's work. On 24 August 2010, the Chair wrote to the Permanent Representative requesting a telephone conference with the Military Advocate General to discuss matters related to the Committee's mandate. On 31 August 2010, the Permanent Representative of Israel contacted the Chair to suggest that governmental legal representatives might meet the Committee. The Committee spoke with the Permanent Representative on 1 September to express its great interest in this possibility. The Committee received no further communication from the Permanent Representative and in fact never received any official responses to its efforts to reach out to the Government of Israel. The Committee deeply regrets the lack of cooperation from the Government of Israel.

13. The Committee met many witnesses and victims. In its view, their experience in accessing investigatory bodies provides an important perspective on the operation of such bodies. Given the restricted time available in the Gaza Strip, the Committee met a representative group of victims and witnesses concerning the following incidents: the attack on al-Quds hospital; attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni in Zeytoun; the killing of Majda and Rayya Hajaj; the shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo; the shooting of Rouhiyah al-Najjar; the attack on the al-Daya family house; the destruction of el-Bader flour mill; the alleged use of Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami as human shields; and deprivation of liberty and ill-treatment in the al-Atatra sandpits.[5]

14. Finally, the Committee consulted experts in various fields related to its mandate, principally those with knowledge about military justice systems and the international standards relevant to investigations during armed conflict. The discussions were informal in nature and provided a means for the Committee to deepen its understanding of the legal and military issues underlying the mandate and to supplement the available written materials.

15. The totality of this information has provided the basis for the Committee's efforts to implement its mandate "to assess" domestic, legal or other proceedings undertaken by

[5] A/HRC/12/48, paras. 596–629, 706–735, 764–769, 770–779, 780–787, 844–866, 913–941, 1064–1075, 1076–1085, 1112–1126.

Israel and the Palestinian side. The Committee has faced considerable constraints in discharging the other part of its mandate, namely "to monitor" relevant proceedings. Owing to the lack of access to Israel and the West Bank, the Committee was able to visit only the Gaza Strip. While in Gaza, the Committee did not receive any detailed information substantiating claims that criminal or other proceedings had been initiated by the de facto Gaza authorities.

16. The Committee has laboured under strict time limitations.

III. Applicable law and standards

17. The General Assembly called upon Israel and the Palestinian side to conduct independent and credible investigations that conform with international standards. The Human Rights Council added to these criteria the requirements of effectiveness and genuineness. Initially, the Committee must identify the standards by which the Israeli and the Palestinian investigations should be evaluated.

18. International standards are derived from the duty to investigate under international humanitarian law (IHL) and international human rights law (IHRL). Because of the intensity of the clashes between the Israeli Defense Forces (IDF) and the armed Palestinian groups, "Operation Cast Lead" in the Gaza Strip constitutes an armed conflict governed by IHL. The Committee views this conflict as being of an international character, as do both Israel and the Palestinian side.[6] Consequently, IHL was applicable to the conduct of hostilities in the Gaza Strip. The other violations alleged in the FFM report, such as those in the West Bank, did not take place within the context of an armed conflict. They must, therefore, be assessed by the yardstick of IHRL.

19. IHL imposes the duty to investigate and prosecute grave breaches of all four Geneva Conventions on High Contracting Parties.[7] The duty to investigate and prosecute allegations of war crimes arises also under customary international law.[8] Article 146 of the Fourth Geneva Convention requires each High Contracting Party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before its own courts."[9] The article requires legal safeguards for the accused in prosecutions, but beyond that, the treaty offers little guidance as to the relevant standards an investigation must satisfy. The ICRC Commentary provides some direction, specifying that the Parties must actively search for and prosecute the accused with speed and that the necessary police action should be taken spontaneously and not merely at the request of another State. The Commentary further provides that court proceedings should be carried out in a uniform manner and that "nationals, friends, enemies, all should be subject to the same rules of procedure and judged by the same courts".[10]

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[6] See discussion in the FFM report (A/HRC/12/48, paras. 281–285).

[7] First Geneva Convention, art. 49; Second Geneva Convention, art. 50; Third Geneva Convention, art. 129; Fourth Geneva Convention, art. 146.

[8] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, Jean-Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rule 158.

[9] The Committee follows the position of the FFM report that the substantive rules applicable to either international or non-international armed conflicts are broadly converging in this area (A/HRC/12/48, para. 281).

[10] Jean Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), pp. 592–593.

20. In contrast, international human rights law sets out more elaborate standards with respect to the duty to investigate. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires "prompt" and "impartial" investigations by competent authorities into allegations of torture (art. 12). The International Covenant on Civil and Political Rights does not refer explicitly to a duty to investigate; however, the Human Rights Committee has consistently urged States parties to undertake full criminal investigations in cases of serious violations of human rights so as to bring the perpetrators to justice.[11] Despite the Covenant's silence on this point, the Human Rights Committee has held that a failure to investigate alleged human rights violations, such as violations of the right to life and enforced disappearances, itself constitutes a violation of the Covenant.[12]

21. The human rights treaties and soft law instruments rely on a range of criteria or standards, at times overlapping, to guide investigations. Most of the relevant pronouncements stem from the Human Rights Committee. Its jurisprudence runs largely parallel to the jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights. The most common criteria – referred to in the FFM report as "universal principles"[13] – are independence, impartiality, thoroughness, promptness and effectiveness. In addition, soft law standards specify that investigative bodies should have adequate powers to carry out their duties; soft law standards also provide direction with respect to collecting and analysing evidence, undertaking autopsies, reporting by medical experts, calling and protecting witnesses, involving victims and family members, providing budgetary and technical resources, as well as establishing independent commissions of inquiry.[14] Transparency is also a key element, both as to the manner in which the inquiry is conducted and in ensuring there is public scrutiny of the results.[15] Human rights bodies have defined the most common criteria as follows:

22. Independence. Both the body undertaking the investigation as well as its members should be independent in the sense of being institutionally detached from those implicated in the events. For example, those potentially implicated in violations should have no supervisory role, whether direct or indirect, over those conducting the investigation.[16] Independence goes beyond institutional independence, however: investigatory bodies and

[11] See, e.g., its general comment No. 31 (2004) on the nature of the legal obligation on States parties to the Covenant, para. 15.

[12] See, e.g., A/HRC/12/48, footnote 1153; *Umetaliev et al.* v. *Kyrgyztan*, communication No. 1275/2004, views of 30 October 2008, paras. 9.4–9.6; *Amirov* v. *Russian Federation*, communication No. 1447/2006, views of 2 April 2009, paras. 11.2–11.4.

[13] A/HRC/12/48, para. 1814.

[14] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex, principles 9–17); Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 55/89, annex).

[15] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principles 10, 16 and 17; Principles on the Effective Investigation and Documentation of Torture, principles 2, 3, 4 and 5 (*b*). See also Committee against Torture, *Danilo Dimitrijevic* v. *Serbia and Montenegro*, communication No. 172/2000, views of 16 November 2005, para. 7.3, and *Osmani* v. *Serbia*, case 261/2005, 8 May 2009, para. 10.7; and Inter-American Court of Human Rights, case of the *"Las Dos Erres" Massacre*, No. 211, Judgement, 24 November 2009, para. 236.

[16] European Court of Human Rights, *Davydov and Others* v. *Ukraine*, application Nos. 17674/02 and 39081/02, Judgement, 1 July 2010, para. 277; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 15; Principles on the Effective Investigation and Documentation of Torture, principle 3 (*b*).

their members should not be unduly influenced by powerful social groups, such as the media, industry or political parties.[17]

23. Impartiality. Impartiality is closely related to independence. While independence relates to the establishment and functioning of an investigative body and its members, impartiality refers to the question of whether an investigator is or is likely to be biased. The Human Rights Committee has stated that "judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties".[18] Similar considerations apply to investigators. Indications that investigators uncritically adhere to one interpretation of events without bothering to explore alternatives, including the version of events advanced by the complainant, or fail to acknowledge a lack of evidence to support their interpretation of events, could indicate a lack of impartiality.[19]

24. Thoroughness and effectiveness. This standard refers to the completeness and comprehensiveness of an investigation. Thorough and effective investigators should: undertake necessary autopsies and medical examinations; collect and record all relevant evidence; conduct site visits as appropriate; identify, question and take statements from all relevant witnesses; question witnesses comprehensively so that the investigation is able to establish the cause of the alleged violation and those responsible; and provide conclusions based on a comprehensive analysis of all relevant elements.[20] The Committee against Torture has found that inconsistencies in the results of investigations, as well as a lack of qualifications of key experts, such as the doctor undertaking an autopsy, can be evidence of a lack of thoroughness.[21]

25. Promptness. As a general rule an investigation should commence and progress with reasonable expedition.[22] Determining whether an investigation has met this standard of reasonableness depends on the specific circumstances of the case. Cases of torture and extrajudicial killings – where medical evidence might disappear – and enforced disappearances – where an individual's life might be in imminent danger – require immediate action. The Committee against Torture suggests that the requirement to undertake a prompt investigation means that an investigation should be initiated immediately when there is a suspicion of torture or ill-treatment, namely, within hours or days.[23] It has found delays of 15 months and 10 months between the alleged act and the

[17] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (N.P. Engel, 2005), pp. 320–321.

[18] Karttunen v. *Finland*, communication No. 387/1989, views of 23 October 1992, para. 7.2.

[19] European Court of Human Rights, *Assenov and Others* v. *Bulgaria*, Judgement, 28 October 1998, para. 103.

[20] European Court of Human Rights, *Musayev and Others* v. *Russia*, application Nos. 57941/00, 58699/00 and 60403/00, Judgement, 26 July 2007, para. 162; *Gül* v. *Turkey*, Case 22676/93, Judgement, 14 December 2000, para. 89–90; *Cennet Ayhan and Mehmet Salih Ayhan* v. *Turkey*, application No. 41964/98, Judgement, 27 June 2006, para. 88; *Nachova and Others* v. *Bulgaria*, application Nos. 43577/98 and 43579/98, Judgement, 6 July 2005, para. 113.

[21] *Ristic* v. *Yugoslavia*, communication No. 113/1998, views of 11 May 2001, para. 8.6. See also European Court of Human Rights, *Kopylov* v. *Russia*, application No. 3933/04, Judgement, 29 July 2010, para. 169; *Akulinin and Babich* v. *Russia*, application No. 5742/02, Judgement, 2 October 2008, para. 51.

[22] European Court of Human Rights, *Isayeva, Yusupova and Bazayeva* v. *Russia*, application Nos. 57947/00, 57948/00, 57949/00), Judgement, 24 February 2005, paras. 209–213; *Benuyeva and Others* v. *Russia*, application No.8347/05, Judgement, 22 July 2010, para. 112.

[23] *Blanco Abad* v. *Spain*, communication No. 59/1996, views of 14 May 1998, para. 8.5.

opening of an investigation to be unreasonable.[24] When examining the progress of investigations, frequent and unexplained adjournments can unacceptably compound delay.[25]

26. The Committee must determine what standards are applicable to investigations in the present context. Both Israel and the Palestinian side have a duty to investigate alleged serious violations of IHL and IHRL. This duty arises as a result of international law and is further imposed by General Assembly resolution 64/254.

27. As extensively explained in the FFM report,[26] all parties to the armed conflict are bound by the relevant rules of IHL. Israel is a party to the Fourth Geneva Convention and is, moreover, bound by the rules of customary international law reflected in the 1907 Hague Regulations concerning the Laws and Customs of War on Land and Additional Protocol I of 1977. Palestine is not a party to any of the relevant international instruments. However, in June 1989, the Palestinian Authority submitted a unilateral written undertaking to Switzerland, the depositary of the Geneva Conventions, to be bound by the four Geneva Conventions of 1949 and the two Additional Protocols of 1977.[27] This declaration established a binding commitment under international law.[28] Additionally, both the Palestinian Authority and the de facto Gaza authorities are subject to the IHL rules of customary international law that apply to non-State actors.

28. With regard to inquiries into alleged violations of IHRL, Israel has accepted legal responsibility to investigate by ratifying the International Covenant on Civil and Political Rights and the Convention against Torture. As clarified by the International Court of Justice, the Covenant is applicable also to actions by Israel in the occupied Palestinian territory.[29] The Palestinian Authority has pledged to respect international human rights law by several declarations addressed to the international community[30] and by enshrining that commitment in its Basic Law (arts. 9–33). Lastly, the de facto Gaza authorities have made a series of unilateral declarations of respect for human rights and have acknowledged that the Palestinian Basic Law applies to the Gaza Strip.[31]

29. The question remains whether the more elaborate IHRL standards on investigations also govern inquiries into violations of IHL. In principle, IHRL continues to apply during armed conflict alongside IHL, subject to the possible derogation of certain civil and political rights in states of emergency. IHL may prevail as *lex specialis*.[32] There is no

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[24] See *Halimi-Nedzibi* v. *Austria*, application No. 8/1991, 18 November 1993, para. 13.5; *M'Barek* v. *Tunisia*, case 60/1996, 10 November 1999, paras. 11.5–11.7.

[25] *Musayev and Others* v. *Russia*, para. 160.

[26] A/HRC/12/48 paras. 270–285, 304.

[27] On 13 September 1989, the Swiss Federal Council informed the States parties that it was not in a position to decide whether the letter constituted an instrument of accession "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

[28] See *Nuclear Tests (Australia* v. *France), Judgment*, *I.C.J. Reports 1974*, p. 253 (p. 267, para. 43).

[29] Legal *Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (pp. 179–180, paras. 109–111).

[30] See, for instance, the Barcelona Declaration of the Euro-Mediterranean Ministerial Conference, 27–28 November 1995.

[31] A/HRC/12/48, para. 307.

[32] Legality *of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226 (p. 240, para. 25); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (p. 178, para. 106); *Case concerning Armed Activity on the Territory of the Congo (Democratic Republic of Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 168 (p. 243, para. 216); *Application of the International Convention on the*

conflict as such between the duty to investigate under IHL and IHRL. Accepting that the IHRL standards apply in the current situation of armed conflict, the question arises as to how to interpret the more elaborate IHRL standards of investigation in the light of the pre-eminent position of IHL as the specialized body of law designed for armed conflict.

30. The Committee believes that the gap between the expansive standards under IHRL and the less defined standards for investigations under IHL is not so significant. Several criteria under human rights law can be met within the context of armed conflict. Above all, investigators must be impartial, thorough, effective and prompt; otherwise, an investigation would be no more than a manoeuvre of artful deceit. Any investigations that meet these criteria may be called credible and genuine. Credibility presupposes also that the investigating bodies enjoy some measure of independence. The standard of promptness is alluded to in the ICRC Commentary, which refers to the duty to search for and prosecute the perpetrator with speed.

31. It is important to note the growing trend towards requiring comparable standards for investigations under IHL and IHRL. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on 16 December 2005 as a set of rules designed to develop the law, state that the "obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: … (*b*) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law".[33]

32. Nonetheless, there are constraints during armed conflict that do impede investigations. For example, not every death during an armed conflict can be effectively investigated. Similarly, the level of transparency expected of human rights investigations is not always achievable in situations of armed conflict, particularly as questions of national security often arise. The nature of hostilities might obstruct on-site investigations or make prompt medical examinations impossible. The conflict might have led to the destruction of evidence, and witnesses might be hard to locate or be engaged in conflict elsewhere. When the fighting is over, some of these constraints tend to lose their relevance. As summarized by the Special Rapporteur on extrajudicial, summary or arbitrary executions: "On a case-by-case basis a State might utilize less effective measures of investigation in response to concrete constraints. For example, when hostile forces control the scene of a shooting, conducting an autopsy may prove impossible. Regardless of the circumstances, however, investigations must always be conducted as effectively as possible and never be reduced to mere formality."[34]

33. The purpose and objectives of IHL also affect the legal significance of some IHRL standards of investigation beyond the common criteria of independence, impartiality, thoroughness, effectiveness and promptness mentioned above. The overriding concern of IHRL to protect the rights and freedoms of individuals from the abuse of State power is not the primary focus of IHL. The latter seeks first to balance the lawful use of force with the protection of individuals. Consequently, some human rights standards, such as the involvement of victims in investigations, while desirable, are not requisite for evaluating the inquiries into alleged IHL violations. However, the Committee acknowledges that, in

Elimination of All Forms of Racial Discrimination (Georgia v. *Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 353 (p. 387, para. 112).

[33] Resolution 60/147, annex, para. 3.

[34] E/CN.4/2006/53, para. 36.

the light of the Basic Principles and Guidelines on the Right to a Remedy and Reparations, victims' access to justice is increasingly being accepted as a relevant criterion applicable to investigations into alleged war crimes.

34. Finally, international humanitarian law and human rights standards do not require any specific body to undertake investigations. Military justice systems usually take the lead in inquiring into alleged violations of IHL. This is consistent with Additional Protocol I to the Geneva Conventions reflecting customary law principles, which places a duty on High Contracting Parties to require military commanders "to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol" as well as "to initiate disciplinary or penal action against violators" (art. 87). Military investigators have the specialized knowledge of combat conditions and munitions that are important to such investigations. However, the use of military courts for prosecution of alleged human rights violations has been controversial and has been found to lack the independence and impartiality required under IHRL.[35] Nonetheless, both military and civilian justice systems may properly undertake investigations of incidents occurring in armed conflict, the only requirement being that the mechanisms employed conform to the various standards discussed above.

IV. The Government of Israel

A. Investigations conducted

35. Israel has issued three reports detailing the proceedings it has undertaken, including investigations into some of the allegations raised in the FFM report (see footnote 2 above). At the centre of Israel's investigation system is the Military Advocate General (MAG). He supervises the rule of law in the military, acts as legal adviser to the Chief of Staff and to other military authorities in respect of law and justice, and provides legal supervision of disciplinary law in the military.[36]

36. The MAG relied on three mechanisms for examining and investigating allegations related to the Gaza conflict. The first is the operational debriefing or command investigation: an "inquiry held in the army, in accordance with IDF orders, regarding an event which occurred during training or operational activity, or in relation to them".[37] The command investigation forwards its findings to the MAG, who decides whether or not to order a criminal investigation. Ordinary command investigations examined 90 allegations, including civilian injuries and deaths, and destruction of civilian property.

37. Second, the Minister of Defense and the Chief of General Staff may appoint an officer or group of officers, often high-ranking, to investigate in confidence high-profile or sensitive matters and then submit their findings and recommendations to the MAG. These investigations are known as special command investigations. On 20 January 2009, the Chief of General Staff ordered five special command investigations headed by Colonels not personally related to the incidents. The investigations covered 30 alleged violations of IHL grouped as follows: harm to a large number of civilians not directly participating in the hostilities; damage to United Nations and international facilities; shooting at medical facilities, buildings, vehicles and crews; destruction of private property and infrastructure

[35] See, e.g., E/CN.4/1995/61, para. 93.
[36] Military Justice Law, sect. 178.
[37] Ibid., sect. 539A (a).

by ground forces; and use of weaponry containing phosphorous.[38] A sixth command investigation was established in November 2009 to investigate the allegations relating to the al-Samouni residence, the mistreatment of Palestinian detainees by IDF and the attack on the al-Maqadmah mosque.[39]

38. Third, the MAG may order the Military Police Criminal Investigation Division (MPCID) to open a criminal investigation into allegations of criminal behaviour.[40] He does so either directly upon receipt of a complaint from any source or on the basis of the results of a command investigation. A team of 16 investigators was designated to undertake investigations stemming from the Gaza conflict.[41] By July 2010, the MAG had launched 47 such criminal investigations, of which he had referred 34 directly for criminal investigation while the remaining 13 cases had previously been the subject of command or special command investigations.

39. Once the review is concluded, MPCID reports to the military prosecution and transfers the file for review by a prosecutor. The MAG or Chief Military Prosecutor then decides whether to initiate disciplinary or criminal proceedings or to undertake further investigations. The military prosecution files an indictment before a military court if it determines that there is sufficient evidence to obtain a conviction.[42]

40. In total, Israel has launched more than 150 investigations into allegations of misconduct or violations of IHL during "Operation Cast Lead". As previously noted, this has led to 47 criminal investigations and 4 criminal indictments, one of which led to a conviction for the crime of looting.[43] In addition, investigations have examined operational procedures and the use of certain munitions, such as white phosphorous.[44]

41. The FFM report set out 36 incidents alleging serious violations of IHL and IHRL. Annex II below illustrates the status of investigations into these incidents based on available information. While most have been investigated, the Committee does not have information on whether inquiries into certain matters have been launched and these are discussed below.

B. Assessment

Positive developments

42. The Committee welcomes certain positive steps that have resulted from Israel's investigations into complaints raised in relation to the Gaza conflict. The adoption of new written procedures for the protection of civilians in urban warfare should help to increase that protection in armed conflict and ensure that IDF places more emphasis on civilian safety. The establishment of a "humanitarian officer" for every fighting battalion with responsibility for handling the civilian population should be highlighted as an innovative means to educate soldiers and advise commanders on the protection of civilians and civilian property and the planning and coordination of humanitarian assistance. Likewise, the New Order Regulating the Destruction of Private Property for Military Purposes should help to minimize such destruction in the future. The establishment of a clear doctrine and strict

[38] "January update", para. 96.
[39] Ibid., paras. 124–126.
[40] Ibid., para. 50.
[41] Ibid., para. 132.
[42] Ibid., para. 67.
[43] "Second update", para. 10.
[44] "January update", paras. 117–120.

orders on the use of munitions containing white phosphorous is a step forward. In addition, the Committee notes the establishment of the Turkel Commission, which includes two international observers.[45] Part of its mandate is to examine "the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally,… conform with the obligations of the State of Israel under the rules of international law".[46]

43. In spite of the many investigations undertaken and the sophisticated nature of Israel's military justice system, the Committee has concerns about the investigations conducted into the Gaza conflict thus far.

Lack of cooperation

44. As a result of the lack of cooperation from Israel, the Committee could rely only on three public reports of the Government, supplemented by information from NGOs and witnesses. The information in the three reports is inadequate as a basis for a reliable evaluation of the independence, effectiveness and genuineness of investigations into such serious allegations. The available information is extensive, providing detail on many investigations although not on all. The Committee would have preferred to speak directly with investigators to assess the thoroughness and effectiveness of their work. Instead, the Committee is left with many questions. The fact that it had difficulty verifying whether Israel had investigated all 36 incidents in the FFM report illustrates the opacity of the information available. Owing to the lack of cooperation, the Committee is unable to make a definitive determination as to whether the investigations carried out by Israel meet the criteria in resolution 13/9.

45. First, in some cases, the Committee could not ascertain whether Israel had met its duty to investigate in relation to all 36 incidents. For example, the Committee was unable to find any information as to whether or not an investigation into the death of Muhammad Hajji and the shooting of Shahd Hajji and Ola Masood Arafat[47] was launched. This incident might have been the subject of one of the 90 command investigations or the first special command investigation that considered harm to civilians not directly participating in the hostilities. No reference is made to any investigations into the alleged deprivation of liberty of AD/02.[48] Likewise, the Committee was unable to find information on whether inquires were made into the allegations of indiscriminate killing of members of the Abu Halima family[49] and instead had to rely on NGO material.[50] Cooperation with Israel would have enabled the Committee to verify that information.

46. In other cases, it is evident that investigators compiled a good deal of information. A case in point is the incident at the el-Bader flour mill, destroyed by an air attack.[51] The MAG reopened the investigation upon receiving new evidence and provided further explanations to support his conclusion that the mill had not been intentionally targeted. The example illustrates a serious attempt on the part of Israeli investigators to explain what happened at the flour mill.

[45] "Second update", paras. 158–163.
[46] Ibid., para. 160.
[47] A/HRC/12/48, paras. 745–754.
[48] Ibid., paras. 1127–1142.
[49] Ibid., paras. 788–801.
[50] Human Rights Watch, *Turning a Blind Eye: Impunity for Laws-of-War Violations during the Gaza War* (April 2010), p. 40, footnote 132.
[51] A/HRC/12/48, paras. 913–941.

47. A second category of cases raises questions about the extent of the inquiries undertaken. For example, the Committee would have benefited from clarification from Israeli investigators with respect to the shooting of Majda and Rayya Hajaj at Juhr ad-Dik on 4 January 2009.[52] The Israeli report of the investigation into this incident notes the indictment of a soldier on the charge of manslaughter for shooting a civilian at the time and place where the Hajaj women – one of whom was carrying a white flag – were killed.[53] Yet, the press release announcing the soldier's indictment appeared to concern an incident where a man, rather than two women, was shot, suggesting that the indictment may relate to an entirely different incident.[54] The admitted confusion as to the identity and number of the victims at Juhr ad-Dik that day calls into serious question whether a full and prompt investigation was undertaken into the shooting of the Hajaj women.

48. Another case concerned the Abd al-Dayem condolence tents incident.[55] The Fact-Finding Mission alleged that Israeli soldiers had launched a deliberate attack on civilians, killing 5 and injuring 20. The results of the command and criminal investigations suggest instead that soldiers were firing on combatants launching a Grad rocket and that soldiers "did not identify any civilians in the vicinity" of "the terrorist squad".[56] The Committee notes the discrepancy in the two versions of the incident. Owing to the lack of cooperation from Israel, it is unable to confirm that extensive efforts were taken by investigators to reconcile these conflicting accounts.

49. In the al-Quds hospital case,[57] there is insufficient information to determine with any accuracy what the results of the inquiry demonstrate. Israel has communicated very little with respect to this incident. The first Israeli report indicated that an inquiry was ongoing into attacks on medical facilities.[58] The second report noted that the third special command investigation examined incidents of shootings at medical facilities, buildings, vehicles and crews.[59] The third report reflected that disciplinary action was taken against some officers as a result of these attacks,[60] but it is unclear whether that disciplinary action corresponded to the attack on al-Quds hospital or to attacks on other medical centres. The Committee has no basis for assessing whether this investigation was, in fact, effective and thorough.

50. Third, owing to a lack of cooperation from Israel, the Committee is not in a position to evaluate a range of allegations in the FFM report about the way in which the Israeli system of military investigations actually functions. For example, it is alleged that: the system of command investigations was not effective owing to the failure of investigators to comply with regulations and orders;[61] command investigations obstructed criminal investigations by destroying the scene of the crime and obstructing and delaying the process of identifying and collecting evidence;[62] penalties imposed on Israeli offenders had been noticeably more lenient than those imposed on Palestinians;[63] command investigations had

[52] Ibid., paras. 764–769.
[53] "Second update", paras. 99–102.
[54] See IDF Military Advocate General takes disciplinary action, indicts soldiers following investigations into incidents during Operation Cast Lead, 6 July 2010. Available from http://dover.idf.il/IDF/English/Press+Releases/10/07/0601.htm.
[55] A/HRC/12/48, paras. 867–885.
[56] "Second update", paras. 113–117.
[57] A/HRC/12/48, paras. 596–629 (al-Quds hospital) and paras. 630–652 (al-Wafa hospital).
[58] "The operation in Gaza", para. 376.
[59] "January update", paras. 111–112.
[60] "Second update", para. 60.
[61] A/HRC/12/48, para. 1816.
[62] Ibid., para. 1817.
[63] Ibid., paras. 1818 and 1825.

no established methods of criminal investigations "such as visits to the crime scene, interviews with witnesses and victims, and assessment by reference to established legal standards";[64] the delay of six months to start some 13 criminal investigations constituted undue delay;[65] criminal investigations had been conducted in an unprofessional way, making it virtually impossible to prove charges beyond reasonable doubt;[66] and command investigations were generally a tool to review performance and learn lessons, which can hardly be an effective and impartial investigation mechanism to respond to allegations of serious violations.[67]

Promptness

51. The Committee has reservations as to whether investigations were sufficiently prompt. Promptness requires investigations to commence and progress with reasonable expedition. The Committee notes that many Palestinian witnesses were interviewed only at the very end of 2009, while many allegations of IHL and IHRL violations were reported almost immediately at the end of "Operation Cast Lead" in January 2009 and at the latest in September 2009 with the publication of the FFM report. Such delays can result in evidence being lost or compromised, and in the kind of confusing and conflicting testimony that affected the results of the inquiries into the shooting of Majda and Rayya Hajaj and the attack on the el-Bader flour mill referred to above. Without additional information on when specific investigations actually got under way, the Committee is not in a position to make a definitive finding on the expeditiousness with which Israel conducted the relevant proceedings.

Independence and impartiality

52. In general terms, it appears that Israel's military justice system has certain built-in mechanisms to preserve its independence. At the heart of the system is the MAG, whose hierarchical independence rests on a number of factors. Specifically, the Minister of Defense, rather than the Chief of General Staff, is responsible for his appointment and decisions of the MAG are subject to review by the Attorney-General and by the Supreme Court sitting as the High Court of Justice, including through petition by individuals and civil society. Israeli jurisprudence illustrates the careful attention paid to ensuring the independent functioning of the MAG within the rule of law.[68]

53. In spite of the structural guarantees of independence built into the military justice system, the dual responsibilities of the MAG, in the specific context of these investigations, raise concerns of a lack of impartiality. The MAG is legal adviser to the Chief of Staff and other military authorities. Yet, at the same time, he is the supervisor of disciplinary law in the military. Although the combination of the advisory and supervisory functions in one office does not automatically lead to a conflict of interest or a lack of impartiality, the situation is complicated in the present case by the fact that many of the allegations of

[64] Ibid., para. 1819.
[65] Ibid., para. 1820.
[66] Ibid., para. 1829.
[67] Ibid., para. 1831.
[68] See, e.g., HCJ 4723/96, *Avivit Atiyah* v. *Attorney-General* 51(3) P.D. 714; HCJ 425/89, *Jamal Abdel Kader Mahmoud* v. *the Chief Military Prosecutor*, 43(4) P.D. 718; HCJ 372/88, *Fuchs* v. *the Military Advocate General*, 42(3) P.D. 154; HCJ 425/89, *Zofan* v. *the Military Advocate General* 43(4) P.D. 718; Cr.A. 6009/94, *Shafran & Ors* v. *the Chief Military Prosecutor*, 48(5) P.D. 573; HCJ 442/87, *Shaul* v. *the Military Advocate General*, 42(2) P.D. 749; HCJ 4550/94, *Isha* v. *the Attorney-General*, 49(5) P.D. 849.

serious violations of IHL and IHRL in the FFM report directly link to the advice he provided.

54. Indeed, Israel publicly stated that the MAG gave legal advice on IHL to commanders at all levels leading up to and during the Gaza conflict and that "the lawyers examined the legality of planned targets, participated in the operational planning process, helped direct humanitarian efforts and took part in situation assessments, exercises and simulations".[69] However, as noted above, the Fact-Finding Mission strongly criticized the objectives, strategy and policy underlying the entire Gaza operation.[70] The link between the advice given and the allegations in the FFM report underlines the importance of the MAG not only acting impartially, but also being seen to act impartially.

55. One way to dispel any suspicion of a lack of impartiality is to examine the results of the investigations. Of the 36 incidents in the FFM report, the Committee notes the following findings: no violation or discontinuation of proceedings for various reasons (20); unclear results (7); disciplinary action taken (3); indictments (1); ongoing criminal investigations (5). Although the Committee does not have access to the full evidence and reasoning behind these decisions, given the seriousness of the allegations, the military investigations thus far appear to have produced very little.

56. The Committee notes that civilian oversight of the MAG decisions provides a commendable mechanism to protect against arbitrariness. However, the Committee is not aware of any requests for judicial review of a decision of the MAG related to investigations connected to the Gaza conflict. While any interested party, including NGOs, can seek a High Court judicial review, even in the course of armed conflict, Palestinians in Gaza face significant hurdles.

Treatment of Palestinian complainants and witnesses

57. Palestinian complainants and their legal representatives stated that they were not systematically informed of the progress of their cases. While the military has a standard practice of acknowledging receipt of a complaint, the vast majority of complainants received no further information whatsoever about the status of their cases. Two organizations which filed complaints on behalf of Palestinians told the Committee that they had learned about the dismissal of their complaints only through the Israeli media.[71] The lack of any standard process of informing complainants about the progress and results of investigations affects the perception of justice. Not surprisingly, the Committee learned that the complainants and witnesses affected by investigations had little confidence in the system.

58. The same lack of transparency was also reported in civil cases. In addition to lodging a complaint with the MAG, complainants can initiate a proceeding to seek compensation with the Ministry of Defense. The claimant must lodge a form within 60 days of incurring damage, followed by a civil claim within two years. The Palestinian Centre for Human Rights (PCHR) submitted 1,028 compensation claims to the Israeli Ministry of Defense, of which, by 11 February 2010, only 7 on behalf of 20 individuals had been acknowledged. The Israeli Military Police notified PCHR that it had opened investigations in 15 cases and summoned 35 witnesses to the Erez crossing. According to PCHR, none of the interviewed witnesses received any information following their appearance before the investigation panel in Erez. In the case of the attack on the al-Daya family residence –

[69] "The operation in Gaza", para. 216.

[70] A/HRC/48/12, para. 1895.

[71] Consultation with Adalah, Amman, 29 July 2010; consultation with the Palestinian Centre for Human Rights, Gaza City, 15 August 2010.

where Israel admitted it had made an operational error leading to the deaths of 23 civilians – PCHR filed the compensation form on 11 February 2009 and a criminal petition on 18 May 2009, only to receive a formal letter acknowledging receipt of its petition on 13 September 2009 and requesting a power of attorney (which PCHR had already filed). PCHR has received no further information on the progress of this compensation claim.[72] Furthermore, Palestinian witnesses in Gaza are not always granted a permit to travel out of Gaza and so cannot reach courts in Israel, particularly since the closure of the Gaza Strip in June 2007.[73] Consequently, access to justice is rarely guaranteed in practice to Palestinian complainants.

59. The experience of victims and witnesses when giving testimony at the border and in accessing Israeli justice more broadly helps to explain why Palestinians have little confidence in the Israeli investigations. The Committee interviewed 28 witnesses, of whom 19 had given evidence at the Erez border. Witnesses had had to wait long hours at the border. One of the witnesses in the al-Samouni case reported having to wait 13 hours and being refused access to sanitary facilities for hours, finally being allowed to use a toilet, but only in the company of soldiers.[74] Another witness to the Halawa incident had to wait four hours without water or food; the witness was forced to wait an hour and a half to use a toilet.[75] Another person related to the Abd Rabbo incident had to wait six hours at the border and was sent home without being interviewed.[76]

60. In the view of the Palestinians residing in Gaza, the Israeli military justice system is simply the extension of the same military system that organized and carried out "Operation Cast Lead". Most distrust its ability to deliver justice. For this reason, many potential witnesses declined to appear in Erez. Perhaps this is not surprising since victims of military operations naturally perceive a deep bias and predisposition towards self-preservation and national interests among those representing the adversary State. However, in the interests of performing effective and impartial investigations, the Committee emphasizes the importance of treating all victims and witnesses, whether Israeli or Palestinian, with dignity and courtesy.

Allegations not investigated

61. The information available suggests that Israel has not investigated all the allegations of serious violations of IHL and IHRL set out in the FFM report.

62. First, Israel has not conducted investigations into the allegations of human rights violations with respect to its actions in the West Bank at the time of the military operations in Gaza.[77] The allegations of violations of the right to life, as well as claims of torture and unlawful conditions of detention, give rise to the duty to investigate under the International Covenant on Civil and Political Rights and the Convention against Torture. There is no evidence that Israel has met this duty.

63. Furthermore, the information available suggests that Israel has not conducted a general review of the military doctrine regarding legitimate military targets. The Fact-Finding Mission rejected the Israeli viewpoint that the entire governmental infrastructure in

[72] Discussions with PCHR, Gaza, 15 August 2010.
[73] PCHR, "Memorandum for the United Nations Committee of Experts", annex I, August 2010.
[74] Interviews, Gaza, 15 August 2010.
[75] Interviews, Gaza, 16 August 2010.
[76] Interviews, Gaza, 15 August 2010.
[77] A/HRC/12/48, paras. 1394–1404 (use of force during demonstrations in the West Bank); paras. 1411–1418 (violence by settlers against Palestinians in the West Bank).

the Gaza Strip, including the Legislative Council building, was a legitimate target, warning that it was incompatible with the principle of distinction.[78]

64. Finally, Israel has not conducted investigations into decisions made at the highest levels about the design and implementation of the Gaza operations.[79] A core allegation in the FFM report was that the systematic and deliberate nature of the destruction in Gaza left the Mission "in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations".[80] Those alleged serious violations go beyond individual criminal responsibility at the level of combatants and even commanders, and include allegations aimed at decision makers higher up the chain of command. The official inquiry must be conducted by a truly independent body, given the obvious conflict inherent in the military's examining its own role in designing and executing "Operation Cast Lead".

V. The Palestinian side

A. The Palestinian Authority

65. On 25 January 2010, the Palestinian Authority established a four-member Independent Investigation Commission by Presidential Decree to follow up on the implementation of the recommendations of the FFM report.[81] The Commission was authorized to undertake investigative duties pursuant to that report, work in accordance with the timetable provided in it, and submit its conclusions and recommendations to the relevant authorities.[82]

66. The Committee received the report of the Independent Investigation Commission (see footnote 3 above) from the High Commissioner for Human Rights on 19 August 2010. It set out in detail the Commission's methodology and scope of investigations. The Commission's mandate was to investigate the alleged violations committed by the Palestinian side both before and after the Gaza conflict that were described in the FFM report.[83] The Commission had powers to collect information, evidence and data relevant to its activities; to receive complaints of human rights violations falling within its mandate; and to hear testimony from complainants, including victims, witnesses, human rights organizations and official agencies.[84]

[78] A/HRC/12/48, para. 392.

[79] In this regard, the FFM report names particular individuals, including the Deputy Prime Minister, Eli Yishai, and the Foreign Minister, Tzipi Livni, as well as Major-General Dan Harel, whose statements during "Operation Cast Lead" support its contentions that the Operation was indeed intended to cause disproportionate destruction and violence against civilians as part of a deliberate policy. The Fact-Finding Mission also charges that Israel's strategic goals demonstrated a qualitative shift from relatively focused operations to massive and deliberate destruction. See A/HRC/12/48, paras. 1177–1216.

[80] Ibid., para. 1895.

[81] Issa Abu Sharar, Chair and former Head of the Supreme Court and former President of the Supreme Judicial Council; Judge Zuhair al-Surani, former Head of the Supreme Court and former President of the Supreme Judicial Council; Ghassan Farmand, Professor of Law at Birzeit University; Yasser al-Amuri, Professor of International Law at Birzeit University.

[82] See Decree concerning the formation of an independent commission to follow up on the Goldstone report, article 2 (A/64/651, annex II, attachment I).

[83] A/64/890, annex II, chap. II, para. 60.

[84] Ibid., para. 62.

67. The Commission sought the expertise of independent international scholars,[85] human rights organizations and officials in the West Bank. The Commission also collected and analysed data from the reports of national and international human rights organizations. It placed notices in local newspapers in the West Bank and Gaza Strip, organized a press conference to introduce itself to its constituents and encourage individuals to bring complaints before it,[86] and held public hearings.

68. The Commission made a series of findings, including allegations of torture and ill-treatment by security forces in the West Bank and Gaza; extrajudicial killings by law enforcement agencies and armed groups connected to the de facto Gaza authorities; failure by these Gaza authorities to protect against extrajudicial killings and to prosecute those responsible; and various violations by the West Bank and de facto Gaza authorities in relation to the right to form associations, press freedoms and the right to take part in public affairs.

69. The Commission addressed recommendations to the Palestinian Authority, including the Office of the Public Prosecutor, the Office of the Military Prosecutor, the security services, the Preventive Security Service, the General Intelligence Service and the Military Intelligence Service. In addition, it addressed findings to the de facto Gaza authorities and their security services, as well as to the United Nations.

70. The Committee notes that the Independent Investigation Commission undertook independent and impartial investigations in a comprehensive manner that squarely addressed the allegations in the FFM report.[87]

71. The Commission was established as an independent investigatory body and its members were not directly linked to the Palestinian Authority hierarchy being investigated. Two of the four members were retired judges of high standing in the occupied Palestinian territories; the other two were university professors. The Commission established in its statute the principle of complete independence of its members. It claimed that "no party was allowed to interfere with or influence the course of the investigation".[88] The conclusions tend to support this claim, particularly given the Commission's allegations of violations committed by the Palestinian Authority, including at high levels, as well as by the de facto Gaza authorities. Furthermore, the Commission's investigatory powers were sufficient to support its investigations and are reflected in its statute.

72. Moreover, its report demonstrates that it was thorough. In the elaboration of its methods of work, the Commission set out in detail the process it had followed to arrive at its conclusions. The fact that the Commission was able to undertake some 100 hearings in relation to each of the alleged violations illustrates the comprehensiveness of its work. The Commission met governmental representatives accused of violations, including high-level officials. The steps taken to protect witnesses and safeguard the information it obtained demonstrate its professionalism.

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[85] Ibid., para. 63.

[86] Ibid., paras. 68–70.

[87] The Commission covered allegations in the FFM report as follows: arrest and detention by security forces (A/HRC/12/48, paras. 1555–1558); torture and ill-treatment (paras. 1559–1560); freedom of association (para. 1561); freedom of the press; freedom of expression and opinion (paras. 1564–1570); freedom of assembly (paras. 1571–1575). The Commission also attempted to cover allegations of violations by armed groups and security services in the Gaza Strip including: launching of attacks within civilian areas (paras. 446–460); detention of Gilad Shalit (paras. 1336–1344); killings, torture and other human rights violations (paras. 1345–1372); and rocket and mortar attacks by Palestinian armed groups on Israel (paras. 1594–1691).

[88] A/64/890, annex II, chap. II, para. 62.

73. The Commission set out the limitations impeding its work, including the fact that it was unable to travel to the Gaza Strip. While these limitations affected the thoroughness of its work, the Commission was able to interview victims, witnesses and representatives of human rights organizations in the Gaza Strip by videoconference.[89] However, it is unclear to what extent its report will lead to criminal investigations and prosecutions there.

74. The Committee also has some concerns about the promptness of the investigations. The FFM report published allegations of violations in September 2009. Yet the Commission was established only in January 2010, presumably in response to General Assembly resolution 64/10 (para. 4) rather than to the FFM report itself. This delays the start of criminal investigations and prosecutions. That said, the Committee observes that the Commission undertook a task of significant proportions with reasonable expedition so that it was able to submit its results to the Secretary-General in a timely manner.

75. Finally, the Committee emphasizes that investigations are only the first step to achieving accountability for alleged human rights violations and that the prosecution of perpetrators, as well as the provision of an effective remedy to those whose rights have been violated, should follow promptly. At the time of writing, the Committee had not received any information to indicate that criminal investigations or prosecutions were actually under way in the West Bank. On 6 September 2010, the Committee received a copy of a letter sent by the Prime Minister, Mr. Sallam Fayyad, to the Chair of the Commission, Mr. Issa Abu-Sharar, reiterating the commitment of the Council of Ministers "to the full implementation of the recommendations contained [in the Commission's report] towards respecting and ensuring respect of human rights and public freedoms in Palestine". The Committee strongly encourages the Palestinian Authority to live up to this commitment through prompt and effective prosecutions where appropriate.

B. The de facto Gaza authorities

76. The de facto Gaza authorities established two committees in response to General Assembly resolution 64/254. The United Nations received the report of the first Committee in January 2010 and the report of the second in August 2010 (see footnote 4 above).

77. The first Committee was an entirely governmental body headed by the Minister of Justice of the de facto Gaza authorities. The other Committee members were members of the Prime Minister's Legal Council, the Under-Secretary of the Ministry of Foreign Affairs, the Under-Secretary of the Ministry of Justice, the Chair of the Military Jurisdiction Authority, the Public Prosecutor, the Head of the Central Documentation Committee, a Judge of the Court of Appeal, the Director-General of Legal Affairs at the Ministry of Justice, the Director-General of Fatwa and Legislation, the Director-General of the Legislative Council, and the General Controller of the Ministry of the Interior. Its report focused entirely on Israeli Government policy vis-à-vis the Gaza Strip and the conduct of Israeli military troops during the Gaza conflict.

78. It did not carefully consider the violations allegedly perpetrated by the de facto Gaza authorities or associated armed groups. However, in its report, it stated that all claims concerning the conduct of the de facto Gaza authorities and armed groups should be directed to the Office of the Prosecutor-General.

79. The report, while submitted as a response to the FFM report, did not discuss the Fact-Finding Mission's recommendations in detail, nor did it propose measures to address alleged violations committed by the de facto Gaza authorities or the armed groups under its

[89] Ibid., para. 66.

control. The report is not an investigative report, but simply a description of what, in the view of the de facto Gaza authorities, the situation currently is in the Gaza Strip. It primarily reiterated the allegations of the FFM report against Israel.

80. However, the report did announce the establishment of a follow-up Independent Legal Committee (hereinafter "second Gaza Committee"), composed of three national and three international experts, to implement the Fact-Finding Mission's recommendations "in accordance with international standards."

81. This second Gaza Committee[90] presented its report to this Committee in Gaza on 15 August 2010. Its national experts were introduced as Gaza-based lawyers with many years' experience in international law practice. Its three international experts were international lawyers from Egypt and Saudi Arabia. They were unable to enter the Gaza Strip and were limited to communicating with the national members by telephone. The Committee accepts that the de facto Gaza authorities sought to establish an independent body to undertake investigations.

82. The second Gaza Committee made field visits, interviewed victims and officials, and reviewed criminal investigation files. However, its report did not include sufficient information to demonstrate systematically the steps it took to collect and evaluate evidence. More details would have shed light on the thoroughness of its investigations.

83. The second Gaza Committee's report did give examples of criminal proceedings related to alleged violations of IHL and IHRL, including a case where a number of defendants were convicted and imprisoned, while others were given suspended prison sentences. Some cases were settled out of court between the families involved. While in the Gaza Strip, the Committee requested the Prosecutor-General to provide it with specific information about the number and progress of the investigations his Office had undertaken. His Office subsequently responded in writing, but its submission contained no statistics or other data substantiating the report's reference to investigations or prosecutions undertaken by the de facto Gaza authorities.

84. The second Gaza Committee's report stated in addition that all persons detained on political grounds had been released; Palestinian groups had not deliberately violated the principle of distinction; there was no credible testimony to support the charge that Palestinian armed groups had intentionally targeted Israeli civilians when launching rockets against Israeli targets; mosques and civilian buildings had not been used as storage space or bases for weapons; and there was no evidence that Palestinians had used civilians as human shields.

85. The Committee is not in a position to ascertain the veracity of any of these assertions.

86. The Committee also has concerns related to the impartiality of the second Gaza Committee's investigations. The report did not seriously address the recommendations by the Fact-Finding Mission to the de facto Gaza authorities. This is in stark contrast to the report of the Palestinian Authority's Commission, which demonstrated a sincere effort on its part to investigate and expose the culpability of the government authorities. Instead, the second Gaza Committee – like the first – addressed recommendations to the United Nations and the international community, while its conclusions concentrated on criticizing Israel's policies and actions towards Gaza, rather than on addressing those of the de facto Gaza authorities. This gives the impression that the investigations sought to deflect attention from

[90] Mr. Abdollah Alasha'al (Chair, Egypt); Mr. Basem A'alem (Saudi Arabia); Mr. Mahmood Almobarak (Saudi Arabia); Mr. Muhammad No'man Elnahhal (Gaza); Mr. Salem Elsaqqa (Gaza); Mr. Nazem Owaida (Gaza).

the alleged violations of IHL and IHRL by the de facto Gaza authorities and raises concerns about their credibility and genuineness.

87. Moreover, some aspects of the report sought to explain away allegations of serious violations of IHL. For example, the second Gaza Committee suggested that the unavailability of modern military technology could not preclude armed groups from defending themselves. This implicitly acknowledges the truth of the allegations in the FFM report that armed groups violated IHL by launching weapons at Israel that were incapable of striking precise targets, while seeking to justify the violation and absolve the perpetrators.

88. The investigations of the second Gaza Committee, which began more than a year after the Gaza conflict, also raise questions as to the promptness of its inquiry. The report set out reasons for the delay, noting the difficulties inherent in undertaking effective investigations in the wake of the destruction caused by the conflict. This Committee understands that the chaos resulting from armed conflict had an impact on the second Gaza Committee's capacity to undertake investigations. In this sense, the strict application of the standard of promptness might not be appropriate.

VI. Conclusions

A. Israel

89. **A lack of cooperation hampered the Committee's assessment of Israel's response to the call by the General Assembly to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of IHL and IHRL reported by the United Nations Fact-Finding Mission on the Gaza Conflict. The Committee's bases of information are insufficient for a definitive assessment. Consequently, the Committee is not in a position to establish whether the investigations carried out by Israel met international standards of independence, impartiality, thoroughness, effectiveness and promptness.**

90. **The Committee acknowledges that there are mechanisms in place within the Israeli legal order to investigate allegations of war crimes. It accepts that military as well as civilian investigative bodies may inquire into such crimes so long as the investigations conform to international standards. Investigations into allegations of violations of either IHL or IHRL should meet the universal criteria of independence, impartiality, thoroughness, effectiveness and promptness, subject to the constraints of armed conflict.**

91. **The actual operation of Israel's military investigations system raises concern in the present context. Specifically, the Committee concludes that the dual role of the Military Advocate General (MAG) to provide legal advice to IDF with respect to the planning and execution of "Operation Cast Lead" and to conduct all prosecutions of alleged misconduct by IDF soldiers during the operations in Gaza raises a conflict of interest, given the Fact-Finding Mission's allegation that those who designed, planned, ordered and oversaw the operation were complicit in IHL and IHRL violations. This bears on whether the MAG can be truly impartial – and, equally important, be seen to be truly impartial – in investigating these serious allegations.**

92. **The Israeli investigators did not always undertake steps to inform victims, witnesses and their legal representatives of the progress of their inquiries, nor did they consistently treat victims with dignity and courtesy. Transparency in reporting progress and results of investigations and access to justice for victims are**

requirements for investigations under IHRL, although they are not strictly applicable to investigations under IHL, owing to the differing objectives of investigations under these two bodies of law.

93. **Nonetheless, without the full participation of victims and witnesses in investigations, their effectiveness and thoroughness suffer. The Committee notes that international standards are evolving in this area, with ever stronger emphasis on affording access to justice for victims even with respect to investigations into alleged violations of IHL.**

94. **The Committee does not have any information on whether Israel has undertaken investigations into the allegations raised in the FFM report concerning IHRL violations in the West Bank. In this regard, Israel has not met its duty, under the International Covenant or under the Convention against Torture, to investigate these claims.**

95. **Similarly, there is no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw "Operation Cast Lead". The FFM report contained serious allegations that officials at the highest levels were complicit in violations of IHL and IHRL. Israel has not met its duty to investigate this charge. The Committee observes that the military justice system would not be the appropriate mechanism to undertake such an investigation, given the military's inherent conflict of interest.**

B. The Palestinian side

1. The Palestinian Authority

96. **The Palestinian Authority established an independent commission of investigation, which carried out a careful and detailed inquiry into the allegations addressed to the Palestinian Authority. On the basis of the Commission's report and its meeting with the Commission's Chair and members, the Committee concludes that the Commission was not only independent in form, according to its legal statute, but also in fact. Its report alleges that serious violations of IHRL were committed by public officials in the West Bank. The Committee concludes that the investigation conforms with international standards and can be considered credible and genuine.**

97. **However, the Committee observes that the Commission's work was hampered by difficulties in accessing the Gaza Strip. While the Commission took all appropriate steps to investigate the allegations of serious violations of IHL and IHRL in Gaza, the Committee concludes that the Commission was unable to do so.**

98. **The Commission has laid the groundwork for the commencement of proceedings against the perpetrators and other measures suited to provide redress to the victims. Its Chair has received written assurances from the Prime Minister concerning the implementation of all its recommendations, but the Committee is unaware of any criminal proceedings that may have been initiated since the Commission filed its report.**

2. The de facto Gaza authorities

99. **The de facto authorities in Gaza established two committees of inquiry.**

100. **The report of the first Committee, made up of officials of the de facto Gaza authorities, makes no serious effort to address the allegations detailed in the FFM report against the de facto authorities in Gaza; it focuses primarily on the allegations directed against Israel.**

101. **The second report, prepared by three national and three international legal experts, provides some information about the actual measures taken to redress the violations that were alleged, but fails to substantiate assertions that all political prisoners have been released and criminal prosecutions have taken place in response to the FFM report. On the basis of the information before it, the Committee cannot conclude that credible and genuine investigations have been carried out by the de facto authorities in the Gaza Strip.**

Annex I

[English only]

List of stakeholders consulted

Diplomatic missions

Permanent Mission of the Arab Republic of Egypt to the United Nations in Geneva

Permanent Mission of Israel to the United Nations in Geneva

Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations in Geneva

Permanent Observer Mission of Palestine to the United Nations in Geneva

Domestic authorities

Muhammad Abed	Prosecutor General, Gaza
Dhiya al-Madhoun	Central Documentation Committee, Gaza

Investigative bodies

Judge Issa Abu Sharar	Chair, Independent Investigation Commission of the Palestinian Authority
Ghassan Farmand	Member, Independent Investigation Commission of the Palestinian Authority
Yasser al-Amuri	Member, Independent Investigation Commission of the Palestinian Authority
Muhammad Faraj al-Ghoul	Chair of the Government Committee for Follow-up to the Implementation of the United Nations Fact-Finding Mission Report
Muhammad No'man Elnahhal	Member, Independent Legal Committee to Monitor Implementation of the United Nations Fact-Finding Report
Salem Elsaqqa	Member, Independent Legal Committee to Monitor Implementation of the United Nations Fact-Finding Report
Nazem Owaida	Member, Independent Legal Committee to Monitor Implementation of the United Nations Fact-Finding Report

Non-governmental organizations

Addameer, al-Haq, Badil, Cairo Institute for Human Rights, Christian Aid, Defence National (Israel), Geneva for Human Rights, Human Rights Watch, International Federation for Human Rights (FIDH), Save the Children, UN Watch, the Women's

International League for Peace and Freedom, the World Council of Churches. In addition, the Committee received submissions from: Adalah, al-Mezan, B'Tselem, Hamoked, the Palestinian Centre for Human Rights, the Euro-Mediterranean Human Rights Network (EMHRN).

National human rights institutions

The Palestinian Independent Commission for Human Rights

Independent experts

Philip Alston, Professor	Former Special Rapporteur on extrajudicial, arbitrary and summary executions
Abraham Bell, Professor	Bar Ilan University Israel
Richard Falk	Special Rapporteur on the Occupied Palestinian Territories
William Fenrick	Schulich School of Law, Dalhousie University, Canada; former Senior Legal Adviser, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia
Eugene Fidell	President of the National Institute of Military Justice, United States of America, and Florence Rogatz Lecturer in Law, Yale Law School
Jim Goldston	Open Society Institute – Justice Initiative
Col. Daniel Reisner (ret.)	Former head of the IDF international law department.
Marco Sassoli, Professor	University of Geneva
Michael Schmitt	Professor Durham University and ex-Advocate-General, United States of America
Rupert Skilbeck	Open Society Institute – Justice Initiative
Canadian military law expert	

International organizations

United Nations Special Coordinator Office for the Middle East

Office of the United Nations High Commissioner for Human Rights

International Committee of the Red Cross

Annex II

[English only]

Table: Incidents in the report of the United Nations Fact-Finding Mission on the Gaza Conflict

Indiscriminate or deliberate killings

Incident	Paragraphs FFM report	Investigation body	Status
1. Killing of Ateya Samouni and his son Ahmad	706-735	Sixth special command investigation; MPCID	Ongoing
2. Attack on the Wa'el al-Samouni house	706-735	Sixth special command investigation; MPCID	Ongoing
3. Al-Fakhura Street massacre/al-Deeb family	653-703	Special command investigation	No violation
4. Shooting of Iyad al-Samouni	736-744	Sixth special command investigation; MPCID	Ongoing
5. Death of Mohammed Hajji and shooting of Shahd Hajji and Ola Masood Arafat	745-754	Unclear	Unclear
6. Shooting of Ibrahim Juha	755-763	MPCID	Ongoing
7. Killing of Majda and Rayya Hajaj	764-769	MPCID; military court	Ongoing but unclear if same case
8. Khalid Abd Rabbo's daughters	770-779	MPCID	No violation
9. Shooting of Rouhiyah al-Najjar	780-787	Command investigation; MPCID	No violation
10. Abu Halima family	788-801	MPCID	Unclear
11. Attack on al-Maqadmah mosque	822-843	Two special command investigations (January 2009 and November 2009)	Disciplinary action
12. Attack on al-Daya family	844-866	Special command investigation	No violation
13. Attack on the Abd al-Dayem condolence tents	867-885	Command investigation; MPCID	No violation

Attacks on government infrastructure

Incident	Paragraphs FFM report	Investigation body	Status
14. Israeli air strikes on the Gaza main prison	366-392	Command investigation	No violation
15. Strikes on the Palestinian Legislative Council building	366-392	Unclear	Unclear
16. Arafat City police HQ	393-438	Command investigation	No violation
17. Deir al-Balah police attacks	393-438	Command investigation	No violation
18. Abbas police station	393-438	Command investigation	No violation
19. Zeytoun police stations	393-438	Command investigation	No violation
20. Al-Shujaeiyah and al-Tuffah police station	393-438	Command investigation	No violation

Use of Palestinians as human shields

Incident	Paragraphs FFM report	Investigation body	Status
21. Abbas Ahmed Ibrahim Halawa	1064-1075	MPCID	No violation
22. Majdi Abd Rabbo	1033-1063	MPCID	Disciplinary action
23. Mahmoud Abd Rabbo al-Ajrami	1076-1085	MPCID	No violation
24. AD/03	1086-1088	MPCID	Discontinued insufficient evidence

Arbitrary detention

Incident	Paragraphs FFM report	Investigation body	Status
25. Al-Atatra incident	1112-1126	Sixth special command investigation	Ongoing
26. AD/02	1127-1142	MPCID	Unclear
27. AD/03	1143-1164	MPCID	Discontinued insufficient evidence
28. AD/06	1107	Unclear	Unclear

Use of harmful weapons

Incident	Paragraphs FFM report	Investigation body	Status
29. Al-Quds hospital	596-629	Special command investigation	Unclear Possible disciplinary action
30. Al-Wafa hospital	630-652	Special command investigation	Unclear Possible disciplinary action
31. UNRWA	543-595	Special command investigation	Apology, disciplinary action, compensation

Attacks on infrastructure and food production

Incident	Paragraphs FFM report	Investigation body	Status
32. El-Bader flour mill	913-941	Command investigation	No violation
33. Sawafeary chicken farm	942-961	Command investigation	No violation
34. Abu Jubba cement company	1012-1017	Command investigation	No violation

Attacks on water and sewage installations

Incident	Paragraphs FFM report	Investigation body	Status
35. Gaza wastewater treatment plant	962-974	Command investigation	No violation
36. Namar wells group	975-986	Command investigation	No violation

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Human Rights Council
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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1* ** ***

Summary

The present report contains the main findings and recommendations of the commission of inquiry established pursuant to Human Rights Council resolution S-21/1. In the report, the commission urges all actors to take immediate steps to ensure accountability, including by guaranteeing the rights of all victims to an effective remedy.

* Late submission.
** For detailed findings of the commission of inquiry, see document A/HRC/29/CRP.4.
*** The annexes to the present report are circulated as received.

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I. Introduction

1. On 23 July 2014, the Human Rights Council, by resolution S-21/1, decided to urgently dispatch an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after. Pursuant to resolution S-21/1, the President of the Council appointed three experts to the commission: William Schabas (Chair), Mary McGowan Davis and Doudou Diène.

2. The commission formally began its work on 16 September 2014. Following the resignation of Professor Schabas on 2 February 2015, the President of the Council designated Justice Davis as Chair. The Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the commission. Notwithstanding the urgency expressed by the Council to dispatch the commission, the secretariat was not fully constituted until the end of November 2014.

3. The commission repeatedly requested Israel to cooperate, including by granting it access to Israel and the Occupied Palestinian Territory, including the West Bank, East Jerusalem and the Gaza Strip (see annex I). Regrettably, Israel did not respond to these requests. Subsequently, the commission learned from a press release[1] that no such cooperation would be forthcoming. The Government of Egypt, when requested to facilitate entry into the Gaza Strip through the Rafah crossing, responded that it was not possible owing to the prevailing security situation. The commission thanks the Government of Jordan for facilitating its two visits to Amman.

4. The commission received full cooperation from the State of Palestine, including the Permanent Observer Mission of the State of Palestine to the United Nations Office at Geneva. It met with representatives of Palestinian ministries in Amman, who provided a range of documents. The commission also spoke to members of the authorities in Gaza, who submitted several reports.

5. The commission addressed to the Government of Israel and the Government of the State of Palestine a list of questions relating to specific incidents and legal and policy issues. A comparable list was sent to Hamas. Only the State of Palestine responded.

II. Mandate and methodology

6. The commission interpreted its mandate as requiring it to examine alleged violations of international human rights and humanitarian law occurring between 13 June and 26 August 2014 across the Occupied Palestinian Territory, in particular in Gaza, and in Israel, and to determine whether such violations had been committed. It examined existing accountability mechanisms and their effectiveness, and the immediate and continuing impact of the military operations on the affected populations and their enjoyment of human rights. The commission considered that the victims and their human rights were at the core of its mandate. Its activities were thus informed by the wish to ensure that the voices of all victims are heard, and that the commission's recommendations will strengthen the protection of the civilian population in the Occupied Palestinian Territory and in Israel.

[1] Israel Ministry of Foreign Affairs, "Israel will not cooperate with UNHRC investigative committee", press release, 13 November 2014.

7. The commission is grateful to the many victims and witnesses who shared their experiences and other relevant information. The fact that, despite its repeated requests, the commission was not granted access to the Occupied Palestinian Territory and Israel posed a challenge for conducting interviews in person with victims and witnesses and made viewing the sites where violations were alleged to have been committed impossible. Owing to the restrictions on movement preventing victims and witnesses from leaving Gaza, the commission obtained first-hand testimony by means of interviews conducted via Skype, videoconference and telephone. It conducted confidential interviews with victims and witnesses from the West Bank in Jordan (in November 2014 and January 2015) and with victims and witnesses from Israel in Geneva (in January 2015).

8. The commission and its secretariat conducted more than 280 interviews with victims and witnesses and received more than 500 written submissions and other documentation from a wide range of sources (see annexes II and III). It reviewed information publicly available, including on official websites of the Government of Israel. The commission used all the information gathered in making its assessments while carefully considering the credibility and reliability of sources. It gave particular weight to first-hand testimonies, recognizing the limitations resulting from the fact that the interviews were conducted remotely, the lapse in time since the incidents, and the possibility of reprisals.

9. Some sources requested that their submissions be treated confidentially for fear of possible consequences of testifying before the commission, including for their safety. Primary responsibility for protecting victims, witnesses and other persons cooperating with the commission rests with their States of residence and nationality. The commission appreciated the valuable contributions made to its work by OHCHR, United Nations agencies and programmes, non-governmental organizations and experts.

10. Consistent with established practice, the commission employed a "reasonable ground" standard of proof in its factual assessment of the incidents investigated and legal analysis of the patterns found. Such a standard is lower than that required in criminal trials; the commission therefore does not make any conclusions with regard to the responsibility of specific individuals for alleged violations of international law.

11. Given its restricted access, its limited resources and the short time frame available for its inquiry, the commission selected incidents on the basis of certain criteria, in particular, the gravity of the allegations of violations of international humanitarian law and international human rights law; their significance in demonstrating patterns of alleged violations; access to victims, witnesses and supporting evidence; and the geographic location of the incident.

III. Legal framework

12. All parties to the conflict are bound by the relevant provisions and rules of international humanitarian and human rights treaty and customary law. The commission considers that, in situations of armed conflict or occupation, international humanitarian law and international human rights law apply concurrently,[2] and shares the position of United Nations human rights treaty bodies and the International Court of Justice, according to which Israel bears responsibility for implementing its human rights treaty obligations in the Occupied Palestinian Territory.[3] The State of Palestine is bound by the obligations

[2] Advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, 9 July 2004, para. 106.

[3] Ibid., paras. 111–113. See also CCPR/C/ISR/CO/4, para. 5.

contained in the treaties to which it has acceded. The authorities in Gaza must respect and ensure human rights norms because of their exercise of government-like functions.

13. A number of core principles of international humanitarian law govern the conduct of hostilities. Firstly, the principle of distinction requires that parties to a conflict distinguish between civilians and civilian objects on the one hand, and combatants[4] and military objectives on the other. Attacks may only be directed against the latter. Secondly, the principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated. Thirdly, the principle of precautions in attack requires all parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.

IV. Context

14. The hostilities of 2014 erupted in the context of the protracted occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and of the increasing number of rocket attacks on Israel. In the preceding months, there were few, if any, political prospects for reaching a solution to the conflict that would achieve peace and security for Palestinians and Israelis and realize the right to self-determination of the Palestinian people.

15. The blockade of Gaza by Israel, fully implemented since 2007 and described by the Secretary-General as "a continuing collective penalty against the population in Gaza" (A/HRC/28/45, para. 70), was strangling the economy in Gaza and imposed severe restrictions on the rights of the Palestinians. Two previous rounds of hostilities in the Strip since 2008 had not only led to loss of life and injury but also weakened an already fragile infrastructure. Palestinians have demonstrated extraordinary resilience in recent years, living in an environment scarred by physical destruction and psychological trauma. In the West Bank, including East Jerusalem, settlement-related activities and settler violence continued to be at the core of most of the human rights violations against Palestinians. In the absence of any progress on the political front, the risk of a flare-up of the situation was evident.

16. In the meantime, threats to the security of Israel remained all too real. Palestinian armed groups increasingly launched rockets during June and July 2014. The discovery of tunnels leading into Israel added to the sense of insecurity. According to one witness, residents of her kibbutz experienced regular panic attacks after the discovery of a tunnel in March 2014 and the explosion of an alleged tunnel exit on 8 July. Several other infiltration attempts were thwarted by the army during July and August.

17. The events of summer 2014 were preceded by an agreement, reached on 23 April 2014 between the Palestinian Liberation Organization and Hamas, which sought to end Palestinian divisions. On 2 June 2014, President Abbas declared the formation of a Government of national consensus. The Government had yet to assume its full responsibilities in Gaza when active hostilities broke out in the Strip in July 2014, thereby leaving Hamas exercising government-like functions, as had been the case since June 2007.

18. On 12 June 2014, three Israeli teenagers were kidnapped and brutally murdered in the West Bank. In response, Israel launched an extensive search and arrest operation, which lasted until their bodies were found, on 30 June. On 2 July, a 16-year-old Palestinian

[4] For the purposes of distinction, the term "combatants" includes members of the armed forces and of organized armed groups with a continuous combat function.

teenager from East Jerusalem was viciously murdered – burned alive – and his body discovered in West Jerusalem in what appeared to be an act of revenge for the murdered Israeli teenagers. Tensions in the West Bank, including East Jerusalem, ran high, and were further fuelled by a rise in extreme anti-Palestinian rhetoric. Widespread protests and violent clashes ensued between Palestinians and the Israel Defense Forces.

19. On 7 July 2014, the Israel Defense Forces commenced operation "Protective Edge" in the Gaza Strip, with the stated objective of stopping the rocket attacks by Hamas and destroying its capabilities to conduct operations against Israel. After an initial phase focused on airstrikes, on 17 July 2014, Israel launched a ground operation, which it declared sought to degrade "terror organisations' military infrastructure, and [… neutralize] their network of cross-border assault tunnels".[5] A third phase began on 5 August, and was characterized by alternating ceasefires and ongoing air strikes. The operation concluded on 26 August, when both Israel and Palestinian armed groups adhered to an unconditional ceasefire.

V. Principal findings and conclusions

20. Palestinians and Israelis were profoundly shaken by the events of the summer of 2014. In Gaza, in particular, the scale of the devastation was unprecedented. The death toll alone speaks volumes: 2,251 Palestinians were killed, including 1,462 Palestinian civilians, of whom 299 women and 551 children;[6] and 11,231 Palestinians, including 3,540 women and 3,436 children, were injured (A/HRC/28/80/Add.1, para. 24), of whom 10 per cent suffered permanent disability as a result. While the casualty figures gathered by the United Nations, Israel, the State of Palestine and non-governmental organizations differ, regardless of the exact proportion of civilians to combatants, the high incidence of loss of human life and injury in Gaza is heartbreaking.

21. The death of six civilians in Israel and 67 soldiers and the injury of up to 1,600 others were also the tragic result of the hostilities. According to official Israeli sources, rockets and mortars hit civilian buildings and infrastructure, including schools and houses, causing direct damage to civilian property amounting to almost $25 million.[7]The hostilities caused immense distress and disruption to the lives of Israeli civilians, especially those living in the southern regions. In addition to the constant threat of rocket and mortar attacks, the Israelis interviewed by the commission expressed particular anxiety about the new threat of assaults from tunnels penetrating into Israel. One Israeli woman said that "the tunnels are scarier than the rockets because there's no chance of being warned". The sense of panic among many Israelis was exacerbated by the short, often insufficient, time to conduct effective emergency procedures.

22. In Gaza, as Palestinians struggled to find ways to save their own lives and those of their families, they were confronted with intense attacks, with no way of knowing which locations would be hit and which might be considered safe. People began to move from one place to another, only to encounter attacks in the new neighbourhood, and they would have to move on. Closed into the Strip, with no possibility to exit at times, 44 per cent of Gaza

[5] Israel Ministry of Foreign Affairs, "2014 Gaza Conflict, Israel's Objectives and Phases of the 2014 Gaza Conflict" (available at http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx), p. 3.

[6] Data compiled by the OCHA Protection Cluster, 31 May 2015. For its methodology, see A/HRC/28/80/Add.1, para. 24, footnote 43.

[7] Israel Ministry of Foreign Affairs (see footnote 5), "Hamas' Violations of the Law", p. 4.

was either a no-go area or the object of evacuation warnings.[8] These terrifying circumstances created a sense of entrapment, of having "no safe place" to go.

23. Alongside the toll on civilian lives, there was enormous destruction of civilian infrastructure in Gaza: 18,000 housing units were destroyed in whole or in part;[9] much of the electricity network and of the water and sanitation infrastructure were incapacitated; and 73 medical facilities and many ambulances were damaged.[10] Many Palestinians were uprooted from their homes or temporary shelters multiple times; at the height of the hostilities, the number of internally displaced persons reached 500,000, or 28 per cent of the population. The effects of this devastation had a severe impact on the human rights of Palestinians in Gaza that will be felt for generations to come. The West Bank, including East Jerusalem, witnessed a period of heightened tensions and widespread human rights violations, including the fundamental right to life, which were overshadowed by the tragic events in Gaza.

24. The impact of the hostilities in Gaza cannot be assessed separately from the blockade imposed by Israel. The blockade and the military operation have led to a protection crisis and chronic, widespread and systematic violations of human rights, first and foremost the rights to life and to security, but also to health, housing, education and many others. According to international human rights law, Israel has obligations in relation to these rights and must take concrete steps towards their full realization. In that context, while fully aware of the need for Israel to address its security concerns, the commission believes that the Gaza Reconstruction Mechanism, put in place with the assistance of the United Nations to accelerate efforts to rebuild destroyed houses and infrastructure, is not a substitute for a full and immediate lifting of the blockade.

25. Palestinian and Israeli children were savagely affected by the events. Children on both sides suffered from bed-wetting, shaking at night, clinging to parents, nightmares and increased levels of aggressiveness.[11] In addition, according to the United Nations Children's Fund, in Gaza, more than 1,500 children were orphaned.[12] Anas "Bader" Qdeih, aged 7, was seen pleading for help from people fleeing Khuza'a while holding his intestines, which were coming out of his abdomen, "I don't want to die. Don't leave me." He died soon afterwards, after his medical evacuation was delayed.

A. Gaza Strip and Israel

26. In the section below, the commission summarizes its main findings and conclusions, emphasizing the key characteristics of the hostilities of 2014. It focuses on areas that reflect new patterns, notably attacks by Israel on residential buildings resulting in the death of entire families; Israel's ground operations, which levelled urban neighbourhoods; and violations by Palestinian armed groups and authorities in Gaza, including their reliance on attack tunnels. Other incidents – namely, attacks by Israel on United Nations shelters,

[8] Office for the Coordination of Humanitarian Affairs (OCHA), Occupied Palestinian Territory: Gaza Emergency Situation Report, 22 July 2014, p. 1.

[9] OCHA, Gaza Initial Rapid Assessment, 27 August 2014, p. 4.

[10] Health Cluster, Gaza Strip: Joint Health Sector Assessment Report, September 2014, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Joint_Health_Sector_Assessment_Report_Gaza_Sept_2014.pdf.

[11] Child Protection Working Group, Child Protection Rapid Assessment Report, October 2014 (available at http://cpwg.net/wp-content/uploads/sites/2/2015/03/Child-Protection-Rapid-Assessment-_-Gaza_2014.pdf).

[12] United Nations Children's Fund, State of Palestine, Humanitarian Situation Report, 23 October 2014, p. 1.

medical facilities, ambulances, and other critical infrastructure – are considered less thoroughly, because these patterns have been a recurring reality in this and prior conflicts.

1. Rocket, mortar and tunnel attacks against locations in Israel

(a) Rocket and mortar attacks

27. Between 7 July and 26 August 2014, Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel, killing six civilians and injuring as many as 1,600 people, including 270 children. A mother from Israel described the situation experienced: "We have 45 seconds to run. You just have to wait and see if it's going to fall on you."

28. Owing to the lack of cooperation by Israel and its denial of access to its territory, the commission faced difficulties in identifying victims who had been injured in rocket attacks and was unable to examine individual cases in detail. The commission was, however, able to speak with witnesses and victims of a number of mortar attacks, the cause of the majority of Israeli civilian deaths.

29. On 22 August 2014, Daniel Tregerman, aged 4, was killed in his home at Kibbutz Nahal Oz, about 2 km from Gaza. While he was playing, a siren sounded, followed by an explosion three seconds later, when a mortar hit the family car and shrapnel struck Daniel. Given the short time, he had been unable to reach the protected room with the rest of his family. In another incident, on 26 August, Ze'ev Etzion and Shahar Melamed were killed by a mortar. Gad Yarkoni suffered injuries to his legs, which were later amputated. He informed the commission that the attack occurred as the three men were repairing electricity lines damaged by Palestinian projectiles in Kibbutz Nirim. The Al-Qassam Brigades announced that they had targeted Kibbutz Nirim and various other communities with 107 mm mortars on the day of the attack.[13]

30. Palestinian armed groups released statements indicating that they intended to attack Israeli civilians and population centres in Israel. In some instances, Palestinian armed groups in Gaza reportedly attempted to warn civilians in Israel of imminent attacks. For instance, on 20 August 2014, the Al-Qassam Brigades warned communities near Gaza to avoid returning home or to remain inside shelters.[14]

31. While some Palestinian armed groups made efforts to direct projectiles, especially mortars, at military objectives, in other cases they targeted villages near Gaza. The majority of projectiles fired by Palestinian armed groups were rockets without guidance systems so they could not be directed at specific military objectives. Many of the rockets were launched in the direction of major cities, including Jerusalem, Tel Aviv and Ashkelon, and one landed in the vicinity of Ben Gurion airport.

(b) Tunnels

32. The Israel Defense Forces found 32 tunnels, 14 of which extended beyond the Green Line into Israel.[15] The discovery of the tunnels and their use by Palestinian armed groups during the hostilities caused great anxiety among Israelis fearing that the tunnels might be used to attack civilians. One witness recalled, "When it's quiet, we are even more afraid

[13] https://twitter.com/qassam_arabic1/status/504191347684048898 (in Arabic). See also "Kibbutz member killed by mortar shell laid to rest", *Times of Israel*, 28 August 2014, and "After Operation Protective Edge, day 1", Haaretz, 27 August 2014.

[14] Al-Qassam, Press Release of Abu Obeida, Al-Qassam spokesperson, 20 August 2014.

[15] Israel Defense Forces, "Operation Protective Edge by the Numbers", 5 August 2014.

because we don't know what things can come from the ground. Since April, everyone was afraid and uncomfortable about the tunnels."

33. The use of rockets in the possession of Palestinian armed groups, indiscriminate in nature, and any targeted mortar attack against civilians constitute violations of international humanitarian law, in particular of the fundamental principle of distinction, which may amount to a war crime. The intent of some Palestinian armed groups to direct attacks against civilians is demonstrated by statements indicating that their intended targets were civilians or large population centres in Israel. While certain Palestinian armed actors cited the limits of their military arsenals as a reason for failing to attack military targets precisely, the military capacity of a party to the conflict is irrelevant to its obligation to respect the prohibition against indiscriminate attacks.

34. The absence of any possible military advantage resulting from rockets that cannot be directed at a military objective, coupled with statements by Palestinian armed groups, strongly suggest that the primary purpose of the rocket attacks was to spread terror among the civilian population, in violation of international humanitarian law.

2. Air strikes on residential buildings in Gaza

35. During the 51-day operation, the Israel Defense Forces carried out more than 6,000 air strikes in Gaza,[16] many of which hit residential buildings. The Office for the Coordination of Humanitarian Affairs found that at least 142 Palestinian families had three or more members killed in the same incident, amounting to a total of 742 fatalities.[17] Tawfik Abu Jama, a Gazan father of eight, recalled: "I was sitting with my family at the table, ready to break the fast. Suddenly we were sucked into the ground. Later that evening, I woke up in the hospital and was told my wife and children had died".

36. The commission investigated 15 cases of strikes on residential buildings across Gaza, in which a total of 216 people were killed, including 115 children and 50 women. On the basis of all available information, including research by non-governmental organizations,[18] it identified patterns of strikes by Israeli forces on residential buildings and analysed the applicable law in relation to individual incidents.

37. The commission found that the fact that precision-guided weapons were used in all cases indicates that they were directed against specific targets and resulted in the total or partial destruction of entire buildings. This finding is corroborated by satellite imagery analysis.[19] Many of the incidents took place in the evening or at dawn, when families gathered for *iftar* and *suhhur*, the Ramadan meals, or at night, when people were asleep. The timing of the attacks increased the likelihood that many people, often entire families, would be at home. Attacking residential buildings rendered women particularly vulnerable to death and injury.[20]

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[16] Israel Ministry of Foreign Affairs, IDF Conduct of Operations during the 2014 Gaza Conflict (available at http://mfa.gov.il/ProtectiveEdge/Documents/IDFConduct.pdf), p. 38.

[17] OCHA, Fragmented Lives: Humanitarian Overview 2014, March 2015, p. 4.

[18] See also B'Tselem, "Black Flag: The legal and moral implications of the policy of attacking residential buildings in the Gaza Strip", January 2015, p. 46; and Amnesty International, "Families Under the Rubble – Israeli Attacks on Inhabited Homes", 5 November 2014, p. 42.

[19] United Nations Institute for Training and Research (UNITAR), Impact of the 2014 Conflict in the Gaza Strip – UNOSAT Satellite Derived Geospatial Analysis, 2014.

[20] The percentage of women killed was significantly higher in 2014 (20.2 per cent of civilians) than during the conflict in 2009 (14 per cent); see B'Tselem, "B'Tselem publishes complete fatality figures from operation cast lead", press release, 9 September 2009.

38. In six of the cases examined, and in most cases reported on by non-governmental organizations, there is little or no information available to explain why residential buildings, which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives. In relation to each attack on residential buildings that resulted in significant destruction and civilian deaths or injuries, the onus is on Israel to explain the factual elements that rendered the houses or the person(s) present inside a military target. Israel should provide specific information on the effective contribution of a given house or inhabitant to military action and the clear advantage to be gained by the attack. Should a strike directly and intentionally target a house in the absence of a specific military objective, this would amount to a violation of the principle of distinction.[21] It may also constitute a direct attack against civilian objects or civilians, a war crime under international criminal law.[22]

39. Although the commission found indications of possible military objectives in the remaining nine cases examined, it is not in a position to determine whether they actually motivated the attacks in question. It appears that the potential targets were mostly individuals who were or who could have been present in the building at the time it was hit, presumably on account of their alleged links to the police, Hamas or an armed group. In that regard, international law provides that persons may be targeted only if they participate directly in hostilities or are members of organized armed groups with a continuous combat function.

40. With regard to proportionality, given the circumstances, a reasonable commander would have been aware that these attacks would be likely to result in a large number of civilian casualties and the complete or partial destruction of the building. Such circumstances differ from case to case, and include the residential nature of the targeted buildings; their location in densely populated areas; the timing of the attacks; and the frequent use of large bombs that were apparently meant to cause extensive damage. Given the absence of information suggesting that the anticipated military advantage at the time of the attack was such that the expected civilian casualties and damage to the targeted and surrounding buildings were not excessive, there are strong indications that these attacks could be disproportionate, and therefore amount to a war crime.[23]

41. Regarding precautions, the Israel Defense Forces stated repeatedly that its measures were more stringent than those required by international humanitarian law.[24] In many incidents, however, the weapons used, the timing of attacks, and the fact that the targets were located in densely populated areas indicate that the Israel Defense Forces may not have done everything feasible to avoid or limit civilian casualties.

42. Warnings are one means of precaution. International humanitarian law requires that "effective advance warning be given of attacks which may affect the civilian population, unless circumstances do not permit."[25] The fact that many residential buildings were destroyed without causing deaths suggests that, where specific warnings were conveyed via telephone or text messages, they may have been effective in minimizing civilian casualties. In other cases, the Israel Defense Forces used so-called "roof-knock" warnings, strikes by small missiles before the real strike. In a number of incidents examined, the concerned persons either did not understand that their house had been the subject of a "roof-knock", or

[21] Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 51 and 52.1.

[22] Rome Statute of the International Criminal Court, art. 8.

[23] Ibid.

[24] IDF MAG Corps, "Aerial Strikes against Terrorists: Some Legal Aspects".

[25] Protocol I, art. 57, para. 3.

the time given for evacuation between the warning and the actual strike was insufficient. In one case examined by the commission, a 22-member family, including nine children, were given just a few minutes to evacuate their home after a "roof knock" in the early hours of the morning, while they were asleep; 19 of the 22 people present in the house died. The commission concluded that "roof knocks" cannot be considered an effective warning given the confusion they often cause to building residents and the short time allowed to evacuate before the actual strike.

43. The limited effectiveness of the above-mentioned precautionary measures must have become abundantly clear in the early days of the operation, given that many buildings were destroyed, together with their inhabitants. The apparent lack of steps to re-examine these measures in the light of the mounting civilian toll suggests that Israel did not comply with its obligation to take all feasible precautions before the attacks.

44. Furthermore, the large number of targeted attacks against residential buildings and the fact that such attacks continued throughout the operation, even after the dire impact of these attacks on civilians and civilian objects became apparent, raise concern that the strikes may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel.[26]

45. The commission also considered air strikes against *prima facie* residential buildings that did not cause deaths because the buildings had been vacated. These included attacks against houses of senior political figures and high-ranking members of armed groups in their absence, and against three high-rise buildings in the last days of the conflict. Without precise information about the possible military use of these premises, the commission is unable to make a conclusive assessment regarding Israel's respect of the principle of distinction. These attacks raise concerns that Israel's interpretation of what constitutes a "military objective" may be broader than the definition provided for by international humanitarian law.[27]

3. Ground operations

46. With regard to operations by Israel, the commission investigated attacks in three neighbourhoods: in Shuja'iya (on 19, 20 and 30 July); in Khuza'a (from 20 July to 1 August); and in Rafah (from 1 to 3 August), large areas of which were levelled to the ground. After an assessment of all available information, the commission identified five key patterns with respect to the ground operations.

(a) Use of artillery and other explosive weapons in densely populated areas

47. Talal Al Helo, a man from Shuja'iya, recalled "I am not a fighter, I am a civilian and I care about the well-being of my family. The attacks were everywhere. Everything was coming under attack, the roads and buildings; there was no safe haven in Shuja'iya. We walked as the missiles kept arriving. We saw bodies of people in the streets. We came across the […] bodies of young and old people, women and children."

48. During the ground operations, the Israel Defense Forces used explosive weapons extensively in densely populated areas of Gaza. These weapons included artillery and tank shells, mortars and air-dropped high-explosive munitions. The Forces reported that, during

[26] See the judgement of the International Criminal Tribunal for the Former Yugoslavia on *Kupreškić et al* of 14 January 2000; Amnesty International, "Families Under the Rubble" (see footnote 19), pp. 6 and 42; and FIDH, "Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge", October 2014, pp. 29–30.

[27] See Protocol I, art. 52, para. 2.

the operation, 5,000 tons of munitions were supplied,[28] and that 14,500 tank shells and approximately 35,000 artillery shells had been fired.[29] One non-governmental organization reported a 533 per cent-increase in highly explosive artillery shells used in 2014 in comparison to the hostilities in 2008 and 2009.[30] Many explosive weapons, in particular artillery and mortars, have a wide-area effect, meaning that anyone or anything within a given area is likely to be killed, injured or damaged, owing to the scale of their blast and their imprecise nature. While not illegal as such, the use of these weapons in densely populated areas poses a high risk to the civilian population.[31]

49. According to official Israeli sources, artillery was used in urban areas only on an exceptional basis, when these areas were known to have been largely evacuated.[32] The incidents examined by the commission, however, demonstrate that artillery and other heavy weapons were widely used in residential neighbourhoods, resulting in a large number of casualties and extensive destruction.[33] For instance, in Shuja'iya, the sheer number of 155 mm shells fired, the reported dropping of 120 one-ton bombs in a short amount of time in a densely populated area,[34] and the use of a creeping artillery barrage raise questions with regard to the respect by the Israel Defense Forces of the rules of distinction, precaution and proportionality.

50. The extensive use by the Israel Defense Forces of explosive weapons with wide-area effects, and their probable indiscriminate effects in the built-up neighbourhoods of Gaza, are highly likely to constitute a violation of the prohibition of indiscriminate attacks.[35] Such use may, depending on the circumstances, qualify as a direct attack against civilians,[36] and may therefore amount to a war crime.[37]

51. In addition, the fact that the Israel Defense Forces did not modify the manner in which they conducted their operations after initial episodes of shelling resulted in a large number of civilian deaths indicates that their policies governing the use of artillery in densely populated areas may not be in conformity with international humanitarian law.

52. The commission examined several additional incidents, including attacks on shelters, hospitals and critical infrastructure, in which artillery was used. The use of weapons with wide-area effects against targets in the vicinity of specifically protected objects (such as medical facilities and shelters) is highly likely to constitute a violation of the prohibition of indiscriminate attacks. Depending on the circumstances, indiscriminate attacks may qualify as a direct attack against civilians,[38] and may therefore amount to a war crime.[39]

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[28] Israel Defence Forces, Omer Shalit, Technological and Logistics Directorate: "Faster and more efficient: this is how munition is supplied to the fighting forces", 13 August 2014, available at www.idf.il/1133-21100-HE/IDFGDover.aspx (in Hebrew).

[29] "16 Facts about Operation Cast Lead", *Bayabasha*, Ground Forces Magazine, No. 29; October 2014 (available at http://mazi.idf.il/6216-he/IGF.aspx) (in Hebrew), p. 47.

[30] Action on Armed Violence, "Under fire: Israel's artillery policies scrutinised", December 2014, p. 14.

[31] See also OCHA Policy, "Protecting civilians from the use of explosive weapons in populated areas".

[32] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 49.

[33] Action on Armed Violence, "Under fire" (see footnote 30), p. 12.

[34] NRG News, Senior officer Yohai Ofer "Shuja'iya is under control, we have damaged an entire Hamas network"; 23 July 2014, available at www.nrg.co.il/online/1/ART2/599/869.html (in Hebrew).

[35] Protocol I, art. 51, para. 4.

[36] International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Galic*, case No. IT-98-29-T, judgement, 5 December 2003, para. 57.

[37] Rome Statute, art. 8.

[38] *Prosecutor v. Galic* (see footnote 36), para. 57.

[39] Rome Statute, art. 8.

(b) Destruction

53. Information gathered by the commission, including from witness accounts, United Nations reports, video and photographic materials, observations by the United Nations Institute for Training and Research Operational Satellite Applications Programme (UNITAR-UNOSAT)[40] and anecdotal testimonies by soldiers of the Israel Defense Forces, indicates that destruction by artillery fire, air strikes and bulldozers may have been adopted as a tactic of war. Some destruction may arguably be the result of the legitimate attempts of the Israel Defense Forces to dismantle tunnels and to protect its soldiers. The concentration of destruction in localities close to the Green Line, in some areas amounting to 100 per cent, and the systematic way in which these areas were flattened one after the other, however, raise concerns that such extensive destruction was not required by imperative military necessity.[41] If confirmed, this would constitute a grave breach of article 147 of the Fourth Geneva Convention, which is a war crime.

(c) Warnings and the continued protected status of civilians

54. In many cases during the ground operations, the Israel Defense Forces warned the population of impending attacks by means of leaflets, loudspeaker announcements, telephone calls, text messages and radio announcements.[42] In many instances, however, inhabitants did not leave their homes.[43] For instance, the Office for the Coordination of Humanitarian Affairs reported on 20 July that the majority of the 92,000 inhabitants of Shuja'iya had remained in their neighbourhood despite repeated warnings to evacuate.[44] Witnesses pointed to several reasons for staying, including not knowing in which direction to go, given that intense shelling and air strikes were under way in many parts of Gaza; lack of clarity of and unclear time frames indicated by the warnings; the fact that many places considered safe were already overcrowded; and the poor conditions in shelters, which themselves came under attack.

55. Statements by officials of the Israel Defense Forces indicated that, in some cases, warnings to evacuate were meant to create "sterile combat zones", and the people remaining in the area would no longer be considered civilians and thus benefit from the protection afforded by their civilian status. For example, the Head of the Doctrine Desk at the Infantry Corps Headquarters, Major Amitai Karanik, reportedly stated: "We try to create a situation whereby the area where we are fighting is sterile, so any person seen there is suspected of engaging in terrorist activity. At the same time, we make the utmost effort to remove the population, whether this means dropping flyers or shelling [.] We don't want to confuse the troops […] In peacetime security, soldiers stand facing a civilian population, but in wartime, there is no civilian population, just an enemy."[45] The commission is aware of the assertions made by the Israel Ministry of Foreign Affairs that "although Hamas authorities actively encouraged civilians to ignore the IDF's warnings and refrain from evacuating, the IDF did not regard civilians who heeded such advice as voluntary human shields and thus legitimate targets for attack. Nor did the IDF discount such civilians for purposes of its proportionality analyses."[46] It is the view articulated by Major Karanik that appears, however, to have prevailed in at least two of the neighbourhoods examined by the

[40] UNITAR, Impact of the 2014 Conflict in the Gaza Strip (see footnote 20), p. 8.
[41] Regulations annexed to the Hague Convention IV of 1907, art. 23; Fourth Geneva Convention, art. 53.
[42] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), pp. 30–37.
[43] Ibid.
[44] OCHA, Gaza Emergency Situation Report (see footnote 8), p. 2.
[45] *Bayabasha*, Ground Forces Magazine, October 2014, No. 29, p. 62 (unofficial translation).
[46] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 13.

commission and to have had implications for the way in which Israeli soldiers on the ground viewed those who remained. On the basis of soldier testimony, one non-governmental organization concluded that "the soldiers were briefed by their commanders to fire at every person they identified in a combat zone, since the working assumption was that every person in the field was an enemy."[47]

56. The commission recognizes that the general warnings issued by the Israel Defense Forces saved lives. At the same time, these warnings were often used in a context where people fleeing were unable to identify a safe place to go owing to the unpredictability of many attacks over a lengthy period of time. Most importantly, inferring that anyone remaining in an area that has been the object of a warning is an enemy or a person engaging in "terrorist activity", or issuing instructions to this effect, contributes to creating an environment conducive to attacks against civilians. Those civilians choosing not to heed a warning do not lose the protection granted by their status. The only way in which civilians lose their protection from attack is by directly participating in the hostilities.[48] Merely issuing a warning does not absolve the Israel Defense Forces of their legal obligations to protect civilian life.

(d) Protection of civilians, force protection and the "Hannibal directive"

57. An examination of actions by the Israel Defense Forces in Shuja'iya in July and Rafah on 1 August indicates that the protection of Israeli soldiers significantly influenced the conduct of the Israel Defense Forces in these operations, at times overriding any concern for minimizing civilian casualties. While force protection is a legitimate objective, the commission has the distinct impression that, when soldiers' lives were at stake or there was a risk of capture, the Forces disregarded basic principles on the conduct of hostilities. One of the witnesses recalled that "every time an Israeli soldier dies or is kidnapped, we feel the consequences". In Rafah, following the killing of two Israeli soldiers and the apparent capture of one, who was later found to be dead, entire areas were closed off, in particular through the use of shelling and air strikes, presumably to prevent the captors from leaving the area with the captive soldier. Reports indicate that a procedure, known as the "Hannibal directive", was activated in Rafah and possibly in Shuja'iya, where there were similar fears that a soldier had been captured. It reportedly gives considerable leeway to Israeli commanders in deciding how to prevent their soldiers from being captured by armed groups,[49] and is widely perceived as having led to intensified shelling. In Rafah, every moving vehicle or person became a potential target, with the most intensive fire reported over the first four hours.

58. The Government of Israel has stated that the requirement to respect the principle of proportionality continues to apply whenever the Hannibal directive is invoked,[50] and some have argued that the proportionality test may take into account strategic considerations in determining the military advantage. The commission emphasizes that policy considerations and remote strategic objectives informed by political goals – such as denying armed groups the leverage they could obtain over Israel in negotiations for the release of a captured soldier – are not valid considerations in conducting the proportionality analysis required under international humanitarian law. The commission believes that the military culture created by such policy priorities may have been a factor contributing to the decision to unleash massive firepower in Rafah and Shuja'iya, in utter disregard of its devastating impact on the civilian population. Moreover, applying this protocol in the context of a

[47] Breaking the Silence, "This is how we fought in Gaza", May 2015, p. 18.
[48] Protocol I, art. 51, para. 3, and art. 57.
[49] Breaking the Silence, "This is how we fought in Gaza" (see footnote 49).
[50] Israel Ministry of Foreign Affairs, IDF Conduct of Operations (see footnote 17), p. 44.

densely populated environment through the use of heavy weaponry predictably leads to violations of the principles of distinction and proportionality.

(e) Targeting of civilians

59. The commission examined several cases in which the people or groups of people targeted were civilians, at times children, who were not directly participating in the hostilities and did not represent any threat to the Israeli soldiers present in the area. For instance, Salem Shamaly, whose death was recorded on video, was shot several times while looking for a relative during a humanitarian pause, even after he had been felled by the first shot (A/HRC/28/80/Add.1, para. 43). The commission examined two other incidents in which civilians allegedly carrying white flags were targeted by soldiers in Khuza'a. The first case pertained to a large group of people, including children, who were attacked in front of a clinic while attempting to leave the village holding white flags. In the second case, a man in a house carrying a white flag was shot at point-blank range in front of some 30 other people, including women, children and elderly persons, who had sought shelter in the house.

60. Directing attacks against civilians constitutes a violation of the principle of distinction and may amount to a war crime. These acts may also constitute wilful killings. Such acts are also a violation of the right to life, as guaranteed by article 6 of the International Covenant on Civil and Political Rights.

4. Impact on the population in Gaza of the conduct of Palestinian armed groups

61. The commission examined the conduct of Palestinian armed groups in a densely populated environment, and what measures, if any, were taken by the authorities in Gaza to protect civilians in Gaza from the effects of the attacks conducted by Israel.

62. The commission regrets that it was unable to verify allegations made by Israel on the use of civilian buildings by Palestinian armed groups[51] owing to the denial by Israel of access to Gaza; fears by Palestinian witnesses of reprisal by armed groups and local authorities, in particular when providing information remotely; and challenges faced by Palestinian human rights organizations in documenting alleged violations by Palestinian armed groups.

(a) Conducting military operations from within or near densely populated areas

63. Palestinian armed groups allegedly often operated from densely populated neighbourhoods, including by firing rockets, mortars and other weapons from built-up areas. In addition, they were alleged to have frequently placed command and control centres and firing positions in residential buildings and to have stockpiled weapons and located tunnel entrances in *prima facie* civilian buildings. They also reportedly conducted military operations within or in close proximity to sites benefiting from specific protection under international humanitarian law, such as hospitals, shelters and places dedicated to religion and education, including within or in the vicinity of schools operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East. The Secretary-General expressed his dismay that Palestinian militant groups would put United Nations schools at risk by using them to hide their arms. "The three schools in which weaponry was found were empty at the time and were not being used as shelters. However, the fact that they were used by those involved in the fighting to store their weaponry and, in two cases, probably to fire from is unacceptable" (S/2015/286, p. 3). Israel made specific allegations

[51] Israel Ministry of Foreign Affairs (see footnote 5), "Hamas' Violations of the Law".

with regard to the use of schools, mosques and hospitals and the areas in their immediate vicinity for military purposes. By firing rockets from densely populated areas, Palestinian armed groups also put Gazans in danger; for example, on 28 July 2014, 13 civilians, including 11 children, were killed in Al-Shati camp when a rocket appears to have fallen short of its target.

64. The commission recognizes that the obligation to avoid locating military objectives within densely populated areas is not absolute. The small size of Gaza and its population density make it difficult for armed groups to always comply with this requirement. While the commission was unable to verify independently the specific incidents alleged by Israel, the frequency of reports of Palestinian armed groups carrying out military operations in the immediate vicinity of civilian objects and specially protected objects suggests that such conduct could have been avoided on a number of occasions. In those instances, Palestinian armed groups may not have complied, to the maximum extent feasible, with their legal obligations. In cases where their goal may have been to use the presence of civilians to protect military assets from attack, this would constitute a violation of the customary law prohibition against the use of human shields.[52] With regard to the alleged use of medical facilities and ambulances for military purposes, if verified, and if the buildings or ambulances bore distinctive emblems of the Geneva Conventions, such as the Red Crescent, such actions would amount to an improper use of a distinctive emblem, in violation of customary international humanitarian law.

65. Regardless of the case-by-case legality of the actions of Palestinian armed groups, the military use of civilian buildings and densely populated areas from which to conduct military operations increases the risk to the civilian population and civilian objects. The questionable conduct of these armed groups does not, however, modify Israel's own obligations to abide by international law.

(b) Measures to facilitate the removal of the civilian population from the vicinity of military objectives

66. The authorities in Gaza stated that they had taken measures to facilitate evacuation from areas most affected by the hostilities, including by setting up shelters for internally displaced persons and conducting more than 4,450 evacuation missions in Beit Hanoun, Shuja'iya and Khuza'a. Nevertheless, the commission is concerned that, in some cases, the authorities in Gaza reportedly encouraged residents not to heed the warnings given by the Israel Defense Forces.[53] If confirmed, and depending on the circumstances, such declarations may indicate that the authorities in Gaza did not take all the precautions necessary to protect the civilian population under their control as required by international humanitarian law.

(c) Executions of suspected "collaborators"

67. The commission found that 21 alleged "collaborators" were executed between 5 and 22 August 2014. Sixteen of them were taken from Al-Katiba prison where they had been held in the custody of the local authorities in Gaza and shot by firing squad.[54] The Al-Qassam Brigades claimed responsibility for the executions, in some cases claiming that the persons executed had been "found guilty of giving information on the whereabouts of

[52] Protocol I, art. 51, para. 7.

[53] Statement by Hamas spokesperson Mushir al-Masri, 16 July 2014, available at www.youtube.com/watch?v=ks_nlgjfPWM (in Arabic).

[54] Amnesty International, "Strangling necks": Abductions, torture and summary killings of Palestinians by Hamas forces during the 2014 Gaza/Israel conflict", 26 May 2015.

fighters and civilian houses".[55] The local authorities in Gaza informed the commission that the executions had been carried out by Palestinian factions operating in secrecy, without instructions from the authorities. They have purportedly created a body to investigate allegations of extrajudicial killings. The Government of the State of Palestine likewise pledged to investigate such cases once it regains control over Gaza.

68. Owing to the link to the armed conflict, these extrajudicial executions constitute a violation of article 3 common to the 1949 Geneva Conventions, and therefore amount to a war crime. In addition, the commission found that the executions appear to have been carried out with the knowledge of the local authorities in Gaza, in violation of their human rights obligation to protect the right to life and security of those in their custody. Furthermore, the commission is concerned that the families of those executed have been stigmatized by being labelled the relatives of "collaborators".

B. West Bank, including East Jerusalem

69. The period of June to September 2014 was marked by heightened tensions in the West Bank, including East Jerusalem. Israeli security forces allegedly conducted more than 1,400 raids on Palestinian homes and other civilian buildings, often at night, and reportedly arrested more than 2,050 Palestinians, including children (see A/HRC/28/80/Add.1).[56] As at the end of August 2014, 473 persons were said to be held in administrative detention.[57] Cruel, inhuman and degrading treatment, including of children, was widely reported.[58] Israel also imposed severe restrictions on the movement of Palestinians within and out of the West Bank, as well as on their access to Al-Aqsa Mosque.[59] These measures prevented Palestinians from having access to services, markets, education and workplaces, and generated significant economic losses.[60] In addition, Israel resumed its practice of punitive home demolitions. Incidents of settler violence and settlement-related activity, including reportedly as a response to the abduction and killing of the three Israeli youths, were recorded.

70. There was also a stark rise in deaths and injuries of Palestinians by Israeli security forces. Between 12 June and 26 August 2014, 27 Palestinians, including five children, were allegedly killed and more than 3,100, Palestinians were injured by the Israeli security forces (A/HRC/28/80/Add.1, para. 10).[61] This figure reportedly rose to 36 Palestinians, including 11 children, by the end of September 2014.[62] The victims included Hashem Abu Maria, a well-known child rights activist who worked for the non-governmental organization Defence for Children International who was killed in circumstances where he presented no

[55] See news reports (in Arabic) at http://tinyurl.com/psv72pw and www.ahdath.info/?p=11335 and http://tinyurl.com/ms2z7lk and http://tinyurl.com/ots3rqd.

[56] See also Military Court Watch, "Statistics – Palestinian 'security' prisoners in Israeli detention".

[57] B'Tselem, "Israel holding more than 470 Palestinians in administrative detention – highest number in 5 years", 7 October 2014.

[58] See also testimonies collected by Military Court Watch available at http://is.gd/yJmFA3.

[59] See B'Tselem, "Hebron District and its 680,000 residents under third day of closure: increasing reports of property damage in arrest raids", 17 June 2014; and OCHA, Monthly Report, June – August 2014.

[60] See B'Tselem, "Hebron District and its 680,000 residents under third day of closure" (see footnote 61).

[61] OCHA, Monthly Report, June – August 2014 (see footnote 59).

[62] Submission from Al-Dameer Association for Human Rights, Al-Haq, Al Mezan Center for Human Rights and the Palestinian Center for Human Rights. See B'Tselem, "Palestinians killed by Israeli security forces in the West Bank, after operation Cast Lead", 2015.

threat to the security forces. United Nations data indicate that the number of those killed within this period was equivalent to the total number of Palestinian fatalities in similar circumstances throughout 2013 (ibid.). These data further show that the large number of deaths and injuries was a direct result of the regular recourse to live ammunition by the Israeli security forces[63] and the apparent rising trend in the use of 0.22 inch calibre bullets in crowd-control situations. The increased use of live ammunition, combined with the spike in casualties, appears to reflect a change in policy guiding the law enforcement operations of the Israel Defense Forces in the West Bank.[64]

71. The commission is particularly concerned that the pervasive use of live ammunition inevitably raises the risk of death or serious injury. The use of firearms against those not posing a threat to life or serious injury constitutes a violation of the prohibition of the arbitrary deprivation of life,[65] and may, depending on the circumstances, amount to an act of wilful killing. The unjustified recourse to firearms by law enforcement officials may be considered a war crime when it takes place in the context of an international armed conflict, including a situation of military occupation, and that the person killed was a protected person.

VI. Accountability

72. The commission notes the steps taken by Israel to investigate alleged violations of the law of armed conflict by the Israel Defense Forces during operation "Protective Edge"[66] and towards bringing its system of investigations into compliance with international standards. Flaws remain, however, with respect to the State's adherence to international standards. Further significant changes are required to ensure that Israel adequately fulfils its duty to investigate, prosecute and hold perpetrators accountable for violations of international humanitarian law and international human rights law. One of the measures needed is to enhance the independence and impartiality of the Military Advocate General and to ensure the robust application of international humanitarian law in his decisions regarding criminal investigations. For example, the definition of "military objectives" has implications for both for the Military Advocate General's operational guidance of troops on the ground and his subsequent assessment of whether to refer a case for criminal investigation. Moreover, the investigations process followed by the Israel Defense Forces focuses on possible individual criminal responsibility at the level of the soldier on the battlefield. Even where the behaviour of soldiers and low-ranking officers during hostilities has come into question, however, this has rarely resulted in criminal investigations. At the policy level, the commission looks forward to reading the report of the State Comptroller's inquiry into the procedure of decision-making by the military and political echelons during operation "Protective Edge". The Comptroller's inquiry should be supplemented by mechanisms – including criminal proceedings[67] and disciplinary measures – that aim to hold to account individuals who may have played a role in wrongdoing. In addition, Palestinian victims face significant obstacles that impede their right to benefit from effective remedies, including reparations.

73. The commission concludes that investigations by Palestinian authorities are woefully inadequate, despite allegations of violations of international humanitarian law by

[63] OCHA, Monthly Report, June – August 2014 (see footnote 59).
[64] B'Tselem, "Military steps up use of 0.22 inch bullets against Palestinian stone-throwers", 18 January 2015.
[65] International Covenant on Civil and Political Rights, art. 6.
[66] Israel Ministry of Foreign Affairs (see footnote 5), p. 1.
[67] See Fourth Geneva Convention, art. 146.

Palestinian actors, leaving Israeli victims without an effective remedy. With respect to the local authorities in Gaza, no steps appear to have been taken to ensure effective investigations into actions by Palestinian armed groups, seemingly owing to a lack of political will. The Palestinian Authority claims that its failure to open investigations results from insufficient means to carry out investigations in a territory over which it has yet to re-establish unified control.

VII. Conclusions and recommendations

A. Concluding observations

74. **The commission was deeply moved by the immense suffering of Palestinian and Israeli victims, who have been subjected to repeated rounds of violence. The victims expressed their continued hope that their leaders and the international community would act more resolutely to address the root causes of the conflict so as to restore human rights, dignity, justice and security to all residents of the Occupied Palestinian Territory and Israel. In relation to this latest round of violence, which resulted in an unprecedented number of casualties, the commission was able to gather substantial information pointing to serious violations of international humanitarian law and international human rights law by Israel and by Palestinian armed groups. In some cases, these violations may amount to war crimes. The commission urges all those concerned to take immediate steps to ensure accountability, including the right to an effective remedy for victims.**

75. **With regard to Israel, the commission examined carefully the circumstances of each case, including the account given by the State, where available. Israel has, however, released insufficient information regarding the specific military objectives of its attacks. The commission recognizes the dilemma that Israel faces in releasing information that would disclose in detail the targets of military strikes, given that such information may be classified and jeopardize intelligence sources. Be that as it may, security considerations do not relieve the authorities of their obligations under international law. The onus remains on Israel to provide sufficient details on its targeting decisions to allow an independent assessment of the legality of the attacks conducted by the Israel Defense Forces and to assist victims in their quest for the truth.**

76. **The commission is concerned that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.**

77. **Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the Israel Defense Forces on residential buildings, the use of artillery and other explosive weapons with wide-area effects in densely populated areas, the destruction of entire neighbourhoods in Gaza, and the regular resort to live ammunition by the Israel Defense Forces, notably in crowd-control situations, in the West Bank. In many cases, individual soldiers may have been following agreed military policy, but it may be that the policy itself violates the laws of war.**

78. **The commission's investigations also raise the issue of why the Israeli authorities failed to revise their policies in Gaza and the West Bank during the period under review by the commission. Indeed, the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue.**

79. **With regard to Palestinian armed groups, the commission has serious concerns with regard to the inherently indiscriminate nature of most of the projectiles directed towards Israel by these groups and to the targeting of civilians, which violate international humanitarian law and may amount to a war crime. The increased level of fear among Israeli civilians resulting from the use of tunnels was palpable. The commission also condemns the extrajudicial executions of alleged "collaborators", which amount to a war crime.**

80. **The Palestinian authorities have consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law are brought to justice. The commission is concerned that continuing political divisions contribute significantly to the obstruction of justice for victims of violations by Palestinian armed groups. The absence of measures to initiate criminal proceedings against alleged perpetrators calls into question the stated determination of the Palestinian Authority to achieve accountability. In accordance with their legal obligations, the authorities must take urgent measures to rectify this long-standing impunity.**

81. **Comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors will be a key deciding factor of whether Palestinians and Israelis are to be spared yet another round of hostilities and spikes in violations of international law in the future.**

B. Recommendations

82. **The persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies, special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory. Bearing in mind this wealth of guidance, the commission will not elaborate an exhaustive list of recommendations, which would repeat concerns registered by other bodies. Rather, it calls upon all duty bearers to implement fully all recommendations made by the above-mentioned bodies without delay in order to avert a crisis similar to that of summer 2014 in the future.**

83. **The commission calls upon all parties to fully respect international humanitarian law and international human rights law, including the main principles of distinction, proportionality and precaution, and to establish promptly credible, effective, transparent and independent accountability mechanisms. The right of all victims to an effective remedy, including full reparations, must be ensured without further delay. In this context, the parties should cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.**

84. **The commission also calls upon Israelis and Palestinians to demonstrate political leadership by both refraining from and taking active steps to prevent**

statements that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence.

85. **The commission calls upon the Government of Israel to conduct a thorough, transparent, objective and credible review of policies governing military operations and of law enforcement activities in the context of the occupation, as defined by political and military decision-makers, to ensure compliance with international humanitarian law and human rights law, specifically with regard to:**

(a) The use of explosive weapons with wide-area effects in densely populated areas, including in the vicinity of specifically protected objects;

(b) The definition of military objectives;

(c) The tactics of targeting residential buildings;

(d) The effectiveness of precautionary measures;

(e) The protection of civilians in the context of the application of the Hannibal directive;

(f) Ensuring that the principle of distinction is respected when active neighbourhoods are declared "sterile combat zones";

(g) The use of live ammunition in crowd-control situations.

The review should also examine mechanisms for continuous review of respect for international humanitarian law and human rights law during military operations and in the course of law enforcement activities in the context of the occupation.

86. **The commission further calls upon the Government of Israel:**

(a) To ensure that investigations comply with international human rights standards and that allegations of international crimes, where substantiated, are met with indictments, prosecutions and convictions, with sentences commensurate to the crime, and to take all measures necessary to ensure that such investigations will not be confined to individual soldiers alone, but will also encompass members of the political and military establishment, including at the senior level, where appropriate;

(b) To implement all the recommendations contained in the second report of the Turkel Commission, in particular recommendation No. 2 calling for the enactment of provisions that impose direct criminal liability on military commanders and civilian superiors for offenses committed by their subordinates, in line with the doctrine of command responsibility;

(c) To grant access to Israel and the Occupied Palestinian Territory for, and cooperate with, international human rights bodies and non-governmental organizations concerned with investigating alleged violations of international law by all duty bearers and any mechanisms established by the Human Rights Council to follow up on the present report;

(d) To address structural issues that fuel the conflict and have a negative impact on a wide range of human rights, including the right to self-determination; in particular, to lift, immediately and unconditionally, the blockade on Gaza; to cease all settlement-related activity, including the transfer of Israel's own population to the occupied territory; and to implement the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory;

(e) To accede to the Rome Statute.

87. **The commission calls upon the State of Palestine:**

(a) To ensure that investigations into violations of international humanitarian law and international human rights law, including international crimes, by the Palestinian Authority, the authorities in Gaza and Palestinian armed groups, where substantiated, comply with international human rights standards and that full accountability is achieved, including through criminal proceedings;

(b) To accelerate efforts to translate the declarations on Palestinian unity into tangible measures on grounds that would enable the Government of national consensus to ensure the protection of human rights and to achieve accountability for victims.

88. **The commission calls upon the authorities in Gaza and Palestinian armed groups:**

(a) To respect the principles of distinction, proportionality and precaution, including by ending all attacks on Israeli civilians and civilian objects, and stopping all rocket attacks and other actions that may spread terror among the civilian population in Israel;

(b) To take measures to prevent extrajudicial executions and eradicate torture, cruel, inhuman and degrading treatment; to cooperate with national investigations aimed to bring those responsible for violations of international law to justice; and to combat the stigma faced by families of alleged collaborators.

89. **The commission calls upon the international community:**

(a) To promote compliance with human rights obligations, and to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with article 1 common to the Geneva Conventions;

(b) To use its influence to prevent and end violations, and to refrain from encouraging violations by other parties;

(c) To accelerate and intensify efforts to develop legal and policy standards that would limit the use of explosive weapons with wide-area effects in populated areas with a view to strengthening the protection of civilians during hostilities;

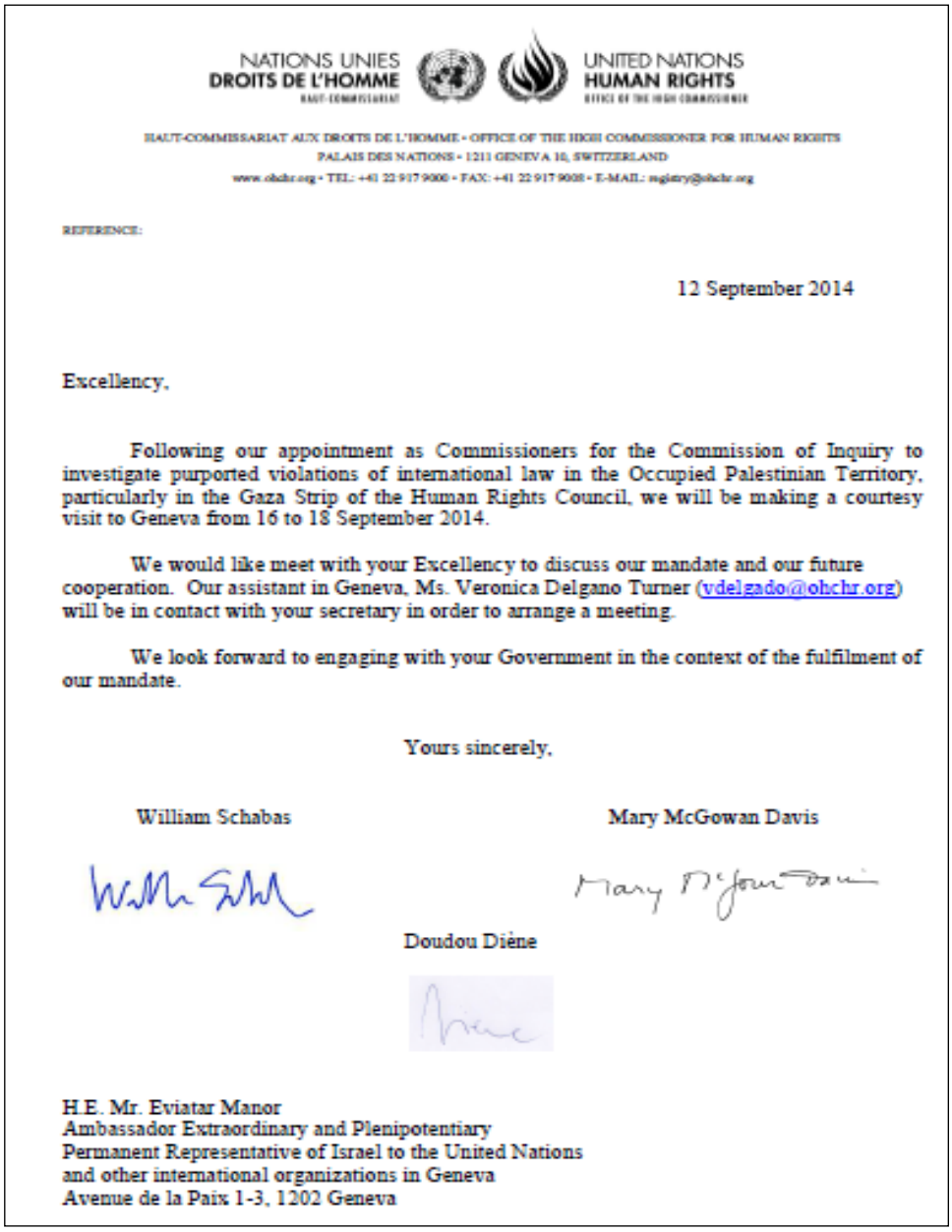
(d) To support actively the work of the International Criminal Court in relation to the Occupied Palestinian Territory; to exercise universal jurisdiction to try international crimes in national courts; and to comply with extradition requests pertaining to suspects of such crimes to countries where they would face a fair trial.

90. **The commission recommends that the Human Rights Council consider conducting a comprehensive review of the implementation of the numerous recommendations addressed to the parties by its own mechanisms, in particular relevant commissions of inquiry and fact-finding missions, and explore mechanisms to ensure their implementation.**

Annexes

[English only]

I. Correspondence



NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE:

12 September 2014

Excellency,

Following our appointment as Commissioners for the Commission of Inquiry to investigate purported violations of international law in the Occupied Palestinian Territory, particularly in the Gaza Strip of the Human Rights Council, we will be making a courtesy visit to Geneva from 16 to 18 September 2014.

We would like meet with your Excellency to discuss our mandate and our future cooperation. Our assistant in Geneva, Ms. Veronica Delgano Turner (vdelgado@ohchr.org) will be in contact with your secretary in order to arrange a meeting.

We look forward to engaging with your Government in the context of the fulfilment of our mandate.

Yours sincerely,

William Schabas

Mary McGowan Davis

Doudou Diène

H.E. Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
and other international organizations in Geneva
Avenue de la Paix 1-3, 1202 Geneva

NATIONS UNIES UNITED NATIONS

UNITED NATIONS INDEPENDENT COMMISSION OF INQUIRY ON THE 2014 GAZA CONFLICT

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TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: coigaza@ohchr.org

REFERENCE: COI-Gaza/WS/EM/vdt

16 October 2014

Excellency,

I am writing in my capacity as Chair of the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict. Mary McGowan Davis, Doudou Diene being the two other Commissioners. We were appointed by the President of the Human Rights Council, His Excellency Ambassador Baudelaire Ndong Ella, in August 2014.

The three Commissioners request your Government to provide them, as well as the staff members of its Secretariat, access to Israel. In order to implement our mandate, we need to visit Israel and to have access via Israel to the Gaza strip and the West Bank. In accordance with its mandate, the Commission is investigating alleged violations attributable to all parties to the conflict in these three areas. The cooperation of the Government of Israel will permit us to meet with victims and to visit locations where violations took place in all of these areas.

Given the short duration of our mandate and the request by the Human Rights Council that we report in March 2015, we wish to travel to the region for several weeks during November and December. Specifically, we would request your cooperation in travelling to Israel and visiting its territory in order to investigate rocket attacks emanating from Gaza as well as to meet with civilian and military officials in the Government of Israel able to provide us with information about these attacks as well as about activities of the Government of Israel in the Gaza strip and the West Bank that are relevant to the conflict. In addition, we seek your assistance in facilitating access so as to conduct our work in the Gaza strip and the West Bank.

I also take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission. We will be in Geneva next week should a meeting with you be possible and convenient.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
Commission of Inquiry on the 2014 Gaza Conflict

His Excellency
Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
and other International Organizations at Geneva
Avenue de la Paix 1-3, 1202 Geneva
E-mail: mission-israel@geneva.mfa.gov.il

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• TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: coigaza@ohchr.org

REFERENCE: COI-Gaza/WS/KL/vdt

24 November 2014

Excellency,

I refer to the letter dated 16 October 2014 with regard to the United Nations Independent Commission of Inquiry on the 2014 Gaza conflict.

The Commission would like to reiterate the request for cooperation in implementing its mandate, including by providing access to Israel and facilitating access to the West Bank, including East Jerusalem and the Gaza Strip to enable the Commission to meet with victims of alleged violations and relevant authorities, including military officials. We would also respectfully request access to all documentation relevant to our inquiry.

The Commission reiterates its firm conviction that in order to examine all incidents relevant to its mandate and investigate alleged violations committed by all parties, including rocket attacks that emanated from Gaza and its impact on Israeli citizens, it is crucial that the Commission visit all affected areas.

The Commission intends to conduct field visits in the coming two months. The delegation will be composed by the three Commissioners, accompanied by staff of the Secretariat.

The Commission will be in Geneva on 26 and 27 November 2014, and would like to take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
United Nations Independent Commission of Inquiry
on the 2014 Gaza Conflict

His Excellency
Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
and other International Organizations at Geneva
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REFERENCE: COI-Gaza/WS/KL/vdt

7 January 2015

Excellency,

I refer to our previous correspondence with regard to the United Nations Independent Commission of Inquiry on the 2014 Gaza conflict. The Commission would like to once again reiterate the request for cooperation in implementing its mandate, including by providing access to Israel and facilitating access to the West Bank, including East Jerusalem and the Gaza Strip to enable the Commission to meet with victims of alleged violations and relevant authorities.

The Commission wishes to make it clear that it interprets this mandate to include investigations of the activities of Palestinian armed groups in Gaza, including attacks on Israel. The Commission reiterates its firm conviction that in order to examine all incidents relevant to its mandate including assessing the impact of rocket and mortar attacks on Israeli citizens, it is crucial that the Commission visit all affected areas.

The Commission will be in Geneva from 12 to 16 January 2015, and would like to take this opportunity to reiterate our request for a meeting with Your Excellency in order to further discuss the work of the Commission.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
Commission of Inquiry on the 2014 Gaza Conflict

His Excellency
Mr. Eviatar Manor
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Israel to the United Nations
and other International Organizations at Geneva
Avenue de la Paix 1-3, 1202 Geneva
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REFERENCE: COI-Gaza/WS/KL/vdt

24 November 2014

Excellency,

I refer to our meeting of 17 September 2014 regarding the work of the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict and the possibility of us seeking the assistance of the Government of Egypt to facilitate the Commission's access to Gaza if access was not possible through Israel.

As we have not yet received a response to several requests to the Israeli authorities, we would like to express our desire to travel to Gaza through the Rafah crossing. The cooperation of the Government of Egypt will permit us to meet with victims and to visit locations where incidents that are relevant to the conflict may have taken place.

The Commission very much appreciates receiving the valuable support of the Government of Egypt in facilitating the delegation's travel to Gaza through the Rafah crossing. We have started conducting interviews with victims and witnesses and we intend to carry out field investigations in Gaza in January. The cooperation of your Excellency's Government will permit us to meet with victims and to visit locations where incidents that are relevant to the conflict may have taken place.

The Commission intends to travel to Gaza for 10 to 15 days during the period of 9 to 25 January 2015. The delegation will be composed of the three Commissioners and will be accompanied by six to eight staff of the Secretariat. A detailed list of the members of the delegation will be sent to you ahead of the mission to allow sufficient time to complete the visa requirements and make any other necessary arrangements.

Please accept, Excellency, the assurances of my highest consideration.

William Schabas
Chair
United Nations Independent Commission of Inquiry
on the 2014 Gaza Conflict

His Excellency
Mr. Amr Ramadan
Ambassador
Permanent Representative of Egypt to the United Nations
and other International Organizations at Geneva
Avenue Blanc 49
1202 Geneva
E-mail: mission.egypt@ties.itu.int

II. Stakeholders consulted by the commission of inquiry*

Diplomatic missions

Permanent Mission of the Republic of Cyprus to the United Nations Office at Geneva and other international organizations in Switzerland

Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other international organizations in Geneva

Permanent Mission of France to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Federal Republic of Germany to the United Nations Office and other international organizations in Geneva

Permanent Mission of Ireland to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations Office and other international organizations in Geneva

Permanent Mission of the State of Qatar to the United Nations Office and other international organizations in Geneva

Permanent Mission of the Russian Federation to the United Nations and other international organizations in Geneva

Permanent Mission of the Republic of Rwanda to the United Nations Office and other international organizations in Geneva

Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva

Permanent Observer Mission of the State of Palestine to the United Nations Office and other international organizations in Geneva

Permanent Delegation of the European Union to the United Nations Office and other international organizations in Geneva

Domestic authorities

State of Palestine

Ministry of Agriculture

Ministry of Health

Ministry of the Interior

Office of the Prosecutor

* In the light of the commission's confidentiality policy, it should be noted that inclusion in this list was done on the basis of explicit authorization by the relevant party. Therefore, the list is not exhaustive and includes only those persons and organizations that authorized the commission to be mentioned in the report.

Central Bureau of Statistics

Jerusalem Governorate

Palestinian Liberation Organization

Higher National Commission for Prisoners and Detainees Affairs

Negotiations Support Unit

Authorities in Gaza

Other official meetings

Ministry of Foreign Affairs of the Hashemite Kingdom of Jordan

United Nations and international organizations

Human Rights Council, President

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Office for the Coordination of Humanitarian Affairs

United Nations Children's Fund

United Nations Entity for Gender Equality and the Empowerment of Women

United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014

United Nations High Commissioner for Human Rights

Office of the United Nations High Commissioner for Human Rights

Office of the United Nations High Commissioner for Human Rights, Occupied Palestinian Territory

United Nations Institute for Training and Research Operational Satellite Applications Programme

United Nations Relief and Works Agency for Palestine Refugees

World Health Organization

Non-governmental organizations

Adalah – The Legal Center for Arab Minority Rights in Israel

Al-Haq

Addameer Prisoner Support and Human Rights Association

Al Mezan Center for Human Rights

Amnesty International

Badil – Resource Center for Palestinian Residency and Refugee Rights

Civic Coalition for Palestinian Rights in Jerusalem

Defence for Children International Palestine

Diakonia

Euromid Observer for Human Rights

Human Rights Watch

International Association of Jewish Lawyers and Jurists

International Federation for Human Rights

Palestinian Centre for Human Rights

Palestinian Medical Relief Society

Physicians for Human Rights – Israel

Public Committee Against Torture in Israel

Other Voices from the South

Women's Affairs Center of Palestine

Women's Affairs Technical Committee of Palestine

Women's Centre for Legal Aid and Counselling

UN Watch

Experts

Doctor Mads Gilbert

Colonel (ret.) Richard Kemp

Daniel Reisner

Professor Marco Sassoli

III. Submissions to the commission of inquiry*

United Nations agencies, offices and special procedures mandate holders

Office for the Coordination of Humanitarian Affairs

Office of the United Nations High Commissioner for Human Rights

United Nations Children's Fund

United Nations Development Programme

United Nations Entity for Gender Equality and the Empowerment of Women

United Nations Institute for Training and Research Operational Satellite Applications Programme

United Nations Mine Action Service

United Nations Relief and Works Agency for Palestine Refugees

World Health Organization

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Special Rapporteur on violence against women, its causes and consequences

Non-governmental organizations

Adalah – The Legal Center for Arab Minority Rights in Israel

Addameer – Prisoner Support and Human Rights Association

Al Dameer Association for Human Rights

Al-Haq

Alkarama Foundation

Al Mezan Center for Human Rights

American Association of Jurists

Amnesty International

Arab Lawyers Union

Artificial Limbs and Polio Center in Gaza

Badil-Resource Center for Palestinian Residency and Refugee Rights

Bara'm El-Funoun Palestinian Dance Troupe

Civic Coalition for Palestinian Rights in Jerusalem

* In the light of the commission's confidentiality policy, it should be noted that inclusion in this list was done on the basis of explicit authorization by the relevant party. Therefore, the list is not exhaustive and includes only those persons and organizations that authorized the commission to mention their submissions in the report.

Defence for Children International – Palestine and Israel Section

Euromid Observer for Human Rights

Forensic Architecture

HaMoked – Center for the Defence of the Individual

High Level International Military Group

Hemaya Centre for Human Rights

International Association of Democratic Lawyers

International Association of Jewish Lawyers and Jurists

International Federation for Human Rights

International Network on Explosive Weapons

Jerusalem Center for Genocide Prevention and Hebrew University Hadassah Genocide Prevention Program

Jerusalem Center for Public Affairs

Kvinna till Kvinna Foundation

Lawyers for Palestinian Human Rights

Mada – Palestinian Center for Development and Media Freedoms

National Lawyers Guild, Palestine Subcommittee

NGO Monitor

Palestinian Centre for Human Rights

Palestinian Medical Relief Society

Palestinian Working Women Society for Development

Physicians for Human Rights Israel

Public Committee against Torture in Israel

Rural Women's Development Society

Society of St. Yves, Catholic Center for Human Rights

The Lawfare Project

Women's Centre for Legal Aid and Counselling

UK Lawyers for Israel

Individual submissions[**]

Charles Abelsohn

Professor Amichai Cohen

Denis Mac Eoin

[**] The list does not include the large number of e-mails and letters received recounting individual experiences.

Doctor Mads Gilbert

Jonathan Tate Harris

Eado Hecht

Colonel (ret.) Richard Kemp

Trevor S. Norwitz

Maurice Ostroff

United Nations A/HRC/40/74

General Assembly

Distr.: General
6 March 2019

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory*

Summary

In the present report, submitted pursuant to Human Rights Council resolution S-28/1, the independent international commission of inquiry investigates the demonstrations held in Gaza between 30 March and 31 December 2018, the response of Israeli security forces to the demonstrations and the impact on civilians in Gaza and Israel.

The commission was mandated to focus on accountability and identifying those responsible for violations of international human rights law and international humanitarian law. The commission found reasonable grounds to believe that some violations may constitute international crimes.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution S-28/1, the Human Rights Council established the international independent commission of inquiry with a mandate to, inter alia, investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, and to report thereon to the Council at its fortieth session.[1]

2. Santiago Canton (Argentina) (Chair), Sara Hossain (Bangladesh) and Kaari Betty Murungi (Kenya) were appointed to the commission by the President of the Human Rights Council.[2]

3. A secretariat from the Office of the United Nations High Commissioner for Human Rights (OHCHR) was appointed to support the commission. Despite several requests, Israel did not grant the commission access to Israel or the Occupied Palestinian Territory nor did it cooperate or provide information. While the Government of Egypt indicated a willingness to provide access to Gaza for the commission, ultimately it did not, citing security reasons. The commission undertook missions to Amman in November 2018 and Istanbul, Turkey in December 2018.

4. The commission is grateful to the Governments of Turkey, Jordan, Egypt and the State of Palestine for their cooperation with the commission and for facilitating its work.

II. Methodology

5. In accordance with its mandate, the commission focused its inquiry on the protests that began on 30 March 2018. Given the time and access limitations, the commission investigated events up to 31 December 2018, with a particular focus on three demonstration days: 30 March, the first day; 14 May, which saw the highest number of fatalities and wounded; and 12 October, one of two demonstration days with the highest number of fatalities in the latter part of 2018.

6. The commission paid special attention to the protection of civilians in both Gaza and Israel, and to groups warranting protection under international law, including children, women, health workers, journalists and persons with disabilities. It was also mandated to focus on accountability and identifying those responsible for violations and international crimes.

7. The commission investigated the response of Israeli security forces to the protests, and the policing of demonstrations by Palestinian security forces in the West Bank supporting the "great march of return and breaking of the siege" and demonstrations held inside Gaza since 30 March 2018.

8. The commission conducted 325 interviews and meetings with victims, witnesses, government officials and members of civil society, from all sides, and gathered more than 8,000 documents, including affidavits, medical reports, open source reports, social media content, written submissions and expert legal opinions, video and drone footage, and photographs.

9. As is customary practice for the fact-finding bodies of the United Nations, the commission adopted an evidentiary standard of "reasonable grounds to believe". It employed fact-finding practices aimed at ensuring the safety and security of witnesses and victims.

[1] The detailed findings of the commission will be made available in a conference room paper on its webpage at www.ohchr.org/EN/HRBodies/HRC/CoIOPT/Pages/OPT.aspx.

[2] David Crane (United States of America), who was initially appointed as Chair, resigned on 22 August 2018 and was replaced by Mr. Canton on 20 September 2018.

10. The commission thanks all those who provided information, in particular victims and witnesses.

III. Applicable law

11. Both Israel and the State of Palestine are party to the International Covenant on Civil and Political Rights, other core international human rights treaties and the Geneva Conventions of 1949, and are bound by customary international law. Within Gaza, the de facto authorities led by Hamas bear human rights obligations given their exercise of government-like functions.

12. Israel and Palestinian organized armed groups (Izz al-Din al-Qassam Brigades and Al Quds Brigades, the military wings of Hamas and Palestinian Islamic Jihad respectively), as parties to the armed conflict, are bound by international humanitarian law. As the occupying Power, Israel is also bound by the rules on occupation under international treaty and customary law.

13. Substantively, the commission assessed whether these duty bearers respected, protected and fulfilled the right to life, the freedom of peaceful assembly and the freedom of expression, among other rights.

IV. Context and background

14. The "great march" entailed weekly demonstrations by Palestinians near the fence that since 1996 has separated Gaza and Israel (along the Green Line traced by the armistice agreements of 1949), demanding that the blockade imposed on Gaza be lifted and the return of Palestinian refugees.

A. Blockade

15. Gaza is home to 2 million people – half of whom are children – living in a coastal strip 42 km long, with a population density that is one of the highest in the world. Their access to the outside world and to the rest of the Occupied Palestinian Territory is extremely limited owing to movement restrictions imposed by Israel since the early 1990s, increasing in the 2000s and maintained after Israel withdrew its settlements from Gaza in 2005. After Hamas[3] won the Palestinian legislative elections in 2006, in June 2007 Israel declared Gaza "hostile territory" and imposed an air, land and sea blockade in a campaign of "economic warfare".

16. By 2015, the Israeli blockade and restrictions on entry and exit of goods and people had halved the GDP of Gaza and reduced it to a humanitarian case of profound aid-dependency, with the world's highest unemployment rate (54 per cent overall, with 70 per cent youth unemployment) and 68 per cent of the population rendered food insecure. The United Nations and the International Committee of the Red Cross have both found that the blockade constitutes collective punishment.

17. In 2017, the United Nations warned that Gaza would become "unliveable", pointing to an ever-deepening water, electricity, health, education and food crisis resulting from the blockade.[4]

[3] Hamas describes itself as a "Palestinian Islamic national liberation and resistance movement", and includes a political party and an armed wing (see http://hamas.ps/en/post/678/a-document-of-general-principles-and-policies). Hamas or its armed wing is listed as a terrorist organization by Australia, Canada, the European Union, Israel, New Zealand and the United States of America.

[4] "Gaza: Ten Years Later", United Nations Country Team in the occupied Palestinian Territory, July 2017.

B. Return of refugees

18. Some 75 per cent of Gazans are registered refugees, living in or outside one of eight cramped cinderblock refugee camps in Gaza. They are among the descendants of the 750,000 Palestinians who, during the 1948 conflict, fled or were expelled from their previous homes in today's Israel, in what Palestinians call the Nakba ("catastrophe"). In 1948, the General Assembly, in its resolution 194, recognized that refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property. Following the hostilities of 1967, when Israel occupied the West Bank, including East Jerusalem and Gaza, the Assembly reaffirmed in 1974, in its resolution 3236, the "inalienable right" of return of Palestinian refugees from both the 1948 and 1967 hostilities. In its resolution 242 (1967), the Security Council affirmed the necessity of a "just settlement" of the refugee problem.

19. While Palestinians have since urged the implementation of General Assembly resolutions 194 and 3236, Israel opposes their return, arguing that "the influx of millions of Palestinians into the State of Israel would threaten the existence of Israel as a Jewish state, obliterating its basic identity as the homeland of the Jewish people and a refuge for persecuted Jews worldwide."[5]

20. The return of refugees was among the "final status" issues that the negotiations held in 1993 leading to the Oslo Accords set out to solve within five years. Some 25 years later, the issue remains unresolved and the Accords unimplemented. In the West Bank and East Jerusalem, the construction of settlements and a separation wall deemed unlawful by the International Court of Justice has contributed to what the United Nations Special Coordinator for the Middle East Peace Process called a "growing risk of a one-state reality of perpetual occupation".[6]

21. On 6 December 2017, the Government of the United States of America announced its decision to move its embassy to Jerusalem, thereby reducing hopes for a two-State solution further and sparking new demonstrations across the Occupied Palestinian Territory.

C. The "great march of return and breaking of the siege": background and principles

22. On 7 January 2018, Ahmed Abu Artema, a 34-year-old Palestinian poet and journalist, posted on Facebook the idea of a non-violent march at the separation fence, to draw attention to General Assembly resolution 194 and to the dire humanitarian situation in Gaza. In the post, ending #GreatMarchofReturn, he wrote, "what if 200,000 demonstrators marched peacefully and broke through the fence east of Gaza and entered a few kilometres into the lands that are ours, holding the flags of Palestine and the keys to return, accompanied by international media, and then set up tents inside and established a city there."

23. The idea evolved into a movement of Palestinians. Within weeks, Abu Artema, civil society activists and other stakeholders drew up a charter of 12 principles, envisaging a national march by Palestinians of all ages, genders, political and social groups.

24. A higher national committee and 12 subcommittees were subsequently established to organize and oversee the planning of the march. Its members came from all sectors of Palestinian society, including civil society, cultural and social organizations, student unions, women's groups, eminent persons and members of clans. Representatives of several political parties, including the Democratic Front for the Liberation of Palestine, Fatah, Hamas, the Popular Front for the Liberation of Palestine and Palestinian Islamic Jihad, were

[5] See https://mfa.gov.il/MFA/ForeignPolicy/FAQ/Pages/FAQ_Peace_process_with_Palestinians_Dec_2009.aspx# Refugees1.

[6] See https://unsco.unmissions.org/security-council-briefing-situation-middle-east-including-palestinian-question-2.

also members (the armed wings of these parties were not represented on the committee). While the members of the committee held diverse political views, they stated that their unifying element was the principle that the march was to be "fully peaceful from beginning to the end" and demonstrators would be unarmed.

25. The higher national committee established demonstration sites in open land along the separation fence in all five Gaza governorates: northern Gaza Strip (Abu Safia); east of Gaza City (Malaka); central Gaza Strip (El Bureij); east of Khan Younis (Khuzaa); and in the south in Rafah (Al-Shawkah). Each site comprised a "camp of return" – a group of tents positioned 700–1,000 m from the separation fence, named after villages from which Palestinians were displaced in 1948.

26. Demonstrations were held at these sites every Friday and occasionally other weekdays between 30 March and 31 December 2018, and continued thereafter. Beginning in August, weekly demonstrations were also organized at the Zikim beach in North Gaza.

D. Conflict between Israel and Palestinian armed groups

27. Over the past 10 years, Gaza and Israel have experienced successive violent confrontations; these included three major escalations with massive land and air attacks by Israeli security forces on Gaza and indiscriminate rocket attacks on Israel by Palestinian organized armed groups. Nearly 1,400 Palestinians and 13 Israelis were killed during the three weeks of hostilities in 2008 and 2009, during Operation Cast Lead; 174 Palestinians and 6 Israelis were killed during one week of hostilities in 2012; and 2,251 Palestinians and 71 Israelis were killed during 51 days of hostilities in mid-2014, during Operation Protective Edge.

28. A ceasefire mediated by Egypt between Israel and Hamas was concluded in August 2014. Episodes of hostilities have since continued, and included Israeli airstrikes and incursions into Gaza, and indiscriminate rocket or mortar fire by Palestinian armed groups towards Israel. As these events occurred outside the time and place of the demonstration, the commission did not investigate them.

E. Israeli preparations and rules of engagement

29. Israeli security forces stated that they perceived a new security threat in the demonstrations as being closely linked with Palestinian armed groups and an attempt to mask "terror activities". This assessment was based partly on statements by Palestinian public figures, including leaders of Hamas, speaking of return and of crossing the fence, including in ambiguous or inflammatory terms.

30. Prior to the first demonstration, Israeli forces reinforced their positions at the fence with additional troops, including more than 100 sharpshooters. They dropped leaflets in Gaza and contacted Palestinian bus companies to warn against participation. At the demonstration sites, they strengthened the separation fence and its underground barrier (to prevent and detect cross-border tunnels), installed kilometres of barbed wire coils on the Gazan side as additional barriers, cleared vegetation on both sides, dug deep trenches on the Israeli side and erected a battery of earth mounds or berms onto which snipers were positioned for better visibility and shooting accuracy.

31. The rules of engagement apparently permitted live fire at demonstrators as a last resort in the event of imminent threat to life or limb of Israeli soldiers or civilians. They permitted snipers to shoot at the legs of "main inciters" as a means to prevent a demonstrating crowd from crossing the separation fence, because the Israeli forces viewed crossing as a potential imminent threat, in part because the crowd might include militants. The rules also permitted the use of lethal force against any demonstrators "directly participating in hostilities", such as an armed attack against Israeli forces.

F. Legal assessment of the demonstrations

32. In the commission's view, the demonstrations were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or a military campaign. Thus, the legal framework applicable to policing the protests was that of law enforcement, based in international human rights law. This assessment did not change following the commission's investigation into the demonstrators' affiliation to or membership in organized armed groups. Owing to the ongoing armed conflict, the rules of international humanitarian law were also in effect and operated as *lex specialis* during active hostilities. International humanitarian law only permits attacks that comply with the principles of distinction, proportionality and precaution.

33. Founded in the right to life, law enforcement rules based on international human rights law permit potentially lethal force by law enforcement agencies or security forces only in self-defence or for the defence of others when there is an imminent threat to life. A State's use of force must be necessary to achieve a legitimate law enforcement objective, and the force used must be proportionate to the harm being averted. The use of firearms against the human body is potentially lethal force.

34. For a threat to life to be regarded as imminent, an attacker should have no remaining preparatory steps and be in sufficient geographic proximity for the attack to succeed. An imminent or immediate threat should be understood to mean a matter of seconds, not hours (A/HRC/26/36, para. 59).

35. Israeli and Palestinian non-governmental human rights organizations challenged the application of lethal force by Israeli forces at the fence in the Israel Supreme Court, contending that the rules of engagement violated international law because they were too permissive or were being applied permissively. The Court disagreed and approved the rules of engagement, holding that "the use of potentially lethal force for the sake of dispersing a mass riot – from which an actual and imminent danger is posed to life or bodily integrity – is, in principle, permitted, subject to proving necessity and proportionality." The Court declined to examine how the rules were applied on the ground, deferring to the internal investigations of Israeli security forces.[7]

36. The interpretation and application of the legal thresholds of "imminent threat to life" under international human rights law and "direct participation in hostilities" under international humanitarian law had a direct impact on the commission's findings, ultimately serving to distinguish between lawful and unlawful uses of lethal force. To make such an assessment was the commission's primary task when analysing whether violations had been committed against demonstrators. Here it considered the evolution of international humanitarian law and international human rights law since the Second World War, which, amid vigorous discussion, have converged in the direction of increased protection of individuals.

G. Statistics

37. The commission focused its investigation on fatalities and physical injuries occurring in the context of the demonstrations between 30 March and 31 December 2018. See the table below.

[7] See *Yesh Din – Volunteers for Human Rights and Others v. Israel Defense Forces Chief of General Staff and Others*, Case No. HCJ 3003/18, Judgment of 24 May 2018. The rules of engagement were not shown to the court.

Fatalities and injuries between 30 March and 31 December 2018

Category	*Total*	*Women*	*Children*	*Body part targeted*				*Press*[e]	*Health workers*[f]
				Head/neck	*Torso*	*Upper limb*	*Lower limb*		
Gaza:									
Fatalities by live ammunition[a]	183	1	32	70	101	0	12	2	3
Injuries by live ammunition[b]	6 106	159	940	175	401	493	4 903	39	39
Injuries by bullet fragmentation/shrapnel[c]	1 576	59	345	-	-	-	-	5	34
Injuries by rubber-coated metal bullet	438	36	124	-	-	-	-	4	34
Injuries by direct tear-gas canister hit	1 084	60	233	-	-	-	-	-	85
Israel:									
Fatalities[d]	0	0	0	-	-	-	-	-	-
Injuries by stones, explosives	4	0	0	-	-	-	-	-	-

[a] The commission found that 189 Palestinians were killed at demonstrations sites, 183 of whom by live ammunition used by Israeli security forces; 29 were members of Palestinian organized armed groups that were parties to the conflict with Israel (of which one was killed by a tear-gas canister, and 22 were shot on 14 May). The commission had insufficient information to render a finding on the membership of 18 of the other persons killed.

[b] The commission's estimate of 6,103 persons wounded by live ammunition at demonstration sites is based on its analysis of detailed data sets and electronic patient registry extracts collected separately from a large range of health-care providers in Gaza (including eight hospitals run by the Ministry of Health, six other hospitals, and several health-care and rehabilitation centres run by international non-governmental entities and organizations). Of these, the commission tracked and corroborated more than 300 incidents in which demonstrators were wounded by live ammunition. Some 134 of those shot were hit in multiple or other parts of the body.

[c] Most injuries by shrapnel were the result of bullet fragmentation from live ammunition. A small number may also have been caused by metal fragments stemming from direct tear-gas canister hits.

[d] One Israeli soldier was killed on a Friday while demonstrations were ongoing but outside the protest sites; see para. 91.

[e] Incidents affecting journalists or other media workers investigated or corroborated by the commission. The total number is likely higher. See paras. 72–74.

[f] World Health Organization, Attacks on health care in the Gaza Strip, January–December 2018. See paras. 69–71.

38. The Office for the Coordination of Humanitarian Affairs has estimated that 23,313 Palestinians were injured by Israeli forces in the context of the demonstrations in 2018, including by tear-gas inhalation and canisters, contributing to the highest toll of injuries recorded in the Occupied Palestinian Territory since 2005.[8]

39. The commission focused on investigating incidents entailing the use of live ammunition.

[8] www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid.

V. Inquiry into specific incidents

A. 30 March 2018

40. The demonstrations began on 30 March 2018, and were reportedly attended that day by between 40,000 and 50,000 Palestinian men, women, children, elders, civil society and political activists, and public figures.

41. Demonstrators congregated at five main demonstration sites. The atmosphere was initially festive, with activities in tents including poetry readings, seminars, lectures and cultural and sporting activities.

42. Most gathered at their respective camp of return along Jakkar Street, which runs parallel to and is approximately 300 m from the separation fence. Smaller numbers of demonstrators moved closer to the fence, and stood, sat or lay on the ground. Some demonstrators near the fence threw stones, burned tyres and waved Palestinian flags. The commission did not find that demonstrators were armed.

43. As early as 9 a.m., Israeli security forces responded to the demonstrations with live ammunition.

44. The killings and injuries on 30 March investigated by the commission included:

(a) At the demonstration site in El Bureij:

- Mohammad Obeid (24)

  Mohammad was a footballer. At approximately 9 a.m., Israeli forces shot him with a single bullet in both legs while he was walking alone approximately 150 m from the separation fence. His injuries ended his football career.

- Schoolboy (16)

  Israeli forces shot a schoolboy in the face as he distributed sandwiches to demonstrators, 300 m from the separation fence. His hearing is now permanently impaired.

- Abed Hawajri (41)

  Abed was a resident of the Nuseirat refugee camp. Israeli forces killed him with a shot to the abdomen as he stood in a crowd of demonstrators approximately 150 m from the separation fence.

- Naji Abu Hojayeer (24)

  Naji, a mechanic from the Bureij refugee camp, was killed by a shot to the abdomen fired by Israeli forces as he stood wrapped in a Palestinian flag, 300 m from the separation fence.

- Yousef Kronz (19)

  Israeli forces shot Yousef, a student journalist, in the legs with two bullets in immediate succession. He was wearing a blue vest marked “Press” while photographing the demonstrations approximately 800 m from the separation fence. His right leg had to be amputated.

(b) At the North Gaza demonstration site:

- Mohammad Kamal Najar (25)

  Mohammad, from Jabaliya, was killed when Israeli forces shot him in the abdomen as he approached a wounded friend approximately 50 m from the fence, and threw stones at the Israeli soldiers.

- Tha’ier Rabaa (30)

  Tha’ier, from Jabaliya, was shot in the thigh by Israeli forces approximately 30 m from the separation fence. He died of his injuries a week later.

- Mohammad Ajouri (17)

  Israeli forces shot Mohammad, a student athlete, in the back of his right leg as he gave onions to demonstrators to relieve tear-gas symptoms, approximately 300 m from the fence. His leg had to be amputated.

- Abdel Fatah Nabi (18)

  Israeli forces killed Abdel, from Beit Lahia, when they shot him in the back of the head as he ran, carrying a tyre, away from and about 400 m from the separation fence.

- Bader Sabagh (19)

  Bader, from Jabaliya, was killed by Israeli forces when they shot him in the head as he stood smoking a cigarette 300 m from the separation fence.

(c) At the Gaza City demonstration site:

- Schoolboy (13)

  Israeli forces shot a schoolboy in the leg as he stood in a crowd on Jakkar Street, approximately 300 m from the separation fence.

(d) At the Khan Younis demonstration site:

- Schoolgirl (13), Marwan Qudieh (45) and two wounded

  Israeli forces injured a schoolgirl with bullet fragmentation. As she lay on the ground, four men attempted to evacuate her. The forces shot three of them, killing Marwan Qudieh (45) from Khuzaa village and injuring a potato seller and another man in the legs. One of the rescuers had to have a leg amputated.

- Jihad Abu Jamous (30)

  Jihad, a resident of Bani Suheila, was killed by Israeli forces by a shot to the head, approximately 300 m from the separation fence.

(e) At the Rafah demonstration site:

- Ameen Abu Mo'amar (25)

  Ameen, from Al-Soufi neighbourhood, was killed by Israeli forces with a shot to the abdomen as he stood in a crowd, approximately 60 m from the separation fence.

- Maryam Abu Matar (16)

  Maryam, a schoolgirl from Rafah, was shot in the leg by Israeli forces as she stood with a small group of girls waving Palestinian flags, approximately 50 m from the separation fence.

- Alaa Dali (21)

  Alaa, a member of the Palestinian cycling team, was shot by Israeli forces in the leg as he stood holding his bicycle, wearing his cycling kit, watching the demonstrations, approximately 300 m from the separation fence. His right leg had to be amputated, ending his cycling career.

45. Israeli security forces wounded demonstrators as far as a kilometre away from the separation fence. In one case, they shot a 21-year-old student in both legs minutes after he arrived at the Bureij demonstration site.

46. Overall, at the demonstrations held on 30 March, Israeli forces killed 18 people and wounded 703 people with live ammunition; another 62 people were wounded by bullet fragmentation or shrapnel. The youngest casualty was a 2-year-old, wounded in the head; the oldest, a 71-year-old woman shot in the legs.

B. 31 March–13 May 2018

47. Over the weeks that followed, demonstrations were held every Friday at the five main sites. A minority of demonstrators slung and threw stones, burned tyres and cut and removed barbed wire coils on the Gaza side of the separation fence. From April, some demonstrators flew kites or balloons carrying burning rags or coals wrapped in chicken wire towards Israel, damaging Israeli property, including agricultural land.

48. Some activities, such as the launching of incendiary kites, cutting barbed wire or tyre burning, began to be organized by self-declared "units", some of them through their own Facebook pages. The commission found no evidence to suggest that they were directed or coordinated by armed groups.

49. Israeli forces continued to employ live ammunition against demonstrators, killing and wounding civilians, including children, journalists and health workers, and leaving many with permanent disabilities.

C. 14 May 2018

50. The demonstrations of 14 May were scheduled to coincide with the opening of the United States Embassy in Jerusalem and the seventieth anniversary of the Nakba. Under the theme "Return of a million", between 35,000 and 40,000 people reportedly attended the demonstrations held at the five original sites and at eight additional temporary sites.

51. The day before, the Israel Defense Forces claimed in an English language video that, on 14 May, "the Hamas terrorist organization plans to send armed terrorists among 250,000 violent rioters to swarm and breach Israel's border with Gaza and enter Israeli communities". Hamas "plans to carry out a massacre in Israel. The Israel Defense Forces will not let them."

52. At all sites, large crowds of unarmed demonstrators congregated around the tents and in the open space between Jakkar Street and the separation fence. Many primarily young and middle-aged men slung or threw stones, shouted slogans and burned tyres, which created a wall of smoke. Some demonstrators cut or pulled away the barbed wire coils or approached the separation fence. In one incident in the Bureij site, two demonstrators crossed the separation fence and set fire to an empty berm, and then ran back towards the fence.

53. Throughout the day, Israeli forces responded to the demonstrations with live ammunition and tear gas.

54. On 14 May, Israeli security forces shot and killed seven children: a girl, Wisal Khalil (14), and six boys: Izzedine al-Samak (13); Said al-Kheir (15); Ahmad al-Sha'ar (15); Talal Matar (15); Saadi Abu Salah (16); and Ibrahim al-Zarqa (17).

55. Other casualties included:

(a) At the demonstration sites in Gaza City:

- Yasser Habeeb (24)

  Yasser, from Gaza City, was shot in the neck by Israeli forces when he was approximately 100 m from the fence, throwing stones at Israeli soldiers and burning tyres. He died on 25 May.

- Ala'a Khteeb (27)

  Ala'a, from Gaza City, was among a group of young men and women who cut through the barbed wire coils and approached the separation fence shouting "God is great". Israeli forces shot Ala'a in the head. He died the same day.

- Husein Abu Aweida (41)

  Israeli forces shot Husein, a food seller from Gaza City, in the back as he stood about 200 m from the separation fence. He died of his wounds two weeks later.

- Schoolboy (16)

  Israeli forces shot a schoolboy from Shuja'iya, Gaza City in the leg with live ammunition when he was approximately 80 m from the separation fence. He underwent three amputation operations on one leg.

- Carpenter (58)

  Israeli forces shot a carpenter in the leg as he stood 300 m from the separation fence. His leg was severed.

- Graphic designer (26)

  Israeli forces shot a graphic designer from Gaza City in the abdomen when he was approximately 150 m from the separation fence. His injuries are such that he will never be able to father children.

(b) At the demonstration sites in North Gaza:

- Accountancy student (23)

  Israeli forces shot the student in the leg as he stood at least 200 m from the separation fence holding a Palestinian flag. His leg had to be amputated.

- Mohammad Najar (33)

  Israeli forces shot Mohammad, a naval police officer, in the chest, killing him, as he sat on a hill with a friend, around 500 m from the separation fence.

- University student (22)

  Israeli forces shot the student in the right hip as he stood alone about 100 m from the separation fence, wearing a Palestinian flag around his neck and holding another. His leg had to be amputated just below the hip.

- Mahmoud Jundya (20)

  Israeli forces shot Mahmoud, a journalism student from Gaza City, in the leg as he filmed the demonstrations on his mobile phone, 50 m from the separation fence. Israeli forces then killed him with a shot to the back as he lay on the ground.

(c) At the demonstration site in Rafah:

- Ali Khafajah (21)

  Israeli forces killed Ali, a university student from Rafah, with a shot to the head as he spoke on the phone about 150 m from the separation fence.

(d) At the demonstration site in Khan Younis:

- Mahmoud Abu Taima (23)

  Israeli forces killed Mahmoud, a resident of Khan Younis, with a shot to the head while he was approximately 150 m from the separation fence.

56. The commission interviewed an international journalist covering the demonstrations at the Malaka site, who described the scene that day:

> What was notable was the amount of injured people. And the slow, methodical shooting. Every few minutes … you would hear a shot ring out and you would see someone fall. And then another shot and another person fell. It went on for hours…
>
> I saw a man who had been shot in the throat, I didn't see it happen but I saw the immediate aftermath. He was covered in blood. I saw a man who had been shot in the head…
>
> There was a constant stream of bloody bodies being carried back towards the ambulances. It was surreal and endless. It became almost normal, it was happening so often. A shot, a person falling, people carrying the body away.
>
> The number of wounded was astonishing. I couldn't say how many people I saw who were shot because it was so high. I have covered wars in Syria, Yemen, Libya. I

> have never seen anything like this. The slow methodical shooting. It was just shocking…

57. The commission investigated an incident that occurred during the demonstrations in the early afternoon of 14 May that may have amounted to "direct participation in hostilities". Near Al-Shuhada cemetery (North Gaza), a person in civilian clothes, metres away from a sizeable group of demonstrators and cheered on by them, fired a rifle towards the Israeli side of the separation fence at a distance of between 50 and 70 m from the fence, amid the thick smoke of the burning tyres. It is unclear whether he was part of a group of militants. Israeli forces responded to the attack with tank and gunfire for about 40 minutes, killing 21 people, including 8 alleged members of armed groups, a paramedic and 2 children: Said Mohammad Abu Al-Kheir (15) and Ibrahim Ahmad Ali Al Zarqa (17).

58. In total, Israeli security forces killed 60 demonstrators on 14 May, the highest one-day death toll in Gaza since their military operation there in 2014. The snipers shot at least 1,162 people with live ammunition; some 141 were wounded by bullet fragmentation or shrapnel.

59. Hospitals in Gaza were literally overwhelmed by the sheer number of deaths and injuries. Medical professionals struggled to treat the wounded. According to an international doctor working that day, "one after the other, ambulances began arriving 10 seconds after each other with one to four patients in each. Casualty and triage were completely overwhelmed, at one point there was total chaos… There was one horrific injury after another."

60. That day one Israeli soldier was lightly wounded, reportedly by a stone.

D. Mid-May–11 October 2018

61. The nature of the demonstrations changed after the violent events of 14 May. On most Fridays, attendance across the demonstration sites ranged between 10,000 and 15,000. The use of incendiary kites became more prevalent over the summer months. In August, following clashes between fishermen and the Israeli navy enforcing the blockade, weekly protests began to be held at the Zikim beach site.

E. 12 October 2018

62. About 15,000 people attended the demonstrations of 12 October, marking the twenty-ninth week of demonstrations, and participated in activities at the tents, flying Palestinian flags. At all sites, a minority of demonstrators burned tyres close to the fence, threw stones, flew incendiary kites and balloons and cut barbed wire coils.

- Ahmad Abu Na'im (17)

63. That afternoon, east of El Bureij, a group of demonstrators cut the separation fence with machetes, axes and wire cutters. Approximately 20 demonstrators crossed the fence into Israeli territory. Israeli forces shot at them with live ammunition. While most retreated to the Gaza side, Ahmad from the Nuseirat refugee camp remained on the Israeli side with at least one other demonstrator. Israeli forces allege that Ahmad approached an Israeli soldier with a knife, and was shot by Israeli forces at point-blank range. Eyewitness accounts are contradictory. According to one, a group of armed Israeli soldiers approached Ahmad, who was on the ground, unarmed; when he reached up to an Israeli soldier's arm, the soldier shot him multiple times in the chest and the female witness in the leg. Another witness alleged that Ahmad was shot while he was running away.

64. Given these different accounts, the commission was unable to make a finding as to whether Ahmed constituted an imminent threat to life or serious injury to Israeli forces when he was shot.

65. Across all sites that day, Israeli forces used live ammunition, rubber-coated bullets and tear gas, killing seven demonstrators. At least 136 others were wounded by live ammunition, and another 50 by bullet fragmentation or shrapnel.

VI. Protected groups

A. Children

66. Children enjoy special protection under international law. Israeli security forces killed 34 children during the demonstrations in 2018. They included:

- Ibrahim Abu Shaar (17)

  On 30 March, Israeli forces shot Ibrahim, a candy seller from Rafah, in the back of the head as he walked away, approximately 100 m from the separation fence, after he and his companion threw stones at Israeli soldiers. He died almost instantly.

- Mohammad Ayoub (14)

  On 20 April, Israeli forces shot Mohammad, from Jabaliya refugee camp, in the head while approximately 200 m from the separation fence. He died the same day.

- Izzedine Samak (13)

  On 14 May, Israeli forces shot Izzedine, from the Bureij refugee camp, in the abdomen after he and two friends slung stones at Israeli soldiers. They shot him as he sat resting with his back to the fence 150 m from the separation fence. He died later that day.

- Wisal Sheikh-Khalil (14)

  On 14 May, Israeli forces shot Wisal from the Maghazi refugee camp in the head when she was approximately 100 m from the separation fence, after she had approached it several times to hang a Palestinian flag there. She died instantly.

- Bilal Ashram (17)

  On 15 May, Bilal, from the Nuseirat refugee camp, was throwing stones at Israeli soldiers when they shot him twice, in the foot and the chest, as he ran away, approximately 150 m from the separation fence. Bilal was pronounced dead on arrival at hospital.

- Haytham Jamal (14)

  On 8 June, Israeli forces killed Haytham, from Rafah, with a single gunshot to the abdomen as he stood in a crowd watching Israeli forces fire tear gas at demonstrators.

- Yasser Abu Naja (11)

  On 29 June, Israeli forces killed Yasser from Khan Younis with a shot to the head as he was hiding with two friends behind a bin, approximately 200 m from the separation fence. The children had been chanting national slogans at Israeli forces.

- Othman Hilles (14)

  On 13 July, Israeli forces killed Othman, from Shuja'iya, with a shot to the chest as he attempted to climb the separation fence at the Malaka site. Othman had nothing in his hands. He died that day.

- Mo'min Hams (16)

  On 27 July, Israeli forces shot Mo'min, from Rafah, in the chest. According to one eyewitness, Mo'min was holding a Palestinian flag. According to another, Mo'min was among a group of young men and boys cutting the barbed wire coils inside Gaza. Mo'min died the following day.

- Muath Souri (15)

  On 3 August, Israeli forces shot Muath, from the Nuseirat refugee camp, in the abdomen when he was approximately 160 m from the separation fence. He died the following day.

- Suhaib Abu Kashef (16)

  On 3 August, Israeli forces shot Suhaib, from Khan Younis, in the neck. According to one source, he had crossed the barbed wire coils inside Gaza, and thrown stones at Israeli forces. He died on 15 September.

- Bilal Khafaja (16)

  On 7 September, Israeli forces shot Bilal, from Rafah, in the chest when he was walking towards the separation fence approximately 300 m away. He died that day.

- Ahmad Abu Tyoor (16)

  Ahmad was from Rafah. On 7 September, Israeli forces shot him in the thigh as he performed a traditional Palestinian dance, alone with his hands in the air, around 15 m from the separation fence, severing his femoral artery. He died the following day.

- Mohammad Hoom (14)

  On 28 September, Israeli forces shot Mohammad, from the Bureij camp, in his chest as he ran away from the separation fence. The bullet hit his heart; he died the same day.

- Nasser Mosabeh (11)

  Nasser was from Khan Younis. On 28 September, Israeli forces shot him in the back of the head as he stood 250 m from the separation fence. He died the same day.

- Fares Sirsawi (13)

  Fares was from Gaza City. On 5 October, Israeli forces shot him in the chest when he was approximately 10 m from the separation fence. Fares had been among a group of youths dragging tyres to the fence. He died that day.

- Mohammad Jahjouh (16)

  On 21 December, Israeli forces shot Mohammad, from Gaza City, in the neck as he stood in a crowd approximately 150 m from the separation fence. He died the same day.

67. The commission found that Israeli security forces used lethal force against children who did not pose an imminent threat of death or serious injury to its soldiers. Four of the children were shot as they walked or ran away from the fence.

68. Several children were recognizable as such when they were shot. The commission finds reasonable grounds to believe that Israeli snipers shot them intentionally, knowing that they were children.

B. Medical personnel

69. The Occupied Palestinian Territory is one of the most dangerous places in the world to be a health worker. During the demonstrations, Israeli forces killed three clearly marked paramedics:

- Musa Abu Hassainen (35)

  On 14 May, Israeli forces killed Musa, who was wearing a high-visibility paramedic vest, with a shot to the chest approximately 300 m from the separation fence. Shortly beforehand, he had been treating wounded demonstrators near the Shuhada cemetery in North Gaza. He died on the way to hospital.

- Razan Najar (20)

  On 1 June, an Israeli sniper bullet hit Razan, of the Palestinian Medical Relief Society and who at the time was wearing a white paramedic vest and standing with other volunteer paramedics approximately 110 m from the separation fence, in the chest at the Khuzaa site, east of Khan Younis. She died in hospital.

- Abed Abdullah Qotati (22)

On 10 August, in Rafah, Israeli forces killed Abed, who was wearing a white paramedic jacket and carrying a red first-aid kit, with a shot to the chest as he was tending to a wounded demonstrator near the separation fence. He died that day.

70. Israeli forces also injured 40 health workers with live ammunition during the demonstrations.

- Volunteer paramedic from Rafah

  On 6 April, in Rafah, Israeli forces shot a paramedic in the back of the leg as he put a wounded demonstrator on a stretcher into the back of an ambulance, approximately 300 m from the fence.

- Volunteer paramedic from Rafah (38)

  On 13 April, in Rafah, Israeli forces shot a male paramedic and ambulance driver, who was clearly wearing a paramedic uniform, in the back of the leg as he walked alone, carrying an empty stretcher, approximately 200 m from the separation fence.

- Dr. Tarek Loubani (37)

  On 14 May, Israeli forces shot Tarek Loubani, a Canadian-Palestinian physician, as he stood with paramedics in hospital uniform. The bullet passed through both of his legs.

- Volunteer paramedic (21)

  In August 2018, Israeli forces shot a female volunteer paramedic, who was wearing a paramedic uniform, in the chest with live ammunition as she approached a group of wounded demonstrators.

- Paramedic from Khan Younis

  On 19 October, at the Khan Younis site, Israeli forces shot a clearly marked paramedic in the back of the leg as he treated a wounded demonstrator near Jakkar Street. His leg risks amputation.

71. The commission found reasonable grounds to believe that Israeli snipers intentionally shot health workers, despite seeing that they were clearly marked as such.

C. Journalists

72. Between 30 March and 31 December, Israeli forces killed 2 journalists and wounded 39 others with live ammunition as they covered the demonstrations.

73. Israeli snipers shot four journalists in the abdomen, just under their vests marked “Press”:

- Yasser Murtaja (30)

  On 6 April, Yasser, a journalist from Gaza City, was shot in the lower abdomen by Israeli forces at the Khan Younis site while he was filming the demonstrations for a documentary. He was wearing a blue helmet and a dark blue bulletproof vest clearly marked “Press”. He died the following day.

- Ahmed Abu Hussein (24)

  On 13 April, Ahmed, a journalist from the Jabaliya refugee camp was shot by an Israeli sniper in the lower abdomen at the north Gaza site while he was taking photographs of the demonstrations, approximately 300 m from the separation fence. He was wearing a blue helmet and a blue vest clearly marked “Press”. He died of his injuries 12 days later.

- Freelance photojournalist (24)

  On 30 March, Israeli forces shot a freelance photojournalist, who was wearing a blue vest clearly marked “Press”, from Khan Younis twice, in the lower abdomen and in the back, while he was taking a break with two other photojournalists from

international news agencies, standing around 300 m from the separation fence. He survived.

- Journalist (34)

  On 14 May, Israeli forces shot a journalist from Khan Younis in the lower abdomen at the Malaka site while he was approximately 150 m from the separation fence. He was wearing a blue helmet and a blue vest clearly marked “Press”. He received intensive medical treatment that saved his life.

74. The commission found reasonable grounds to believe that Israeli snipers shot journalists intentionally, despite seeing that they were clearly marked as such.

D. Persons with disabilities

75. Persons with disabilities are entitled to special protection under international law. The commission investigated several emblematic cases of persons with disabilities who were killed by Israeli forces.

- Fadi Abu Salmi (29, double amputee)

  Fadi, from Khan Younis, had had both legs amputated following an Israeli airstrike in 2008. On 14 May, Israeli snipers shot him in the chest at the Abasan Al-Jadida protest site, where he was sitting in his wheelchair with two friends approximately 300 m from the separation fence. He died immediately.

- Ahmad Abu Aqel (24, walked with crutches)

  Ahmad, from the Jabaliya refugee camp, walked with crutches, having been injured by Israeli forces during a demonstration in 2017. On 20 April, Israeli forces shot him in the back of the head as he sat on a hill approximately 150 m from the separation fence. He died that day.

- Mohammad Abdulnaby (27, walked with crutches)

  Mohammad, from the Jabaliya refugee camp, walked with crutches. On 26 October, Israeli forces killed him with a shot to the head, approximately 200 m from the separation fence.

76. The commission found reasonable grounds to believe that the Israeli snipers shot these demonstrators intentionally, despite seeing that they had visible disabilities.

77. The Israeli forces also unlawfully shot other demonstrators with disabilities.

- Shadi Kashef (23, hearing disability)

  Shadi was from Rafah. He was deaf. On 30 March, Israeli snipers shot him in the head. According to a witness, Shadi was standing about 150 m from the separation fence. He died on 5 April.

- Tahrir Wahba (18, hearing disability)

  Tahrir was deaf. On 1 April, Israeli forces shot him in the back of the head with a single bullet at the Khuzaa demonstration site. He was at least 150 m from the separation fence. He died on 23 April.

E. Amputations and other life-changing injuries

78. The use of live ammunition by Israeli forces inflicted life-changing injuries on demonstrators. Some 21 people became paralysed by injuries to the spinal cord and 9 people suffered permanent loss of vision.

79. More people lost limbs during the demonstrations than during the entire Israel-Gaza conflict of 2014. As at 31 December 2018, 122 demonstrators had undergone amputations, including 20 children and a woman; of these, 98 were lower-limb amputations.

80. The commission investigated several cases of demonstrators whose limbs had to be amputated after they were shot by Israeli security forces, including the following:

- Abed Nofal (11)

  On 17 April, Abed, a schoolboy from the Bureij refugee camp, was shot by Israeli forces while he was playing football near the separation fence. His leg had to be amputated.

- Bricklayer (26)

  On 6 April, Israeli forces shot a bricklayer from Rafah when he was 300 m from the separation fence. His leg had to be amputated. Once the family breadwinner, he is now unable to work.

- Retired teacher (63)

  On 13 April, Israeli forces shot a retired teacher in the leg in El Bureij. He was approximately 400 m from the separation fence. His leg was amputated the same day.

- Farmer (38) and construction worker (31)

  Israeli forces shot two siblings, one a construction worker, the other a farmer, in the legs on two different days at the same demonstration site. Both had to have their legs amputated, with devastating consequences for their families' livelihood.

81. Israeli forces caused permanent disabilities to many of the 940 children shot during the demonstrations. The commission investigated the following cases:

- Ahmad Ghanem (15)

  On 1 June, Ahmad, a schoolboy from the Bureij refugee camp, was shot in the torso by Israeli snipers while he was socializing with other demonstrators approximately 280 m from the separation fence. He subsequently had to have half of a lung and half of his liver removed. He has a 30 per cent chance of recovering the use of his right hand.

- Schoolboy (15)

  On 26 October, at the maritime demonstration site in North Gaza, Israeli forces shot a schoolboy, standing some 120 m from the separation fence, with a single bullet to the testicles. He is now unable to walk more than 30 m and has been forced to drop out of school.

82. The commission found that Israeli security forces shot a number of male demonstrators in the lower abdomen and groin. It also received reports of women being shot in the groin. These victims have told the commission that they were now unlikely to be able to have children.

VII. Impact on the health sector in Gaza

83. The scale and complexity of injuries – often requiring specialized, long-term medical care or orthopaedic, vascular or plastic surgery – inflicted by the Israeli security forces on Palestinian demonstrators would be a challenge to any country's health-care system. With over 6,000 people suffering gunshot wounds from live ammunition, mostly to lower limbs, Gaza faced what Médecins Sans Frontières termed a "slow-motion health-care emergency".[9]

84. According to an international doctor working at a Gaza hospital, interviewed by the commission, "It was striking the number of extremely similar injuries; massive open wounds in the legs, with skin and muscles 'blown out', bones smashed to pieces, and damage to blood vessels leading to vascular injury, putting the entire limb at risk."

[9] www.msf.org/gazans-injuries-risk-permanently-shattering-lives-palestine.

85. Amputations and disabilities have placed a huge burden of care on individuals, families and communities, and disproportionately affected women, mothers, daughters and sisters. Given the unprecedented degree of poverty and food insecurity in Gaza, the loss of a wage-earning family member can lead to severe financial constraints and deep psychological impact.

86. The enormous burden of injuries from the protests has affected health care for all Gazans. After the demonstrations, hospitals were forced to divert resources away from ordinary medical needs, such as cancer treatment, obstetrics and routine operations, with far-reaching effects. Approximately 8,000 elective surgeries were cancelled or postponed, resulting in a backlog that will take years to address.

87. As the health system in Gaza deteriorated owing to the blockade, doctors began to refer cases requiring equipment and expertise that were unavailable to hospitals in East Jerusalem, the West Bank and abroad. Israeli and Egyptian authorities denied, delayed or did not respond to several requests of persons to exit Gaza for medical treatment, with fatal consequences.

88. In early April, the Coordinator of Government Activities in the Territories denied exit permits for wounded demonstrators, primarily on the basis of the policy of the Minister of Defense to deny passage to any person injured during the demonstrations.

89. Although the Supreme Court of Israel subsequently rejected the above-mentioned blanket policy, those injured in the demonstrations continued to face significant challenges in obtaining medical treatment outside Gaza, as illustrated by the case below:

- Zakaria Bishbish (14)

  On 30 May, Israeli security forces shot Zakaria, from the Maghazi refugee camp, in the back at the demonstration site in El Bureij, while he was at least 100 m from the separation fence. The gunshot perforated Zakaria's stomach and colon, splintered his vertebrae and damaged his kidney. His family sought a two-week exit permit to seek life-saving treatment at Saint Joseph Hospital in East Jerusalem, which had arranged a medical appointment for 4 June. The Coordinator of Government Activities in the Territories, however, denied the request, giving no reasons. His family then attempted to secure appointments for him in Egypt and the West Bank; the Coordinator did not respond to their requests. On 18 June, Zakaria died of sepsis.

VIII. Impact on Israel

90. No Israeli civilian deaths or injuries were reported during or resulting from the demonstrations. According to Israeli sources, four Israeli soldiers were injured during the demonstrations.

91. On 20 July, a Palestinian sniper shot Staff Sergeant Aviv Levi of the Givati Brigade while he was near the separation fence opposite Kibbutz Kissufim. According to Israeli sources, he was shot from the first line of houses in Gaza.

92. Extensive damage to Israeli civilian property was caused by hundreds of incendiary kites and balloons launched from the Gaza Strip during the demonstrations. Some landed in empty educational institutions and private houses; others burned agricultural land and crops, causing significant property damage. Civilians in southern Israel reported experiencing psychological distress related to the fires and their fear of demonstrators crossing into Israeli territory and reaching their communities.

IX. Findings

93. The commission investigated all 189 fatalities and tracked more than 300 injuries caused by the Israeli security forces at the demonstration sites and during the demonstrations.

94. With the exception of one incident in North Gaza on 14 May that may have amounted to "direct participation in hostilities" and one incident in Central Gaza on 12 October that may have constituted an "imminent threat to life or serious injury" to the Israeli security forces, the commission found reasonable grounds to believe that, in all other cases, the use of live ammunition by Israeli security forces against demonstrators was unlawful.

95. Victims who were hundreds of metres away from the Israeli forces and visibly engaged in civilian activities were shot, as shown by eyewitness accounts, video footage and medical records. Journalists and medical personnel who were clearly marked as such were shot, as were children, women and persons with disabilities.

96. The Israeli security forces killed and maimed Palestinian demonstrators who did not pose an imminent threat of death or serious injury to others when they were shot, nor were they directly participating in hostilities. Less lethal alternatives remained available and substantial defences were in place, rendering the use of lethal force neither necessary nor proportionate, and therefore impermissible.

97. The commission therefore found reasonable grounds to believe that demonstrators were shot in violation of their right to life[10] or of the principle of distinction under international humanitarian law.

98. The commission found that at least 29 of those killed at the demonstration sites were members of Palestinian organized armed groups. It is aware that the international legal community holds divergent views on whether organized armed group members may be targeted at any time, or only when directly participating in hostilities. In accordance with the law enforcement paradigm as informed by international human rights law and in the absence of arms and active hostilities, the commission concluded that, in this specific context, targeting individuals purely on the basis of their membership of an armed group and not on their conduct at the time was impermissible. The applicable tests remain whether an individual, at the time targeted, was directly participating in hostilities or posed an imminent threat to life. If not, targeting of such persons with lethal force was unlawful.

99. The shooting by Israeli security forces of Palestinian demonstrators with high-velocity weaponry at close range resulted in killings and long-term, life-changing injuries, including paralysis and amputations. Although this was well known as early as April 2018, Israeli forces continued this practice throughout the period under review. Using such weaponry at short range, and justifying it by the need for accuracy at long range, indicates a disproportionate use of force.

100. The right to life includes the right to a life with dignity. As the occupying Power, Israel has obligations under international law to ensure the health and welfare of the Palestinian population. The commission found that the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water, electricity and sanitation, constitute violations of the fundamental rights to life and health, in particular of wounded demonstrators.

101. International human rights law protects demonstrations under the freedoms of expression, of peaceful assembly and of association. While not all demonstrators were peaceful, the commission found reasonable grounds to believe that the excessive use of force by Israeli security forces violated the rights of the thousands who were.

102. The Convention on the Rights of the Child protects children's rights to life, peaceful assembly, expression and the highest attainable standard of health, among other rights. The commission found reasonable grounds to believe that Israel violated those rights when its forces used lethal force against children who did not pose an imminent threat of death or serious injury to others at the time they were shot.

103. Customary and conventional international humanitarian law requires that medical personnel be respected and protected. Similar protection is afforded to journalists and

[10] International Covenant on Civil and Political Rights, art. 6.

children who do not take part in hostilities. The commission found that the Israeli security forces shot paramedics, journalists and children who had not lost their protected status; Israel is thus in violation of international humanitarian law.

104. Some members of the higher national committee, including Hamas, encouraged or defended demonstrators' use of incendiary kites and balloons, causing fear and significant damage in southern Israel. The de facto authorities in Gaza failed in their due diligence obligations to prevent and stop the use of these indiscriminate devices.

105. The commission found that, on 14 May, at least one gunman fired a weapon at the Israeli forces from within or near the demonstrations at a temporary demonstration site in North Gaza. Firing from the vicinity of a crowd of unarmed demonstrators endangers civilian lives and risks violating the principle of distinction under international humanitarian law.

X. Accountability

106. Violations of international law, such as those committed by the Israeli security forces and set out in the present report, give rise to State responsibility on the part of the State of Israel. Israel has an obligation to investigate alleged violations of international human rights law and international humanitarian by its security forces and, where appropriate, to prosecute those deemed responsible. Victims of human rights violations are entitled to remedies, including equal and effective access to justice and adequate, effective and prompt reparation, including compensation, and guarantees of non-repetition.

107. The commission found that responsibility for unlawful deaths and injuries lay primarily on two fronts. First, those who employed lethal force, assisted with or authorized it to be deployed in specific instances, in the absence of an imminent threat to life or where the victim was not directly participating in hostilities; this includes snipers, spotters and/or commanders on site. Second, those who drafted and approved the rules of engagement. While the Supreme Court of Israel approved the rules, the commission has significant concerns about the status of "main inciters", which does not exist in international law; indeed, its use undermined the threshold of "imminent threat to life" for the use of potentially lethal force. Significantly, the Or Commission of Inquiry established by Israel in 2003 determined that "it should be made unequivocally clear that firing live ammunition, including sniper fire, is not a means to disperse crowds… This is a means to be used only in special circumstances, such as when there is a real and immediate threat to life…".

108. While some deaths may have been examined by the Israel Defense Forces' internal "fact-finding assessment", criminal investigations were opened in only five cases, including the deaths of four children. The commission's findings suggest strongly that other killings and gunshot injuries appeared factually similar and therefore also warrant criminal investigation.

109. The police force of the de facto authorities in Gaza bears responsibility for failing to take adequate measures to prevent incendiary kites and balloons from reaching Israel, spreading fear among civilians in Israel and inflicting damage on parks, fields and property. Similarly, the police force failed to prevent or take action against those demonstrators who injured Israeli soldiers.

110. The commission was given a mandate to identify those it deemed responsible for the violations it refers to in the present report. It will place the relevant information in a confidential file to be handed over to the United Nations High Commissioner for Human Rights. The commission will authorize the High Commissioner to provide access to that information to the International Criminal Court and national authorities conducting credible investigations for the purposes of ensuring accountability for crimes and other serious violations committed, establishing the truth about violations or implementing United Nations-mandated targeted sanctions against particular individuals or institutions. The commission will request the High Commissioner to grant access only to the extent that witnesses or other sources of information concerned have given their informed consent and that any protection concerns are duly addressed.

111. To date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations committed against Palestinians or to provide reparation to victims in accordance with international norms. Scarce accountability measures arising out of Operations Cast Lead and Protective Edge and public comments by high-ranking public officials cast doubt over the State's willingness to scrutinize the actions of military and civilian leadership who drafted, approved and supervised the implementation of the rules of engagement governing the actions of Israeli forces at the demonstrations.

112. Strikingly, the right of Gazan victims to equal access to reparation is currently being hampered. Israeli law and recent jurisprudence bar them from access to remedies in Israeli courts, irrespective of the merits of their claims for damages, on the grounds that Gazans are from "hostile" territory. The commission is not aware of any alternative mechanism employed by Israel to compensate Palestinian victims for damage caused unlawfully by the security forces. It notes with concern that the Government of Israel recently announced new measures withholding Palestinian clearance tax revenue to an amount equal to that of payments made by the Palestinian Authority to those injured or to the families of those killed. The Government also expressed its intention to increase the sum of withheld funds in the light of the damage caused by incendiary kites and balloons to the crops of Israeli farmers.

XI. Individual criminal responsibility

113. Certain violations of international law attract individual criminal responsibility and are prosecutable in both domestic and international courts.

114. During armed conflict or occupation, international humanitarian law prohibits, inter alia, wilful killing and wilfully causing great suffering. Unless undertaken lawfully in self-defence, intentionally killing a civilian not directly participating in hostilities is a war crime. The commission found reasonable grounds to believe that individual members of the Israeli security forces, in the course of their response to the demonstrations, killed and gravely injured civilians who were neither directly participating in hostilities nor posing an imminent threat.

115. If committed in the context of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of a State or organizational policy, serious human rights violations may also constitute crimes against humanity. Murder and "other inhumane acts" that cause great suffering or serious injury qualify as such violations. In the course of the investigation, the commission found serious human rights violations that may constitute crimes against humanity.

116. Civilian and military leaders bear responsibility for international crimes they commit directly, but also as commanders where they exert effective control over subordinates, knew or should have known about subordinates' crimes, and failed to prevent or repress their commission or to submit them for investigation and prosecution.

117. The commission is aware of an ongoing preliminary examination by the International Criminal Court of alleged crimes committed in the Occupied Palestinian Territory, including East Jerusalem, since 13 June 2014, and requests the High Commissioner to refer the present report and relevant information upon which it is based to the Office of the Prosecutor.

XII. Recommendations

A. Realization of the human rights of civilians on both sides

118. **The commission calls upon all duty bearers to implement fully previous recommendations made by United Nations human rights and fact-finding bodies. It also calls upon States Members of the United Nations to promote compliance with**

human rights obligations and to ensure respect for international humanitarian law in the Occupied Palestinian Territory and Israel, in accordance with article 1 common to the Geneva Conventions.

B. Prevention of future violations during demonstrations and protection of civilians on both sides

119. **The commission recommends that the Government of Israel:**

(a) **Refrain from using lethal force against civilians, including children, journalists, health workers and persons with disabilities, who pose no imminent threat to life;**

(b) **Ensure that the rules of engagement:**

(i) **Do not authorize lethal force against "main inciters" as a status; and ensure that the rules permit such force only as a last resort, where the person targeted poses an imminent threat to life or directly participates in hostilities;**

(ii) **Prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.**

120. **The commission recommends that the de facto authorities in Gaza stop the use of incendiary kites and balloons.**

121. **The commission recommends that States Members of the United Nations employ every means to prevent further use of lethal force against civilians at demonstrations, including by demarches and by ensuring protective monitoring of the demonstrations by independent entities (United Nations entities or non-United Nations).**

C. Ensuring access to medical services and the fulfilment of the right to health of injured persons

122. **The commission recommends that the Government of Israel:**

(a) **Lift the blockade on Gaza with immediate effect;**

(b) **Ensure that all those injured at demonstrations are permitted prompt access to hospitals elsewhere in the Occupied Palestinian Territory, in Israel or abroad;**

(c) **Ensure timely access of medical and all other humanitarian workers to Gaza, including to provide treatment to those injured in the context of demonstrations;**

(d) **Ensure efficient coordination for entry of medical items and equipment into Gaza, and remove the prohibition of entry applied to items with legitimate protective and medical uses, including carbon fibre components for the treatment of limb injuries.**

123. **The commission recommends that the de facto authorities in Gaza and the Palestinian Authority ensure timely and efficient coordination for the entry of medical supplies and equipment into Gaza.**

124. **The commission recommends that States Members of the United Nations and civil society support the health-care system in Gaza, particularly with the resources necessary to treat injuries incurred at the protests.**

D. Ensuring accountability and reparations for violations committed

125. **The commission recommends that the Government of Israel:**

(a) **Investigate promptly, impartially and independently every protest-related killing and injury in accordance with international standards, to determine whether war crimes or crimes against humanity have been committed with a view to holding those found to be responsible accountable;**

(b) **In accordance with General Assembly resolution 60/147, ensure prompt, adequate and effective remedies for those killed or injured unlawfully, including timely rehabilitation, compensation, satisfaction and guarantees of non-repetition;**

(c) **Amend the law on civil liability to provide a remedy to Gazans through Israeli courts for breaches of international human rights law or international humanitarian law by the Israeli security forces.**

126. **The commission recommends that the United Nations High Commissioner for Human Rights manage the dossiers on alleged perpetrators, to be provided to national and international justice mechanisms, including the International Criminal Court, undertaking credible and independent investigations into alleged international crimes and violations.**

127. **The commission recommends that States Members of the United Nations consider imposing individual sanctions, such as a travel ban or an assets freeze, on those identified as responsible by the commission.**

128. **The commission recommends that States parties to the Geneva Conventions and/or to the Rome Statute carry out their duty to exercise criminal jurisdiction and arrest persons alleged to have committed, or who ordered to have committed, the international crimes described in the present report, and either to try or to extradite them.**

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Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*

Summary

In this report, submitted pursuant to Human Rights Council resolution S-30/1, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel describes the activities that it has carried out to date and how it plans to implement its mandate, given its ongoing nature.

The Commission reviewed the findings and status of implementation of recommendations of previous United Nations fact-finding missions and commissions of inquiry on the situation and of other United Nations human rights bodies. It found that the key findings and recommendations linked to the underlying root causes of recurrent tensions, instability and protraction of conflict have not been implemented, and that this lack of implementation is at the heart of the systematic recurrence of violations in both the Occupied Palestinian Territory, including East Jerusalem, and Israel.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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I. Introduction

1. In its resolution S-30/1, the Human Rights Council decided to urgently establish an ongoing independent, international commission of inquiry to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021.

2. On 22 July 2021, the President of the Human Rights Council announced the appointment of Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia) to serve as the three members of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, and indicated that Ms. Pillay would serve as Chair of the Commission.

3. A core temporary start-up team was appointed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the operationalization of the Commission while a full team was being recruited. At the time of writing of this report, the recruitment of the full secretariat was continuing, delayed due to administrative and financial constraints. The budget of the Commission, approved on 24 December 2021 by the Fifth Committee of the General Assembly, required a 25-per-cent reduction in staff on the estimates by OHCHR.

II. Cooperation

4. In resolution S-30/1, the Human Rights Council called upon all relevant parties to cooperate fully with the Commission and to facilitate its access. The Commission is grateful to the Government of the State of Palestine for facilitating consultations and meetings with relevant authorities. The Commission is also grateful to the Government of Jordan, which allowed the Commission access to its territory in March 2022. The Government of Egypt indicated its willingness to cooperate with the Commission but has not yet responded to the Commission's request to access the Gaza Strip through the Rafah crossing. The Commission also sought to engage with the de facto authorities in Gaza, but at the time of writing no response had been received.

5. The Commission regrets the lack of cooperation by the Government of Israel, and its refusal to allow entry to Israel and to permit access to the Occupied Palestinian Territory, despite the desire of the State of Palestine to allow the Commission to visit. This refusal obstructed the engagement of many Israeli and Palestinian victims, witnesses and other stakeholders with the Commission.

6. On 27 May 2021, the Ministry of Foreign Affairs of Israel rejected Human Rights Council resolution S-30/1 and indicated: "Israel cannot and will not cooperate with such an investigation".[1] In a letter addressed to the Chair of the Commission, dated 28 October 2021, the Permanent Representative of Israel to the United Nations Office and other international organizations in Geneva declined to meet with the Commission. In a note verbale addressed to the Permanent Mission of Israel in Geneva, dated 29 December 2021, the Commission invited the Government of Israel to reconsider its position of non-cooperation. In her response dated 17 February 2022, the Permanent Representative replied that there was no reason to believe that Israel would receive reasonable, equitable and non-discriminatory treatment from either the Human Rights Council or the Commission, and that it would treat the Commission, its functioning and its findings accordingly. On 3 March 2022, the Commission acknowledged the communication and asked for a response to its request for access to Israel and the Occupied Palestinian Territory. In doing so, the Commission highlighted the need for it to hear from all concerned parties, duty bearers, victims and witnesses, underlined the importance of the Commission's engagement with Israel, and invited representatives of the Government to meet with the Commission. No response was received.

[1] See https://www.gov.il/en/departments/news/mfa-s-comment-on-the-hrc-resolution-27-may-2021.

7. A draft of this report was shared for comments with both Israel and the State of Palestine. The State of Palestine provided comments on the report, which were carefully reviewed by the Commission. Israel did not respond.

8. The Commission will continue to deploy all its efforts to engage the Israeli authorities in a dialogue and to seek their cooperation and access to Israel and the Occupied Palestinian Territory. It will also continue to seek the cooperation of Egypt in enabling access to the Gaza Strip.

III. Mandate and methods of work

9. The Commission has the mandate to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.[2]

10. The mandate to investigate the root causes prompted the Commission to give priority to broad questions and seek to identify overall patterns, policies, historical legacies and structural inequalities that affect the enjoyment of human rights of all individuals in the Occupied Palestinian Territory, including East Jerusalem, and in Israel, and that have led to instability and protracted conflict.

11. As required under its mandate, the Commission conducted an assessment of the findings and recommendations of previous commissions of inquiry and fact-finding missions and of other United Nations human rights mechanisms and entities. Within the scope of its assessment, the Commission undertook two missions to Geneva and one to Jordan, holding consultations with various stakeholders, including representatives of the Governments of the State of Palestine and of Jordan, Israeli and Palestinian civil society organizations and international non-governmental organizations. The Commission ensured the inclusion of a diverse range of perspectives in its consultations and meetings, including with women's rights organizations, academics and organizations focusing on child rights.

12. In accordance with its mandate, the Commission has developed an information and evidence repository that, once fully operational, will be used to systematically record and preserve all information and evidence collected, in accordance with international law standards and with a view to assisting future accountability efforts.

13. The Commission interpreted its mandate as requiring it to take full account of intersecting forms of discrimination, including gender-based discrimination, as both a driver and a root cause of conflict. A gender analysis is being mainstreamed throughout the Commission's work. The Commission will incorporate into its work an investigation of human rights violations and abuses based on gender and age, as well as differences between women, men, girls and boys in the enjoyment of human rights and fundamental freedoms.

IV. Applicable law

14. The Commission has laid out in detail in its terms of reference the applicable law that it will apply.[3] The Commission draws attention to its position on the following points of law.

[2] For the full mandate, see Human Rights Council resolution S-30/1, paras. 1–2. For a further breakdown and explanation of the mandate, see the Commission's terms of reference (available at https://www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf) and the "Frequently asked questions" about the Commission (available at https://www.ohchr.org/sites/default/files/2022-02/FAQ_COIOPTEJI.pdf).

[3] See terms of reference, section III. In addition to being party to seven of the core human rights treaties, the State of Palestine is party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

A. International humanitarian law

15. The occupation of territory in wartime is, under international humanitarian law, a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty. Consequently, occupation as a result of war cannot imply any right whatsoever to dispose of territory.[4]

16. The Occupied Palestinian Territory, including East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies.[5] Despite the claim by Israel that it disengaged from Gaza in 2005, the Commission notes the positions of the Security Council[6] and the General Assembly,[7] the declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention),[8] the assessment by the International Committee of the Red Cross (ICRC)[9] and the positions of previous commissions of inquiry,[10] along with the lack of authoritative findings to the contrary, that Israel remains in occupation of the territory by virtue of the control exercised over, inter alia, its airspace and territorial waters, land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.

17. Israel is therefore bound by the obligations of an occupying Power set out in the Fourth Geneva Convention and customary international law, including the Convention respecting the Laws and Customs of War on Land, throughout the Occupied Palestinian Territory.[11] The Commission will also apply international humanitarian law to incidents relating to the conduct of hostilities occurring within Israel, as has been done by previous commissions of inquiry.[12]

18. The Commission emphasizes that all norms of international humanitarian law must be respected by all parties, including Palestinian armed groups. This includes the obligation to respect the principles of military necessity, distinction, proportionality and precautions in and against the effects of attacks.

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[4] International Committee of the Red Cross (ICRC), commentary of 1958 on article 47 of the Fourth Geneva Convention, available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A.

[5] On the West Bank and East Jerusalem, see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at pp. 166–167, paras 75–78.

[6] See, for example, Security Council resolution 1860 (2009).

[7] See, for example, General Assembly resolution 76/126.

[8] A/69/711-S/2015/1, annex, paras. 4 and 8.

[9] Peter Maurer, "Challenges to international humanitarian law: Israel's occupation policy", *International Review of the Red Cross*, vol. 94, No. 888 (Winter 2012), p. 1503–1510, at p. 1508.

[10] For example, A/HRC/12/48, paras. 276–280; A/HRC/29/CRP.4 (submitted as a supplement to A/HRC/29/52 and available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session29/list-reports), paras. 25–31; and A/HRC/40/CRP.2 (submitted as a supplement to A/HRC/40/74 and available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session40/list-reports), paras. 59–67.

[11] See, for example, Security Council resolutions 237 (1967), 271 (1969), 446 (1979), 681 (1990), 799 (1992) and 904 (1994); and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, p. 177, para. 101. On the Hague Conventions of 1907, although Israel is not a party, the provisions of the Conventions are considered as embodying rules of customary international law (see https://ihl-databases.icrc.org/ihl/INTRO/195; and A/HRC/34/38, para. 10). Furthermore, the Supreme Court of Israel, in a judgment dated 30 May 2004, found that the "military operations of the [Israeli Defence Forces] in Rafah … are governed by Hague Convention IV Respecting the Laws and Customs of War on Land 1907 … and the Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949" (cited in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 176–177, para. 100).

[12] For example, A/HRC/29/52, para. 6.

19. Additionally, all State parties to the Geneva Conventions have the duty not only to respect the Conventions, but also to ensure respect for them, under article 1 common to the Geneva Conventions. This includes an obligation to take measures to ensure respect for the Conventions by others that are party to a conflict.[13]

B. International human rights law

20. The applicability of human rights law in a situation of armed conflict or occupation concurrently with international humanitarian law has been widely affirmed, including recently by the Human Rights Committee in its concluding observations on the fifth periodic report of Israel.[14] A situation of armed conflict or occupation does not release a State from its human rights obligations.[15] The Commission notes the position of the Government of Israel that, although its conduct remains consistent with international human rights law, that law does not apply beyond a State's national territory, and therefore does not place human rights obligations upon Israel with respect to areas beyond its national territory; and that international human rights law remains distinct from international humanitarian law, with each body of law applying, to the exclusion of the other, in different circumstances.[16]

21. The Commission notes the finding of the International Court of Justice on the applicability of international human rights law and international humanitarian law in the Occupied Palestinian Territory, whereby the Court determined that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation".[17] The assertion that, in addition to its applicability within its own territory, Israel bears human rights obligations in the Occupied Palestinian Territory has also been consistently expressed in resolutions of the General Assembly[18] and in reports of the Secretary-General,[19] the High Commissioner for Human Rights,[20] the Human Rights Council,[21] United Nations treaty bodies,[22] and previous commissions of inquiry and fact-finding missions on the Occupied Palestinian Territory.[23]

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[13] ICRC, commentary of 2016 on article 1 common to the Geneva Conventions, available at https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1; declaration of 5 December 2001 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 199–200, paras. 158–159; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, at pp. 114–115, para. 220; A/HRC/34/38, para. 12.

[14] CCPR/C/ISR/CO/5, para. 7.

[15] Despite the rejection by Israel of the applicability of its human rights obligations outside its national territory, their applicability in the Occupied Palestinian Territory has been continuously asserted in resolutions of the General Assembly and in reports of the Secretary-General and of the High Commissioner for Human Rights. See, for example, General Assembly resolution 71/98; A/69/348, para. 5; A/HRC/8/17, para. 7; A/HRC/12/37, paras. 5–6; A/HRC/28/44, para. 6; and A/HRC/34/38, para. 7.

[16] See CCPR/C/ISR/5.

[17] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 177–178, paras. 102–106.

[18] For example, in the preambles of its resolutions 71/98 and 72/87, the General Assembly recalled the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and affirmed "that these human rights instruments must be respected in the Occupied Palestinian Territory, including East Jerusalem".

[19] For example, A/69/347, para. 3; A/69/348, para. 5; A/HRC/28/44, para. 6; and A/HRC/34/39, para. 4.

[20] For example, A/HRC/8/17, para. 7; A/HRC/12/37, paras. 5–6; A/HRC/28/80, paras. 4–5; and A/HRC/37/43, para. 3.

[21] For example, the preamble of the resolution S-30/1, in which the Council established this Commission of Inquiry. See also Council resolutions 31/34, preamble and para. 5; 31/35, preamble; 34/30, preamble and para. 5; 37/35, para. 4; and 37/37, preamble.

[22] CAT/C/ISR/CO/5, paras. 8–9; CCPR/C/ISR/CO/5, paras. 6–7; CEDAW/C/ISR/CO/5, paras. 12–13; CERD/C/ISR/CO/17-19, paras. 9–10; CRC/C/ISR/CO/2-4, para. 3; CRC/C/OPAC/ISR/CO/1, para. 4; CRC/C/OPSC/ISR/CO/1, para. 3; and E/C.12/ISR/CO/4, para. 9.

[23] For example, A/HRC/12/48, A/HRC/22/63 and A/HRC/29/52.

22. In terms of duty bearers, the Commission considers that the State of Palestine comprises the West Bank (whether Area A, Area B or Area C), all of East Jerusalem, and the Gaza Strip. It further considers that Israel remains in belligerent occupation of all these territories and is therefore the primary duty bearer within these territories, along with the occupied Syrian Golan, given the jurisdiction and effective control exercised by Israel as an occupying Power and the extraterritorial applicability of a State's international human rights obligations.

23. The Commission notes that territory over which the Government of the State of Palestine can exert its authority as duty bearer has been under occupation by Israel since 1967, which poses severe challenges to its ability to assert its State functions. Nonetheless, and while not affecting the obligations of Israel, the accession of the State of Palestine to international human rights treaties engages its responsibility, to the extent of its jurisdiction and effective control.

24. Within the Gaza Strip, the Hamas-led administration bears human rights obligations as the de facto authority in light of its exercise of government-like functions. Within the territory and over the residents of Gaza, it shares some effective control with Israel, each exercising certain functions. Under the treaties ratified by the State of Palestine and customary human rights law, the de facto authority is internationally responsible for violations that it commits in Gaza or from within Gaza.[24]

C. International criminal law

25. The Commission will apply the provisions of international criminal law as defined in applicable international treaties, the Rome Statute of the International Criminal Court and customary international law. The Rome Statute provides detailed elements for most of these crimes, and its subsequent ratification by a majority of Member States of the United Nations reflects on the whole the definition of these crimes under customary international law.[25] In situations where the International Criminal Court is found to lack jurisdiction, the Commission will apply the elements of the crimes under the Rome Statute so long as they reflect customary international law.

V. Submissions

26. In response to a general call for written submissions, the Commission has received several thousand written submissions, including individual complaints, reports and statements addressing a broad range of underlying root causes of recurrent tensions, instability and protraction of conflict. These were received from a vast array of geographic locations, and from individuals and organizations from diverse sectors of society and political backgrounds, confirming to the Commission the global reach of the consequences of the conflict. The Commission has preserved these submissions and is conducting a continuing review of all information received.

VI. Assessment of the findings and recommendations of previous United Nations fact-finding missions and commissions of inquiry on the situation and other United Nations bodies

27. In undertaking its assessment of the findings and recommendations of previous commissions of inquiry, fact-finding missions, treaty bodies, special procedures and other United Nations bodies, the Commission identified overarching issues that lay at the core of most recommendations. The Commission focused on the findings and recommendations that

[24] A/HRC/8/17, paras. 4 and 9; A/HRC/28/45, para. 6; A/HRC/29/52, paras. 12 and 17; and A/HRC/40/CRP.2, para. 50.

[25] The State of Palestine accepted the jurisdiction of the International Criminal Court over alleged crimes committed in the Occupied Palestinian Territory, including East Jerusalem, as of 13 June 2014. Israel is not a State party.

directly related to underlying root causes of recurrent tensions, instability and protraction of conflict in the States concerned.

28. The topics reviewed in this report are not comprehensive, given the large volume of issues covered by the various bodies. The report offers primarily an overview of the wide range of violations and abuses at the heart of the conflict. The Commission notes, however, that the findings and recommendations relevant to the underlying root causes were overwhelmingly directed towards Israel, and the report therefore reflects this. The Commission took this point as an indicator of the asymmetrical nature of the conflict and the reality of one State occupying the other.

VII. Failure to uphold the laws and customs of war, including those of belligerent occupation

A. An occupation in perpetuity

29. During the third cycle of the universal periodic review of Israel, in 2018, more than 110 out of a total of 240 recommendations by individual Member States are listed in the matrix of recommendations as relating to international humanitarian law, [26] including recommendations on ending the occupation, ceasing settlement expansion, ending forced evictions, ceasing the policy of administrative detention, particularly of children, lifting the restriction of freedom of movement, including by lifting the blockade on Gaza, allowing Palestinians access to their natural resources, and eliminating laws and practices that discriminate against Palestinians, including road segregation for the exclusive use of the Israeli population.[27]

30. In its resolution 242 (1967), adopted unanimously on 22 November 1967, the Security Council called for the withdrawal of Israeli armed forces from "territories occupied in the recent conflict", which it affirmed would be in accordance with the principles of the Charter of the United Nations. Despite this, Israel has not brought an end to the occupation, which would allow the Palestinian people to enjoy their right to self-determination. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has called the situation an occupation in perpetuity, emphasizing that, despite the clear requirement under international law that the Israeli occupation must be temporary, Israel is unlikely to end the occupation without concerted international intervention.[28]

31. In the 1990s, the Oslo Accords were intended to start a process towards achieving a peace treaty, "to establish a Palestinian Interim Self-Government Authority, the elected Council …, for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading to a permanent settlement based on Security Council resolutions 242 (1967) and 338 (1973)". The entire territory, divided in the Oslo Accords into Areas A, B and C, was to be gradually handed over to the Palestinians. These agreements have never been fully implemented: Area C, which encompasses 60 per cent of the West Bank and completely surrounds and separates urban centres in Areas A and B, remains under full Israeli control, with ever-increasing expansion of settlements.

B. Transfer of the civilian population

32. Previous findings and recommendations have established that Israel is continuing to build settlements in Area C of the Occupied Palestinian Territory, and in East Jerusalem, and is allowing the establishment of outposts across the West Bank in direct violation of its obligations under the laws of belligerent occupation. In its resolutions, the Security Council has underlined that the Israeli policy and practices of establishing settlements in the Occupied

[26] See https://www.ohchr.org/EN/HRBodies/UPR/Pages/ILindex.aspx.
[27] See A/HRC/38/15.
[28] See A/HRC/49/87.

Palestinian Territory, including East Jerusalem, have no legal validity, and constitute a "flagrant violation" under international law and a major obstacle to peace.[29]

33. According to a 2017 report of the High Commissioner for Human Rights that detailed the status of implementation of the recommendations made to all parties between 2009 and 2016 by the relevant Human Rights Council mechanisms and by United Nations treaty bodies, OHCHR and the Secretary-General in their reports to the Human Rights Council, a total of 93 recommendations, or 10 per cent of all recommendations, addressed the presence of Israeli settlements in the West Bank, including East Jerusalem.[30] Of the 81 recommendations directed at Israel, none was found to have been implemented.[31] Since 2017, the High Commissioner has repeatedly reported on the continued expansion of settlements and ever-growing settler population.[32]

34. According to the Yesha Council, an umbrella organization of local authorities of settlements in the Occupied Palestinian Territory, 491,923 settlers were living in Area C in the West Bank (excluding East Jerusalem) in January 2022, with 15,890 new settlers in 2021. The Yesha Council forecasts that by the end of 2022, the settler population in the West Bank (excluding East Jerusalem) will reach half a million, a 43-per-cent increase in population size over the last decade (148,985), compared to an 11-per-cent increase in Israel.[33] According to the Palestinian Central Bureau of Statistics, the total Palestinian population of the West Bank in 2022 is 3,188,387, with a growth rate of 2.1 per cent.[34]

35. The Security Council, the General Assembly, the Secretary-General and the High Commissioner for Human Rights have all reaffirmed the illegality of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.[35] The Commission also notes that the policy of settlement runs contrary to the obligation of Israel under article 49 of the Fourth Geneva Convention. Furthermore, the transfer, directly or indirectly, by an occupying Power of parts of its own civilian population into the territory that it occupies constitutes a war crime under the Rome Statute.

C. Conduct of hostilities

36. Many recommendations reviewed by the Commission have addressed the issue of the conduct of hostilities, calling on all parties to adhere to their obligations under international humanitarian law. Previous investigative mechanisms established by the Human Rights Council, including those on the 2009 and 2014 Gaza conflicts, found that violations of the core international humanitarian law principles of distinction, proportionality, and precautions in and from the effects of attacks by the Israeli military forces and Palestinian armed groups may have amounted to war crimes.[36] Furthermore, the commission of inquiry investigating the conflict in Gaza in 2014 found that the Israeli tactics of targeting residential buildings during the incursion made women and children more vulnerable to death and injury than during previous armed conflicts.[37]

37. The high-level fact-finding mission to Beit Hanoun concluded in 2008 that the people of Gaza must be afforded protection in compliance with international law and that the consequences of the use of force on civilians must be placed at the centre of the Israeli military's decision-making and activities in the Occupied Palestinian Territory.[38]

38. The key recommendation has been that all parties fully respect international humanitarian law and international human rights law, including the main principles of

[29] See Security Council resolutions 446 (1979) and 2334 (2016).
[30] A/HRC/35/19, paras. 5 and 35.
[31] Ibid., para. 35.
[32] For example, A/HRC/34/39, para. 11, and A/HRC/49/85, paras. 3, 6 and 9.
[33] See http://www.myesha.org.il/?CategoryID=335&ArticleID=10249&dbsAuthToken= (in Hebrew).
[34] See https://www.pcbs.gov.ps/site/lang__en/881/default.aspx#Population.
[35] For example, Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolution 70/89; A/HRC/34/38, paras. 14–15 and 73; and A/HRC/49/85, para. 51.
[36] See A/HRC/12/48 and A/HRC/29/52.
[37] A/HRC/29/CRP.4, para. 244. See also A/HRC/46/63, para. 13.
[38] A/HRC/9/26, para. 75.

distinction, proportionality and precautions.[39] Furthermore, the United Nations Fact-Finding Mission on the Gaza Conflict recommended in 2009 that Israel initiate a review of the rules of engagement and standard operating procedures of military and security personnel, and that it avail itself of the expertise of ICRC, OHCHR and other bodies, experts and civil society organizations with the relevant expertise in order to ensure compliance in that respect with international humanitarian law and international human rights law.[40] The independent international commission of inquiry on the 2018 protests in the Occupied Palestinian Territory recommended that the Government of Israel refrain from using lethal force against civilians, and ensure that the rules of engagement permit lethal force only as a last resort, where the person targeted poses an imminent threat to life or directly participates in hostilities, and that the rules prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.[41]

39. The Commission also notes findings that Palestinian armed groups launched indiscriminate rocket attacks towards Israeli cities and towns, which killed and injured Israeli civilians and caused significant damage to civilian objects. The United Nations Fact-Finding Mission on the Gaza Conflict recommended in 2009 that Palestinian armed groups undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects.[42] It further recommended that these groups take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities,[43] and that the Palestinian Authority issue clear instructions to security forces under its command to abide by human rights norms and ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control.[44]

40. The commission of inquiry investigating the conflict in Gaza in 2014 further called upon the de facto authorities in Gaza and Palestinian armed groups to respect the principles of distinction, proportionality and precautions, including by ending all attacks on Israeli civilians and civilian objects, and stopping all actions that could spread terror among the civilian population in Israel, and to take measures to prevent extrajudicial executions and eradicate torture and cruel, inhuman and degrading treatment.[45]

41. Armed hostilities broke out again in Gaza in May 2021, with reports of the recurrence of many of the patterns described above. As noted by the High Commissioner for Human Rights, the escalation was triggered by protests against the impending eviction of Palestinian families from their homes in Sheikh Jarrah for the benefit of settlers, increasing nationalistic and ethnic tensions, and restrictions and the use of force by Israel against Palestinians in East Jerusalem during Ramadan. Protests spread from East Jerusalem to the entire Occupied Palestinian Territory and Israel.[46] The High Commissioner also noted that the apparent failure to verify that targets were military objectives raised serious concerns regarding the compliance of Israel with the principles of distinction, proportionality and precautions under international humanitarian law.[47] She also reported that by launching indiscriminate attacks, in violation of international humanitarian law, Palestinian armed groups had killed and injured Israeli civilians and caused significant damage to civilian objects, and might also be responsible for the death of a number of Palestinians in Gaza, including women and children, owing to rockets falling short of their targets.[48]

[39] A/HRC/29/52, para. 83.
[40] A/HRC/12/48, para. 1972.
[41] A/HRC/40/CRP.2, para. 793.
[42] A/HRC/12/48, para. 1973.
[43] Ibid., para. 1973.
[44] Ibid., para. 1974.
[45] A/HRC/29/52, para. 88.
[46] A/HRC/49/83, para. 3.
[47] Ibid., para. 9.
[48] Ibid., para. 11.

VIII. Violations and abuses of individual and collective rights

A. Discrimination and geographic, social and political fragmentation

42. Previous reports have found that movement permit requirements, settlement infrastructure, military incursions and checkpoints remain a part of daily life for Palestinians, who in the great part remain cut off from each other in East Jerusalem, the rest of the West Bank, Gaza and Israel.[49] The wall continues to separate Palestinians in the West Bank from East Jerusalem and Israel, despite the International Court of Justice having stated that it gravely infringed a number of rights of Palestinians living in the territory occupied by Israel.[50] The United Nations Fact-Finding Mission on the Gaza Conflict found in 2009 that the blockade amounted to a collective punishment that fit into a continuum of policies aimed at pursuing Israeli political objectives with regard to Gaza and the Occupied Palestinian Territory as a whole, including the progressive isolation and separation of the Gaza Strip from the West Bank.[51]

43. The High Commissioner for Human Rights noted in her 2017 report that 9 per cent of all past recommendations related to freedom of movement. A total of 78 were addressed to Israel, with only one, relating to freedom of movement between Gaza and the West Bank, found to have been partially implemented. Two recommendations were addressed to the de facto authorities in Gaza, with neither found to have been implemented.[52] In Gaza, given the ongoing occupation, the 15-year economic and social blockade, and the repeated attacks and destruction of essential infrastructure, the population continues to face critical restrictions on the freedom of movement of both individuals and goods.

44. The Commission notes that findings and recommendations extend to concerns regarding human rights violations in Israel itself. The Committee on the Elimination of Racial Discrimination has expressed concern about several laws that, in its view, discriminate against Arab citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property.[53] The Committee expressed concern about the discriminatory effect of the Basic Law: Israel – The Nation-State of the Jewish People (2018) on non-Jewish people in Israel, and urged Israel to review the Basic Law with a view to bringing it into line with the International Convention on the Elimination of All Forms of Racial Discrimination.[54] It further recommended that Israel ensure equal treatment for all persons on the territories under its effective control and subject to its jurisdiction.[55] This recommendation was recently reiterated when the Human Rights Committee expressed its deep concern about the Basic Law, which could, in its view, exacerbate pre-existing systematic and structural discrimination against non-Jews in Israel.[56]

45. The Commission also notes the concerns expressed by the Human Rights Committee, and echoed by the Committee on Economic, Social and Cultural Rights, that the Jewish and non-Jewish population in Israel are treated differently in several regards and that the Israeli domestic legal framework maintains a three-tiered system of laws affording different civil status, rights and legal protection for Jewish Israeli citizens, Palestinian citizens of Israel and

[49] A/HRC/35/19, paras. 43–44.

[50] CCPR/C/ISR/CO/5, paras. 14–15; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, pp. 193–194, para. 137.

[51] A/HRC/12/48, paras. 1877–1879. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the High Commissioner for Human Rights have also identified the blockade on Gaza as constituting "collective punishment" (A/HRC/34/36, para. 36; A/HRC/37/38, para. 4; A/HRC/44/60; A/HRC/46/63, para. 7; and A/HRC/49/83, paras. 15–16). See also the position of ICRC, available at https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm.

[52] A/HRC/35/19, paras. 41–44.

[53] CERD/C/ISR/CO/17-19, para. 15.

[54] Ibid., paras. 13–14.

[55] Ibid., para. 16.

[56] CCPR/C/ISR/CO/5, para. 10.

Palestinian residents of East Jerusalem.[57] Different legal regimes are also applied by Israel in the West Bank: despite its position that international human rights law does not apply extraterritorially, Israel applies a substantial part of its domestic laws to Israeli settlers in the West Bank, while Palestinians are subject to Israeli military law. The situation is different in East Jerusalem, which since its purported annexation by Israel has been subject to the Israeli domestic legal system, though its Palestinian residents are not eligible for Israeli citizenship.

46. The Commission notes the renewal on 10 March 2022, despite these recommendations, of the Citizenship and Entry into Israel Law (Temporary Order), about which the Human Rights Committee has expressed concern for denying the right to family unification of Israeli citizens with their Palestinian spouses living in the West Bank or Gaza and of permanent residents of East Jerusalem.[58] This Law comes in stark contrast to the Law of Return (1950), which provided for the right of "every Jew" to settle in Israel.[59] The Committee on Economic, Social and Cultural Rights has expressed concern that the Law places Palestinian women whose right to reside in East Jerusalem or in Israel is dependent on their husband's status in a vulnerable position, as they may be forced to stay in abusive relationships.[60]

47. Stakeholders have informed the Commission that restrictions on movement are also having a direct effect on the political fragmentation of Palestinian society. The United Nations Fact-Finding Mission on the Gaza Conflict noted in 2009 that systematic efforts by Israel to hinder and control Palestinian democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, had culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. It concluded that the cumulative impact of those policies and actions made prospects for political and economic integration between Gaza and the West Bank more remote.[61]

48. Stakeholders have also informed the Commission that, notwithstanding the occupation, the continuing political division between Fatah and Hamas is having a negative effect on the full enjoyment by Palestinians of their human rights.[62] The Commission notes that there have been no presidential or legislative elections in the State of Palestine since 2006. The planned presidential and legislative elections in 2021 were indefinitely postponed by the President of the State of Palestine due to the refusal by Israel to allow Palestinians in East Jerusalem to vote. However, the Commission was told that the participation of Palestinians in East Jerusalem could have been ensured through other means.

B. Settlements and settler violence

49. While Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, including networks of bypass roads, the movement of Palestinians in the West Bank continues to be restricted, severely infringing upon their freedom of movement and access to services and livelihoods.[63] Furthermore, while settlements expand rapidly and Israeli settlers are able to construct structures on occupied land, it is almost impossible for Palestinians to get building permits in Area C due to discriminatory zoning and planning regimes.[64]

50. Linked to this, the Human Rights Committee, in its concluding observations on the fifth periodic report of Israel, expressed concern about a significant increase in the incidence and severity of settler violence in recent years and the involvement of the Israeli security

[57] CCPR/C/ISR/CO/4, para, 7; and E/C.12/ISR/CO/4, paras. 16–17.
[58] For example, CCPR/C/ISR/CO/4, para. 21, and CCPR/C/ISR/CO/5, paras. 44–45.
[59] See https://fs.knesset.gov.il/24/law/24_lsr_622751.pdf (in Hebrew).
[60] E/C.12/ISR/CO/4, para 40.
[61] A/HRC/12/48, para. 1879.
[62] For example, CEDAW/C/PSE/CO/1, para. 9.
[63] A/HRC/46/65, para. 13, and A/HRC/49/85, para. 10.
[64] Office for the Coordination of Humanitarian Affairs, "Most Palestinian plans to build in Area C not approved", *Humanitarian Bulletin*, January–May 2021, 22 June 2021.

forces in such violence.[65] The Commission has also met with stakeholders who report an alarming increase in both the severity and frequency of settler violence during the past year, maintaining that such violence and a lack of accountability for it was fuelling violence in the Occupied Palestinian Territory. The United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority, in his briefing to the Security Council on 22 March 2022 on the implementation of Security Council resolution 2334 (2016), emphasized that, despite the Security Council's call in that resolution for immediate steps to prevent all acts of violence against civilians, including all acts of terror, as well as all acts of provocation and destruction, daily violence continued.[66]

C. Violations of economic, social and cultural rights

51. In accordance with the indivisibility of all human rights, the Commission affirms the critical importance of economic, social and cultural rights. It recognizes the concern raised by human rights mechanisms about the patterns of violation of the right to land and housing in the West Bank, including systemic violations resulting from discriminatory planning and zoning laws and policies, confiscation of land and natural resources, systemic demolition of homes, forced eviction, and expansion of settlements coupled with restriction of movement.[67] Several human rights mechanisms have raised concerns about the situation of the Bedouin communities within Israel, including the eviction of such communities without consultations and their limited access to basic necessities.[68] The Committee on Economic, Social and Cultural Rights expressed concern about the discriminatory effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, as illustrated by the fact that less than 1 per cent of the land in Area C and 13 per cent of the land in East Jerusalem was allocated for the construction of infrastructure for Palestinians.[69]

52. The destruction of Palestinian water infrastructure, including pipelines, wells and reservoirs, the denial of construction permits and the confiscation and control of natural water resources have left the population in the West Bank at extreme risk of severe water scarcity.[70] The Commission notes reports that, while Israeli settlers have access to 320 litres per capita per day of water, which is more than the recommended 100 litres, Palestinians in Areas A and B have access to 75 to 100 litres per capita per day, and Palestinians in Area C to 30 to 50 litres per capita per day.[71] The Committee on Economic, Social and Cultural Rights expressed concern about the impact of the Israeli occupation and settlement policy and of its destruction of Palestinian water infrastructure on Palestinians in the Occupied Palestinian Territory in terms of access to water, which results in serious health consequences.[72]

53. The United Nations has warned that Gaza is at risk of becoming "unliveable" due to the grave violations of economic, social, and cultural rights resulting from the occupation and ongoing long-term land, air and sea blockade and repeated attacks that have destroyed essential infrastructure.[73] In 2021, almost two out of five people were food insecure,

[65] CCPR/C/ISR/CO/5, para. 24.
[66] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_22_march_2022_2334.pdf.
[67] See, for example, A/76/433; A/HRC/12/48; A/HRC/40/73, para. 18–22; and A/HRC/49/85, paras. 5–49.
[68] E/C.12/ISR/CO/4, paras. 20–21.
[69] Ibid., para. 50.
[70] See, for example, A/HRC/40/73 and E/C.12/ISR/CO/4.
[71] Office for the Coordination of Humanitarian Affairs, "Palestinians strive to access water in the Jordan Valley", Humanitarian Bulletin, January–May 2021, 22 June 2021.
[72] E/C.12/ISR/CO/4, para. 46.
[73] For example, A/HRC/40/74, para. 17; United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later", July 2017; and United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), "Occupied Palestinian Territory emergency appeal 2022", January 2022, p. 9.

compared to one in five in 2018.[74] The poverty rate was expected to increase to 59.3 per cent in 2021 as a result of the attacks in May 2021, up from 53 per cent in 2017.[75] The unemployment rate reached 50.2 per cent in 2021.[76] A higher percentage was reported among women (68.6 per cent) due to the lack of opportunities and social barriers to securing formal employment. Unemployment was especially affecting youth between the ages of 15 and 29, with an average rate of 71.8 per cent.[77]

54. Several United Nations mechanisms have stressed that the continuing blockade and repeated hostilities, resulting in the destruction of infrastructure and the deprivation of essential goods and services, have hindered access to water and sanitation and to the health-care system in Gaza.[78] The health-care system has suffered from severe destruction of infrastructure and shortage of essential medical equipment, medicines and medical personnel.[79] The Special Rapporteur reported that, as of October 2018, almost half of essential medicines were completely depleted in Gaza.[80]

D. Forced evictions and displacement

55. Palestinians face a constant threat of home demolitions and forced evictions.[81] The demolition of Palestinian-owned structures and forced eviction in the Occupied Palestinian Territory, including East Jerusalem, continue and were reported by the High Commissioner for Human Rights for the period from 1 November 2020 to 30 October 2021.[82] The demolitions and forced evictions have affected houses, donor-funded structures providing humanitarian aid, water sanitation and hygiene structures, and schools.[83] The punitive demolition of family homes of Palestinians found or alleged to have launched attacks against Israelis have been described as a form of collective punishment disproportionally affecting women and children.[84] Of particular note to the Commission is the effect that such demolition and arrests are having on children, an issue flagged to it by a number of stakeholders and reported by the United Nations Fact-Finding Mission (2009) and the Special Rapporteur.[85] The Commission notes with concern the Special Rapporteur's findings regarding children's traumatic experience of being expelled and the impact of home demolition on children, which also revives the trauma that their parents have already undergone with their own experience of dispossession and displacement, and may affect generations to come.[86]

E. Attacks on civic space

56. The Commission has noted with concern the increasing attacks on and efforts to silence human rights defenders and civil society organizations advocating the protection of human rights and accountability in the Occupied Palestinian Territory and Israel.

57. On 19 October 2021, the Israeli Minister of Defence designated six Palestinian human rights and humanitarian organizations as terrorist organizations, constituting arms of the Popular Front for the Liberation of Palestine and receiving funding that served that

[74] See Office for the Coordination of Humanitarian Affairs and humanitarian country team in the Occupied Palestinian Territory, "Humanitarian needs overview", December 2021; and https://www.un.org/unispal/document/thousands-of-palestinians-face-food-insecurity-amid-escalating-conflict-wfp-infographic/.
[75] UNRWA, "Occupied Palestinian Territory emergency appeal 2022", p. 14.
[76] Ibid., pp. 6 and 14.
[77] Ibid., p. 14.
[78] For example, A/HRC/12/48, paras. 1217–1335; A/HRC/40/73, paras. 53–55; A/HRC/40/74, para. 100; and A/HRC/40/CRP.2, paras. 150–194.
[79] For example, A/HRC/40/74, para. 100; A/HRC/40/CRP.2, paras. 160–161, and E/C.12/ISR/CO/4, para. 58.
[80] A/HRC/40/73, para 9.
[81] For example, A/HRC/49/85, paras. 24–25.
[82] A/HRC/49/85, paras. 24–25.
[83] Ibid., paras. 24–27.
[84] A/HRC/49/83, para. 17.
[85] A/HRC/12/48, para. 1282; and A/HRC/47/57, paras 21–23.
[86] A/HRC/47/57, para. 22.

organization's activities.[87] The Commission notes with concern the statement by the High Commissioner for Human Rights that the designation decision was based on vague and unsubstantiated reasons, and similar concerns expressed by the Human Rights Committee.[88] Individual human rights defenders have also been targeted with accusations of links to terrorist organizations. On 10 March 2022, an Israeli military court sentenced a French-Palestinian lawyer, Salah Hammouri, to four months' detention without trial, accusing him of being a member of the Popular Front for the Liberation of Palestine and a threat to security.

58. Many stakeholders emphasized to the Commission that silencing the voices of civil society deprives Palestinians of one of the few remaining avenues of redress and advocacy in seeking to ensure their fundamental human rights.

59. The Commission also notes reports of action being taken by the Palestinian Authority and the de facto authorities in Gaza that significantly curtail civic space and demands for accountability.[89] The High Commissioner for Human rights reported that on 24 June 2021, an opposition parliamentary candidate, Nizar Banat, who was known for his criticism of the Palestinian Authority, was killed during an arrest operation by Palestinian security forces.[90] The High Commissioner documented the use of unnecessary or disproportionate force by the Palestinian security forces in response to peaceful protests in major cities in the West Bank by Palestinians calling for accountability for Mr. Banat's death and for changes in leadership, with 75 protesters arrested, 40 of whom faced charges relating to the protests.[91] OHCHR documented the arbitrary arrest of critics by police of the de facto authorities in Gaza.[92] Extrajudicial executions of individuals suspected of "collaborating" with the Israeli intelligence service were also reported.[93]

60. The harassment and detention of Palestinians, including children, by Israeli forces in the Occupied Palestinian Territory can only contribute towards the coercive environment in which people live. The Commission notes the Special Rapporteur's alarm at the number of children in detention and the conditions of their arrest.[94]

F. Violence against women and girls

61. Reports have emphasized that women and girls continue to be subjected to excessive use of force and abuse by the Israeli security forces and settlers, including physical, psychological and verbal abuse and sexual harassment and violations of their right to life.[95] Harassment and abuse of Palestinian women and girls by the Israeli security forces in the Occupied Palestinian Territory has been reported at checkpoints and on the way to and from school and work.[96] Sexual and gender-based violence has also been reported in detention and during night raids,[97] and the Committee on the Elimination of Discrimination against Women has recommended that Israel ensure that the practice of night raids complies with due process guarantees and rights under the Convention on the Elimination of All Forms of Discrimination against Women.[98] Reports indicate that women and girls have been

[87] The six organizations in question were Addameer Prisoner Support and Human Rights Association, Al-Haq, the Bisan Center for Research and Development, Defence for Children International – Palestine, the Union of Agricultural Work Committees and the Union of Palestinian Women's Committees. See https://nbctf.mod.gov.il/en/Pages/211021EN.aspx.

[88] A/HRC/49/25, para. 36, and CCPR/C/ISR/CO/5, para. 18.

[89] A/HRC/49/25, para. 43, and A/HRC/49/83, paras. 33–36.

[90] A/HRC/49/83, para. 34.

[91] Ibid., para. 35.

[92] Ibid., para. 36.

[93] A/HRC/29/CRP.4, paras. 490–502.

[94] A/HRC/47/57, para. 23.

[95] CEDAW/C/ISR/CO/6, para. 30. See also A/HRC/46/63, paras. 17 and 19–21.

[96] CEDAW/C/ISR/CO/6, para. 30.

[97] A/HRC/12/48, paras. 112, 1707 and 1927; A/HRC/29/CRP.4, paras. 344–347 and 523; A/HRC/35/30/Add.1, para. 54; A/HRC/46/63, para. 59; and A/HRC/49/83, para. 42. See also CEDAW/C/ISR/CO/6, para. 30.

[98] CEDAW/C/ISR/CO/6, para. 31.

particularly targeted by settlers in the West Bank, including when the male members of their family are absent.[99]

IX. A lack of accountability

62. Numerous findings and recommendations by United Nations bodies have addressed the lack of accountability for violations of international humanitarian law and violations and abuses of international human rights law. The United Nations Fact-Finding Mission on the Gaza Conflict, in 2008–2009, found that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights.[100] The Mission concluded that there were serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission also took the view that the system presented inherently discriminatory features that made the pursuit of justice for Palestinian victims extremely difficult.[101]

63. The commission of inquiry investigating the conflict in Gaza in 2014 expressed concern that impunity prevailed across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, and found that Israel must break with its "recent lamentable track record" in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.[102] It also found that the Palestinian authorities had consistently failed to ensure that perpetrators of violations of international humanitarian law and international human rights law were brought to justice, and that the absence of measures to initiate criminal proceedings against alleged perpetrators called into question the stated determination of the Palestinian Authority to achieve accountability.[103] It concluded that comprehensive and effective accountability mechanisms for violations allegedly committed by Israel or Palestinian actors would be a key deciding factor of whether Palestinians and Israelis were to be spared yet another round of hostilities and spikes in violations of international law in the future.[104]

64. The Commission also notes the findings on a lack of accountability in the 2017 report of the High Commissioner for Human Rights on implementation of past recommendations on the Occupied Palestinian Territory, including East Jerusalem. The High Commissioner found a lack of accountability by Israel for violations in the Occupied Palestinian Territory on account of two sets of shortcomings: physical, financial, legal and procedural barriers that restricted the ability of Palestinians, particularly those living in Gaza, to gain access to justice, and the failure to investigate all allegations.[105] According to the report, accountability and access to justice was the largest thematic area under review, representing 27 per cent of the recommendations. Of the recommendations directed to Israel, 90 per cent were found not to have been implemented. Of those directed towards Palestinian authorities, 82 per cent were found not to have been implemented. [106]

65. Since the 2017 report of the High Commissioner for Human Rights, the Secretary-General and the High Commissioner have provided regular updates on the lack of progress in the implementation of the recommendations of the commission of inquiry on the 2014 Gaza conflict.[107] These reports have highlighted persistent concerns with regard to a lack of

[99] A/76/433, para. 13; A/HRC/12/48, footnote 713 (para. 1384); A/HRC/35/30/Add.1, paras. 66–67; A/HRC/46/63, para. 11; and CEDAW/C/ISR/CO/6, paras. 30–31.
[100] A/HRC/12/48, para. 1940.
[101] Ibid., para. 1961.
[102] A/HRC/29/52, para. 76.
[103] Ibid., para. 80.
[104] Ibid., para. 81.
[105] A/HRC/35/19, para. 18- (also quoting A/71/364, para. 40).
[106] Ibid., para. 14.
[107] A/HRC/37/41, paras. 9–17; A/HRC/40/43, paras. 4–13; A/HRC/43/21, paras. 14–15 and 19; and A/HRC/46/22, paras. 5–10.

accountability by all parties within the conduct of hostilities, and by Israeli security forces outside the conduct of hostilities.[108]

66. The words of the high-level fact-finding mission to Beit Hanoun in its report of 2007 continue to ring true: that the lack of accountability for those firing Qassam rockets indiscriminately on civilian areas in Israel, as well as a lack of accountability for civilian deaths caused by Israeli military activities in Gaza, had resulted in a culture of impunity on both sides, and that, as in many other parts of the world, the culture of impunity begets further human rights violations.[109] In her report of February 2022, the High Commissioner for Human Rights reiterated that position, stating that the prevailing climate of impunity, by all duty bearers, persisted.[110] She further noted that the absence of any significant process in the investigation and prosecution of alleged violations dating back in some cases more than a decade called into question the willingness of Israeli and Palestinian authorities to hold those allegedly responsible duly to account.[111]

67. The Commission also notes with concern the climate of impunity for violence against women. In her 2021 annual report on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, the High Commissioner for Human Rights reported that the occupation and the multiplicity of authorities and legal systems posed critical obstacles to the prevention of and punishment for acts of violence by all duty bearers against women and girls, particularly in East Jerusalem and in Area C.[112]

X. Assessment

68. The Commission was set up by the Human Rights Council following the fourth escalation in violence between Israel and Palestinian armed groups since 2008. While the highest levels of violence occurred between the Israeli security forces and Palestinian armed groups based in Gaza, the Commission emphasizes that the ongoing occupation of the West Bank and East Jerusalem and the 15-year blockade of Gaza are intrinsically linked. As with the 2014 Gaza hostilities, the 2021 conflict came against a backdrop of tensions between Palestinians and Israelis in the West Bank and East Jerusalem. In her statement to the Human Rights Council at its forty-ninth session, in March 2022, the High Commissioner for Human Rights noted that the number of Palestinians killed by Israeli security forces had tripled in comparison with the previous reporting period, and that there had been a significant increase in the number of Palestinian children detained by Israel, and of administrative detainees, while settlements continued to expand.[113] There were also attacks directed against Israeli civilians by Palestinians in early 2022.

69. **This review of the findings and recommendations of previous United Nations mechanisms and bodies clearly indicates that ending the occupation of lands by Israel, in full conformity with Security Council resolutions, remains essential in ending the persistent cycle of violence. What has become a situation of perpetual occupation was cited by Palestinian and Israeli stakeholders to the Commission as the one common issue that constitutes the underlying root cause of recurrent tensions, instability and protraction of conflict in both the Occupied Palestinian Territory, including East Jerusalem, and Israel.** In 2008, the high-level fact-finding mission to Beit Hanoun reported that the occupation remained the root cause of the bleak situation that the mission had only briefly sketched in its report.[114]

70. **The Commission notes the strength of prima facie credible evidence available that convincingly indicates that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory,**

[108] A/HRC/37/41, para. 45; A/HRC/40/43, para. 52; A/HRC/43/21, para. 45; and A/HRC/46/22, para. 46.
[109] A/HRC/5/20, para. 19.
[110] A/HRC/49/25, para. 4.
[111] Ibid., para. 16.
[112] A/HRC/46/63, para. 25 and 33–35. See also A/HRC/35/30/Add.2, paras. 47–53.
[113] See https://www.ohchr.org/en/statements/2022/03/occupied-palestinian-territory.
[114] A/HRC/9/26, para. 74.

and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers.

71. The Commission notes the views of the former Secretary-General that a sense of despair and frustration was growing under the weight of half a century of occupation and the paralysis of the peace process.[115] **This review of past reports indicates that impunity is feeding increased resentment among the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and in Israel and is fuelling recurrent tensions, instability and protraction of conflict and an endless cycle of violence that compromises chances for sustainable peace and security.** While tackling impunity must be the highest priority for the parties, the Commission finds from its analysis a clear unwillingness by the relevant duty bearers to adequately address the core underlying issues driving the cycle of violence and dispossession.

72. The continuing occupation of the Occupied Palestinian Territory, including East Jerusalem, the 15-year blockade of Gaza and longstanding discrimination within Israel are all intrinsically linked, and cannot be looked at in isolation. The conflict and the occupation must be considered in their full context. Both the 2014 and 2021 hostilities came in the context of tensions between Palestinians and Israelis in the West Bank and East Jerusalem, in addition to the situation in Gaza itself.

73. The increased level of violence within Israel itself during the 2021 hostilities and again in early 2022 adds to concerns. **The Commission repeats with concern the stark warning by the Special Rapporteur that the persistent discrimination against Palestinians throughout the West Bank and East Jerusalem, threats of forced displacement, forced displacement, demolitions, settlement expansion and settler violence and the blockade of Gaza have all contributed to and will continue to contribute to cycles of violence.**[116]

74. Discrimination emanating from divisions, and restrictions on human rights to varying degrees, have created an oppressive environment that itself fuels both Palestinian resentment towards those imposing the restrictions and Israeli fear and insecurity.

75. **Meanwhile, the Palestinian Authority frequently refers to the occupation as a justification for its own human rights violations and as the core reason for failure to hold legislative and presidential elections. The de facto authorities in Gaza show little commitment towards upholding human rights, and little adherence to international humanitarian law.**

76. **The end of the occupation, coupled with the fulfilment by Israel and the State of Palestine of their obligations under the Convention on the Elimination of All Forms of Discrimination against Women, also remains central to women's transformative empowerment, meaningful participation in public life and equal enjoyment of all human rights.**[117] While Palestinian women play an active role within their communities and in social and political movements, persistent gaps remain in terms of equal participation in political leadership, decision-making and peace processes and access to resources.[118]

77. Ending the occupation alone will not be sufficient, however. Other steps must be taken to ensure that all people in Palestine and in Israel are able to enjoy all of their human rights equally and in full, without any discrimination.

78. In its initial consultations with stakeholders, the Commission received numerous requests for it to issue key findings as soon as possible on relevant violations, abuses and international crimes being committed in the Occupied Palestinian Territory, including East Jerusalem, and Israel. While this review of past findings and of the status of implementation of recommendations points to numerous violations and abuses of international law, **the**

[115] https://www.un.org/sg/en/content/sg/statement/2016-01-26/secretary-generals-remarks-security-council-situation-middle-east.

[116] A/HRC/47/57, para. 10.

[117] For example, A/HRC/35/30/Add.2, paras. 54 and 90.

[118] A/HRC/12/48, para. 1977; A/HRC/46/63, para. 26; and Economic and Social Commission for Western Asia, "Gendered needs during the May 2021 conflict in the Gaza Strip", March 2022, pp. 18 and 21. See also CEDAW/C/PSE/CO/1, paras. 18–19 and 30–31.

Commission must conduct its own investigations and legal analysis into alleged violations and abuses, and in so doing will carefully review all available evidence and material. It will reach its own findings and, in accordance with its mandate, will make recommendations, in particular on accountability measures. It will preserve and analyse information and evidence on international crimes with a view to identifying those bearing individual criminal responsibility. It will also seek to work with judicial accountability mechanisms that adhere to internationally accepted due process and fair trial standards towards ensuring individual, State and corporate accountability. In parallel, the Commission will seek to identify ways of addressing the underlying root causes of the recurrent tensions, instability and protraction of conflict, and will work with relevant stakeholders to identify tangible steps aimed at contributing to ending the violence and fostering peaceful coexistence.

79. The Commission notes the findings of the International Court of Justice that, in the context of the construction of the wall and its associated regime, Israel was in violation of relevant obligations under international humanitarian law and international human rights law, and that all States parties to the Fourth Geneva Convention have the obligation to ensure compliance by Israel with international humanitarian law as embodied in that Convention. The Commission also notes the recent demonstration of the ability of third States to take prompt and unified action to ensure respect for international law in the face of violations of international law by a Member State of the United Nations. Given these points, and given the Commission's assessment that there has been a lack of implementation of the recommendations of past reports in relation to the core underlying root causes of the conflict, **the Commission will carefully assess the responsibilities of third States along with those of private actors in the continued policies of occupation, in accordance with its mandate established by the Human Rights Council. It will also consider the role of third States in ensuring respect for and full compliance with international humanitarian law and human rights law in the Occupied Palestinian Territory, including East Jerusalem, in Israel and in the occupied Syrian Golan.**

80. In the implementation of its mandate, the Commission will examine specific thematic areas in future reports, while maintaining a continued focus on investigating all underlying root causes of recurrent tensions and identifying recurring patterns in the consequences of the conflict, including the Israeli occupation and the promotion of accountability. In doing so, it will undertake investigations, host consultations, engage with relevant stakeholders and launch focused requests for submissions based on specific thematic areas. **Given that approximately 50 per cent of the Palestinian population resides outside the Occupied Palestinian Territory and Israel, the Commission will seek to engage with the wider Palestinian diaspora located in neighbouring countries and further afield, as well as Palestinians, Israelis and others who reside in the State of Palestine or Israel. Despite the lack of cooperation by Israel and its refusal to allow the Commission entry, the Commission will continue to seek access to Israeli and Palestinian victims to hear their voices.**

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REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the Human Rights Council the report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Human Rights Council decision 1/106.

The Secretary-General draws the attention of the members of the Human Rights Council to the fact that this report is based on a visit undertaken by the Special Rapporteur from 9 to 17 June 2006, prior to the adoption of the above-mentioned decision by the Council.

* A/HRC/2/1.

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Summary

The central feature of this report is the conflict in and the siege of Gaza. On 25 June 2006, following the capture of Corporal Gilad Shalit by Palestinian militants and the continued firing of home-made Qassam rockets into Israel, Israel commenced repeated military incursions into Gaza and regular shelling of Gaza, causing numerous deaths and injuries, destruction of homes, agricultural land and infrastructure and resulting in the large-scale violation of human rights and international humanitarian law. In particular, Israel has violated the prohibition on the indiscriminate use of military power against civilians and civilian objects. The situation in the West Bank has also deteriorated substantially.

The Wall presently under construction in the Palestinian territory is now portrayed by the new Government of Israel as a political measure designed to annex 10 per cent of Palestinian land situated between the Green Line and the Wall, where some 76 per cent of the Israeli settler population lives. When the Wall is completed, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will be enclosed in the closed zone between the Wall and the Green Line. The 500,000 Palestinians living near the Wall require permits to cross it, and it is estimated that 40 per cent of the applications for permits are refused.

Israel continues its policy of the de-Palestinization of Jerusalem. The Wall is constructed in such a way as to place about a quarter of East Jerusalem's Palestinian population of 230,000 in the West Bank. Such persons will in future require permits to access their employment and to visit friends, hospitals and religious sites in Jerusalem.

Settlements continue to expand, in violation of the Fourth Geneva Convention. The settler population in the West Bank and East Jerusalem now numbers over 440,000.

The low wall under construction in south Hebron will make it difficult for Palestinian communities located between the low wall and the Green Line to access their lands, schools and clinics.

The number of checkpoints has increased, from 376 in August 2005 to over 500. Permits for travel between different parts of the West Bank are granted sparingly and require Palestinians to subject themselves to arbitrary bureaucratic procedures. Nablus and Jenin, in particular, have been seriously affected by checkpoints, and are today in effect imprisoned cities. It seems that the main purpose of many checkpoints is to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process.

The demolition of houses remains a regular feature of the occupation. It has now become the practice to destroy houses in the course of effecting arrests in policing operations. The destruction of houses for reasons other than military necessity is prohibited by international humanitarian law.

The family life of Palestinians is undermined by a number of Israeli laws and practices. Recently, the Israeli High Court upheld a law which prohibits Israeli Arabs who marry Palestinians from living together with them in Israel. The Wall in Jerusalem has also resulted in the separation of families.

More than 10,000 Palestinians, including women and children, are imprisoned in Israeli jails.

The humanitarian situation in both the West Bank and Gaza is appalling. At least 4 out of 10 Palestinians live under the official poverty line of less than US$ 2.10 a day and unemployment stands at least 40 per cent. To aggravate matters, the public sector, which accounts for 23 per cent of total employment in the Palestinian territory, is employed but unpaid as a result of the withholding of funds owed to the Palestinian Authority by the Government of Israel, amounting to $50 to 60 million per month. In addition, the United States and the European Union have cut off funds to the Palestinian Authority on the ground that Hamas, the party elected to Government in January 2006, is listed under their laws as a terrorist organization. Non-governmental organizations working with the Palestinian Authority have likewise been affected by restrictions on funding.

In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated. This continues, despite the fact that Israel is itself in violation of numerous Security Council and General Assembly resolutions and has failed to implement the advisory opinion of the International Court of Justice of 9 July 2004.

The Quartet itself has no regard for the advisory opinion and fails even to refer to it in its public utterances. This has substantially undermined the reputation of the United Nations in the Occupied Palestinian Territory. Although Palestinians have a high regard for dedicated and committed United Nations workers on the ground, they have serious misgivings about the role of the United Nations in New York and Geneva.

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I. INTRODUCTION

1. I visited the Occupied Palestinian Territory (OPT) and Israel from 9 to 17 June 2006 in order to compile information for my report to the Human Rights Council at its forthcoming session in September 2006. Shortly after I left OPT a serious crisis erupted in Gaza following the capture by Palestinian militants of an Israeli soldier, Corporal Gilad Shalit. The Israeli reaction to this development prompted the convening of a special session of the Council to discuss the situation in OPT. At the special session, held on 5 and 6 July 2006, the Council decided to send a fact-finding mission headed by myself to OPT so that I might report on the most recent developments. In order to carry out this mission it was necessary to obtain the consent of the Government of Israel. The Government, however, declined to agree to a visit by the fact-finding mission. The present report is therefore written to apprise the Council of the situation affecting human rights in the region in the context of my visit and subsequent developments in OPT which gave rise to the request for a fact-finding mission. Inevitably, as I was not able to visit the region in July, information on these developments up to 9 August 2006 has been obtained from secondary sources - press reports, reports of non-governmental organizations (NGOs), United Nations publications, etc.

2. During my mission I visited Jerusalem, Gaza, villages in the vicinity of Jerusalem which have been seriously affected by the construction of the Wall, Ramallah, Hebron and communities in the South Hebron Hills, Bethlehem and the Wall near Rachel's Tomb, the village of Wallaja, where house demolitions have occurred, the Jordan Valley, including Jericho, and communities whose human rights are affected by Israeli policies and practices, Nablus, including the Balata refugee camp, the village of Jayyous on the perimeter of the Wall and farming communities living close to the Wall, and checkpoints around the city of Nablus and roads in its vicinity.

3. During the visit I spoke with a wide range of persons, both Palestinian and Israeli, about violations of human rights and international humanitarian law. I delivered a lecture at the Hebrew University in Jerusalem sponsored by the Minerva Centre for Human Rights and the International Committee of the Red Cross (ICRC). The lecture, which was attended by more than 100 persons, examined controversial questions of humanitarian law relating to the conflict in OPT. Unfortunately, I had no contact with Israeli officials as the Government of Israel does not recognize my mandate. The Government was, however, aware of my visit and placed no obstacles in the way of the visit.

4. The eruption of violence in Gaza following the capture of Corporal Shalit and the arrest of members of the Palestinian Legislative Council and the Palestinian Authority (see paragraph 11 below) was followed by Israel's invasion of Lebanon and large-scale violence in Lebanon, Israel and Gaza. It is not the purpose of this report to comment on events in Lebanon and along Israel's northern borders, as that falls outside my mandate. It will, however, fully examine the situation in Gaza. It should be mentioned that the events in Lebanon to a large extent have overshadowed violence in Gaza and along its borders.

5. In the present report "the Wall" is used instead of "barrier" or "fence". This term was carefully and deliberately used by the International Court of Justice in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2006. I see no reason to depart from this language.

II. THE QUESTION OF OCCUPATION

6. Before turning to the substance of my report, there is a preliminary matter of concern which I wish to address. This is the question of occupation. The Government of Israel prefers to avoid acknowledging the fact that OPT, that is both the West Bank and Gaza, including East Jerusalem, is occupied territory. Instead, it prefers to speak about the "disputed territories" and to assert that the withdrawal of settlers and the Israel Defence Forces (IDF) from Gaza in August 2005 has terminated the occupation of Gaza. This is a misconception of both law and fact. The International Court of Justice, the Security Council and the High Court of Israel itself have all asserted that OPT is and remains occupied territory and that, as such, it is governed by a special legal regime. According to this regime, Israel is bound to comply with both international humanitarian law and human rights law in its treatment of Palestinians. It is, admittedly, an unusual occupation in that it has continued for almost four decades. The protracted nature of the occupation does not, however, reduce the responsibility of the occupying Power. On the contrary, it increases its responsibility. The length of the occupation has led some to characterize the situation as one of colonialism or apartheid. Although Israel's conduct at times resembles that of a colonial Power or an apartheid regime, it is more correct to classify Israel as an occupying Power in OPT and to judge its actions in accordance with the international law rules applicable to occupation.

III. THE PRESENT CRISIS IN GAZA

7. The question whether Gaza remains an occupied territory is now of academic interest only. In the course of the cynically named "Operation Summer Rains" IDF has not only asserted its control in Gaza by means of heavy shelling, but has also done so by means of a military presence.

8. In August 2005 Israel withdrew its settlers and armed forces from Gaza. Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. Even before the commencement of "Operation Summer Rains", Gaza remained under the effective control of Israel. This control was manifested in a number of ways. First, Israel retained control of Gaza's air space, sea space and external borders. Although a special arrangement was made for the opening of the Rafah crossing to Egypt, to be monitored by European Union personnel, all other crossings remained largely closed. The closure of the Karni crossing for goods for substantial periods had particularly serious consequences for Gaza as it resulted in a denial of access to foodstuffs, medicines and fuel. A proposed scheme which would have allowed Gazans to visit family in the West Bank by means of bus convoys was never implemented. In effect, following Israel's withdrawal Gaza became a sealed-off, imprisoned society. The effectiveness of Israel's control was further demonstrated by sonic booms caused by its overflying aircraft, designed to terrorize the population of Gaza, regular shelling of homes and fields along the border and targeted assassinations of militants, which, as in the past, were carried out with little regard for innocent civilian bystanders. In one incident in June 2006, a family of seven was killed by IDF shelling while picnicking on a Gaza beach. The actions of IDF in respect of Gaza have clearly demonstrated that modern technology allows an occupying Power to effectively control a territory even without a military presence.

9. Writing in *Haaretz* on 7 July 2006, the Israeli columnist Gideon Levy summed up the situation in the following language:

> "The Israel Defence Forces departure from Gaza … did almost nothing to change the living conditions for the residents of the Strip. Gaza is still a prison and its inhabitants are still doomed to live in poverty and oppression. Israel closes them off from the sea, the air and land, except for a limited safety valve at the Rafah crossing. They cannot visit their relatives in the West Bank or look for work in Israel, upon which the Gazan economy has been dependent for some forty years. Sometimes goods can be transported, sometimes not. Gaza has no chance of escaping its poverty under these conditions. Nobody will invest in it, nobody can develop it, nobody can feel free in it. Israel left the cage, threw away the keys and left the residents to their bitter fate. Now, less than a year after the disengagement, it is going back, with violence and force."

10. Even before the start of "Operation Summer Rains" Israel had already tightened its control of Gaza in response to the election of Hamas to the Palestinian Authority in January 2006. I visited Gaza on 11 June 2006. For security reasons, I was not permitted to stay overnight, as had previously been my practice during visits to OPT. I visited the Al-Aqsa Martyrs Hospital in Gaza and spoke with the director of hospital services and senior medical practitioners. It was clear that the hospital services faced a crisis resulting from the non-payment of staff salaries and the restrictions placed on the supply of medicines and vaccines through the Karni crossing. It seemed clear to me that the Government of Israeli had embarked upon a siege in order to bring about regime change. In the process little attention was being paid to human rights, as shelling and sonic booms violated the fundamental rights to life and human dignity, and even less attention was paid to the constraints of international humanitarian law; it was already clear that collective punishment was to be the instrument used to bring about regime change.

11. On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli-Egyptian border, which left two Palestinians and two IDF soldiers dead. In retreating, they took Corporal Gilad Shalit with them as captive. They demanded the release of the women and children in Israeli jails in return for his release. This act, together with the continued Qassam rocket fire into Israel, unleashed a savage response from the Government of Israeli. In the first place, it arrested 8 Hamas Cabinet ministers and 26 members of the Palestinian Legislative Council in Ramallah. At the time of writing this report, most of them remained in detention. While Israel claims that they are being held because of their support for terrorist activities, it is difficult to resist the notion that they are being held as hostages, in violation of article 34 of the Geneva Convention relative to the Protection of Civilians in Time of War (Fourth Geneva Convention). This impression is confirmed by the debate within the Government over what to do with them. The Shin Bet security service suggested holding them as bargaining chips under the Unlawful Combatants Law. It seems, however, that the Attorney-General, Menachem Mazuz, has insisted that legal proceedings be initiated against them for membership in a terrorist organization (see *Haaretz*, 30 June 2006). The issue of the arrest of members of Hamas has been aggravated by the arrest of Aziz Dweik, Speaker of the Palestinian Legislative Council, on 5 August 2006 and reports that he has been injured in the course of interrogation.

12. Israel's assault on and siege of Gaza in the course of "Operation Summer Rains" has taken many forms, described in the following paragraphs.

A. Bombardment of public utilities

13. On 28 June 2006 the Israeli Air Force (IAF) destroyed all six transformers of the only domestic power plant in the Gaza Strip. This plant supplied 43 per cent of Gaza's daily electricity. The rest is provided by the Israel Electrical Corporation. Approximately 700,000 Gazans, out of a population of 1.4 million, initially were without electricity. Currently, the Gaza Electrical Distribution Company (GEDCO) is load-sharing the remaining electricity supply from Israel, but the supply of power to households across the Gaza Strip is intermittent. As most of Gaza's water wells are powered through the national electrical grid, which has been destroyed, generators are being used to power wells, and the daily water supply to Gazan households has been reduced. Israel's military operations have also destroyed the main water pipelines and sewerage networks. In addition, the frequent closure of the Nahal Oz pipeline, the only pipeline bringing fuel into the Gaza Strip, has affected the use of backup generators to power regular water supplies.

14. On 19 July IAF bombed power transformers during an attack on the el-Maghazi refugee camp, cutting off power to the whole of the central Gaza Strip.

15. The substantial reduction of the electricity and fuel supply, together with the disruption of water supplies, has impacted severely on the daily life of Palestinians who are without light at night and electricity to do their cooking. Moreover, it is impossible to pump water to the upper levels of multi-storey buildings. The sewers threaten to overflow. Hospitals have been radically affected and are forced to use generators to power life-saving equipment because of power outages.

B. Bombardment of public buildings and facilities

16. Israeli war planes have deliberately targeted public buildings in Gaza. The buildings housing the Ministries of the Interior, Foreign Affairs and the National Economy and the Office of the Prime Minister have all been destroyed. Such action serves no security purpose and can only be construed as an attempt to undermine the institutions of Government. Educational institutions have also been destroyed. Six bridges linking Gaza City with the central Gaza Strip have been destroyed, as have a number of roads. On 28 June IDF occupied Gaza International Airport and destroyed large parts of it.

C. Closure of borders

17. Although the Rafah crossing is not directly controlled by Israel, IDF prevented European observers responsible for staffing the crossing from reaching it. It has, therefore, been closed since 25 June, only opening for two brief periods. The closure of the Rafah crossing for three weeks in July 2006 left more than 3,000 Palestinians stranded on the Egyptian side of the border in harsh conditions, including some 578 people deemed to be "urgent humanitarian cases", who had been referred for medical treatment abroad. Eight Palestinians died as a result of their being denied proper medical treatment, shelter and water at the crossing.

18. The closure of the Rafah crossing has also had serious consequences for Palestinians on the Gaza side, particularly those living abroad who were in Gaza for family visits. Serious questions arise about the role of the EU monitors in this connection. They are in charge of the supervision of the crossing under the terms of an agreement of 15 November 2005 between the Palestinian Authority and Israel, an agreement facilitated by the United States. It is surely incumbent upon the EU monitors to show some courage and compassion in carrying out their supervisory role and not simply to bow to the dictates of the Government of Israel.

19. The Karni commercial crossing has been intermittently closed. The import of some food and medical supplies to Gaza has been permitted but the export of goods has been severely curtailed.

20. Israeli naval vessels have prevented Palestinian fishing along the coast, with the result that fish is no longer available in local markets.

D. Casualties

21. Since 25 June 2006 some 184 Palestinians (at least half of whom were civilians) have been killed, including 42 children. Some 720 people have been seriously wounded, including 168 children and 21 women. One Israeli soldier has been killed and 25 Israelis injured, including 11 injured by home-made rockets fired from Gaza.

E. Military incursions causing death and destruction

22. Since 25 June 2006 IDF has made numerous and repeated incursions into the Gaza Strip, killing civilians and destroying houses. The most serious incursions have been into Beit Hanoun, Beit Lahia, Sajiyeh, Deir el-Balah, the el-Maghazi refugee camp, Rafah and Khan Younis. In the course of these raids, carried out by tanks and bulldozers, houses have been seized and transformed into military bases. These houses have been severely damaged and several hundred houses have been destroyed. Schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) have been attacked and damaged. Olive and citrus trees have been uprooted and farmland destroyed in land-levelling operations. Roads, water pipes and electricity and telephone poles have been damaged. Many families have been compelled to flee their houses, and it is estimated that some 3,400 Palestinians are presently being sheltered by UNRWA as a result of the military action. Despite the prohibition on the use of civilians as human shields imposed by the High Court of Israel, IDF has detained civilians and used them as human shields during bulldozing and detention operations. Military incursions have been accompanied by heavy shelling and the bombing of houses, resulting in the death of many civilians.

23. The attacks on the el-Maghazi refugee camp from 19 to 21 July 2006 and the attack on Rafah at the beginning of August are examples of typical Israeli incursions. In the first, 19 Palestinians were killed, including 4 children and 1 woman, and 125 were injured, most of them unarmed civilians. Four houses were completely destroyed and nine were partially destroyed. In addition, agricultural crops were levelled and the electrical, water and road infrastructure was destroyed. In the second incursion, 16 Palestinians were killed, including 10 civilians, and 39 were injured by shrapnel and suffered burns; 4 children were killed and 13 injured.

24. There has been heavy fighting between Palestinian militants and IDF. IDF has used tanks and bulldozers, supported by helicopters that have fired flares and machine guns to provide cover for ground forces.

F. Shelling and sonic booms

25. Israel has maintained unrelenting shelling of the Gaza Strip since 25 June. Several thousand shells have been fired, an estimated 200-250 each day. IAF had conducted at least 220 aerial bombings as of 3 August and fighter jets have fired air-to-surface missiles. This has been accompanied by F-16s flying low and breaking the sound barrier over Gaza, causing sonic booms that are as loud as the actual bombardments. These sonic booms have caused widespread terror among the population, particularly children. If terrorism has any meaning, then it is surely this. A doctor from Gaza has written about the effects of sonic booms and artillery shelling on her 13-year-old daughter in the following words:

> "My daughter is restless, panicked and afraid to go out, yet frustrated because she cannot see her friends. When Israeli fighter planes fly by day and night, the sound is terrifying. My daughter usually jumps into bed with me, shivering with fear. Then both of us end up crouching on the floor. My heart races, yet I try to pacify my daughter, to make her feel safe. But when the bombs sound, I flinch and scream. My daughter feels my fear and knows that we need to pacify each other. I am a doctor, and mature, middle-aged woman, but with sonic booming, I become hysterical" (Dr. Mona El-Farra, *The Boston Globe*, 10 July 2006).

26. Palestinians are not blameless when it comes to shelling. Militants continue to fire Qassam home-made rockets indiscriminately into Israel, injuring Israeli civilians, damaging civilian infrastructure and causing fear among the civilian population living near the Gaza border. It is estimated that eight to nine rockets are fired each day.

G. Targeted assassinations

27. Targeted assassinations have continued, with the inevitable "collateral damage" to civilians.

H. Terrorism by telephone

28. The Israeli military has now resorted to a new method of psychological terror. Palestinians in Gaza are telephoned by Israeli military intelligence agents and warned that their houses will be blown up in less than one hour. This threat is sometimes carried out and sometimes not. This tactic has inevitably caused psychological distress and panic amongst Palestinians. Palestinians forced to leave their homes in this way have become internally displaced persons forced to live in UNRWA school premises.

I. Hospitals and health

29. Israeli forces demolished the outside wall of the new emergency hospital in Beit Hanoun. Nevertheless, the hospital continues to function but is seriously impaired. Generators are being used to operate X-ray departments and operation theatres. Referrals abroad of patients from the

Gaza Strip have been severely affected by the present crisis. As noted above, checkpoints have been closed to patients and permits denied. Particularly serious problems have arisen in respect of the Rafah border crossing to Egypt. Essential drugs are also in short supply. On 27 July the Palestinian Authority Ministry of Health reported that 67 of the 473 items on the list of essential drugs were out of stock.

30. Public health is endangered by lack of safe drinking water and sewage leakage and reported cases of diarrhoea have increased by 163 per cent compared with the same period last year. It is feared that communicable diseases like cholera and poliomyelitis will reappear.

31. Many Palestinians have suffered burns concentrated on the lower body, which has resulted in a high number of amputations. The Palestinian Health Ministry has called for an independent inquiry into this phenomenon.

J. Food and poverty

32. The poverty level in Gaza stands at 75 per cent. This is mainly attributable to the siege. Food insecurity results in part from the absence of purchasing power as few people have sufficient money today to cover their family's basic food needs. Food prices have inflated and supplies have been reduced as a result of the current operation. As noted above, fish is no longer available as a result of the sea blockade. Wheat flour mills, factories producing food and bakeries have been forced to reduce their production owing to power shortages. Furthermore, the loss of capacity to preserve perishable food in the Gaza heat results in high food losses. Supplies of sugar, dairy products and milk are running extremely low as commercial supplies from Israel are limited.

33. As indicated above, water supplies have been seriously affected as a result of the destruction of the Gaza power plant and the bombing of pipelines. Consequently, drinking water is in short supply. UNRWA and ICRC have been compelled to supply water by means of water tankers.

K. Legal assessment of Israeli action

34. Israel's actions must be assessed in terms of both human rights norms and international humanitarian law. According to the International Court of Justice in its advisory opinion cited above, both these regimes are applicable to Israel's conduct in the Occupied Palestinian Territory.

35. Israel has violated a number of rights proclaimed in the International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), the freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It has also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably "the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing", freedom from hunger, and the right to food (art. 11) and the right to health (art. 12).

36. Israel has, in addition, violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians or civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention, and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of Corporal Gilad Shalit and the continued firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

IV. THE WEST BANK

37. Many of Israel's policies and practices in the West Bank seriously impinge upon the human rights of Palestinians. The Wall presently under construction in Palestinian territory, checkpoints and roadblocks, settlements, an arbitrary permit system, the pervasive practice of house demolitions, targeted assassinations, and arrests and imprisonment violate a wide range of civil and political rights. Economic and social rights have also suffered from the humanitarian crisis resulting from the occupation.

The Wall

38. The Wall that Israel is presently building largely in Palestinian territory is clearly illegal. The International Court of Justice in its advisory opinion 4 asserted that it is contrary to international law and that Israel is under obligation to discontinue construction of the Wall and to dismantle those sections that have already been built forthwith. On 20 July 2004 the General Assembly adopted resolution ES-10/15 by 150 votes in favour, 6 against and 10 abstentions, in which it demanded that Israel comply with its legal obligations identified in the advisory opinion. The Israeli High Court of Justice, in a judgement delivered in September 2005 in *Mara'abe v. the Prime Minister of Israel* (HCJ 7957/04), dismissed the advisory opinion, arguing that the International Court of Justice had failed to have regard to the security considerations that had prompted the construction of the Wall. The basis of this judgement has now been undermined by the admission of the Israeli Government that the Wall is designed to serve a political purpose and not an exclusively security purpose. The admission that the Wall has in part been built to include West Bank settlements within the Wall and under Israel's direct protection has led the High Court to rebuke the Government for misleading it in the *Mara'abe* hearing and other challenges to the legality of the Wall (see *Haaretz*, 14 and

16 June 2006). That the purpose of the Wall is to acquire land surrounding West Bank settlements and to include settlements themselves within Israel can no longer be seriously challenged. The fact that 76 per cent of the West Bank settler population is enclosed within the Wall bears this out. The Government's present policy to unilaterally disengage from the West Bank or to realign Israel's borders is a thin disguise for the annexation by Israel of the territory between the Green Line and the Wall, amounting to some 10 per cent of Palestinian land.

39. On 30 April 2006 the Israeli Government revised the route of the Wall. It will now be 703 km long when completed, rather than 670 km. At present over 50 per cent of the Wall has been completed. When it is finished, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the Wall and the Green Line. More than 500,000 Palestinians living within 1 km of the Wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the Wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement block, it extends some 22 km into the West Bank. At present, there are some 73 gates in the Wall, but only 38 of them are accessible to Palestinians, and only to those with the correct permit.

40. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. Although precise figures are not available, it seems that the number of permits refused may conservatively be estimated at 40 per cent. Reasons given for refusing permits range from security to failure to establish land ownership. The latter ground is now more frequently used by Israeli authorities as it has become clear that Palestinians, whose land ownership dates from a chaotic Ottoman system of land tenure, are frequently unable to prove ownership to the satisfaction of Israeli authorities determined to deny permits. The difficulties and humiliation occasioned by the process of applying for permits furthermore deters many Palestinians from applying. The fact that the opening and closure of gates leading to the closed zone are regulated in a highly arbitrary manner and frequently do not open as scheduled aggravates the situation. Moreover, tractors and farm vehicles are frequently not allowed access to the closed zone, which means that farmers must walk or use donkeys to reach their land and to bring out their produce.

41. Obstacles placed in the way of access to the closed zone have seriously affected farming in this zone. At a time when many Palestinians are returning to the land as a result of the non-payment of salaries to civil servants and the closure of many private businesses in the cities, the permit system seriously impacts upon Palestinian employment and livelihood.

V. JERUSALEM AND THE WALL

42. At the outset of this discussion it is necessary to repeat that East Jerusalem is not part of Israel. It is occupied territory subject to the Fourth Geneva Convention. This obvious truth was noted by the International Court of Justice in its advisory opinion. Israel's illegal attempt at annexation of East Jerusalem must not be allowed to obscure this fact.

43. The 75 km Wall around Jerusalem (of which only 5 km are on the Green Line) is the instrument being used to effect major changes in the city by seeking to ensure that Jerusalem

assumes a predominantly Jewish character, which will undermine Palestinian claims to Jerusalem as the capital of an independent Palestinian State. This is being done by constructing the Wall through Palestinian neighbourhoods in East Jerusalem and classifying neighbourhoods on the eastern side of the Wall as belonging to the West Bank. This has serious implications for the human rights of some 230,000 Palestinians living in Jerusalem.

44. First, while Palestinians living on the west side of the Wall will be allowed to retain their Jerusalem identity documents, which entitle them to certain benefits, particularly in respect of social security, they will find it increasingly difficult to travel to cities in the West Bank such as Ramallah and Bethlehem, where many of them are employed. Moreover, if they elect to reside in the West Bank in order to be nearer to their places of work, they risk losing their Jerusalem identity documents and the right to live in Jerusalem because under Israel's so-called centre of life policy, Palestinians must prove that they currently live in the city of East Jerusalem to maintain their Jerusalem residency rights.

45. Secondly, those relegated to the West Bank as a result of the construction of the Wall, who number about a quarter of the city's population of 230,000, will lose their Jerusalem identity documents and the attendant benefits. They will also require a permit to enter Jerusalem, and will be allowed to enter the city by only 4 of the 12 crossings in the Wall, which will considerably increase their commuting time and impede their access to schools, universities, hospitals, religious sites and places of employment.

46. The construction of the Wall in order to achieve the Judaization of Jerusalem is a cynical exercise in social engineering that imposes severe hardships on all aspects of Palestinian life.

VI. SETTLEMENTS

47. Jewish settlements in the West Bank are illegal. They violate article 49, paragraph 6, of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in the advisory opinion on the Wall. The Israeli High Court has consistently refused to pronounce on the legality of settlements, which indicates that even Israel's own High Court is unwilling to confer legitimacy on settlements.

48. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Israeli Government persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Israeli Government. For instance, in 2006 the Government approved the expansion of the settlements of Givat Ze'ev, Kfar Sava, Maskiyot and Beitar Ilit (see *Haaretz*, 21 May 2006). More frequently, expansion takes place stealthily under the guise of "natural growth", which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the average growth rate in Israeli cities of 1.7 per cent. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts are frequently established and threats to remove them are not carried out.

49. As a result of this expansion, the settler population in the West Bank numbers some 245,000 persons and that of East Jerusalem nearly 200,000. As indicated above, the Wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements

will be enclosed within the Wall. Moreover, the three major settlement blocks of Gush Etzion, Ma'aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

50. It is clear from statements of the Government of Israel that the major settlement blocks are destined to remain part of Israel. On 3 May 2006 Prime Minister Olmert told the Knesset that "The achievements of the settlement movement in main concentrations will forever be an integral part of the sovereign state of Israel, along with Jerusalem our united capital" (see *Haaretz*, 4 May 2006).

51. The Israeli Government's proposed policy of "unilateral disengagement", "convergence" or "realignment" clearly envisages the unlawful annexation of large portions of Palestinian territory. The euphemisms used to describe this policy should not be allowed to obscure this hard truth.

52. Settler violence continues to be a serious problem. In June 2006 the Palestinian Monitoring Group published the following account of settler violence which is illustrative of the problem:

> "Israeli settlers attempted to abduct a female university student in the district of Salfit; beat civilians in the city of Hebron as well as other civilians near the settlement of Ma'on; closed a road in the district of Qalqiliya; threw stones at civilian houses in Tel Rumeida neighbourhood in the city of Hebron, and stole a water pump from a house in Tel Rumeida. They burned two civilian vehicles and one truck in the town of Huwara; set fire to wheat crops and olive trees in the villages of Salim near Nablus and Al Jab'a near Bethlehem; and grazed sheep on cultivated land in the district of Hebron."

VII. SOUTH HEBRON AND THE "MINI-WALL"

53. Plans to build the Wall in south Hebron have been abandoned. Instead, the projected Wall will largely follow the Green Line. In its place Israel is constructing a "mini-wall" running along the northern side of settler bypass roads in the region. This wall is approximately 1 m high and is designed to prevent Palestinian vehicles from crossing onto the main road and to give settlers unrestricted use of bypass roads. These restrictions will allow Jewish settlers to move safely between settlements and further on to Israel without crossing Palestinian land. Twenty-two Palestinian communities and over 1,900 Palestinians will be enclosed between the road barrier or mini-wall and the Wall, at present being constructed along the Green Line. The mini-wall will hinder the access of Palestinian shepherds and their 24,000 head of livestock to grazing areas on the other side. The mini-wall will add to the hardships already experienced by Palestinian communities living in south Hebron, which has inadequate clinics, schools and waste supplies; water must be trucked in when summer begins and rain-fed systems start emptying. The Israeli Government has refused to link Palestinian communities to its water system, which provides water to settlers alone. To aggravate the situation, the Israeli Government refuses permits to build houses.

54. The plight of Palestinian communities in south Hebron is illustrated by the experience of the village of Tuwani, which I have visited on several occasions. This village is denied

electricity, water and sanitary units and is prohibited from building new houses. Moreover, the villagers are subjected to settler violence from nearby Ma'on. Schoolchildren have to be escorted by IDF to school in order to protect them from the settlers. The settlers are also responsible for poisoning the land.

VIII. THE JORDAN VALLEY

55. Israel has abandoned earlier plans to build the Wall along the spine of OPT and to formally appropriate the Jordan Valley in the same way as it has done along the western border of OPT. But it has asserted its control over this region, constituting 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the Wall and the Green Line on Palestine's western border. The intention of Israel to remain permanently in the Jordan Valley is clear from government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by Israeli control and the increase in the number of settlements in the Jordan Valley.

56. Palestinians living in the Jordan Valley must possess ID cards with a Jordan Valley address. Only such persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, thereby necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley. Travel restrictions make it difficult for farmers in the Jordan Valley to access markets in the West Bank as their produce is frequently held up at checkpoints and perishes in the process. Attempts to sell such produce along the roadside have failed as a result of the destruction of agricultural stalls along the road by IDF.

57. Most of the land in the Jordan Valley is controlled by Jewish settlements or used as military zones. Only 4 per cent of the Valley is accessible to 47,000 Palestinians for agricultural and residential use. There are some 8,300 settlers living in the Jordan Valley and their number is growing as a result of the resettlement of settlers from Gaza. Whereas Palestinians are without electricity and water in most villages, settlers are linked to Israel's electricity and water systems. Moreover the 8,300 settlers living in the Jordan Valley consume more water each year than the 47,000 Palestinians living in the region.

IX. HOUSE DEMOLITIONS

58. The demolition of houses is a regular feature of the occupation; and the bulldozer has become a hated symbol of it. Traditionally, the occupying Power has demolished houses for punitive reasons (where a resident of the house has committed a crime against Israel), military necessity, or for failure to obtain a permit to build. In recent times houses have been demolished for additional reasons: first, to make way for the Wall and second, to carry out arrests of wanted persons. It will be recalled that last year the Israeli High Court forbade the use of Palestinian civilians as human shields in arrest operations. Now, if a wanted person is suspected of being in a particular house and refuses to surrender, the house is bulldozed. I myself witnessed the manner in which houses are destroyed in this manner in the Balata refugee camp near Nablus.

59. For many years Israel has destroyed houses built without permission, arguing that in so doing it is simply applying municipal housing laws in the same way as other developed societies do. Such an argument fails to take account of two factors. First, an occupying Power is constrained from destroying the houses of persons protected by international humanitarian law (see article 23 (g) of the Hague Regulation respecting the Laws and Customs of War on Land annexed to the Hague Convention IV of 1907 and article 53 of the Fourth Geneva Convention). This applies to Palestinian homes in the West Bank, Gaza and East Jerusalem. Second, permits are refused in such an arbitrary manner, and are refused with such great regularity, that it has become virtually impossible for Palestinians to obtain permits to build houses. The permit system for Palestinians in East Jerusalem is administered in a completely different way than it is administered in respect of Israelis. The discriminatory way in which the permit system is implemented in East Jerusalem has recently been highlighted by Meir Margalit in *Discrimination in the Heart of the Holy City* (2006).

X. CHECKPOINTS

60. The number of checkpoints, including roadblocks, earth mounds and trenches, has increased from 376 in August 2005 to over 500. These checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Cities are cut off from each other as a permit is required to travel from one area to another and, again, permits are difficult to obtain. The rules relating to the granting of permits constantly change, particularly with respect to the age of the persons to whom permits are refused. Moreover, bureaucratic procedures for obtaining permits are arbitrary and obstructive. This has worsened since Hamas came to power as those applying for permits must now apply directly to the Israeli Civil Administration because the Israeli Government refuses to cooperate with any Palestinian governmental authority. The permit system also explains the economic decline of OPT as movement of goods and labour cannot move freely.

61. In June 2006 I visited the city of Nablus, which is now completely surrounded by checkpoints which make entrance into and exit from the city impossible for most residents. In effect, Nablus has become an imprisoned city.

62. Israel justifies checkpoints on security grounds. It is difficult to accept this justification for most checkpoints. After all, the Wall provides an effective security barrier between Israel and OPT and there is a line of checkpoints along the finger of land in which the Ariel settlement block has been established which should adequately ensure the protection of Israelis. Checkpoints in other areas, such as those surrounding Nablus, therefore seem to serve no security purpose. This suggests that the main purpose of many checkpoints is in fact to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process.

XI. SEPARATION OF FAMILIES

63. The right to family life is recognized by all human rights conventions. In OPT it is undermined by Israel in a number of ways. First, the Wall running between Jerusalem

neighbourhoods separates Palestinians with Jerusalem identity documents from those with West Bank documents. Where husband and wife have separate documents they often have no choice but to separate in order to allow the Jerusalem ID holder to retain his or her benefits. Eighteen per cent of Palestinian households in Jerusalem are separated from the father and 12 per cent of households are separated from the mother. Secondly, the authorities have recently embarked upon a policy of denying access to Palestinians with foreign passports. In previous years, Palestinians with foreign passports have been allowed to live in the West Bank provided that they renewed their visas every three months. This affects some 50,000 Palestinians living in the West Bank who now face a denial of visas (see *Haaretz*, 10 July 2006). Thirdly, an Israeli law on citizenship prohibits Palestinians who marry Israeli Arabs from living with their spouses in Israel. This law was recently the subject of a controversial decision by the Israeli High Court of Justice which held that the law, which does not apply to Jewish Israelis who marry foreigners, was constitutional on the grounds of security. The Court reasoned that the State was entitled to prevent Palestinians from living with their Israeli spouses in Israel because that might allow Palestinians who threaten the security of Israel to enter the country.

XII. ADMINISTRATION OF JUSTICE

64. Israel clearly does not ascribe to the policy of winning hearts and minds in the process of administering justice; instead, it shows the iron fist, in the process of making arrests, the treatment of arrested persons and the treatment of prisoners. The situation seems to have worsened since Hamas was elected to office.

65. The making of arrests as has been shown, is frequently accompanied by the destruction and trashing of property, beatings, the unleashing of dogs in civilian homes, humiliating strip searches and early morning raids. The interrogation of arrested persons continues to be accompanied by a mix of psychological pressure and physical violence. The number of prisoners continues to rise. There are now over 10,000 Palestinian prisoners in Israeli jails, including women and children. The position of child prisoners is particularly disturbing as they are often compelled to share cells with adult prisoners, denied education and access to family.

XIII. THE HUMANITARIAN CRISIS AND FUNDING OF THE PALESTINIAN AUTHORITY

66. The humanitarian crisis in Gaza is dealt with separately in the section on Gaza above. The appalling humanitarian situation in that part of OPT should not be allowed to distract attention from the serious humanitarian crisis in OPT as a whole. Four out of 10 Palestinians live under the official poverty line of less than $2.10 a day. Unemployment is difficult to determine. The International Labour Organization has estimated the jobless rate to be over 40 per cent of the Palestinian labour force. This, however, does not take account of the fact that the public sector, which accounts for 23 per cent of total employment in OPT, is employed but unpaid.

67. In large measure the humanitarian crisis is the result of the termination of funding of the Palestinian Authority since Hamas was elected to office. In the first instance the Israeli Government is withholding from the Palestinian Authority VAT duties and customs amounting to $50-60 million per month that it collects on its behalf on goods imported into OPT. This

constitutes 36 per cent of the monthly budget of PA or 50 per cent of funds actually available to PA. In law Israel has no right to refuse to transfer this money, which belongs to the Palestinian Authority under the 1994 Protocol on Economic Relations between the Government of Israel and the Palestine Liberation Organization (Paris Protocol). Predictably, Israel justifies its action on security grounds. This shortfall in funds for the Palestinian Authority has been accompanied by a drastic reduction in funding on the part of donor countries and agencies. This has had a serious impact on the work of NGOs which have had to suspend or cancel their projects related to the work of PA. The decision of the Government of Canada to suspend aid has had severe consequences in particular for NGOs. As a result of the fact that Hamas is classified as a terrorist organization by both the United States and the European Union, the United States Treasury has decided to prohibit transactions with the Palestinian Authority. This has had a profound effect on banks which are not prepared to transfer funds to the Palestinian Authority, its agencies and its projects and to NGOs engaged in projects with PA. Some projects involving PA continue to be funded (e.g. World Bank projects) and the European Union has set up a Temporary International Mechanism, endorsed by the Quartet, for the relief of Palestinians employed in the health sector, the uninterrupted supply of utilities, including fuel, and the provision of basic allowances to meet the needs of the poorest segment of the population. (This safety net for the poorest will require the establishment of a special infrastructure.) A proposal made by the World Bank in May that an interim funding scheme provide for the payment of salaries to civil servants was, however, rejected by the Quartet.

68. Despite limited funding attempts of this kind, it is clear that the Palestinian economy, which has become heavily dependent on donor funding since 1994, has suffered dramatically as a result of the withholding of funds by Israel and the international community since the election of Hamas. This economic strangulation has had a severe impact on the social and economic rights of the Palestinian people. About 1 million of Palestine's 3.5 million people is directly affected by the non-payment of salaries to some 152,000 civil servants (and their families), but the whole population has suffered indirectly. Moreover, as the Palestinian Authority is responsible for over 70 per cent of schools and 60 per cent of health-care services in OPT, both education and health care have suffered substantially.

69. Health care is examined more fully in the section on Gaza. However, it is important to stress that cuts in funding have impacted seriously on health care throughout OPT. The failure to pay the salaries of health-care workers has led to absenteeism because workers are simply unable to pay for transportation to the workplace. Drugs and vaccines are in short supply. Hospitals are unable to provide adequately for cancer and kidney dialysis patients. The transfer of patients to hospitals in other parts of the West Bank, and particularly to Israel and Egypt, has become particularly difficult as a result of closures and the refusal of permits.

70. In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated. This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004 advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times.

It is interesting to recall that the Western States refused to impose meaningful economic sanctions on South Africa to compel it to abandon apartheid on the grounds that this would harm the black people of South Africa. No such sympathy is extended to the Palestinian people or their human rights.

XIV. THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE AND THE UNITED NATIONS

71. In 2004 the International Court of Justice held that the Wall that Israel is presently building in Palestinian territory is illegal and should be dismantled. In its advisory opinion the Court also found a number of other Israeli practices (such as the establishment of settlements) to be contrary to international law. Two years have passed, and nothing has been done to give effect to the findings of the Court. To aggravate matters, the Wall does not feature in any way whatsoever in the regular utterances of the Quartet. It is as if no opinion had been given.

72. In 2004 the General Assembly, in its resolution ES-10/15 of 20 July 2004, instructed the Secretary-General to establish a register of damages arising from the construction of the Wall. Two years later, this register is still not in existence, raising serious doubts about whether its structure, goals and methods of operation will comply with the advisory opinion.

73. The advisory opinion of the International Court of Justice is an authoritative pronouncement of the judicial organ of the United Nations, which has been endorsed by the General Assembly in resolution ES-10/15. As an advisory opinion, it is not binding upon States. It is, however, a definitive statement of the law as far as the United Nations is concerned, and it must guide the United Nations in the same way as the advisory opinion of 21 June 1971 on the legal consequences for States of the continuing presence of South Africa in Namibia guided the political organs of the United Nations in their handling of the Namibian question. As a member of the Quartet, the United Nations is duty bound to persuade that body to at least make reference to the advisory opinion of the Court in its regular statements. If it fails in this endeavour, it must at least express its dissatisfaction with the failure of the Quartet to be guided by the advisory opinion and to make reference to it.

XV. CONCLUSION

74. **This report does not make pleasant reading. Israel is in violation of important norms of human rights and international humanitarian law. While it is readily conceded that Israel faces a security threat and is entitled to defend itself, it must not be forgotten that the root cause of the security threat is the continued occupation of a people that wishes to exercise its right of self-determination in an independent State. The need to bring this situation to an end is recognized by the international community, which has delegated power to the Quartet, comprising the United Nations, the European Union, the United States of America and the Russian Federation, to facilitate a peaceful settlement in the form of the creation of a Palestinian State. Unfortunately, at present this goal seems to have been lost to view as the Quartet turns to punitive measures designed to compel Hamas to change its ideological stance, or to bring about regime change. This is clear from its statement of 9 May 2006. Whether the United Nations is in law authorized to make itself a party to economic coercion through the Quartet without following its own procedures under the Charter is questionable. In any event, diplomacy has given way to coercion.**

75. **It is pointless for the Special Rapporteur to recommend to the Government of Israel that it show respect for human rights and international humanitarian law. More authoritative bodies, notably the International Court of Justice and the Security Council, have made similar appeals with as little success as have had previous reports of the Special Rapporteur. It also seems pointless for the Special Rapporteur to appeal to the Quartet to strive for the restoration of human rights, as neither respect for human rights nor respect for the rule of law features prominently on the agenda of this body, as reflected in its public utterances. In these circumstances, the Special Rapporteur can only appeal to the wider international community to concern itself with the plight of the Palestinian people.**

76. **The image and reputation of the United Nations has, sadly, suffered in the occupied Palestinian territories. While there is high regard for dedicated and committed United Nations workers on the ground, the same cannot be said for the United Nations in New York and Geneva. Palestinians are sensitive to the failure of high-ranking United Nations officials to meaningfully visit the region and the inability of the Security Council to take action to protect human rights, as recently evidenced by the veto of an even-handed draft Security Council resolution on Gaza on 12 July 2006. The visit of Jan Egeland, Under-Secretary-General for Humanitarian Affairs and United Nations Emergency Relief Coordinator, on 25 July has no doubt done much to restore the image of the United Nations in the region. The concern of the Human Rights Council will also be welcomed, as will the statements by a number of special procedures mandate-holders. The United Nations needs to show more concern for the human rights of Palestinians. Reports such as the present one record the violations of human rights and humanitarian law, but real action on the part of the Organization is essential at this troubled time.**

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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006, ENTITLED "HUMAN RIGHTS COUNCIL"

Report of the Special Rapporteur on the human rights situation in the Palestinian territories occupied since 1967 pursuant to resolution 3/1 of the Human Rights Council

1. At its 2nd meeting, on 6 July 2006, the Human Rights Council adopted resolution S-1/1 in which it decided "to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967". Although the terms of the fact-finding mission were not spelled out, in context it was clear that the fact-finding mission was established to examine the factual situation in Gaza following the commencement of "Operation Summer Rains" by the Israel Defense Forces and to report on violations of human rights in the course of this Operation.

2. On 7 July I met with the President of the Human Rights Council and the United Nations High Commissioner for Human Rights and their respective staff in order to implement this resolution. It was agreed by all that it would be necessary to obtain the consent of the Government of Israel for this mission as required by the General Assembly in paragraph 6 of its resolution 46/59 entitled: "Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security" ... . To this end, it was agreed that the President would approach the Ambassador of Israel for such consent on the basis of a memorandum on the proposed mission prepared by the Special Rapporteur.

3. On 10 July 2006, I submitted such a memorandum to the President and the High Commissioner setting out the objectives, timing, duration and composition of the mission together with proposals of places to visit and persons to consult. The memorandum proposed that the mission should "visit the Occupied Palestinian Territory as soon as possible and preferably before the end of July".

4. The President of the Human Rights Council met shortly afterwards with the Ambassador of Israel and requested the consent of the Government of Israel for the mission. The President later informed me that the Ambassador had indicated that he would seek instructions on the matter from the Government of Israel and give his reply as soon as possible.

5. I then proceeded to constitute the fact-finding mission. I approached a military security officer and an expert in public health to join the mission under my leadership. Arrangements were made for the assistance of two staff members of the Office of the High Commissioner for Human Rights, one security officer and interpreters. The mission was planned to last for 7 to 10 days.

6. As the days passed, I became worried that the President of the Human Rights Council had received no reply from the Government of Israel. On Tuesday 18 July 2006, I spoke with the President who told me that he had asked the Ambassador to provide him with a reply by 20 July. Later the President informed me that the Ambassador had told him that the Government of Israel required more time to make its decision.

7. On 21 July the President wrote a letter to the Ambassador in which he requested a reply to his request for consent to the mission by 24 July, failing which he would have to inform the members of the Council. To the best of my knowledge the President received no reply to this letter.

8. The days and weeks passed without any response from the Ambassador of Israel. At least I was not informed of any such response. Consequently, on 8 August I wrote a letter to the President (copied to the High Commissioner and the sponsors of resolution S-1/1) in which I stated:

> "We have now waited for more than a month to receive a reply from the Government of Israel I think we have no alternative but to construe its failure to reply as a refusal. In my view you should notify the Government of Israel that this is the position and that you should report accordingly to the Human Rights Council.
>
> …
>
> I request you to kindly inform the Human Rights Council that in my view it is pointless to persist with the fact-finding mission requested on 6 July as the Government of Israel has, by its failure to respond to your request, indicated very clearly that it will not grant permission to the visit of such a fact-finding mission."

9. I was accordingly not able to head a fact-finding mission to the Occupied Palestinian Territory in July-August 2006 as required by the Human Rights Council in its resolution S-1/1. I did, however, compile a report on the situation in Gaza, following the start of "Operation

Summer Rains", and other issues of concern to the Human Rights Council in its special session of 6 July. This report, based on secondary sources and on my visit to the Occupied Palestinian Territory (including Gaza) from 9 to 17 June 2006, was incorporated in my report (A/HRC/2/5), which was considered by the Human Rights Council on 26 September 2006.

10. I reported to the Human Rights Council on 29 Septemberthat I had been unable to carry out the requested fact-finding mission as a result of the failure of the Government of Israel to consent to the mission.

11. I visited the Occupied Palestinian Territory from 1 to 8 December 2006, in my capacity as Special Rapporteur on the situation of human rights in the on the situation of human rights in the Palestinian territories occupied since 1967. I did not require the consent of the Government of Israel for this mission but I did as a matter of courtesy inform the Ambassador of Israel in Geneva of my visit. At the same time I assured him that I did not intend to visit the Occupied Palestinian Territory in pursuance of resolution S-1/1 but in my capacity as Special Rapporteur. The Government of Israel accordingly agreed to facilitate my visit, as it has done in the past, by providing me with a letter which explained the purpose of my visit and requested the relevant Israeli authorities to facilitate my movements in the Occupied Palestinian Territory. Although the Government of Israel refuses to accept my mandate, and consequently to have any contacts with me at governmental level during my visits, it has greatly facilitated my movements by issuing me with the letter described above.

12. On my visit to the Occupied Palestinian Territory from 1 to 8 December, I investigated the human rights situation in East Jerusalem, the West Bank and Gaza. My report on this visit is contained in document (A/HRC/4/17). While I investigated the human rights situation, I did not undertake fact-finding for the following reasons. First, this was not the purpose of my visit. Second, I lacked the expertise on my own to carry out such a task.

13. In the result I have not been able to carry out the fact-finding mission requested by the Council in its resolution S-1/1 as a result of the failure of the Government of Israel to consent to such a mission.

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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard*

* The report was submitted after the deadline so as to include the most recent developments.

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Summary

Gaza has again been the focus of violations of human rights and international humanitarian law in the Occupied Palestinian Territory (OPT). In response to the capture of Corporal Gilad Shalit by Palestinian militants on 25 June 2006, and the continued firing of Qassam rockets into Israel, Israel conducted two major military operations within Gaza - "Operation Summer Rains" and "Operation Autumn Clouds". In the course of these operations, the Israeli Defense Forces (IDF) made repeated military incursions into Gaza, accompanied by heavy artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed or damaged homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and electricity networks. Agricultural lands were levelled by bulldozers. Beit Hanoun was the subject of particularly heavy attacks, and on 8 November 19 civilians were killed and 55 wounded in an artillery attack. Economic sanctions have had a major impact on Gaza. About 70 per cent of Gaza's workforce is out of work or without pay and over 80 per cent of the population live below the official poverty line. The siege of Gaza is a form of collective punishment in violation of the Fourth Geneva Convention of 12 August 1949. The indiscriminate use of military power against civilians and civilian targets has resulted in serious war crimes.

The West Bank has also experienced serious human rights violations resulting from frequent military incursions; the construction of the Wall; house demolitions and checkpoints. Over 500 checkpoints and roadblocks obstruct freedom of movement within the OPT. The Wall being built in East Jerusalem is an instrument of social engineering designed to achieve the Judaization of Jerusalem by reducing the number of Palestinians in the city.

The construction of settlements continues. Today there are some 460,000 settlers in the West Bank and East Jerusalem. A study by an Israeli non-governmental organization (NGO) has shown that nearly 40 per cent of the land occupied by settlements in the West Bank is privately owned by Palestinians. It has become abundantly clear that the Wall and checkpoints are principally aimed at advancing the safety, convenience and comfort of settlers.

There are some 9,000 Palestinian prisoners in Israeli jails. There are serious complaints about the treatment, trial and imprisonment of prisoners.

Since 2000, over 500 persons have been killed in targeted assassinations, including a substantial number of innocent civilians. In December 2006 the Israeli High Court failed to find that such assassinations were unlawful but held that they might only be carried out as a last resort and within the bounds of proportionality.

Israeli law and practice makes it impossible for thousands of Palestinian families to live together. A new practice of refusing visas to foreign residents in the OPT has aggravated this situation.

Discrimination against Palestinians occurs in many fields. Moreover, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid appears to be violated by many practices, particularly those denying freedom of movement to Palestinians.

There is a humanitarian crisis in the OPT resulting from the withholding of funds owed to the Palestinian Authority by the Government of Israel (estimated at about US$ 50 to 60 million per month) and from the economic isolation of the territory by the United States, the European Union (EU) and other States in response to the election of the Hamas Government. The Temporary International Mechanism set up by the EU to provide relief in certain sectors has gone some way towards reducing the crisis, but over 70 per cent of the Palestinian people live below the official poverty line. Health care and education have suffered as a result of a strike of workers in these sectors against the Palestinian Authority and the international community for the non-payment of salaries. In effect Israel and sections of the international community have imposed collective punishment on the Palestinian people.

Persons responsible for committing war crimes by the firing of shells and rockets into civilian areas without any apparent military advantage should be apprehended or prosecuted. This applies to Palestinians who fire Qassam rockets into Israel; and more so to members of the IDF who have committed such crimes on a much greater scale. While individual criminal accountability is important, the responsibility of the State of Israel for the violation of peremptory norms of international law in its actions against the Palestinian people should not be overlooked.

The international community has identified three regimes as inimical to human rights - colonialism, apartheid and foreign occupation. Israel is clearly in military occupation of the OPT. At the same time elements of the occupation constitute forms of colonialism and of apartheid, which are contrary to international law. What are the legal consequences of a regime of prolonged occupation with features of colonialism and apartheid for the occupied people, the occupying Power and third States? It is suggested that this question might appropriately be put to the International Court of Justice for a further advisory opinion.

The Occupied Palestinian Territory is the only instance of a developing country that is denied the right of self-determination and oppressed by a Western-affiliated State. The apparent failure of Western States to take steps to bring such a situation to an end places the future of the international protection of human rights in jeopardy as developing nations begin to question the commitment of Western States to human rights.

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I. INTRODUCTION

1. I visited the Occupied Palestinian Territory (OPT) and Israel from 1 to 8 December 2006 in order to collect information and opinions for the writing of this report. In the course of my mission I visited Jerusalem, Gaza, Jericho, the Jordan Valley, Jenin and Ramallah. While driving through the West Bank I took the opportunity to visit the villages of Bil'in and Bir Nabala, which have been seriously affected by the construction of the Wall; and Jiftlik and Al Aqaba, villages that illustrate the problems experienced in the Jordan Valley. Journeying through the West Bank inevitably exposes one to some of the worst features of life in the area: the Wall, Palestinian roads, checkpoints (both fixed and flying) and settlements. In Gaza, I visited Beit Hanoun, Beit Lahia, Jabalia, Gaza City and Deir el Balah.

2. During my visit I met with a wide range of persons - Palestinians, Israelis, foreign diplomats and United Nations officials. In Jerusalem, I attended two conferences: one on torture organized by the Public Committee Against Torture in Israel and Amnesty International; and the other on terrorism and human rights organized by the Minerva Center for Human Rights.

3. The Government of Israel does not recognize my mandate. Consequently, as in the past, I had no contact with government officials. This is unfortunate as it denies access to a valuable source of information and opinion. On the other hand, the Government of Israel facilitates my visit by providing me with a letter explaining the purpose of my visit to officials and requesting that they help to facilitate my movements. This has made crossing checkpoints considerably easier. I am grateful to the Government of Israel for its cooperation.

4. In the present report the term "Wall" is used instead of "barrier" or "fence". This term was carefully and deliberately used by the International Court of Justice in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004.

5. At the outset it is necessary to stress the scope and limitations of my mandate. I am required to report on violations of human rights and international humanitarian law by Israel in the OPT. This means that it is outside my mandate to report on violations of the human rights of Israelis by Palestinians, on the violation of human rights by the Palestinian Authority, or on human rights violations in the OPT not caused by Israel. This does not mean that I am unconcerned about such human rights violations. In my report I shall refer to the fact that the firing of Qassam rockets from Gaza into Israel violates international humanitarian law and is accordingly to be condemned. I shall also make reference to the strike in the West Bank, which has seriously damaged education and health, and to the increase of crime in the OPT, in the context of the humanitarian crisis in the OPT occasioned by the withholding of funds from the Palestinian Authority by Israel. I shall not consider the violation of human rights caused by Palestinian suicide bombers. Nor shall I consider the violation of human rights caused by the political conflict between Fatah and Hamas in the OPT. Such matters are of deep concern to me but my mandate precludes me from examining them.

II. GAZA

6. In August 2005, Israel withdrew its settlers and armed forces from Gaza. Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. Even before the commencement of "Operation Summer Rains", following the capture of Corporal Gilad Shalit, Gaza remained under the effective control of Israel. This control was manifested in a number of ways. Israel retained control of Gaza's air space, sea space and external borders, and the border crossings of Rafah (for persons) and Karni (for goods) were ultimately under Israeli control and remained closed for lengthy periods. In effect, following Israel's withdrawal, Gaza became a sealed off, imprisoned and occupied territory.

7. On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli Egyptian border. In retreating, they took Corporal Gilad Shalit with them as a captive. They demanded the release of the women and children in Israeli jails in return for his release. This act, together with the continued Qassam rocket fire into Israel, unleashed a savage response from the Government of Israel that went by the name of "Operation Summer Rains". This was followed by another military assault in November with the name of "Operation Autumn Clouds". These operations, which took the form of repeated military incursions into Gaza, accompanied by heavy shelling, rendered the question whether Gaza remains an occupied territory of academic interest only. Israel's assault on, and siege of Gaza, in the course of Operations "Summer Rains" and "Autumn Clouds" is described in the following paragraphs.

A. Military action

8. Between 25 June 2006 and the truce that came into force at the end of November 2006, over 400 Palestinians were killed and some 1,500 injured. More than half of those killed and wounded were civilians. Of those killed some 90 were children; and over 300 children were injured. During the same period 3 Israeli soldiers were killed and 18 wounded, and 2 Israeli civilians were killed and some 30 injured in Sderot and its precincts by Qassam rockets fired by Palestinians from Gaza.

9. In the course of Operations "Summer Rains" and "Autumn Clouds" the IDF carried out 364 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and sewage networks. On 27 June 2006, the Israeli Air Force destroyed all six transformers of the only domestic power plant in the Gaza Strip, which supplied 43 per cent of Gaza's daily electricity. This resulted in depriving half of the population of Gaza of electricity for several months. (At the time of writing, this power plant had been largely repaired, thanks to generous funding from the Governments of Egypt and Sweden, and is now able to provide 85 per cent of the electricity previously supplied.) Citrus groves and agricultural lands were levelled by bulldozers, and in the first phase of "Operation Summer Rains" F-16s flew low over Gaza, breaking the sound barrier and causing widespread terror among the population. Thousands of Palestinians were displaced from their homes as a result of Israel's military action. Israel justified its assault on Gaza on three grounds: the search for Corporal Shalit, the eradication of militant groups and their arms, and, above all, the stopping of Qassam rockets that have been regularly and repeatedly fired from Northern Gaza into civilian areas in Southern Israel.

10. Beit Hanoun in Northern Gaza, with a population of 40,000, was subjected to particularly vicious military action in November in the course of "Operation Autumn Clouds". During a six-day incursion 82 Palestinians, at least half of whom were civilians (including 21 children), were killed by the IDF. More than 260 people, including 60 children, were injured and hundreds of males between the ages of 16 and 40 were arrested. Forty thousand residents were confined to their homes as a result of a curfew as Israeli tanks and bulldozers rampaged through their town, destroying 279 homes, an 850-year-old mosque, public buildings, electricity networks, schools and hospitals, levelling orchards and digging up roads, water mains and sewage networks. In April 2006, the IDF narrowed the "safety zone" for artillery shelling, allowing targeting much closer to homes and populated areas. This, together with heavy artillery fire, contributed substantially to the increase in the loss of life and damage to property. There was also evidence of the use of a new and unusual weapon in Beit Hanoun, and elsewhere in Gaza, which has resulted in an increase in amputations. This weapon is believed to be the Dense Inert Metal Explosive missile (DIME).

11. Israel's assault on Beit Hanoun on 8 November 2006 culminated in the shelling of a home which resulted in the killing of 19 persons and wounding of 55 persons. The house, situated in a densely populated neighbourhood, was the home of the Al-Athamnah family, which lost 16 members on that fateful day. Of the 19 killed, all civilians, 7 were women and 8 children. I visited the destroyed home on 3 December and spoke to Mrs. Sa'ad Alla Moh'Al Athamnah, three of whose sons were killed and whose husband and a son were seriously wounded. Israel's explanation that a "technical failure" in the radar system of the artillery was to blame is questionable on a number of grounds. First, 12 to 15 high explosive artillery shells were fired over a time span of 30 minutes. Secondly, the home is located close to open fields that Israel probably suspected were used to launch Qassam rockets. Thirdly, the home had been occupied for the previous three nights by IDF soldiers who made a full inventory of the occupants of the building. Unfortunately, Israel has refused to accept any international investigation into this matter. It refused to allow a Human Rights Council mandated mission which was to have been led by Archbishop Desmond Tutu, to enter Israel and the Occupied Palestinian Territory and at the time of writing, has yet to respond to a resolution of the General Assembly of 17 November, adopted by 156 votes to 7, with 6 abstentions, which required the Secretary-General to send a fact-finding mission to the area. On 11 November the United States vetoed a Security Council draft resolution calling for the establishment of a fact-finding mission into the events of 8 November in Beit Hanoun. The failure of Israel to allow an international investigation into the killing of 19 persons in Beit Hanoun, or to undertake an impartial investigation of its own, is regrettable as it seems clear that the indiscriminate firing of shells into a civilian neighbourhood with no apparent military objective constituted a war crime, for which both the commanding officer and those who launched the 30-minute artillery attack should be held criminally responsible. The failure to hold anyone accountable for this atrocity illustrates the culture of impunity that prevails in the IDF.

12. Israel has justified its attack on Beit Hanoun as a defensive operation aimed at preventing the launching of Qassam rockets into Israel. It is true that over a thousand home-made rockets have been fired into civilian areas in Israel without any military target and that 2 Israelis have been killed and over 30 injured. Such actions cannot be condoned and clearly constitute a war crime. Nevertheless, Israel's response has been grossly disproportionate and indiscriminate and resulted in the commission of multiple war crimes.

13. In recent months Israel has resorted to a policy of terrorism by telephone. Militants are telephoned by Israeli intelligence agents and warned that their home is to be blown up within an hour. This threat is sometimes carried out and sometimes not. It appears that over 100 homes have been destroyed following such threats. In November, Palestinians rallied to the defence of persons threatened in this way by gathering on the roof of the house or in the street outside to prevent the bombing of the house. It is difficult to categorize such conduct as a war crime, as originally suggested by Human Rights Watch in a statement of 22 November (subsequently largely withdrawn in a statement of 16 December). Voluntary, collective action of this kind can at most be categorized as an act of civil disobedience against the occupying Power.

B. The humanitarian crisis

14. Gaza has become a besieged and imprisoned territory as a result of the economic sanctions imposed on the Occupied Palestinian Territory by Israel and the West, following Hamas' success in the January 2006 elections, and the military assault on the territory, following the capture of Corporal Gilad Shalit. External borders have been mainly closed and only opened to allow a minimum of imports and exports and foreign travel. This has produced a humanitarian crisis, one carefully managed by Israel, which punishes the people of Gaza without ringing alarm bells in the West. It is a controlled strangulation that apparently falls within the generous limits of international toleration.

15. There are six crossings into Gaza, all of which are controlled by Israel. Erez, which is used by diplomats, United Nations officials, international workers, approved journalists and a restricted number of patients travelling to Israeli hospitals; Nahal Oz, which is designed for fuel imports and has operated well below its capacity; Sofa, which is used for the import of construction material and some humanitarian supplies from United Nations agencies and has been open for only 60 per cent of the scheduled days; Kerem Shalom, which has been largely closed since 25 June, but has opened to allow the import of cables and appliances from Egypt to repair the Gaza power plant destroyed on 27 June 2006, and some humanitarian assistance.

16. Rafah, the crossing point for Gazans to Egypt, and Karni, the commercial crossing for the import and export of goods, are the principal crossing points. They are the subject of an Agreement on Movement and Access (AMA), entered into between Israel and the Palestinian Authority on 15 November 2005, which provides for Gazans to travel freely to Egypt through Rafah; and for a substantial increase in the number of export trucks through Karni. Since 25 June 2006, the Rafah crossing has been open for only 14 per cent of the scheduled opening days as a result of Israel's refusal to allow members of the European Border Assistance Mission, responsible for operating Rafah, to cross to Rafah through Kerem Shalom. The closure of Rafah has resulted in great hardships. The sick and wounded have not been able to travel freely to Egypt; those wishing to leave Gaza have had to wait patiently, sometimes for weeks, until Rafah opens; and Gazans returning home have often had to wait for weeks in Egypt until the Rafah crossing opened. The closure of Rafah has been justified as a reprisal for the capture of Corporal Shalit. The situation at Karni is no better. In terms of the AMA truckloads crossing Karni were to increase to 400 per day by the end of 2006. Instead, the crossing has been closed since April for 54 per cent of the scheduled operating days (for 71 per cent of such days since 25 June), and only 12 truckloads of goods on average have been exported. This has had disastrous consequences for the economy of Gaza. The agricultural produce from the former settlements was particularly affected as it perished while waiting to be exported at Karni. In the

end most of this produce was donated or destroyed in Gaza. Imports have also suffered seriously and many basic foodstuffs have not reached local markets. On 22 December 2006 the Government of Israel promised to allow 400 trucks to pass through Karni per day. This promise has still to be implemented.

17. The siege has had a major impact on employment. Construction workers are out of work as a result of the restriction on the import of construction materials; farmers (particularly those employed in the greenhouses of the former Israeli settlements) are unemployed as a result of the ban on exports of Palestinian produce; fishermen are out of work as a result of the ban on fishing along most of the Gaza coast; many shopkeepers have had to close their shops as a result of the lack of purchase power of Gazans; small factories employing some 25,000 workers have had to close; and the public service, while employed in theory is largely unpaid as a result of Israel's withholding of funds due to the Palestinian Authority and the refusal of the EU and the United States to transfer donations to the Palestinian Authority. Consequently about 70 per cent of Gaza's potential workforce is out of work or without pay. The signs of unemployment are distinctly visible. Construction works are abandoned; greenhouses that were flourishing with produce when I visited them in 2005 are now empty of produce; and fishermen that I visited at Deir El Balah sit idly on the shore, prohibited from setting out to sea.

18. Poverty is rife. Over 80 per cent of the population live below the official poverty line. 1.1 million Gazans of a population of 1.4 million receive food assistance from the United Nations Relief and Works Agency for Palestine refugees in the Near East and the World Food Programme. Recipients of food aid receive flour, rice, sugar, sunflower oil, powdered milk and lentils. Few can afford meat, fish - virtually unobtainable anyway as a result of the ban on fishing - vegetables and fruit. Shopkeepers generously give credit but their capacity to do so is being overstretched. (I visited a shopkeeper in Jabaliya who had granted US$ 20,000 credit to customers.) Moreover some basic foodstuffs are in short supply, and prices are inflated due to the closure of Karni crossing.

19. Although the Gaza power plant has now been restored to 85 per cent of its former capacity (thanks to Egypt and Sweden, and not to Israel which is responsible for supplying electricity to an occupied people), it must not be forgotten that for several months following the bombing of this power plant on 27 June 2006, the people of Gaza suffered in all aspects of their life from power stoppages: lighting, refrigerators, elevators, water supply and sewage were all affected; hospitals were unable to operate properly; and so on. The bombing of the power plant has rightly been described as a war crime for which Israel and members of the IDF must accept responsibility.[1]

20. Living conditions in Gaza are bleak in a society dominated by poverty, unemployment and military assault. Although hospitals have not suffered from strike action, as they have done in the West Bank, health care has suffered from military incursions and the closure of the crossings. For months hospitals were required to use generators for operation theatres; referrals abroad of patients have been hampered by the closing of Rafah; essential drugs are in short

[1] See B'Tselem, *Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects* (September 2006).

supply; clinics have been unable to operate because of military action; and members of the Palestine Red Crescent Society ambulance services have been killed in military operations. Chronic illnesses have increased. Anaemia has also increased as a result of the nutritional situation. Mental health is a serious problem, particularly among children, as a result of the trauma inflicted by military incursions and the death or injury of friends and family. Education has been affected by military assaults: schools have been closed and school buildings destroyed. Domestic violence and ordinary crime are on the increase. In 2006 nearly 200 Palestinians were killed and 1,000 injured in internal disputes and factional violence. Morale is low. The very fabric of Gazan society is threatened by the siege.

C. Legal assessment

21. Israel has violated a number of rights proclaimed in the International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It has also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing", freedom from hunger, and the right to food (art. 11) and the right to health (art. 12).

22. Israel has, in addition, violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians and civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of Corporal Shalit and the continuing firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

III. THE WEST BANK AND EAST JERUSALEM

23. Many of Israel's policies and practices in the West Bank seriously impinge upon the human rights of Palestinians. The Wall presently under construction in Palestinian territory, checkpoints and roadblocks, settlements, an arbitrary permit system, the pervasive practice of house demolitions, targeted assassinations, and arrests and imprisonment violate a wide range of civil and political rights. The sharp rise in military incursions into the West Bank has further

aggravated the situation. Economic and social rights have also suffered from the humanitarian crisis resulting from the occupation. It is estimated that 56 per cent of the population of the West Bank live below the official poverty line and are dependent on food aid.

A. The Wall

24. The Wall that Israel is presently building largely in Palestinian territory is clearly illegal. The International Court of Justice in its Advisory Opinion of 9 July 2004, asserted that it is contrary to international law and that Israel is under obligation to discontinue construction of the Wall and to dismantle those sections that have already been built forthwith. The Israeli High Court of Justice, in a judgement delivered in September 2005 in *Mara'abe v. the Prime Minister of Israel* case (HCJ 7957/04), dismissed the advisory opinion, arguing that the International Court of Justice had failed to have regard to the security considerations that had prompted the construction of the Wall. The basis of this judgement has now been undermined by the admission of the Government that the Wall is designed to serve a political purpose and not an exclusively security purpose. The admission that the Wall has in part been built to include West Bank settlements within the Wall and under Israel's direct protection, has led the High Court to rebuke the Government for misleading it in the *Mara'abe* hearing and other challenges to the legality of the Wall.[2] That the purpose of the Wall is to acquire land surrounding West Bank settlements and to include settlements within Israel can no longer be seriously challenged. The fact that 76 per cent of the West Bank settler population is enclosed within the Wall bears this out.

25. The Wall is planned to extend for 703 km. When it is finished, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the Wall and the Green Line. More than 500,000 Palestinians living within 1 km of the Wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the Wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement block, it extends some 22 km into the West Bank. The closed zone includes many of the West Bank's most valuable water resources.

26. The Wall has serious humanitarian consequences for Palestinians living within the closed zone, i.e. the area between the Green Line and the Wall. They are cut off from places of employment, schools, universities and specialized medical care, and community life is seriously fragmented. Moreover they do not have 24-hour access to emergency health services. Palestinians who live on the eastern side of the Wall but whose land lies in the closed zone face serious economic hardship as a result of the fact that they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that 60 per cent of the farming families with land to the west of the Wall could no longer access their land.[3] To aggravate matters the opening and

[2] *Head of the Azzun Municipal Council, Abed Alatif Hassin and others v. State of Israel and the Military Commander of the West Bank* (HCJ 2733/05).

[3] OCHA Special Focus, November 2006.

closing of the gates leading to the closed zone are regulated in a highly arbitrary manner. In November 2006, OCHA carried out a survey in 57 communities located close to the Wall, which showed that only 26 of the 61 gates in the Wall were open to Palestinians for use all the year round and that these gates were only open for 64 per cent of the officially stated time.[4] Hardships experienced by Palestinians living within the closed zone and in the precincts of the Wall have already resulted in the displacement of some 15,000 persons, but it is feared that more will leave this area as life is made intolerable for them by the IDF and settlers.

B. Jerusalem and the Wall

27. The 75 km Wall being built in East Jerusalem is an instrument of social engineering designed to achieve the Judaization of Jerusalem by reducing the number of Palestinians in the city. The Wall is being built through Palestinian neighbourhoods, separating Palestinians from Palestinians, in a manner that cannot conceivably be justified on security grounds. It does, however, have serious implications for the human rights of some 230,000 Palestinians living in Jerusalem.

28. Palestinians living on the west side of the Wall will be allowed to retain their Jerusalem identity documents, which entitle them to certain benefits, particularly in respect of social security, but they will find it increasingly difficult to travel to cities in the West Bank such as Ramallah and Bethlehem, where many of them are employed. Moreover, if they elect to reside in the West Bank in order to be nearer to their places of work, they risk losing their Jerusalem identity documents and the right to live in Jerusalem because under Israel's so-called centre of life policy, Palestinians must prove that they currently live in the city of East Jerusalem to maintain their Jerusalem residency rights. Those relegated to the West Bank as a result of the construction of the Wall, who number about a quarter of the city's Palestinian population, will lose their Jerusalem identity documents and the attendant benefits. They will also require a permit to enter Jerusalem, and will be allowed to enter the city by only 4 of the 12 crossings in the Wall, which will considerably increase their commuting time and impede their access to schools, universities, hospitals, religious sites and places of employment.

29. The absurdity of the Wall in Jerusalem is illustrated by the case of ar-Ram. Some 60,000 people live in the suburb of ar-Ram just outside the municipal boundary of Jerusalem. About half of the residents are Jerusalemites who left Jerusalem because of the restrictions placed on Palestinians' building houses in the city. They are completely dependent on Jerusalem for work, education and hospitals. Yet now they are surrounded by the Wall and cut off from Jerusalem. To get to work, school or hospital they must travel a circuitous route of several kilometres and pass through the international terminal-like checkpoint at Qalandiya, and they may only do this if they have the correct permit. A journey that previously took them minutes is now extended into hours.

[4] Ibid.

30. The construction of the Wall in Jerusalem makes a mockery of Israel's commitment to religious freedom. Because of the wall, Palestinian Muslims and Christians are prevented from praying at the Al-Aqsa Mosque and the Church of the Holy Sepulchre respectively - if they are classified as West Bankers. The Wall also bars access by East Jerusalemite Christian Palestinians to the Church of the Holy Nativity in Bethlehem.

C. The Mini-Wall of South Hebron

31. In 2005, the Government of Israel abandoned its plan to build the Wall in Palestinian territory in the South Hebron district as a result of a court ruling and instead agreed to build the Wall along the Green Line. However, it then built a secondary Wall or mini-Wall along the original route which severely impacted the lives of thousands of Palestinians who lived south of the mini-Wall or whose lands were situated south of the mini-Wall. On 14 December 2006, the Israeli High Court of Justice ruled that this Wall was to be dismantled as it interfered disproportionately with the freedom of movement of Palestinian residents and their livestock.

D. Settlements: the new colonialism

32. Jewish settlements in the West Bank are illegal. They violate article 49, paragraph 6, of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in its advisory opinion on the Wall. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Government of Israel persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Government. As recently as December 2006, the Israeli Government officially approved the building of a new settlement - Maskiot - in the northern Jordan Valley. More frequently, expansion takes place stealthily under the guise of "natural growth", which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the 1.7 per cent average growth rate in Israeli cities. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts are frequently established and threats to remove them are not carried out. As a result of expansion, the settler population in the West Bank numbers some 260,000 persons and that of East Jerusalem nearly 200,000. As indicated above, the Wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements will be enclosed within the Wall. Moreover, the three major settlement blocks of Gush Etzion, Ma'aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

33. In October 2006, the Israeli NGO, Peace Now, published a study[5] which showed, on the basis of government maps and figures, that nearly 40 per cent of the land held by Israeli settlements in the West Bank is privately owned by Palestinians. The data shows, for example, that 86 per cent of the largest settlement of Ma'aleh Adumim is on Palestinian private property; that 35 per cent of Ariel is on private property; and that more than 3,400 buildings in settlements are constructed on land privately owned by Palestinians. The Israeli Government

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[5] *Breaking the Law in the West Bank - One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property*.

maintains that it respects Palestinian property in the West Bank and that it only, on a temporary basis, takes land there legally for security reasons. Moreover, article 46 of the Hague Regulations of 1907, which Israel acknowledges as binding upon it, provides that "private property … must be respected" and "cannot be confiscated". Peace Now's disclosure is an embarrassment to the Government of Israel but it is unlikely to respond positively as it has already repeatedly rejected the international community's complaint that settlements are contrary to article 49, paragraph 6, of the Fourth Geneva Convention. This new revelation does, however, serve to further emphasize the illegality of Israel's colonial empire - the settlements - in the West Bank.

34. The history of colonialism shows that there are "good" settlers and "bad" settlers. So it is with Israel's colonists. Many are ordinary Israelis who have been lured to the settlements by tax incentives and a better quality of life. On the other hand, there is a fanatic minority determined to assert its superiority over the Palestinian population by violent means. Throughout the West Bank there is evidence of settler violence, which often takes the form of destroying Palestinian olive groves or obstructing the olive harvest. Undoubtedly the most aggravated settler behaviour occurs in Hebron, where Palestinian schoolchildren are assaulted and humiliated on their way to schools, shopkeepers are beaten and residents live in fear of settler terror. Despite rulings of the High Court of Justice[6] that it is the duty of the IDF to protect Palestinian farmers from settlers, there is still evidence that the IDF turns a blind eye to settler violence and, on occasion, collaborates with the settlers in harassing and humiliating Palestinians.[7] Indeed I have witnessed such conduct on the part of the IDF myself in Hebron.

E. The Jordan Valley

35. Israel has abandoned earlier plans to build the Wall along the spine of the Occupied Palestinian Territory and to formally appropriate the Jordan Valley. It has nevertheless asserted its control over this region, which constitutes 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the Wall and the Green Line on Palestine's western border. That Israel intends to remain permanently in the Jordan Valley is clear from government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by the exercise of Israeli control and the increase in the number of settlements in the Jordan Valley.

36. Palestinians living in the Jordan Valley must possess identity cards with a Jordan Valley address, and only those persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the

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[6] *Rashad Morar v. The IDF Commander for Judea and Samaria* (HCJ 9593/04).

[7] See Yesh Din, *A Semblance of Law. Law Enforcement Upon Israeli Civilians in the West Bank* (June 2006).

West Bank. This has led to the isolation of the Jordan Valley. Travel restrictions make it difficult for farmers in the Jordan Valley to access markets in the West Bank as their produce is frequently held up at checkpoints, notably at Al Hamra, where it perishes in the process.

37. Housing in the Jordan Valley is a serious problem as most of the Valley is designated as Area C, which means that the Israeli authorities must give permission for the construction of houses and assert the power to demolish structures built without permission - a permission which is rarely forthcoming. On this mission I visited two villages in the Jordan Valley where structures were threatened with demolition by the IDF. The first was Jiftlik, where I visited a secondary school functioning in harsh conditions - with teachers mainly unpaid and no glass in the windows - where I was informed that the school had been served with a demolition order. The second was Al-Aqaba, a village located on the slope between the Jordan Valley and the northern West Bank mountain range. The village, which has no running water and electricity is supplied by generators, comprises 35 houses of which 16, including a mosque, clinic and kindergarten school, are threatened with demolition. The cheerful kindergarten, which I visited, has 85 children drawn from neighbouring communities. Since 1967, Al-Aqaba's population has decreased by 85 per cent, from 2,000 in 1967 to 300 persons today. What cynical exercise in social engineering could motivate the demolition of nearly half the structures in the village?

F. Freedom of movement? checkpoints

38. The number of checkpoints, including roadblocks, earth mounds and trenches, increased from 376 in August 2005 to 540 in December 2006. These checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Moreover highways for the use of Israelis only further fragment the Occupied Palestinian Territory into 10 small cantons or Bantustans. Cities are cut off from each other as a permit is required to travel from one area to another and permits are difficult to obtain. On 22 December 2006, the Government of Israel announced that it would dismantle 27 checkpoints to make life easier for Palestinians

39. The rules governing the granting of permits and passage through the checkpoints constantly change. Generally men between the ages of 18 and 35 are not allowed to leave the northern West Bank but there is no clear rule on this subject. Military orders on checkpoints are not published and it is left to Palestinians to find out by trial and error whether they will be allowed to pass through a checkpoint on a particular day. To further complicate matters, there is a secret list with some 180,000 names of security risks who may not pass through a checkpoint, but no notice is served on such a person on this list until he arrives at a checkpoint. The conduct of soldiers at the checkpoints is often rough. A person may be refused passage through a checkpoint for arguing with a soldier or explaining his documents. The principle of legality, requiring a law to be clear, consistent and published in advance, is completely unknown and disregarded at the checkpoints. Instead an arbitrary and capricious regime prevails.

40. Checkpoints and the poor quality of secondary roads Palestinians are obliged to use, in order to leave the main roads free for settler use, result in journeys that previously took 10 to 20 minutes taking 2 to 3 hours. Israel justifies these measures, together with the behaviour of its soldiers at checkpoints, on security grounds and claims that they have succeeded in thwarting the passage of numerous would-be suicide bombers. There is, however, another security

perspective. Palestinians perceive these measures to be designed, first, to serve the convenience of settlers and to facilitate their travel through the West Bank without having to make contact with Palestinians; and, secondly, to humiliate Palestinians by treating them as inferior human beings. The result is a suppressed anger that in the long term poses a greater threat to the security of Israel. In apartheid South Africa, a similar system designed to restrict the free movement of blacks - the notorious "pass laws" - created more anger and hostility to the apartheid regime than any other measure. Israel would do well to learn from this experience.

41. On 19 November the IDF Commander in the West Bank issued an order that prohibits Palestinians from travelling with Israelis in Israeli vehicles in the West Bank without a permit. Israeli human rights NGOs who travel with Palestinians in the West Bank see this as an attempt to curb their activities and have announced that they will refuse to apply for permits.

G. Military incursions

42. Since the election of the Hamas Government in January 2006, the IDF has intensified its military incursions into the West Bank. In November 2006 alone there were 656 IDF raids into the West Bank. These raids have involved the killing of some 150 Palestinians; and search and arrest action resulting in damage to property, injuries (an average of 179 per month) and arrests (an average of 500 per month). Most of these IDF operations have taken place in the northern West Bank, particularly Nablus and Jenin.

IV. PRISONERS

43. There are some 9,000 Palestinian prisoners in Israeli jails charged with or convicted of security offences, which range from violent acts against the Israeli Defense Forces to anti-Israeli political activities. This figure includes some 400 children and over 100 women. In addition there are over 700 administrative detainees, i.e. persons held without charge or trial, simply on the ground that the occupying Power regards them as security risks.

44. There are serious complaints about the treatment, trial and imprisonment of prisoners. Pretrial detention is accompanied by prolonged isolation and lengthy interrogation in painful positions. Threats, deception and sleep deprivation are essential features of this process.[8] Due process of law is undermined by trial before military courts and the obstructions placed in the way of defence counsel. Prison conditions are poor and family visits are rare. Israel holds political prisoners in jails in Israel rather than in the OPT, in violation of article 49 of the Fourth Geneva Convention, and then refuses the families of many of the prisoners the right to visit them.[9]

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[8] Antonio Marchesi, *Getting Around the International Prohibition of Torture: Responsibilities of the Israeli Government and the Palestinian National Authority* (December 2006), p. 27.

[9] B'Tselem, *Barred from Contact: Violation of the Right to Visit Palestinians held in Israeli Prisons* (September 2006).

45. Since 1967 over 650,000 Palestinians have been held in Israeli prisons. Hardly a family in Palestine has therefore been untouched by the Israeli prison system. Inevitably most prisoners emerge from prison embittered against the occupying Power.

V. TARGETED ASSASSINATIONS

46. Israel has a proud record on the death penalty. Since the creation of the State only two persons have been executed following a proper trial - the last being Adolf Eichmann. However, Israel's reputation as an abolitionist society has been tarnished by the practice of extrajudicial assassinations or targeted killings, which has been widely employed by the Israeli Defense Forces since the start of the Second Intifada in 2000. According to the Public Committee Against Torture in Israel, approximately 500 Palestinians have been killed by targeted assassinations, including 168 innocent civilians.

47. In December 2006, the Israeli High Court of Justice at last ruled on the lawfulness of targeted assassinations in *The Public Committee against Torture in Israel v. Government of Israel* case (HCJ 769/02). Clearly the court found itself in an awkward position as it wished to uphold justice without harming the security of the State. It failed to hold that targeted killings were unlawful. Instead, it held that under customary international law it could not be said "that this policy is always prohibited, just as it cannot be said that it is permitted in all circumstances according to the discretion of the military commander" (per President Beinisch). It rejected the argument that "terrorists" could be classified as unlawful combatants (para. 28), but held that the killing of a "terrorist" was permissible where a person took a "direct part" in hostile activity, with "direct part" defined broadly to include not only those who perpetrate terror attacks, but also those who transport the perpetrators, supervise them, collect intelligence or supply certain services (paras. 34-35). Having approved the targeted killing of "terrorists" in certain circumstances, the Court then set limits for such action: It should not be resorted to when a person could be arrested, without threatening the lives of soldiers (para. 40) or when the act would be disproportionate in that the harm done to civilians would outweigh the security advantage (paras. 44-46, 60). Measured by these standards, it is clear that many targeted assassinations would be adjudged to be unlawful. Whether the Court's decision will restrain the IDF remains to be seen. It retains a wide discretion and there is a real fear that it will continue to act as in the past. If it does, Israel will continue to be seen as an "abolitionist society" that employs the death penalty on a wide scale through the back door of "targeted assassinations".

VI. FAMILY SEPARATION

48. Israeli law and practice shows little respect for family life. Israeli Palestinians married to Palestinians from the Occupied Palestinian Territory cannot live together in Israel. Palestinians from the OPT cannot live together with foreign spouses:[10] Since 2000, a total of 120,000 requests for family unification have not been considered. Jerusalemites with Jerusalem identity cards cannot live together with their spouses who hold West Bank identity cards. The construction of the Wall in Jerusalem has separated 21 per cent of Palestinian households in

[10] B'Tselem and Ha Moked, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories* (July 2006).

East Jerusalem in this way.[11] Now there is a new problem: Israel has started to refuse the renewal of visas for Palestinians with foreign passports. Israel does not permit non-Jewish foreigners to receive residency rights in the OPT, but previously it allowed foreign passport holders, many of whom were born in Palestine, to renew their tourist visas every three months. The discontinuation of this policy since the election of the Hamas Government has resulted in persons who have lived in the OPT for years being denied visas and refused re-entry to the OPT. Consequently families are separated by the exclusion from the OPT of family members with foreign passports. Businessmen, students, lecturers, health-care and humanitarian workers have also been affected. Many "illegal" spouses continue to live in the OPT, but they do so in constant fear of arrest and expulsion. Why Israel has chosen to follow this vindictive policy is a matter of speculation. Is it for reasons of security? Or demography? A punishment for the election of Hamas? Or is it a wish to remove articulate critics of Israel?

VII. RACIAL DISCRIMINATION AND APARTHEID

49. Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1966 defines "racial discrimination" as meaning "any distinction, exclusion, restriction preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". This convention only requires States to prohibit and eliminate racial discrimination. Another convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, goes further and criminalizes practices of racial segregation and discrimination that, inter alia, involve the infliction on members of a racial group of serious bodily or mental harm, inhuman or degrading treatment, arbitrary arrest or the deliberate creation of conditions preventing the full development of a racial group by denying to such a group basic human rights and freedoms, including the right to freedom of movement, when such acts are committed "for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them".

50. Israel vehemently denies the application of these Conventions to its laws and practices in the Occupied Palestinian Territory. Despite this denial, it is difficult to resist the conclusion that many of Israel's laws and practices violate the 1966 Convention on the Elimination of All Forms of Racial Discrimination. Israelis are entitled to enter the closed zone between the Wall and the Green Line without permits while Palestinians require permits to enter the closed zone; house demolitions in the West Bank and East Jerusalem are carried out in a manner that discriminates against Palestinians; throughout the West Bank, and particularly in Hebron, settlers are given preferential treatment over Palestinians in respect of movement (major roads are reserved exclusively for settlers), building rights and army protection; and the laws governing family reunification (para. 48 above) unashamedly discriminate against Palestinians. It is less certain that the International Convention on the Suppression and Punishment of the Crime of Apartheid is violated. The IDF inflicts serious bodily and mental harm on Palestinians, both in Gaza (paras. 8-13 above) and the West Bank (para. 42 above); over 700 Palestinians are held

[11] Badil, *Displaced by the Wall* (September 2006).

without trial (para. 43 above); prisoners are subjected to inhuman and degrading treatment (para. 44 above); and Palestinians throughout the OPT are denied freedom of movement (paras. 38-41 above). Can it seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred from the actions described in this report.

VIII. THE HUMANITARIAN CRISIS AND THE WITHHOLDING OF FUNDS FROM THE PALESTINIAN AUTHORITY

51. There is a humanitarian crisis in both the West Bank and Gaza. In Gaza, over 80 per cent of the population live below the official poverty line of US$ 2.10 per day while in the West Bank 56 per cent of households fall below the poverty line. This means that two thirds of all Palestinian households fall below the income poverty line, are dependent on food aid and unable to provide for their basic needs. Health care and education in the West Bank are badly affected by a strike that continued for several months - a strike against the non-payment of salaries by the Palestinian Authority (PA) since March, but also a protest against the international community for withholding funding from the PA. In such a situation it is not surprising that domestic violence and crime is on the increase.

52. In large measure the humanitarian crisis is the result of the termination of funding of the Palestinian Authority since Hamas was elected to office. The Government of Israel is withholding from the Palestinian Authority VAT monies amounting to US$ 50 to 60 million per month which it collects on behalf of the Authority on goods imported into the OPT. In law Israel has no right to refuse to transfer this money, which belongs to the Palestinian Authority under the 1994 Protocol on Economic Relations between the Government of Israel and the Palestine Liberation Organization (Paris Protocol). Predictably, Israel justifies its action on security grounds, but the real reason seems to be a determination to effect a regime change. In the process, Israel is violating its obligation as occupying Power to provide for the welfare of the occupied people. By deliberately making life as difficult as possible for the Palestinian people, by withholding funds and imposing harsh measures on them, Israel has embarked upon a policy of collective punishment in violation of article 33 of the Fourth Geneva Convention. Worse still it is creating a failed state on its own border which augurs ill for both the Occupied Palestinian Territory and Israel itself.

53. Israel is not alone to blame for the crisis in the OPT. Since the election of Hamas in January 2006, the United States, the European Union and other States, have likewise withheld funds from the Palestinian Authority by reason of its failure to recognize Israel, renounce violence and accept obligations previously assumed towards Israel. The decision of the United States Treasury to prohibit transactions with the Palestinian Authority has, moreover, resulted in banks refusing to transfer money to the PA. To aggravate matters the Quartet has gone along with this policy of political and financial isolation. In order to mitigate the crisis, the EU has set up a Temporary International Mechanism, endorsed by the Quartet, for the relief of Palestinians employed in the health sector, the uninterrupted supply of utilities, including fuel, and the provision of basic allowances to meet the needs of the poorest segment of the population. Although the EU disbursed US$ 865 million to the Palestinians in this way in 2006 - an increase of 27 per cent compared to EU funding in 2005 - it has not resulted in the payment of salaries to most Palestinians employed in the public sector. Health-care workers and teachers have received

some payments, but well short of their full salaries, and pensioners and social hardship cases have also received an allowance. However, owing to the withholding of tax revenues due to the PA by Israel, most government employees remain unpaid and are experiencing difficulty in paying their basic expenses, such as rent and electricity.

54. In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated. This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004 advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead, the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times.

IX. CIVIL SOCIETY AND THE PROTECTION OF HUMAN RIGHTS

55. Civil society - Palestinian, Israeli and international - plays a major role in the protection of the human rights of the Palestinian people by means of public education, litigation, humanitarian aid and protective action. Non-governmental organizations collect, analyse and publicize information about human rights abuses in the Occupied Palestinian Territory. Where possible they petition the Israeli Supreme Court for redress. All the decisions of the Israeli Supreme Court, some helpful to the cause of human rights and some positively unhelpful, referred to in this report have been initiated by NGOs, mainly from Israel itself. NGOs working in the fields of health, education and welfare perform invaluable services. On occasion members of civil society intervene to protect Palestinians against the Israeli Defense Forces or settlers or to assist in the assertion of rights. The Israeli women's group, Machsom Watch, monitors the behaviour of members of the IDF at checkpoints and in so doing softens the conduct of some soldiers. Israeli peace activists have assisted in the harvesting of olives and protected Palestinian farmers against settler violence. Israeli and Palestinian activists regularly demonstrate against the construction of the Wall at places like in the village of Bil'in. Civil society must therefore be credited with having reduced the suffering of the Palestinian people.

X. INTERNATIONAL ACCOUNTABILITY AND RESPONSIBILITY

56. On a recent visit to the Occupied Palestinian Territory and Israel, the High Commissioner for Human Rights stressed the need for the accountability of Israelis and Palestinians for the violation of international humanitarian law and human rights law. Palestinians who launch Qassam rockets into Israel, killing and injuring civilians and damaging property, should be held individually accountable - that is prosecuted. But so should Israelis who have committed violations of international humanitarian law on a much greater scale. Despite the fact that Israel - unlike Palestine - has a sophisticated and advanced criminal justice system, prosecutions are very rare. Civil claims were impossible before the Israeli Supreme Court on 12 December 2006 overturned a law that prevented Palestinians from seeking compensation from Israel for damages from Israeli army activities in the OPT. Palestinians harmed in "non-belligerent" army operations in the OPT may now sue for redress. This ruling, however, does not alter the prohibition on compensation to Palestinians harmed in combat operations or to Palestinians belonging to "terrorist organizations" - such as Hamas.

57. Individual criminal accountability is no substitute for State responsibility. A State that violates international law by destroying the property of another State used for humanitarian purposes in an occupied territory may be held responsible by the injured State in accordance with the traditional principles of State responsibility. Moreover a State that systematically violates a peremptory norm of general international law may incur responsibility to the international community as a whole for such conduct; and be subject to an international claim for reparation at the instance of any State prepared to make such a claim.[12] Many States, particularly European States, have suffered damages as a result of Israeli attacks on their humanitarian assistance projects in the OPT. Moreover Israel has systematically violated peremptory norms of international law in the OPT, ranging from the denial of self-determination to serious crimes against humanity. States may well consider bringing claims against Israel under the rules governing State responsibility in order to induce it to comply with its obligations in the fields of human rights and humanitarian law.

XI. OCCUPATION, COLONIZATION AND APARTHEID: IS THERE A NEED FOR A FURTHER ADVISORY OPINION?

58. The international community, speaking through the United Nations, has identified three regimes as inimical to human rights - colonialism, apartheid and foreign occupation. Numerous resolutions of the General Assembly of the United Nations testify to this. Israel's occupation of the West Bank, Gaza and East Jerusalem contains elements of all three of these regimes, which is what makes the Occupied Palestinian Territory of special concern to the international community.

59. That the OPT is occupied by Israel and governed by the rules belonging to the special legal regime of occupation cannot be disputed. The International Court of Justice confirmed this in respect of the West Bank and East Jerusalem in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see, ICJ Reports, p. 136, paragraph 78), and held that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949, was applicable to this Territory (ibid., para. 101). The Security Council, General Assembly and States Parties to the Fourth Geneva Convention have declared that this Convention is applicable to the entire OPT (ibid., paras. 96-99). Moreover, it is not possible to seriously argue, as Israel has attempted to do, that Israel has ceased to occupy Gaza since August 2005, when it withdrew its settlers and the Israel Defense Forces from Gaza. Even before the commencement of "Operation Summer Rains", following the capture of Corporal Gilad Shalit on 25 June 2006, Israel was able to exercise effective control over the Territory by reason of its control of Gaza's external borders, air space and sea space. Since that date it has exercised its military authority within Gaza by military incursions and shelling, in circumstances which clearly establish occupation (see paragraphs 8-13 above).

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[12] Draft articles on the Responsibility of States for Intentionally Wrongful Acts (arts. 40 and 48 (2) (b)), *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10).

60. Today there are over 460,000 Israeli settlers in the West Bank and East Jerusalem (para. 32 above). Moreover, Israel has appropriated agricultural land and water resources in the West Bank for its own use. This aspect of Israel's exploitation of the West Bank appears to be a form of colonialism of the kind declared to be a denial of fundamental human rights and contrary to the Charter of the United Nations as recalled in the General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 (Resolution 1514 XV).

61. Israel's practices and policies in the OPT are frequently likened to those of apartheid South Africa (see, for example, Jimmy Carter, *Palestine: Peace, Not Apartheid* (2006)). On the face of it, occupation and apartheid are two very different regimes. Occupation is not intended to be a long-term oppressive regime but an interim measure that maintains law and order in a territory following an armed conflict and pending a peace settlement. Apartheid is a system of institutionalized racial discrimination that the white minority in South Africa employed to maintain power over the black majority. It was characterized by the denial of political rights to blacks, the fragmentation of the country into white areas and black areas (called Bantustans) and by the imposition on blacks of restrictive measures designed to achieve white superiority, racial separation and white security. Freedom of movement was restricted by the "pass system" which sought to restrict the entry of blacks into the cities. Apartheid was enforced by a brutal security apparatus in which torture played a significant role. Although the two regimes are different, Israel's laws and practices in the OPT certainly resemble aspects of apartheid, as shown in paragraphs 49-50 above, and probably fall within the scope of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid.

62. Colonialism and apartheid are contrary to international law. Occupation is a lawful regime, tolerated by the international community but not approved. Indeed over the past three decades it has, in the words of the Israeli scholar Eyal Benvenisti, "acquired a pejorative connotation".[13] What are the legal consequences of a regime of occupation that has continued for nearly 40 years? Clearly none of the obligations imposed on the occupying Power are reduced as a result of such a prolonged occupation.[14] But what are the legal consequences when such a regime has acquired some of the characteristics of colonialism and apartheid? Does it continue to be a lawful regime? Or does it cease to be a lawful regime, particularly in respect of "measures aimed at the occupants' own interests"?[15] And if this is the position, what are the legal consequences for the occupied people, the occupying Power and third States? Should questions of this kind not be addressed to the International Court of Justice for a further advisory opinion? It is true that the 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* has not had the desired effect of

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[13] *The International Law of Occupation* (1993), p. 212.

[14] See A. Roberts "Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967" (1990) 84, *American Journal of International Law* 44, 55-57, 95.

[15] Benvenisti, op. cit (note 13), p. 216.

compelling the United Nations to take firmer action against the construction of the Wall. On the other hand, it must be remembered that the United Nations requested four advisory opinions from the International Court of Justice to guide it in its approach to South Africa's occupation of South-West Africa/Namibia. In these circumstances a request for another advisory opinion warrants serious consideration.

XII. CONCLUSION: ISRAEL, PALESTINE AND THE FUTURE OF HUMAN RIGHTS

63. **The Occupied Palestinian Territory is of special importance to the future of human rights in the world. Human rights in Palestine have been on the agenda of the United Nations for 60 years; and more particularly for the past 40 years since the occupation of East Jerusalem, the West Bank and the Gaza Strip in 1967. For years the occupation of Palestine and apartheid in South Africa vied for attention from the international community. In 1994, apartheid came to an end and Palestine became the only developing country in the world under the subjugation of a Western-affiliated regime. Herein lies its significance to the future of human rights. There are other regimes, particularly in the developing world, that suppress human rights, but there is no other case of a Western-affiliated regime that denies self-determination and human rights to a developing people and that has done so for so long. This explains why the OPT has become a test for the West, a test by which its commitment to human rights is to be judged. If the West fails this test, it can hardly expect the developing world to address human rights violations seriously in its own countries, and the West appears to be failing this test. The EU pays conscience money to the Palestinian people through the Temporary International Mechanism but nevertheless joins the United States and other Western countries, such as Australia and Canada, in failing to put pressure on Israel to accept Palestinian self-determination and to discontinue its violations of human rights. The Quartet, comprising the United States, the European Union, the United Nations and the Russian Federation, is a party to this failure. If the West, which has hitherto led the promotion of human rights throughout the world, cannot demonstrate a real commitment to the human rights of the Palestinian people, the international human rights movement, which can claim to be the greatest achievement of the international community of the past 60 years, will be endangered and placed in jeopardy.**

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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, on the non-implementation of Human Rights Council resolution S-1/1

GE.07-12963

1. On 6 July 2006 the Human Rights Council adopted resolution S-1/1 in which it decided to "dispatch an urgent fact-finding mission [to the Occupied Palestinian Territory] headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967". The resolution failed to provide details of the mandate. In particular, it failed to indicate which facts were to be investigated. The preamble, however, suggests that the purpose was to examine the humanitarian consequences of the Israel Defence Forces' (IDF) "Operation Summer Rains" in Gaza and the arrest of Palestinian legislators in the West Bank. Also, the resolution contained no reporting obligation (unlike Human Rights Council resolution S-3/1, entitled "Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun".)

2. At the time that the resolution was being debated, I communicated with the proposers of the resolution and suggested to them that someone other than myself be mandated to carry out the mission, as it was unlikely that Israel would consent to such a mission under my direction in the light of my critical reports on Israel's policies and practices in the Occupied Palestinian Territory (OPT). The proposers of the resolution did not heed my suggestion and instead continued with their resolution, directing me to carry out the fact-finding mission.

3. Unperturbed by the flaws in resolution S-1/1, and the likelihood that Israel would refuse to consent to the mission, I went ahead and prepared for the mission, ably assisted by the staff of OHCHR. For this purpose I constituted a mission comprising of myself, a health expert and a security expert, together with interpreters and OHCHR staff. Details of these preparations are contained in my report to the Human Rights Council of 20 December 2006 (see A/HRC/4/116, entitled "Report of the Special Rapporteur on the human rights situation in the Palestinian territories occupied since 1967 pursuant to resolution 3/1 of the Human Rights Council").

4. Under the terms of General Assembly resolution 46/59, no fact-finding mission may be undertaken without the consent of the State to be investigated. The Government of Israel, despite representations from the President of the Human Rights Council, failed to respond positively to requests for the mission to take place, as I had predicted to the proposers of the resolution. On 8 August 2006, I wrote to the President requesting him to inform the Human Rights Council that Israel had failed to consent to the mission and that as far as I was concerned the mission could not proceed (see A/HRC/4/116).

5. From 1 to 8 December 2006 I visited Israel and the Occupied Palestinian Territory in my capacity as Special Rapporteur. As on previous visits, the Government of Israel placed no obstacles in the way of my visit and indeed on occasion facilitated my visit by issuing me a "To Whom It May Concern" letter instructing Israeli Defense Forces (IDF) officers at crossings and checkpoints to allow me free passage. However, as in the past, the Government of Israel refused to meet with me, as it does not recognize my mandate. In writing to the Government of Israel about my proposed visit in December, as a matter of courtesy, I assured the Government that I intended visiting in my capacity as Special Rapporteur and not in my capacity as head of the fact-finding mission mandated by resolution S-1/1. I am confident that without such an assurance I would not have been permitted to enter Israel.

6. During my December visit to the Occupied Palestinian Territory, I visited Gaza and examined the consequences of both "Operation Summer Rains" and "Operation Autumn

Clouds". I also visited the scene of the killing of 19 persons and the wounding of 55 persons in Beit Hanoun on 8 November 2006. (The Human Rights Council later established a mission headed by Archbishop Desmond Tutu to investigate this event. Again, no consent by Israel was forthcoming for such a mission.) I reported to the Human Rights Council on this visit in my report on 22 March 2007 (see A/HRC/4/17).

7. In this report I examined the consequences of Israeli military action in Gaza between 25 June and the end of November 2006, action that took the names "Operation Summer Rains" and "Operation Autumn Clouds". I reported that over 400 Palestinians were killed and some 1,500 injured in 364 military incursions which were accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed homes, schools, hospitals, mosques, agricultural land, public buildings, bridges, water pipelines and sewage networks. On 27 June the Israeli Air Force (IAF) destroyed the only domestic power plant in Gaza, which deprived half of the population of Gaza of electricity for several months. Thousands of Palestinians were displaced from their homes as a result of Israel's military actions.

8. The report paid particular attention to IDF action in Beit Hanoun in November 2006. In this action 82 Palestinians were killed and more than 260 injured. I reported on my visit to the home of the Al-Athamnah family, which was shelled on 8 November 2006, killing 19 persons and wounding 55 persons. I expressed the view that there were reasons for doubting that this shelling was the result of a "technical failure", as maintained by Israel.

9. The report also examined the humanitarian crisis occasioned by the siege of Gaza and Israeli military action. I found that 70 per cent of Gaza's potential work force was out of work or without pay and that over 80 per cent of the population live below the official poverty line. I considered the effect that the destruction of the Gaza power plant had had on daily life in Gaza and the consequences of the siege for health and education.

10. I concluded that Israel had violated a number of rights contained in the two International Covenants and that it had, in addition, violated the most fundamental rules of international humanitarian law by attacking civilian targets, spreading terror among the civilian population, destroying property not justified by military necessity, and using force excessively and disproportionately. In my view such action constituted unlawful collective punishment of the people of Gaza.

11. My report on Gaza (A/HRC/4/17) ran to 10 pages and 17 paragraphs. It presented a full picture of the events of June to November 2006 in Gaza and the consequences of these events.

12. I am the Special Rapporteur on the *situation* of human rights in the occupied Palestinian territories. In this capacity, I report on the overall situation in the Occupied Palestinian Territory without attempting to investigate or resolve any factual dispute. I am not a one-person fact-finding mission. Consequently, the above report raises questions about Israel's justification for the shelling of the Beit Hanoun home, in which 19 persons died, and states that "it seems clear that the indiscriminate firing of shells into a civilian neighbourhood with no apparent military objective constituted a war crime", but it makes no attempt to pronounce definitively upon the factual dispute whether the shelling was the result of a "technical failure", as maintained by Israel. The line between situation-reporting and fact-finding is admittedly not absolutely clear.

Thus there is substance in the statement by the Israeli Ambassador, Itzhak Levanon, on 22 March 2007 in the Human Rights Council that I have already reported on the subject covered by resolution S-1/1 and that the Human Rights Council has already considered it. It is difficult not to agree with the Israeli Ambassador that the purpose of resolution S-1/1 "has already been effectively realized".

13. Despite my report to the Human Rights Council on 22 March 2007, the Human Rights Council on 27 March adopted resolution 4/2 calling for the implementation of resolution S-1/1. By the time I received notice of this resolution I had already made plans to visit the Occupied Palestinian Territory on 27 May in my capacity as Special Rapporteur. For the purpose I had already written to the Israeli Ambassador informing him of my visit, expressing the expectation that no obstacles would be placed in the way of my visit, and assuring him that "I shall not be visiting in pursuance of resolution S-1/1" but in my capacity as Special Rapporteur. In the light of this assurance I informed the President of the Council that "as a man of his word, I cannot renege on this assurance" by going to the OPT under the terms of resolution S-1/1. (Subsequently, I had to cancel this mission as a result of the fact that I suffered a heart attack on 29 April and was placed under doctor's orders not to travel.)

14. In my view the mission contemplated is obsolete and impractical for the following reasons:

(a) The events that resolution S-1/1 instructed me to investigate have passed into recent history and been overtaken by other events. For instance, the destruction of the Gaza power plant on 27 June was to be a major focus of investigation. Today the power plant has been substantially repaired. Any investigative mission visiting Gaza at present would therefore examine other more pressing problems – such as recent air strikes on Gaza;

(b) The events that I was expected to report on have already been reported on in my report on Gaza. There would be little to add to this report;

(c) Resolution S-1/1 was seriously flawed by reason of its failure to contain a reporting obligation – unlike resolution 3/1 establishing the mission to be led by Archbishop Tutu. Consequently, opponents of resolution S-1/1 might legitimately argue that any report in terms of the resolution was *ultra vires* the resolution;

(d) The present security situation in Gaza precludes the implementation of resolution S-1/1. I have been informed by United Nations Security that no visits to Gaza have been permitted for some time and that it is unlikely that they will be permitted in the foreseeable future;

(e) There is no prospect that the Government of Israel will consent to a mission under resolution S-1/1.

15. For the above reasons, I recommend that the Human Rights Council accept that the mission contemplated by resolution S-1/1 has not been implemented and cannot be implemented. Moreover no purpose would be served by carrying out such a mission a year after the events in question and after a full report has already been made by the Special Rapporteur in his capacity as Special Rapporteur.

16. I urge the Human Rights Council in future to seriously consider the wisdom of sending someone who is already a Special Rapporteur on a fact-finding mission to the State in respect on which he or she is Special Rapporteur. In most circumstances, the Special Rapporteur will have a difficult relationship with that State, which will be exacerbated by requiring him or her to lead a fact-finding mission to the State in question. This may lead the State to place obstacles in the

way of future visits by the Special Rapporteur.

17. I regret that my health prevents me from reporting to the Human Rights Council in person. I trust, however, that the present report provides a full explanation why resolution S-1/1 cannot be implemented and why the Human Rights Council should move on and concentrate on more pressing violations of human rights and humanitarian law in the Occupied Palestinian Territory, such as air strikes in Gaza; military incursions into the West Bank and Gaza; the arrest of Palestinian cabinet ministers, mayors and legislators; the continued expansion of settlements; the construction of the Wall; the terrorization of Palestinians in Hebron; the de facto annexation of the Jordan Valley; and the system of checkpoints. There is also the question of what action is to be taken to promote respect for human rights in the OPT. As suggested in my report (A/HRC/4/17), a request for a further Advisory Opinion from the International Court of Justice on the legal consequences for the occupied people, the Occupying Power and third States of 40 years of occupation might be one method of promoting human rights. Another is an appeal to the Quartet (European Union, Russian Federation, United States of America, and the United Nations) to concern itself more with human rights in its quest for a peaceful settlement in the region. Attention to matters of this kind would, in my opinion, best serve the interests and advance the human rights of the Palestinian people.

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard

GE.08-40229 (E) 290108

Summary

This year marks the fortieth anniversary of the occupation of the Palestinian territory. Israel's obligations as an occupying Power have not diminished as a result of the prolonged nature of the occupation.

Israel remains the occupying Power in Gaza despite its claim that Gaza is a "hostile territory". This means that its actions must be measured against the standards of international humanitarian law and human rights law. Judged by these standards Israel is in serious violation of its legal obligations. The collective punishment of Gaza by Israel is expressly prohibited by international humanitarian law and has resulted in a serious humanitarian crisis.

The human rights situation in the West Bank has worsened, despite expectations that it would improve following the removal of Hamas from the Government of the West Bank. Settlements expand, the construction of the wall continues, and checkpoints increase in number. Military incursions and arrests have intensified, 779 Palestinian prisoners have been released but some 11,000 remain in Israeli jails.

The right of self-determination of the Palestinian people is seriously threatened by the separation of Gaza and the West Bank resulting from the seizure of power by Hamas in Gaza in June 2007. Every effort must be made by the international community to restore Palestinian unity.

On 27 November a new peace process was initiated at a meeting in Annapolis. This process must take place within a normative framework that respects international law, international humanitarian law and human rights. The Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[1] is an essential feature of this framework and cannot be overlooked by the Annapolis peace process, the Israeli and Palestinian authorities, the Quartet and the United Nations. The Secretary-General as the representative of the United Nations must ensure that the Advisory Opinion, which represents the law of the United Nations, is respected by all parties engaged in the Annapolis process.

[1] See A/ES-10/273 and Corr.1.

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Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 visited the Occupied Palestinian Territory (OPT) from 25 September to 1 October 2007. During this time he visited Gaza, Jerusalem, Ramallah, Bethlehem, Jericho and Nablus, where he met with non-governmental organizations (NGOs) - both Palestinian and Israeli - United Nations agencies, Palestinian officials, academics, businessmen and independent interlocutors. The Special Rapporteur spent a considerable amount of time in the field, visiting factories in Gaza, checkpoints, settlements, Palestinian villages affected by the wall near Bethlehem, Nablus and Qalqiliya, and villages and communities in the Jordan valley. On 30 September he delivered a lecture at Al-Najah University in Nablus. The visit of the Special Rapporteur to the OPT was preceded and followed by visits to Jordan where he met with Jordanian officials. The purpose of these meetings was to obtain a Jordanian perspective on the human rights situation in the OPT.

I. CRITICISM OF SPECIAL RAPPORTEUR AND MANDATE

2. The Special Rapporteur has been criticized for a number of reasons by concerned States.[2] First, reports are repetitious. Second, they fail to address terrorism. Third, they fail to consider human rights violations committed by Palestinians. These criticisms will be briefly considered at the outset of the present report.

A. Repetition

3. It is true that reports on the OPT follow a familiar pattern and deal with substantially similar factual situations. They record violations of human rights and international humanitarian law that have occurred in a systematic and consistent manner over many years, some going back to the start of the occupation 40 years ago. Settlements, checkpoints, demolition of houses, torture, closure of crossings and military incursions have characterized the occupation for many decades and have featured regularly in reports. Reports inevitably, and correctly, continue to report on such matters and to record their consequences and frequency in a changing environment. New violations of human rights and humanitarian law are added as they occur, such as the construction of the wall (since 2003), sonic booms, targeted killings, the use of Palestinians as human shields, and the humanitarian crisis produced by the non-payment of tax money due to the Palestinians. In short, reports are repetitious because the same violations of human rights and humanitarian law continue to occur in the OPT.

B. Terrorism

4. Terrorism is a scourge, a serious violation of human rights and international humanitarian law. No attempt is made in the reports to minimize the pain and suffering it causes to victims, their families and the broader community. Palestinians are guilty of terrorizing innocent Israeli

[2] See the criticisms raised by Israel and the United States in the Third Committee in October 2007 (A/C.3/62/SR.23, paras. 5-7 and 22-26) in response to the report of the Special Rapporteur (A/62/275).

civilians by means of suicide bombs and Qassam rockets. Likewise the Israeli Defense Forces (IDF) are guilty of terrorizing innocent Palestinian civilians by military incursions, targeted killings and sonic booms that fail to distinguish between military targets and civilians. All these acts must be condemned and have been condemned.[3] Common sense, however, dictates that a distinction must be drawn between acts of mindless terror, such as acts committed by Al Qaeda, and acts committed in the course of a war of national liberation against colonialism, apartheid or military occupation. While such acts cannot be justified, they must be understood as being a painful but inevitable consequence of colonialism, apartheid or occupation. History is replete with examples of military occupation that have been resisted by violence - acts of terror. The German occupation was resisted by many European countries in the Second World War; the South West Africa People's Organization (SWAPO) resisted South Africa's occupation of Namibia; and Jewish groups resisted British occupation of Palestine - inter alia, by the blowing up of the King David Hotel in 1946 with heavy loss of life, by a group masterminded by Menachem Begin, who later became Prime Minister of Israel. Acts of terror against military occupation must be seen in historical context. This is why every effort should be made to bring the occupation to a speedy end. Until this is done peace cannot be expected, and violence will continue. In other situations, for example Namibia, peace has been achieved by the ending of occupation, without setting the end of resistance as a precondition. Israel cannot expect perfect peace and the end of violence as a precondition for the ending of the occupation.

5. A further comment on terrorism is called for. In the present international climate it is easy for a State to justify its repressive measures as a response to terrorism - and to expect a sympathetic hearing. Israel exploits the present international fear of terrorism to the full. But this will not solve the Palestinian problem. Israel must address the occupation and the violation of human rights and international humanitarian law it engenders, and not invoke the justification of terrorism as a distraction, as a pretext for failure to confront the root cause of Palestinian violence - the occupation.

C. Palestinian human rights violations

6. The mandate of the Special Rapporteur is concerned with violations of human rights and international humanitarian law that are a consequence of military occupation. Although military occupation is tolerated by international law it is not approved and must be brought to a speedy end. The mandate of the Special Rapporteur therefore requires him to report on human rights violations committed by the occupying Power and not by the occupied people. For this reason this report, like previous reports, will not address the violation of the human rights of Israelis by Palestinians. Nor will it address the conflict between Fatah and Hamas, and the human rights violations that this conflict has engendered. Similarly it will not consider the human rights record of the Palestinian Authority in the West Bank or of Hamas in Gaza. The Special Rapporteur is aware of the ongoing violations of human rights committed by Palestinians upon Palestinians and by Palestinians upon Israelis. He is deeply concerned and condemns such violations. However, they find no place in this report because the mandate requires that the report be limited to the consequences of the military occupation of the OPT by Israel.

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[3] See J. Dugard, *International Law. A South African Perspective*, 3rd ed. (Juta & Co. Ltd., Cape Town, 2005) pp. 166-169.

II. THE OCCUPATION OF THE OCCUPIED PALESTINIAN TERRITORY

7. What distinguishes the case of Palestine from other situations in which violations of human rights occur is the occupation, an occupation which began in 1967, 40 years ago, and which shows no sign of ending. In Israel, complaints are frequently made that criticism of its policies and practices are too much centred on the occupation. But the occupation is a reality, one which is to blame for the present conflict, and the source of the violation of human rights and of international humanitarian law. Consequently, it is necessary to commence this report - again - with comments on the occupation.

8. Israel has been for 40 years and remains in military occupation of the OPT. This was reaffirmed by the International Court of Justice in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, when it held that the Palestinian territories (including East Jerusalem) "remain occupied territories and Israel has continued to have the status of occupying Power". The consequence of this, in the opinion of the International Court, is that the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) applies to the Occupied Palestinian Territory, as do the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.[4] Furthermore, Israel's obligations have not diminished as a result of the prolonged nature of the occupation.[5] On the contrary, they have increased as a result of it. It is now argued that Israel's occupation has become unlawful as a result of the numerous violations of international law that have occurred during the occupation.[6]

III. THE OCCUPATION OF GAZA

9. In its Advisory Opinion on the construction of a wall in the West Bank and East Jerusalem, the International Court of Justice was not asked to pronounce on the legal status of Gaza. It, possibly therefore, confined its reaffirmation of the occupied status of the Occupied Palestinian Territory to the West Bank and East Jerusalem.[7] The evacuation of Israeli settlements and the withdrawal of the permanent IDF presence from Gaza in 2005, has now given rise to the argument that Gaza is no longer occupied territory. On 15 September 2005 Prime Minister Sharon told the General Assembly that Israel's withdrawal from Gaza meant the end of its responsibility for Gaza.

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[4] A/ES-10/273, paras. 101, 111 and 112.

[5] See Adam Roberts, "Prolonged military occupation: the Israeli occupied territories since 1967", *American Journal of International Law*, vol. 84 (1990), pp. 55-57 and 95.

[6] O. Ben-Naftali, A.M. Gross and K. Michaeli, "Illegal occupation: framing the Occupied Palestinian Territory", *Berkeley Journal of International Law*, vol. 23, No. 3 (2005), pp. 551-614.

[7] A/ES-10/273, para. 101.

10. On 19 September 2007 Israel seemed to give a new status to Gaza when its Security Cabinet declared Gaza to be "hostile territory" - a characterization that was shortly afterwards approved by the United States Secretary of State. Although the legal implications that Israel intends to attach to this "status" remain unclear, the political purpose of this declaration was immediately made known - namely the reduction of the supply of fuel and electricity to Gaza.

11. The test for determining whether a territory is occupied under international law is effective control,[8] and not the permanent physical presence of the occupying Power's military forces in the territory in question. Judged by this test it is clear that Israel remains the occupying Power as technological developments have made it possible for Israel to assert control over the people of Gaza without a permanent military presence.[9] Israel's effective control is demonstrated by the following factors:

(a) Substantial control of Gaza's six land crossings: the Erez crossing is effectively closed to Palestinians wishing to cross to Israel or the West Bank. The Rafah crossing between Egypt and Gaza, which is regulated by the Agreement on Movement and Access entered into between Israel and the Palestinian Authority on 15 November 2005 (brokered by the United States, the European Union and the international community's envoy for the Israeli disengagement from Gaza), has been closed by Israel for lengthy periods since June 2006. The main crossing for goods at Karni is strictly controlled by Israel and since June 2006 this crossing too has been largely closed, with disastrous consequences for the Palestinian economy;

(b) Control through military incursions, rocket attacks and sonic booms: sections of Gaza have been declared "no-go" zones in which residents will be shot if they enter;

(c) Complete control of Gaza's airspace and territorial waters;

(d) Control of the Palestinian Population Registry: the definition of who is "Palestinian" and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, with few exceptions, Israel has not permitted additions to the Palestinian Population Registry.

The fact that Gaza remains occupied territory means that Israel's actions towards Gaza must be measured against the standards of international humanitarian law.

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[8] See *United States of America v. Wilhelm List et al.* (The *Hostages* case) United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. III, 1949, p. 56; *Democratic Republic of Congo v. Uganda*, International Court of Justice, 2005, paras. 173 and 174.

[9] See further on this subject, Sari Bashi and Kenneth Mann, "Disengaged Occupiers: the Legal Status of Gaza", Gisha: Legal Center for Freedom of Movement, January 2007.

IV. ISRAEL'S ACTIONS AGAINST GAZA AND THEIR CONSEQUENCES

12. Israel has taken a number of actions against Gaza since the withdrawal of Israeli settlers and the IDF in 2005.

A. Military action

13. IDF military incursions into Gaza have continued regularly over the past year; 290 Palestinians were killed in Gaza in 2007. Of this number at least a third were civilians. On 26 September, the day the Special Rapporteur visited Gaza, 12 Palestinian militants were killed by IDF missiles. Since the Annapolis meeting on 27 November 2007, over 70 Palestinians have been killed of whom 8 were killed in a major military operation in southern Gaza on the day before the first round of talks between Israelis and Palestinians following the Annapolis meeting. A further 13 Palestinians were killed in three separate airstrikes on 18 December. The frequency of targeted killings raises a question as to whether the IDF acts within the permissible parameters for such action laid down by the Israeli Supreme Court in its 2006 judgement on targeted killings. Or does the IDF act without regard to its own law as well as international law in carrying out targeted killings?

14. In the past two years 668 Palestinians have been killed by Israeli security forces in Gaza. Over half - 359 people - were not involved in hostilities at the time they were killed. Of those killed 126 were minors; 361 were killed by missiles fired from helicopters; and 29 of those killed were targeted for assassination. During the same period, Palestinians fired some 2,800 Qassam rockets and mortar shells into Israel from the Gaza Strip. Four Israeli civilians were killed by Qassam rockets and hundreds were injured. Four members of the Israeli security forces were killed in attacks originating from Gaza.[10]

B. Closure of crossings

15. All the crossings into and out of Gaza are controlled by Israel. Rafah, the crossing point for Gazans to Egypt, and Karni, the commercial crossing for the import and export of goods, are the principal crossing points. They are the subject of the Agreement on Movement and Access, which provides for Gazans to travel freely to Egypt through Rafah and for a substantial increase in the number of export trucks through Karni. Since 25 June 2006, following the capture of Corporal Shalit, and more particularly since mid-June 2007, following the Hamas seizure of power in Gaza, the Rafah crossing has been closed. From mid-June to early August 2007 some 6,000 Palestinians were stranded on the Egyptian side of the border, without adequate accommodation or facilities and denied the right to return home. Over 30 people died while waiting. The Karni crossing has likewise been closed for long periods of time during the past 18 months, and more particularly since mid-June 2007. Karem Shalom and Sufa are now used for the import of goods but the number of trucks bringing goods into Gaza has dropped

[10] These statistics, provided by B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, cover the period 1 September 2005 to 25 July 2007.

alarmingly - from 253 a day in April 2007 to 74 a day in November. To make matters worse Sufa is possibly scheduled to close - though on 20 November the Israeli Government decided to permit the export of flowers and strawberries from Gaza to Europe via the Sufa crossing. Erez, previously used as a crossing for persons in need of medical attention in Israel, has also been largely closed for this purpose. On the other hand, in December 2007, Israel allowed several hundred Palestinians who reside abroad to leave Gaza via Israel.

C. The reduction of fuel and electricity supplies

16. On 19 September Israel declared Gaza to be a hostile territory and announced that, as a consequence, it would reduce the supply of fuel and electricity to Gaza. Ten Israeli and Palestinian NGOs brought an application before the Israeli High Court of Justice to halt the reduction of fuel and electricity on the ground that this constitutes collective punishment and would cause widespread humanitarian damage but the Israeli High Court has upheld the State's plan to reduce fuel transfers to Gaza. According to the Palestinian Centre for Human Rights fuel supplies have been reduced by more than 50 per cent since the decision to cease fuel supplies on 25 October 2007.

D. Termination of banking facilities

17. Following the designation of Gaza as a hostile territory the only two Israeli commercial banks dealing with financial institutions in Gaza, Bank Hapoalim and Discount Bank, announced that they would cut ties with Gaza. This involves, inter alia, the refusal to clear cheques from Gaza banks and the halting of cash transfers between Israeli banks and Gaza banks. At this stage, the full implications of this decision are not yet clear, but as the Israeli shekel is the official currency in the OPT, in accordance with the Oslo Accords, and must be supplied from Israel, it is likely that this could produce chaos in the Gazan monetary system.

E. The humanitarian crisis in Gaza

18. Regular military incursions, the closure of crossings, the reduction of fuel and the threat to the banking system have produced a humanitarian crisis, which has the following impact on life in Gaza.

1. Food

19. Over 80 per cent of the population of Gaza is dependent on food aid from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the World Food Programme (WFP). This takes the form of flour, rice, sugar, sunflower oil, powdered milk and lentils. Fruit and vegetables are no longer available to supplement these basic rations as farmers do not have the money to get their crops picked and marketed. Few can afford meat, and fish is virtually unobtainable as a result of the Israeli prohibition of fishing. Although critical humanitarian food supplies are being allowed in, only 41 per cent of Gaza's food import needs are currently being met.

2. Unemployment and poverty

20. The closure of crossings prevents Gazan farmers and manufacturers from exporting their goods to markets outside Gaza. It also prevents materials from entering Gaza and this has resulted in the end of most construction works and the closure of factories. On 26 September the Special Rapporteur visited the Karni industrial zone and saw factories that had been closed as a result of the failure to import materials and the prohibition on the export of goods. Factory owners are being held responsible by Israeli buyers for non-delivery of goods caused by the closure. Farmers are without income and some 65,000 factory employees are unemployed. According to the Palestinian Federation of Industries, 95 per cent of Gaza's industrial operations have been suspended as a result of restrictions.[11] Fishermen are likewise unemployed as a result of the Israeli ban on fishing along the Gaza coast. On 9 July 2007, UNRWA announced that it had halted all its building projects in Gaza because it had run out of building materials, such as cement. This has affected 121,000 jobs of people building new schools, houses, waterworks, and health centres. In many instances those working in the public sector remain unpaid. Municipal employees in Gaza City have not been paid since March 2007. As a result garbage collection services went on strike in November causing a serious threat to health.

21. Poverty in Gaza is rife. Over 80 per cent of the population live below the official poverty line.

3. Health care

22. Health-care clinics are in short supply of paediatric antibiotics, and 91 key drugs are no longer available. Previously, seriously ill patients were allowed to leave Gaza to receive treatment in Israel, the West Bank, Egypt, Jordan and other countries through the Rafah and Erez crossings. Rafah is now completely closed and the Israeli authorities deny passage through Erez to all but the most "severe and urgent cases". The situation has worsened since the declaration of Gaza as a hostile territory. The World Health Organization reports that while 89.4 per cent of patients who applied for permits during the period January-May 2007 were granted permits, only 77.1 per cent of those who applied were granted permits during October 2007. This has resulted in a drastic increase in the number of patients who have died as a result of restrictions: according to the Israeli NGO Physicians for Human Rights, since June 2007, 44 people have died as a result of denial or delay of access to medical care by the Israeli authorities and 13 died in November alone. Mahmoud Abu Taha, a 21-year-old patient with stomach cancer, arrived at Erez at 16.00 hours on 18 October with a Palestinian intensive care unit ambulance, escorted by his father. The patient's entry was delayed for two and a half hours, after which the IDF asked the father to cross to the Israeli side of Erez. His son, the patient, was to enter on a walker and not with the ambulance. The patient was denied access after reaching the end of the 500 metre long tunnel, while the father was arrested by the IDF and held for nine days. On 28 October, a second arrangement for the patient was approved and he was admitted to an Israeli hospital, where he died the same night. In November, hospitals were prevented from carrying out

[11] "Investing in Palestinian Economic Reform and Development", Report for the Pledging Conference, World Bank, December 2007, para. 13.

operations as a result of the restrictions placed by Israel on nitrous oxide gas that is used for anaesthetics.

4. Education

23. Gaza's children in UNRWA schools lag behind refugee children elsewhere, according to UNRWA, as a result of the Israeli blockade and military violence. Students are prevented from studying abroad. In November 670 students were denied permission to study abroad, including six Fulbright scholars.

5. Fuel, energy and water

24. Gaza is largely dependent on Israel for its supply of fuel and electricity. Already there are frequent power outages as a result of Israel's destruction of the main Gaza power plant in 2006 and subsequent damage to electricity transformers. (For instance on 14 November the IDF struck an electricity transformer in Beit Hanoun which knocked out power for 5,000 people in the area.) The supply of water is also affected and there is insufficient power for water pumps. As a result, 210,000 people are able to access drinking water supplies for only 1-2 hours a day. Sewage is also a problem: sewage plants require repairs but materials, such as metal pipes and welding machines, have been prohibited by Israel on the grounds that they may be used for making rockets. At present there is a real danger that sewage plants could overflow. Cutting off fuel and electricity will exacerbate an already dangerous situation. It will endanger the functioning of hospitals, water services and sewage, as well as depriving residents of electricity for refrigerators and household appliances. A humanitarian catastrophe is contemplated if Israel continues to reduce fuel and carries out its threat to reduce electricity supplies.

F. Legal consequences of Israel's actions

25. Israel has largely justified its attacks and incursions as defensive operations aimed at preventing the launching of Qassam rockets into Israel, the arrest or killing of suspected militants or the destruction of tunnels. Clearly the firing of rockets into Israel by Palestinian militants without any military target, which has resulted in the killing and injury of Israelis, cannot be condoned and constitutes a war crime. Nevertheless, serious questions arise over the proportionality of Israel's military response and its failure to distinguish between military and civilian targets. It is highly arguable that Israel has violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). These crimes include direct attacks against civilians and civilian objects, and attacks which fail to distinguish between military targets and civilians and civilian objects (articles 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); and the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I).

26. Israel's siege of Gaza violates a whole range of obligations under both human rights law and humanitarian law. The provisions of the International Covenant on Economic, Social and Cultural Rights that state that everyone has the right to "an adequate standard of living for

himself and his family, including adequate food, clothing and housing", freedom from hunger and the right to food (art. 11) and that everyone has the right to health, have been seriously infringed. Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement, the closure of crossings and the consequences that these actions have upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment.

27. Gaza is no ordinary State upon which other States may freely impose economic sanctions in order to create a humanitarian crisis or take disproportionate military action that endangers the civilian population in the name of self-defence. It is an occupied territory in whose well-being all States have an interest and whose welfare all States are required to promote. According to the Advisory Opinion of the International Court of Justice, all States parties to the Fourth Geneva Convention have the obligation "to ensure compliance by Israel with international humanitarian law as embodied in that Convention". Israel has violated obligations of an *erga omnes* character that are the concern of all States and that all States are required to bring to an end. In the first instance, Israel, the occupying Power, is obliged to cease its violations of international humanitarian law. But other States that are a party to the siege of Gaza are likewise in violation of international humanitarian law and obliged to cease their unlawful actions.

V. HUMAN RIGHTS IN THE WEST BANK AND JERUSALEM

28. It was widely expected that the human rights situation would improve in the West Bank following the exclusion of Hamas from the Government of the West Bank. This initially signalled a new rapprochement between Israel and the emergency Government of President Abbas, under the Prime Ministership of Salam Fayyad. Israel has made some gestures of rapprochement, such as the release of 779 prisoners (mainly belonging to Fatah), the payment of some of the tax money due to the Palestinian Authority, the relaxation of travel restrictions in the Jordan Valley, the granting of amnesty to 178 Fatah militants wanted by Israel and the promised granting of residence permits in the West Bank to 3,500 Palestinians. Unfortunately, Israel has not taken steps to dismantle the infrastructure of occupation. On the contrary, it has maintained and expanded the instruments that most seriously violate human rights - military incursions, settlements, the separation wall, restrictions on freedom of movement, the Judaization of Jerusalem and the demolition of houses.

A. Military incursions

29. Military incursions in the West Bank have intensified since June 2007. For instance, in November the IDF carried out 786 raids in the West Bank in the course of which one person was killed, 67 injured and 398 arrested;[12] public and private properties were damaged; curfews were

[12] Palestinian Monitoring Group, Monthly Summary, November 2007.

imposed; and countless innocent civilians were terrorized by armed soldiers and dogs. Nablus has been particularly affected: on 17 October, the Israeli army raided the city of Nablus and fired tank shells, killing an elderly civilian and one armed individual, and injuring 14 civilians, including 2 children and a journalist. The IDF has frequently failed to distinguish clearly between military targets and civilians. As in the case of Gaza (see paragraph 25) these actions appear to violate rules of international humanitarian law (articles 48, 51 (4) and 52 (1) of Additional Protocol I).

B. Settlements and settlers[13]

30. There are 149 settlements in the West Bank and East Jerusalem. Despite promises by Israel to freeze settlement growth, the number of settlers has increased by 63 per cent since 1993 to its present population of 460,000. At present new construction is under way in 88 settlements and the average growth rate in the settlements is 4.5 per cent compared with the average growth rate of 1.5 per cent in Israel itself. In addition there are 105 "outposts" - that is, informal structures, which serve as a prelude to a new settlement, and are unauthorized but still funded by Government ministries. Despite Israel's undertaking in the road map to dismantle all outposts built after 2001, no such action has been taken in respect of the 51 such outposts. More than 38 per cent of the West Bank consists of settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of "road apartheid", which was unknown in apartheid South Africa.)

31. In a statement to the Third Committee in October 2007 the Israeli delegate, Ms. Ady Schonmann, stated that the Special Rapporteur had failed to indicate that the Israeli NGO, Peace Now, had retracted a report of October 2006[14] which showed that nearly 40 per cent of the land held by Israeli settlements in the West Bank is privately owned by Palestinians. The Special Rapporteur has had contact with Peace Now which has indicated that while it made some corrections to its report in response to representations from the Israeli Government, it has not retracted its finding that 40 per cent of land occupied by settlements in the West Bank is privately owned by Palestinians.

32. Settlements are illegal under international law as they violate article 49, paragraph 6, of the Fourth Geneva Convention. This illegality has been confirmed by the International Court of Justice in its Advisory Opinion on the construction of the wall, by the High Contracting Parties

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[13] See generally, "The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank", the Office for the Coordination of Humanitarian Affairs (OCHA), July 2007, available at http://www.ochaopt.org/?module=displaysection&section_id=103&format=html.

[14] *Breaking the Law in the West Bank - One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property*, Peace Now, October 2006.

to the Fourth Geneva Convention in a declaration published in 2001, and by both the Security Council and the General Assembly. Furthermore settlements constitute a form of colonialism which is contrary to international law.[15]

33. Israel's contempt for international law and opinion is illustrated by recent Government decisions. First, in December shortly after the Annapolis meeting, the Israeli Government announced plans to build 307 new apartments in the settlement of Har Homa. Secondly, in October it announced that it would proceed with plans for the development of E1, a planned new settlement which will have 3,500 apartments, 10 hotels and an industrial park, to accommodate 14,500 settlers, situated adjacent to Maale Adumim. At present Israel has built a police station on E1 (visited by the Special Rapporteur on 25 September) but is prevented from proceeding with its plans to start construction on E1 by the presence of the main road from East Jerusalem to Jericho, which is used by Palestinians. Israel has now confiscated Palestinian land in Abu Dis, Sawareh, Nabi Moussa and al-Khan al-Ahmar to enable it to build an alternate road for Palestinians to Jericho which will free the area for E1. The road is part of Israel's broader plan to replace territorial contiguity with "transportational contiguity" by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank.

C. Checkpoints, roadblocks and permits as obstacles to freedom of movement

34. Checkpoints and roadblocks seriously obstruct the freedom of movement of Palestinians in the West Bank, with disastrous consequences for both personal life and the economy. There are 561 such obstacles to freedom of movement, comprising over 80 manned checkpoints and some 476 unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as flying checkpoints, are set up every year by Israeli army patrols on roads throughout the West Bank for limited periods, ranging from half an hour to several hours. In November 2007 there were 429 flying checkpoints.

35. Palestinians are subjected to numerous prohibitions on travel and to requirements for permits for travel within the West Bank and to East Jerusalem. Checkpoints ensure compliance with the permit regime. These restrictions violate article 12 of the International Covenant on Civil and Political Rights which has been held to be binding on Israel in the OPT by the International Court of Justice in its Advisory Opinion on the construction of the wall. Israel's argument that these restrictions are justified as security measures is difficult to accept. Many of the checkpoints and roadblocks are distant from the border of Israel, which is in any event protected by the wall. More likely explanations are to be found in the need to serve the convenience of settlers, to facilitate the travel of settlers through the West Bank and to impress upon the Palestinian people the power and presence of the occupier. According to a report in Yedioth Ahronoth, one quarter of all IDF soldiers who have served at roadblocks in the

[15] See General Assembly resolution 1514 (XV): Declaration on the granting of independence to colonial countries and peoples.

West Bank reported having witnessed or taken part in an act of abuse against a Palestinian civilian. Checkpoints serve to humiliate Palestinians and to create feelings of deep hostility towards Israel. In this respect they resemble the "pass laws" of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa.[16] These laws generated widespread humiliation and anger, and were the cause of regular protest action. Israel would do well to consider the South African experience. Restrictions on freedom of movement of the kind applied by Israel do more to create insecurity than to achieve security.

D. The wall

36. The wall that Israel is at present building, largely in Palestinian territory, is clearly illegal. The International Court of Justice in its Advisory Opinion on the construction of the wall found that it is contrary to international law and that Israel is under an obligation to discontinue construction of the wall and to dismantle forthwith those sections that have already been built. Israel has abandoned its claim that the wall is a security measure only and now concedes that one of the purposes of the wall is to include settlements within Israel. The fact that 83 per cent of the West Bank settler population and 69 settlements are enclosed within the wall bears this out.

37. The wall is planned to extend for 721 kilometres. At present 59 per cent of the wall has been completed and 200 kilometres have been constructed since the International Court of Justice handed down its Advisory Opinion declaring the wall to be illegal. When the wall is finished, an estimated 60,000 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the wall and the Green Line. This area will constitute 10.2 per cent of Palestinian land in the West Bank. There are, however, suggestions that the route of the wall will be revised to include additional Palestinian lands in the south-eastern West Bank near to the Dead Sea. If this plan is implemented some 13 per cent of Palestinian land will be seized by the wall. The closed zone includes many of the West Bank's valuable water resources and its richest agricultural lands.

38. The wall has serious humanitarian consequences for Palestinians living within the closed zone. They are cut off from places of employment, schools, universities and specialized medical care, and community life is seriously fragmented. Moreover, they do not have 24-hour access to emergency health services. Over 100 persons residing in the closed zone have not received permits to leave the area. Palestinians who live on the eastern side of the wall but whose land lies in the closed zone face serious economic hardship, as they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted and the bureaucratic procedures for obtaining them are humiliating and obstructive. The Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that only about 18 per cent of those who used to work land in the closed zone before the construction of the wall receive permits to visit the closed zone today. The opening and closing of the gates leading to the closed zone are regulated in a highly restrictive manner: in 2007 OCHA carried out a survey

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[16] On these laws, see J. Dugard, *Human Rights and the South African Legal Order* (Princeton, Princeton University Press, 1978).

in 67 communities located close to the wall which showed that only 19 of the 67 gates in the wall were open to Palestinians for use all the year round on a daily basis. To aggravate matters Palestinians coming into and out of the closed zone are frequently subjected to abuse and humiliation at the gates by the IDF. Hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons.

39. The plight of the village of Jayyus, visited by the Special Rapporteur on 30 September 2007, illustrates the hardships faced by communities living near to the wall, but in the West Bank. The 3,200 residents of Jayyus are separated by the wall from their farmland; 68 per cent of the village's agricultural land and its six agricultural wells lie in the closed zone between the wall and the Green Line and are off limits to those without a visitor's permit. Scores of greenhouses are situated in the closed zone, producing tomatoes, cucumbers and sweet peppers, which require daily irrigation. Only about 40 per cent of the residents of Jayyus are granted permits to access farms, and gate opening times are both limited and arbitrary. By August 2004, one year after the construction of the wall, local production had fallen from 7 to 4 million kilograms of fruit and vegetables. The situation has further deteriorated over the past three years.

40. The section of the wall within the Jerusalem Governorate measures 168 kilometres in length. Only 5 kilometres of its completed length runs along the Green Line. The route of the wall runs deep into the West Bank to encircle the settlements of Maale Adumim. In contrast, many Palestinian villages which are currently in the Jerusalem municipality are placed outside the wall and thus separated from Jerusalem. In some places, such as Abu Dis, the wall runs through Palestinian communities, separating neighbours and families. About 25 per cent of the 253,000 Palestinians living in East Jerusalem have been cut off from the city by the wall. This means they can only enter Jerusalem through checkpoints, which makes it difficult to access hospitals, schools, universities, work and holy sites - particularly the Al Aqsa Mosque and the Church of the Holy Sepulchre.

E. Demolition of houses

41. The demolition of houses has been a regular feature of Israel's occupation of the OPT. Different reasons or justifications are advanced for such demolitions: military necessity, punishment and failure to obtain a building permit. Although the IDF claims to have discontinued punitive home demolitions, instances of such demolitions still occur. On 29 August 2007, the IDF demolished seven housing units in the Naqar neighbourhood of Qalqiliya, which were home to 48 persons (including 17 children) on the ground that they housed members of the military wing of Hamas.[17] Houses are frequently demolished for "administrative" reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of "normal" town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.

[17] See B'Tselem, "Demolition for Alleged Military Purposes".

42. In both East Jerusalem and that part of the West Bank categorized as Area C (60 per cent of the West Bank, comprising villages and rural districts), houses and structures may not be built without permits. The bureaucratic procedures for obtaining permits are cumbersome and in practice permits are rarely granted. As a result, Palestinians are frequently compelled to build homes without permits. In East Jerusalem house demolitions are implemented in a discriminatory manner:[18] Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained. Between May 2005 and May 2007, 354 Palestinian structures were destroyed by the IDF in Area C. Many Bedouin communities have had their structures demolished. In September 2007 the Special Rapporteur visited Al Hadidiya in the Jordan Valley where the structures of a Bedouin community of some 200 families, comprising 6,000 people, living near to the Jewish settlement of Roi, were demolished by the IDF. This brought back memories of the practice in apartheid South Africa of destroying black villages (termed "black spots") that were too close to white residents. Article 53 of the Fourth Geneva Convention prohibits the destruction of personal property "except where such destruction is rendered absolutely necessary by military operations". According to B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, the destruction of homes in the Naqar neighbourhood of Qalqiliya failed to meet this test. The demolition of homes for administrative reasons can likewise not be justified. Both East Jerusalem and Area C are occupied territory, in respect of which the prohibition contained in article 53 applies.

F. Humanitarian situation

43. The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank. Since 2006 the situation has deteriorated further. Israel withholds taxes which it collects on behalf of the Palestinian Authority on all goods imported into the Occupied Palestinian Territory, amounting to $50-60 million per month (about half of the budget of the Palestinian Authority). Recently, Israel has transferred $119 million of the tax money it has unlawfully seized to the Palestinian Authority and western States and the Quartet have promised to recommence funding to the Palestinian Authority (insofar as it does not further the interests of Hamas in Gaza). At the time of writing no material change is discernible in the humanitarian situation in the West Bank as a result of the continuing occupation, the human rights violations described in this section of the report and Israel's refusal to transfer all the tax money due in law to the Palestinian Authority. Poverty and unemployment are at their highest levels ever; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened.

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[18] Meir Margalit, *Discrimination in the Heart of the Holy City* (Jerusalem, Al Manar Modern Press, 2006).

G. Conclusion

44. The situation in the West Bank may not be as serious as that of Gaza, however it is all a question of degree. Moreover, as in Gaza, the serious humanitarian situation in the West Bank is largely the result of Israel's violations of international law. The wall violates norms of international humanitarian law and human rights law, according to the International Court of Justice; settlements violate the Fourth Geneva Convention; checkpoints violate the freedom of movement proclaimed in human rights conventions; house demolitions violate the Fourth Geneva Convention; the humanitarian crisis in the West Bank, brought about by Israel's withholding of Palestinian tax money and other violations of international law, violates many of the rights contained in the International Covenant on Economic, Social and Cultural Rights. As in Gaza, Israel's actions constitute an unlawful collective punishment of the Palestinian people.

VI. THE TREATMENT OF ARRESTED PERSONS AND CONVICTED PRISONERS

45. It is estimated that since 1967 over 700,000 Palestinians have been imprisoned. At present, there are some 11,000 prisoners in Israeli jails, a number which includes 376 children, 118 women, 44 members of the Palestinian Legislative Council and some 800 "administrative detainees" (that is, persons not convicted for any offence, held for renewable periods of up to six months). Israel sees such prisoners as terrorists or ordinary criminals who have violated the criminal law. Palestinians see them as political prisoners who have committed crimes against the occupier. History is replete with examples of such competing perspectives - to cite but South Africa and Namibia as examples. Prisoners are a key issue in any peace settlement. That Israel is aware of this is demonstrated by its release of 779 prisoners (although in November 411 persons were arrested). The release of such a small number of prisoners, however, provides little evidence of a bona fide attempt to reach a peaceful settlement on the part of Israel. To make matters worse prisoners are subjected to humiliating and degrading treatment.

A. Arrested and detained persons

46. Following arrest, persons are frequently beaten and stripped in a humiliating manner. The interrogation of subjects is then carried out in a degrading and inhuman manner, sometimes amounting to torture. During 2007, two reports published by Israeli NGOs - Hamoked (Center for the Defence of the Individual) and B'Tselem[19] and the Public Committee against Torture in Israel (PCATI)[20] - have shown that arrested persons are subjected to beatings, humiliated and deprived of basic needs and that persons suspected of having information that could prevent attacks (so-called "ticking bomb suspects") are deprived of sleep for more than 24 hours, beaten and subjected to physical ill-treatment. The treatment of children is equally disturbing.

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[19] *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, Hamoked and B'Tselem, May 2007.

[20] *"Ticking Bombs" Testimonies of Torture Victims in Israel*, Public Committee against Torture in Israel, May 2007.

According to Defence for Children International (Palestine Section), children are on average detained for between 8 to 21 days before being brought to court; denied the presence of a parent or lawyer during interrogation; cursed, threatened, beaten and kept in solitary confinement during interrogation.[21]

B. Convicted prisoners and administrative detainees

47. Prison conditions are harsh. Many prisoners are accommodated in tents, which are extremely hot in summer and cold in winter. Food is poor, resulting in anaemia among prisoners, and there is serious overcrowding. Most Palestinian prisoners are held in jails in Israel. This violates article 76 of the Fourth Geneva Convention which requires persons from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein. Family visits are difficult and frequently impossible: all visits for families from Gaza to their relatives detained in Israeli prisons have been suspended since 6 June 2007, affecting some 900 prisoners. On 22 October there was a riot in Ketziot prison in the Negev (in Israel), accommodating some 2,300 prisoners, which resulted in 1 death and some 250 injuries among prisoners.

48. The role of medical doctors in detention centres and prisons requires attention. These doctors witness the result of inhuman treatment - wounds, swollen hands, signs of violence - but remain silent, acting as if they do not know that torture is taking place. This raises ethical questions that in similar circumstances in South Africa were, after years of silence, addressed by the South African Medical Association and international medical bodies. Why, one must ask, has the responsibility of Israeli medical doctors who examine detainees and prisoners not been questioned by the relevant Israeli and international medical professional bodies?

VII. SELF-DETERMINATION

49. The right of self-determination of the Palestinian people has been recognized by the Security Council, the General Assembly, the International Court of Justice and Israel itself. The territory of the self-determination unit within which this right is to be exercised clearly includes the West Bank, East Jerusalem and Gaza. The right of the Palestinian people to self-determination has been denied and obstructed for nearly 60 years by Israel. Now it is threatened by the political separation of the West Bank and Gaza, resulting from the seizure of power in Gaza by Hamas in June 2007, followed by the seizure of power in the West Bank by Fatah. The carefully brokered Government of Palestinian national unity has been destroyed by the internecine conflict resulting in the death of several hundred Palestinians, mostly belonging to Fatah. At the time of writing, there is no immediate prospect of reconciliation between Hamas and Fatah. This is a matter of deep concern to the Special Rapporteur as the right to self-determination is a central and core human right. It must also be a matter of concern to the

[21] Semi-Annual Report 2007, Defence for Children International (Palestine Section).

Quartet and other international institutions committed to the realization of the right of the Palestinian people to self-determination. Such a concern should not take the form of support - political, economic or military - for one faction at the expense of the other, but rather for reconciliation between the two factions so that the right to self-determination may be realized within the 1967 borders of the Palestinian self-determination unit, that is including the West Bank, East Jerusalem and Gaza. Unhappily, the Quartet (which embraces the United Nations) is, at the time of writing, making little attempt to promote Palestinian national unity. On the contrary, it pursues a divisive policy of preferring one faction over the other; of speaking to one faction but not the other; of dealing with one faction while isolating the other.

VIII. INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE, THE QUARTET AND THE UNITED NATIONS

50. On 8 December 2003 the General Assembly requested an advisory opinion from the International Court of Justice on the legal consequences arising from the construction of the wall being built by Israel in the OPT.[22] Fifty States and international organizations gave written statements to the Court and 15 States and international organizations made oral statements before the Court. The Court provided an advisory opinion[23] by 14 votes to 1, which answered many of the legal questions that have been raised over the past 40 years. The principal findings of the Court were as follows:

(a) The Palestinian people have the right to self-determination[24] and the exercise of this right is violated by the construction of the wall;[25]

(b) Israel is under a legal obligation to comply with the Fourth Geneva Convention in the OPT[26] - a unanimous finding;[27]

(c) Settlements are illegal as they violate article 49 (6) of the Fourth Geneva Convention[28] - a unanimous finding;[29]

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[22] Resolution ES-10/14.

[23] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 2004.

[24] Ibid., para. 118.

[25] Ibid., para. 122.

[26] Ibid., paras. 90-101.

[27] Ibid., declaration of Judge Buergenthal, para. 2.

[28] Ibid., paras. 120-121.

[29] Ibid., dissenting opinion of Judge Buergenthal, para. 9.

(d) Israel is bound by international human rights conventions in the OPT[30] - a unanimous finding[31] - and consequently its conduct is to be measured against both international human rights conventions and the Fourth Geneva Convention;

(e) The regime in force in the closed zone between the wall and Green Line violates the right to freedom of movement contained in article 12 of the International Covenant on Civil and Political Rights[32] and the right to work, health, education and an adequate standard of living contained in the International Covenant on Economic, Social and Cultural Rights;[33]

(f) The destruction of property for the construction of the wall violates article 53 of the Fourth Geneva Convention and cannot be justified on grounds of military necessity or national security;[34]

(g) The wall cannot be justified as an exercise in self-defence;[35]

(h) The annexation of East Jerusalem is illegal;[36]

(i) The construction of the wall by Israel in the OPT, including in and around East Jerusalem, and its associated regime are contrary to international law; and Israel is obliged in law to cease the construction of the wall, to dismantle it and to make reparation for the construction of the wall;[37]

(j) All States are under a legal obligation not to recognize the illegal situation resulting from the wall and to ensure compliance by Israel with the Fourth Geneva Convention;[38]

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[30] Ibid., paras. 102-121.

[31] Ibid., dissenting opinion of Judge Buergenthal, para. 2.

[32] Ibid., paras. 133, 134 and 136.

[33] Ibid., paras. 134, 136 and 137.

[34] Ibid., paras. 132, 135 and 137.

[35] Ibid., paras. 138-139.

[36] Ibid., paras. 75 and 122.

[37] Ibid., para. 163.

[38] Ibid., para. 163.

(k) The United Nations, especially the General Assembly and Security Council, should consider what further action is required to bring an end to the illegal situation resulting from the construction of the wall and associated regime, "taking due account of the present Advisory Opinion".[39]

51. On 20 July 2004 the General Assembly adopted resolution ES-10/15 which called for Israel to comply with the Advisory Opinion of the International Court of Justice. This resolution was adopted by 150 votes to 6 (Australia, Micronesia, Israel, Marshall Islands, Palau, United States) with 10 abstentions. The Russian Federation and member States of the European Union voted in favour of the resolution.

52. Since 2004, the Advisory Opinion has been ignored by the Security Council. While the General Assembly[40] and Human Rights Council[41] have passed several resolutions reaffirming the Opinion, no attempt has been made by the Security Council to compel Israel to comply with the Opinion or to remind States of their obligation to ensure compliance by Israel with the Fourth Geneva Convention. The reason for this is not hard to find. The Security Council is prevented from giving its backing to the Opinion by the United States which has refused to accept it. Similarly the United States prevents the Quartet from taking steps to implement the Opinion. No statement issued by the Quartet has ever acknowledged the Opinion.[42]

53. Although the Advisory Opinion of the International Court of Justice is an authoritative statement of the applicable law and is designed to contribute to the framework for peace in the Middle East, it is not legally binding on States. In law, the United States is well within its right to refuse to accept the Opinion in the Quartet. The same applies to the Russian Federation and the European Union - although both have compromised themselves by giving approval to the Opinion by supporting General Assembly resolution ES-10/15 and subsequent resolutions. The position of the United Nations is, however, very different. The International Court of Justice is the judicial organ of the United Nations. Moreover the General Assembly has by an overwhelming majority repeatedly given its approval to the Opinion. This means that it is now part of the law of the United Nations. As such the representative of the United Nations in the Quartet - the Secretary-General or his representative - is in law obliged to be guided by the Opinion and to endeavour in good faith to do his or her best to ensure compliance with the Opinion. If the Secretary-General (or his representative) is politically unable to do so he has two choices: either to withdraw from the Quartet or to explain to his constituency - "we the peoples

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[39] Ibid., para. 163.

[40] See, for example, the draft text in A/62/L.21/Rev.1 adopted on 10 December 2007 which calls on Israel to comply with the Advisory Opinion and on all States to comply with the legal obligations mentioned in the Opinion.

[41] HRC resolution 2/4 of 27 November 2006.

[42] See, for example, the statement of the Quartet of 23 September 2007.

of the United Nations" in the language of the Charter - why he is unable to do so and how he justifies remaining in the Quartet in the light of its refusal to be guided by the law of the United Nations. The first course is possibly unwise at this time as this would deprive the United Nations of a role in the peace process. This makes the second course essential.

54. For 40 years the political organs of the United Nations, States and individuals have accused Israel of consistent, systematic and gross violations of human rights and humanitarian law in the OPT. In 2004 the judicial organ of the United Nations, in its Advisory Opinion, affirmed that Israel's actions in the OPT do indeed violate fundamental norms of human rights and humanitarian law and cannot be justified on grounds of self-defence or necessity. If the United Nations is serious about human rights it cannot afford to ignore this Opinion in the deliberations of the Quartet, as it is an authoritative affirmation that Israel is in serious breach of its international commitments. Failure to attempt to implement, or even to acknowledge, an advisory opinion dealing with international humanitarian law and human rights law, brings the very commitment of the United Nations to human rights into question.

IX. PEACE TALKS

55. At the time of writing negotiations leading to a peace settlement between Israelis and Palestinians have commenced following an initial meeting in Annapolis on 27 November 2007. It is not within the mandate of the Special Rapporteur to comment on what is essentially a political process, except insofar as it has implications for human rights. In this context the Special Rapporteur wishes to make the following remarks.

56. The Oslo Accords have been criticized for failing to consider normative aspects of the Palestinian issue. In particular they failed to pay adequate attention to international law and to the human rights dimension. It is important that the Annapolis process does not make the same mistake. Unfortunately the first indications suggest that this is a serious possibility as the joint statement of 27 November agreed to by the parties as a starting point for the negotiations is premised on the proposals contained in the Quartet road map of 2003 rather than on the legal norms proclaimed by the International Court of Justice in its Advisory Opinion on the construction of the wall. Indeed the joint statement makes no mention of the Advisory Opinion at all. The Secretary-General in his statement at Annapolis also invoked the road map but made no mention of the Advisory Opinion. In the opinion of the Special Rapporteur, the road map is an inappropriate and unhelpful framework for negotiations for the following reasons. First, it is outdated as it takes no account of the Advisory Opinion, Palestinian democratic elections, Israel's withdrawal from Gaza and the June 2007 separation of Gaza from the West Bank. Second, Israel attached 14 reservations to the road map in May 2003, which makes Israel's commitment to it unclear. Third, it is, in its own language, "a performance-based and goal driven roadmap" which takes little account of the normative aspect.

57. It must be recalled that article 47 of the Fourth Geneva Convention provides that persons in an occupied territory shall not be deprived of the benefits of the Convention by any agreement concluded between the authorities of the occupied territory and the occupying Power, or by the annexation by the occupying Power of part of the occupied territory. This means that any agreement between the Palestinian authorities and the Israeli Government that recognizes settlements within the occupied Palestinian territory, or accepts the annexation by Israel of Palestinian land within the wall, will violate the Fourth Geneva Convention. This is but one

example of the dangers of a peace process between unequals which has no regard to the normative framework of international law. In its approach to previous peace negotiations, the Israeli Government has insisted on negotiations being restricted to the agreed framework.[43] The Annapolis joint statement which refers only to the road map suggests that Israel does not see itself as being bound by the normative framework accepted by the United Nations.

58. In the opinion of the Special Rapporteur negotiations should take place within a normative framework, with the guiding norms to be found in international law, particularly international humanitarian law and human rights law, the Advisory Opinion of the International Court of Justice, and Security Council resolutions. Negotiations on issues such as boundaries, settlements, East Jerusalem, the return of refugees and the isolation of Gaza should be informed by such norms and not by political horse-trading. In this respect parties might learn from the experience of the negotiations that led to a democratic South Africa in the mid-1990s, which took place within the framework of accepted democratic principles, the rule of law and international law (with special reference to human rights law).

59. The creation of a Palestinian State will not heal the wounds of 60 years of conflict. If real peace and security is to be achieved every effort should be made to achieve reconciliation between Palestinians and Israelis. To do this it will be necessary for both people to address the events, actions and sufferings of the past. Consideration should therefore be given to the establishment of a Truth and Reconciliation Commission to hear the stories of the sufferings of both peoples. Without truth-telling of this kind tensions between Palestinians and Israelis will remain to threaten peace between the two nations.

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[43] http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process.

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*

* Late submission.

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, in the light of Human Rights Council resolution S-9/1, focuses on the main international law and human rights issues of the attacks by Israel on Gaza that commenced on 27 December 2008 and continued for 22 days. He challenges the widespread emphasis on whether Israeli force was disproportionate in relation to Palestinian threats to Israeli security, and focuses on the question of whether Israeli force was legally justified at all. He concludes that such recourse to force was not legally justified given the circumstances and diplomatic alternatives available, and was potentially a crime against peace.

The Special Rapporteur also gives relevance to the pre-existing blockade of Gaza, which was in massive violation of the Fourth Geneva Convention, suggesting the presence of war crimes and possibly crimes against humanity. He considers the tactics pursued during the attacks by both sides, condemning the firing of rockets at Israeli civilian targets, and suggests the unlawfulness of disallowing civilians in Gaza to have an option to leave the war zone to become refugees, as well as the charges of unlawful weapons and combat tactics. He recommends that an expert inquiry into these matters be conducted to confirm the status under international law of war crimes allegations, and to consider alternative approaches to accountability.

Finally, the Special Rapporteur insists that Israeli security and the realization of the Palestinian right of self-determination are fundamentally connected, and that the recognition of this aspect of the situation suggests the importance of an intensified diplomatic effort, respect by all parties of relevant international law rights, and implementation of the long-deferred Israeli withdrawal from occupied Palestine as initially prescribed by the Security Council in its resolution 242 (1967). Until such steps are taken, the Palestinian right of resistance within the limits of international humanitarian law and Israeli security policy will inevitably clash, giving rise to ever new cycles of violence. The Special Rapporteur also recommends action in response to the denial by Israel of entry to him on 14 December 2008.

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I. INTRODUCTION

1. The present report does not have benefit from a recent mission to Gaza. Such a mission was planned and attempted in mid-December 2008, but was not carried out due to the denial of entry to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. The mission to Gaza was to include a visit to the West Bank and East Jerusalem, and was supposed to commence with a scheduled meeting with the President of the Palestine Authority, Mahmoud Abbas. Entry was denied on 14 December 2008; the Special Rapporteur was detained in a facility close to Ben Gurion Airport, then expelled from Israel the day after. Such a refusal to cooperate with a United Nations representative, not to mention the somewhat humiliating treatment accorded (detention in a locked and dirty cell with five other detainees, and excessive body search), has set an unfortunate precedent with respect to the treatment of a representative of the Human Rights Council, and more generally of the United Nations itself. This precedent should be seriously challenged for the sake of both the mandate and, more broadly, to ensure that in future Member States accord appropriate respect and cooperation with official United Nations missions and activities. One possible form of challenge would be to seek an advisory opinion from the International Court of Justice as to the applicability of the Convention on the Privileges and Immunities of the United Nations. Since such an approach, even if undertaken, would not produce a result in the near future, it would also be important to seek a modification as soon as possible to the position of Israel via diplomatic channels.

2. The expulsion of the Special Rapporteur made information gathering on the ground impossible. In the light of resolution S-9/1 adopted by the Human Rights Council at its ninth special session, the report will focus on the main international law issues raised by Israeli military operations commencing on 27 December 2008 and ending on 18 January 2009. It also considers implications for international criminal law, and discusses the underlying debate as to whether the attacks themselves were violations of the Charter of the United Nations and international law. This broader inquiry is perhaps not strictly within the ambit of the mandate as a distinct subject matter, but its resolution bears directly on the interpretation of alleged violations of international humanitarian and human rights law, which in turn underpin contentions of war crimes and crimes against humanity, as well as implications for accountability and individual criminal responsibility.

II. INTRODUCTORY CLARIFICATIONS

3. A conceptual complexity arises from the nature of the participants in this conflict with respect to international law. International law governing the use of force has developed over time to regulate the behaviour of States in their relations with one another. Without questioning in any way the unity of the Occupied Palestinian Territory, it is important to recall that Gaza is sealed off from the rest of occupied Palestine and is not directly represented, given its present administrative structure, in international diplomatic arenas, such as during the donors conference held at Sharm el-Sheikh in March 2009 or in the United Nations. At the same time, the purposes of international law governing force is concerned with the protection of peoples and the preservation of peace, a sentiment echoed in Article 2, paragraph 4, of the Charter extended beyond relations among States by the phrase “or in any other manner inconsistent with the

purposes of the United Nations". In the enumeration of purposes of the United Nations, Article 1, paragraph 1, affirms the obligation to resolve disputes by peaceful means "in conformity with the principles of justice and international law". These provisions, if read in the light of the Preamble to the Charter, clearly condition an assessment of any use of force in international relations that extends beyond the limits of territorial sovereignty. The decision of the International Court of Justice in the Nicaragua case extended this reasoning with regard to the inhibitions on defensive claims to use force to general international law beyond the framework of the Charter.

4. With regard to Gaza, there is a further concern with respect to the nature of the legal obligations of Israel towards the Gazan population. Israel officially contends that, after the implementation of its disengagement plan in 2005, it is no longer an occupying Power, and is therefore not responsible for observance of the obligations set forth in the Fourth Geneva Convention. That contention has been widely rejected by expert opinion, by the de facto realities of effective control and by official pronouncements by, for instance, the United Nations High Commissioner for Human Rights and the Secretary-General (A/HRC/8/17), the General Assembly in its resolutions 63/96 and 63/98, and the Security Council in its resolution 1860 (2009). Since 2005, Israel has completely controlled all entry and exit routes by land and sea, and asserted control over Gazan airspace and territorial waters. By imposing a blockade, in effect since the summer of 2007, it has profoundly affected the life and well-being of every single person living in Gaza. Therefore, regardless of the international status of the Occupied Palestinian Territory with respect to the use of force, the obligations of the Fourth Geneva Convention, as well as those of international human rights law and international criminal law, are fully applicable.

5. The final introductory clarification concerns the relations of international human rights law and international humanitarian law to international criminal law. Not every violation of human rights or infraction of the Geneva Conventions constitutes a war crime or a crime of State. Moreover, criminal intent, by way of mental attitude or through circumstantial evidence, must be established. In essence, "grave breaches" of the Geneva Conventions as defined in article 147 of the Fourth Geneva Convention normally provide a legal foundation for allegations of war crimes. It is to be noted that the role of international criminal law is not only to identify and implement the fundamental obligations of international humanitarian law in wartime, but also to take into account severe violations of human rights arising from oppressive patterns of peacetime governance.

6. The recommended scope of investigation should combine attention to violations of international humanitarian law, the laws of war and general international law (treaty and customary) as it bears on the rights and duties of Israel as the occupying Power, and Hamas as the party exercising effective political control in Gaza at the present time. It is to be expected that Israel would cooperate with any investigation authorized by the United Nations in accordance with its obligations as a Member State under Article 56 of the Charter of the United Nations calling upon members to cooperate with the Organization, as well as the additional duties contained in the Convention on the Privileges and Immunities of the United Nations. It is disquieting, however, to read that Prime Minister Ehud Olmert and other Israeli high officials have made formal statements to the effect of taking all necessary steps to

protect any member of the Israel Defense Forces from being accused, and, if accused, to prevent indictment and prosecution.[1] Such sentiments seem inconsistent with any expectation of serious official cooperation with a proposed investigation. It may be necessary, given this prospect, to place greater reliance on respected non-governmental organizations compiling evidence and submitting reports and on formal interviews with qualified observers and witnesses.

III. INHERENT ILLEGALITY: LEGALLY MANDATORY DISTINCTION BETWEEN CIVILIAN AND MILITARY TARGETS IMPOSSIBLE IN LARGE-SCALE SUSTAINED ATTACKS ON GAZA AS COMMENCED BY ISRAEL ON 27 DECEMBER 2008

7. It is the view of the Special Rapporteur that the most important legal issue raised by an investigation of the recent military operations concerns the basic Israeli claim to use modern weaponry on a large scale against an occupied population living under the confined conditions that existed in Gaza. This involves trying to establish whether, under the conditions that existed in Gaza, it is possible with sufficient consistency to distinguish between military targets and the surrounding civilian population. If it is not possible to do so, then launching the attacks is inherently unlawful, and would seem to constitute a war crime of the greatest magnitude under international law. On the basis of the preliminary evidence available, there is reason to reach this conclusion.

8. Considering that the attacks were directed at densely populated areas, it was to some extent inevitable and certainly foreseeable that hospitals, religious and educational sites and United Nations facilities would be hit by Israeli military ordnance, and that extensive civilian casualties would result. As all borders were sealed, civilians could not escape from the orbit of harm. For authoritative and more specific conclusions on these points, it will be necessary to mount an investigation based on knowledge of Israeli weaponry, tactics and doctrine to assess the degree to which, in concrete cases, it would have been possible, given the battlefield conditions, to avoid non-military targets and to spare Palestinian civilians to a greater extent. Even without this investigation, on the basis of available reports and statistics, it is possible to draw the important preliminary conclusion that, given the number of Palestinian civilian casualties and degree of devastation of non-military targets in Gaza, the Israelis either refrained from drawing the distinction required by customary and treaty international law or were unable to do so under the prevailing combat conditions, making the attacks impossible to reconcile with international law. On the basis of existing information, the principal results of the military operation were as follows:

(a) A total of 1,434 Palestinians were killed, of whom 235 were combatants. Some 960 civilians reportedly lost their lives, including 288 children and 121 women; 239 police

[1] "The soldiers and commanders who were sent on mission in Gaza must know that they are safe from various tribunals and that the State of Israel will assist them on this issue and defend them." *Los Angeles Times,* 26 January 2009.

officers were also killed, 235 in air strikes carried out on the first day. A total of 5,303 Palestinians were injured, including 1,606 children and 828 women (namely, 1 in every 225 Gazans was killed or injured, not counting mental injury, which must be assumed to be extensive);[2]

(b) Homes and public infrastructure throughout Gaza, especially in Gaza City, sustained extensive damage, including several United Nations facilities; an estimated 21,000 homes were either totally destroyed or badly damaged;

(c) A total of 51,000 people were internally displaced in makeshift shelters that provided minimal protection, while others fled to homes of friends and relatives that seemed slightly safer.[3]

9. There is no way to reconcile the general purposes and specific prescriptions of international humanitarian law with the scale and nature of the Israeli military attacks commenced on 27 December 2008. The attacks with F-16 fighter bombers, Apache helicopters, long-range artillery from the ground and sea were directed at an essentially defenceless society of 1.5 million persons. As recent reports submitted to the Council by the Special Rapporteur emphasized, the residents of Gaza were particularly vulnerable to physical and mental damage from such attacks as the society as a whole had been brought to the brink of collapse by 18 months of blockade that restricted the flow of food, fuel and medical supplies to sub-subsistence levels, and was responsible, according to health specialists, for a serious overall decline in the health of the population and of the health system. Any assessment under international law of the attacks of 27 December should take into account the weakened condition of the Gazan civilian population resulting from the sustained unlawfulness of the pre-existing Israeli blockade that violated articles 33 (prohibition on collective punishment) and 55 (duty to provide food and health care to the occupied population) of the Fourth Geneva Convention. Considering the obligation of the occupying Power to care for the well-being of the civilian occupied population, mounting a comprehensive attack on a society already weakened by unlawful occupation practices would appear to aggravate the breach of responsibility described above owing to the difficulties of maintaining the principle of distinction.

10. The deputy head of the embassy of Israel at the European Union, Ambassador Zvi Tal, during discussions with a committee of the European Parliament, sought to defend the attacks on Gaza by describing them as addressing “a very peculiar” situation. In responding to allegations

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[2] A recent report by Near East Consulting quoted by the Office for the Coordination of Humanitarian Affairs in its Gaza Humanitarian Situation Report of 26 January 2009 concluded that 96 per cent of Gaza residents suffer from depression, with intense depression being experienced by 81 per cent of the residents of North Gaza and Rafah districts. Such mental deterioration is itself an indication of a failure by the occupying Power to discharge its basic duty to safeguard the health of civilians living under occupation.

[3] Office for the Coordination of Humanitarian Affairs, Field Update from the Humanitarian Coordinator, 9 February 2009, and the Gaza Flash Appeal, 2 February 2009; Palestinian Centre for Human Rights, press release, ref. 36/2009, 12 March 2009.

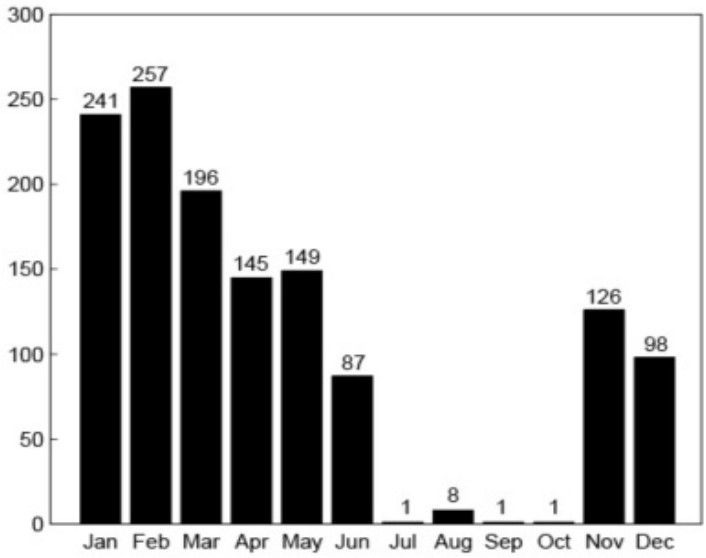
about the bombing of United Nations schools in Gaza, he was quoted as saying: “Sometimes in the heat of fire and the exchange of fire, we do make mistakes. We’re not infallible.” This is deeply misleading in its characterization of the war zone. It is not a matter of mistakes and fallibility, but rather a massive assault on a densely populated urbanized setting where the defining reality could not but subject the entire civilian population to an inhumane form of warfare that kills, maims and inflicts mental harm that is likely to have long-term effects, especially on children that make up more than 50 per cent of the Gazan population.

IV. NON-EXHAUSTION OF DIPLOMATIC REMEDIES, DISPROPORTIONALITY, NON-DEFENSIVE NATURE OF THE ATTACKS

11. It is a requirement of international customary law, as well as of the Charter of the United Nations, Article 2, paragraph 4, interpreted in the light of Article 1, paragraph 1, that recourse to force to resolve an international dispute should be a last resort after the exhaustion of diplomatic remedies and peaceful alternatives, even assuming for a moment that an occupying Power can claim a right to self-defence (see paragraph 28 below). Of course, such an analysis presupposes the rejection of the Israeli contention that Gaza has not been legally “occupied” since the implementation of the disengagement plan in 2005. In the context of protecting Israeli society from rockets fired from Gaza, the evidence overwhelmingly supports the conclusion that the ceasefire in place as of 19 June 2008 had been an effective instrument for achieving this goal, as measured by the incidence of rockets fired and with regard to Israeli casualties sustained.

12. The graph below, based on Israeli sources, shows the number of Palestinian rockets and mortar shells fired each month in 2008, with the period of the ceasefire stretching basically from its initiation on 19 June to its effective termination on 4 November, when Israel struck a lethal blow in Gaza that reportedly killed at least six Hamas operatives. It dramatically demonstrates the extent to which the ceasefire was by far the most secure period with respect to the threats posed by the rockets.

Number of Palestinian rockets and mortar shells fired in 2008



13. The authors of a study based on the data displayed in the graph above[4] concluded that "the ceasefire was remarkably effective; after it began in June 2008, the rate of rocket and mortar fire from Gaza dropped to almost zero, and stayed there for almost four months". The experience of the temporary ceasefire demonstrates both the willingness and the capacity of those exerting control in Gaza to eliminate rocket and mortar attacks.

14. Beyond this, records show that, during the ceasefire, it was predominantly Israel that resorted to conduct inconsistent with the undertaking, and Hamas that retaliated. According to the above-mentioned study, during a longer period, from 2000 to 2008, it was found that, in 79 per cent of the violent interaction incidents, it was Israel that broke the pause in violence. In the course of events preceding the attacks of 27 December, the breakdown of the truce followed a series of incidents on 4 November in which Israel killed a Palestinian in Gaza, mortars were fired from Gaza in retaliation, and then an Israeli air strike was launched that killed an additional six Palestinians in Gaza; in other words, the breakdown of the ceasefire seems to have been mainly a result of Israeli violations, although this offers no legal, moral or political excuse for firing of rockets aimed at civilian targets, which itself amounts to a clear violation of international humanitarian law.

15. Furthermore, Hamas leaders have repeatedly and formally proposed extending the ceasefire, including for long periods.[5] It is notable that the President of the United States of America, Barack Obama, has called for this result in a statement accompanying his appointment of a special envoy on the Israel/Palestine conflict: "As part of a lasting ceasefire, Gaza's border crossings should be open to allow the flow of aid and commerce." This assertion is consistent with the call made by the Security Council in its resolution 1860 (2009) for unimpeded provision and distribution throughout Gaza of humanitarian assistance, including food, fuel and medical treatment, which in effect prescribes the end of the blockade of Gaza that has been maintained by Israel in violation of articles 33 and 55 of the Fourth Geneva Convention.

16. The continuing refusal of Israel to acknowledge Hamas as a political actor, based on the label of "terrorist organization", has obstructed all attempts to implement human rights and address security concerns by way of diplomacy rather than through reliance on force. This refusal is important for reasons already mentioned (see paragraph 3 above), namely, that the population density in Gaza means that reliance on large-scale military operations to ensure Israeli security cannot be reconciled with the legal obligations under the Fourth Geneva Convention to protect to the extent possible the safety and well-being of the occupied Gazan population.

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[4] N. Kanwisher, H. Haushofer and A. Biletzki, "Reigniting violence: how do ceasefires end?", 24 January 2009.

[5] "When this broken truce neared its end, we expressed our readiness for a new comprehensive truce in return for lifting the blockade and opening all Gaza crossings, including Rafah." Khalid Mish'al, "This brutality will never break our will to be free", in *The Guardian*, 6 January 2009. Also available from www.guardian.co.uk/commentisfree/2009/jan/06/gaza-israel-hamas (accessed 3 March 2009).

17. There are several relevant conclusions that demonstrate this link between relying on non-violent options and the requirements of international humanitarian law:

(a) The temporary ceasefire was impressively successful in shutting down cross-border violence and casualties on both sides;

(b) The Palestinian side adhered to the ceasefire, with relatively few exceptions, and relied on violence almost exclusively in reactive modes, while Israel failed to implement its undertaking to lift the blockade and seems mainly responsible for breaking lulls in the violence by engaging in targeted assassinations and other violent and unlawful provocations, most significantly by its air strike of 4 November 2008;

(c) The Hamas leadership appears ready at present to restore the ceasefire provided that the blockade is unconditionally lifted, which should in any event happen owing to its unlawful character, and should also be accompanied by guarantees against weapons smuggling on the Palestinian side, and a commitment to desist from targeted assassinations on the Israeli side;

(d) If substantiated by further investigation, the overall pattern prevailing at the time the attacks were launched would undermine the claim by Israel that its recourse to force was necessary and defensive, both features of which must be present to support a valid claim under international law of self-defence;

(e) On the above basis, the contention that the use of force by Israel was "disproportionate" should not divert our attention from the prior question of the unlawfulness of recourse to force. If for the sake of argument, however, the claim of self-defence and defensive force is accepted, it would appear that the air, ground and sea attacks by Israel were grossly and intentionally disproportionate when measured against either the threat posed or harm done, as well as with respect to the disconnect between the high level of violence relied upon and the specific security goals being pursued.[6] Israel did little to disguise its policy of disproportionate use of force, thereby acknowledging a refusal to comply with this fundamental requirement of international customary law. The Prime Minister of Israel was quoted by the press agency Reuters after the ceasefire as saying: "The Government's position was from the outset that if there is shooting at the residents of the south, there will be a harsh Israeli response that will be disproportionate."[7] To the extent that the Prime Minister's comment reflects Israeli policy, it was a novel and blatant repudiation of one of the most fundamental aspects of international law governing the use of force.

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[6] This legal sentiment is authoritatively expressed in article 51, subparagraph *5b*, of Protocol I to the Geneva Conventions, in which disproportionate attacks are defined as "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".

[7] See www.reuters.com/article/worldNews/idUSTE5100OY20090201.

V. REFUGEE DENIAL

18. In unprecedented belligerent policy, Israel refused to allow the entire civilian population of Gaza, with the exception of 200 foreign wives, to leave the war zone during the 22 days of attack that commenced on 27 December. As the United Nations High Commissioner for Refugees stated on 6 January 2009, Gaza is "the only conflict in the world in which people are not even allowed to flee". All crossings from Israel were kept closed during the attacks, except for rare and minor exceptions. By so doing, children, women, invalids and disabled persons were unable to avail themselves of the refugee option to flee from the locus of immediate harm resulting from the military operations. This condition was aggravated by the absence of places to hide from the ravages of war in Gaza, given its small size, dense population and absence of natural or man-made shelters.

19. International humanitarian law has not specifically and explicitly at this time anticipated such an abuse of civilians, but the policy as implemented would suggest the importance of an impartial investigation to determine whether such practices of "refugee denial" constitute a crime against humanity as understood in international criminal law. The initial definition of crimes against humanity, developed in relation to the war crimes trials after the Second World War, is "murder, extermination, enslavement, deportation and other inhumane acts done against any civilian population".[8] Refugee denial under these circumstances of confined occupation is an instance of "inhumane acts", during which the entire civilian population of Gaza was subjected to the extreme physical and psychological hazards of modern warfare within a very small overall territory. It should be kept in mind that this restriction on free movement, to escape from the war zone, was imposed on a population already severely weakened by the effects of the blockade.

20. The small size of Gaza and its geographic character also operated to deny most of the population remaining within its borders of an opportunity to internally remove itself from the combat zones. In this sense, the entire Gaza Strip became a war zone, although the actual combat area on the ground was more limited. In effect, leaving Gaza was the only way to remove oneself to a position of safety. In this respect, the option to become an internally displaced person was, as a practical matter, unavailable to the civilian population, although some civilians sought relative safety in shelters that were made available on an emergency basis for a tiny fraction of the population, mainly through the efforts of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and other United Nations

[8] A more authoritative definition is contained in article 7, subparagraph *1(k)* of the Rome Statute, according to which crimes against humanity include "inhumane acts ... intentionally causing great suffering or serious injury to body or to mental or physical health".

and non-governmental organization efforts. In some situations, the shelters were not always treated as sanctuaries by the Israeli armed forces. Six UNRWA emergency shelters were damaged during Operation Cast Lead.[9]

21. Furthermore, given such emergency conditions, it seemed feasible to establish temporary refugee camps either in southern Israel or in neighbouring countries for the duration of the attacks. This course of action had allowed almost 1 million Kosovars (almost half the civilian population) to obtain temporary refuge in the neighbouring former Yugoslav Republic of Macedonia during the bombing by the North Atlantic Treaty Organization forces in 1999. It seems evident that, had Serbia denied the Kosovo population such a refugee option by controlling egress, it would have been accused of inhumane behaviour and criminality by the world community. It would seem that the law of war and international human rights law, for the sake of the protection of civilian innocence in wartime situations, needs to affirm the right of every non-combatant civilian to become a refugee, or at least to have the right to seek such a status, especially if the conditions for an internal refugee option are not present.

22. Such an affirmation does not address the related question as to whether neighbouring countries have a legal duty to accommodate, to the extent feasible and at least temporarily, civilians seeking to escape from an ongoing war zone. It would seem at the very least that Israel, as occupying Power and belligerent party, had such a legal obligation. In a general way, such an obligation is set forth in articles 13 to 26 of the Fourth Geneva Convention. Especially relevant are article 15, which looks to the establishment of "neutralized zones" to shelter the civilian population from "the effects of war"; article 16, which imposes a special duty to accord the sick and wounded, as well as expectant mothers, "particular attention and respect", and article 24, which imposes a duty on the occupying Power to protect any children under 15 who are orphans or separated from their families, and obliges it to "facilitate the reception of such children in a neutral country for the duration of the conflict".

23. It is acknowledged that the particular circumstances in Gaza made it difficult, but not entirely impossible, to fulfil these obligations in the manner set forth in the Fourth Geneva Convention. What seems clear, however, is that Israel, as occupying Power, should have adapted these protective goals to the situation facing the population of Gaza, and that this was feasible to a considerable degree, at least to the minimum extent of allowing particularly vulnerable categories of persons within the civilian population, such as children, the sick and disabled, orphans, the elderly and the wounded, to leave. On 21 January 2009, the Executive Board of the World Health Organization reported, for instance, that more than half of the civilian casualties (over 1,300 dead and thousands injured) caused by the Israeli military operations were women,

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[9] A much publicized instance was Beit Lahiya, where about 1,600 displaced Gazans had taken shelter at an UNRWA school, on which the UNRWA spokesman said: "Where you have a direct hit on an UNRWA school where about 1,600 people have taken refuge, where the Israeli Army knows the coordinates and knows who's there, where this comes as the latest in a catalogue of direct and indirect hits on UNRWA facilities, there have to be investigations to establish whether war crimes have been committed." "Israel declares ceasefire; Hamas say it will fight on", *New York Times*, 18 January 2009.

children, infants and elderly persons. This difficulty also gives weight to the argument (see paragraphs 8-10 above) that such a military operation, by its intrinsic nature, generates war crimes.

24. There are further implications with regard to upholding human rights and international humanitarian law under wartime conditions. Confining the civilian population to the war zone also makes it more difficult, if not impossible, to sustain consistently the distinction between military and civilian targets, in combat situations. It also complicates an assessment of claims made by Israel that Hamas used civilians as human shields, and used civilian sites such as schools and mosques from which to engage resistance. If civilians could not leave the war zone under such crowded conditions, some degree of intermingling would necessarily occur, especially in life and death situations.

VI. EXPERT INQUIRY ON WAR CRIMES

25. There have been widespread calls for an investigation of the allegations of war crimes associated with the recent encounter in Gaza. The Secretary-General has called for such an investigation, urging that, in the event that evidence of war crimes is found, mechanisms for accountability should be established. The High Commissioner for Human Rights has also supported an investigation of possible war crimes, recommending that it consider allegations of war crimes on both Israeli and Palestinian sides of the conflict. The Special Rapporteur does not propose another investigation but an expert inquiry to report on the implications of available evidence for international humanitarian law, especially the implications of war crimes of apparent violations. Such a report should also take into account the specific undertakings of the Human Rights Council. In contemplating such an inquiry, it is important that several factors be considered, including the preliminary question as to the applicable body of international law, and the concluding question regarding the availability of mechanisms of accountability. The inquiry should be conducted by three or more respected experts in international human rights law and international criminal law.

A. Scope of the inquiry

26. An inquiry, complementary to the fact-finding mission authorized by the Council in its resolution S-9/1, should be authorized to perform two basic tasks: to review all reports, including those pursuant to resolution S-9/1; and to establish, as definitively as possible, the facts underlying the main allegations of war crimes, including evidence in the form of eye-witness testimony, of contested battlefield practices, as well as explanations in exoneration or mitigation, to the extent available, especially if provided by Israeli and Palestinian military commanders and political leaders. In other words, despite the apparent one-sidedness of the Gaza attack, allegations of war crimes on both sides of the conflict should be taken into account. With respect to Hamas, this refers primarily to the factual profile relating to the rockets fired from its territory, including the determination of intent and issues of attribution (whether rockets were being fired by independent militias or even by groups opposed to Hamas). It would also need to consider all available evidence bearing on the types of weapons used and the combat circumstances of use. It would also be helpful if the inquiry report addressed such issues as the source of applicable rules of international criminal law by which to assess the evidence and that it recommend alternative procedures for establishing potential accountability on the part of individuals and political actors,

especially with respect to the responsibility and capacity of the United Nations system. In this regard, legal uncertainties and political obstacles to the establishment of effective mechanisms should be acknowledged in the report.

27. It should be remembered that establishing evidence of the violation of international humanitarian law creates a non-criminal responsibility on the part of a State, and possibly of a non-State actor, depending on the view taken with regard to the recent development of international treaty and customary laws of war, including the overall impact of Additional Protocol I to the Geneva Conventions (1977) on the clarification of relevant legal norms. It should be made clear in the inquiry report that violations of the laws of war, even if grave breaches do not automatically constitute war crimes, crimes against humanity or crimes against peace, even though article 8 of the Rome Statute treats all established grave breaches as war crimes. Potential legal accountability of political actors (including States) and individuals requires further assessment of whether the allegations and evidence appear to indicate violations of international humanitarian law and international human rights law, and thus provide a solid basis in fact and law for charging the commission of international crimes.[10]

28. It is important that an inquiry in the context of the military operations initiated on 27 December 2008 and continuing until 18 January 2009 evaluate the allegations on both sides, including the issues of alleged criminality associated with both the decision of the Government of Israel to launch the attacks and initiate a ground invasion of Gaza, and the circumstances surrounding the firing of rockets by Palestinian militants. It is further recommended that the underlying claim of Israel that it was acting in self-defence be evaluated in relation to the contention that such an attack violated Article 2, paragraph 4, of the Charter of the United Nations and amounted to an act of aggression under the circumstances, and whether the reliance on disproportionate use of force or the inherently indiscriminate nature of the military campaign should be treated as a criminal violation of international customary and treaty law. There exists here a complex and unresolved issue as to whether an occupying Power can claim self-defence in relation to an occupied society, and whether its use of force, even if excessive, and of a border-crossing variety, can be regarded as aggression. Israel seems to be barred from relying on its status as occupier, considering that it claims that the occupation has ended; of course the inquiry report need not respect that interpretation of the legal relationship.

29. There are difficult issues bearing on the status of what were called crimes against peace at the Nuremberg trials. On the one side, the Rome Statute establishing the International Criminal Court does not yet include aggression or crimes against peace as falling within the competence of the tribunal owing to a failure to agree upon a definition of aggression. In the event of an agreement within the framework of the International Criminal Court, the crime of aggression

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[10] According to the International Court of Justice, a State may be held legally responsible for the commission of the crime of genocide, but only individuals may be prosecuted, convicted and punished for violations of international criminal law. The Special Rapporteur includes this reference solely to clarify the issue of potential State responsibility, and does not intend to imply, directly or indirectly, that the Israeli military operations could be construed as “genocide”. Application of the Convention on the Prevention and Punishment of the Crime of Genocide. (*Bosnia and Herzegovina v. Yugoslavia*), paras. 142-201.

could be prosecuted (article 5.2 of the Statute). On the other side of this question of the clarity of the anti-aggression norm embedded in crimes against peace is the majority decision of the British High Court in the House of Lords in the recent case of *Regina v. Jones and others* to the effect that the criminality of aggressive war established at Nuremberg remains firmly established in international customary law, and its bearing on contested uses of force remains authoritative. This is an important issue that casts a shadow over the entire controversy about the Israeli attacks, and should be clarified to the extent possible in the inquiry report.

30. Other legal concerns relating to the inquiry and any accountability sequel involve the distinctive nature of the belligerent parties, including questions about the proper assessment of the legal responsibility of an occupying Power towards the occupied people from the perspective of international criminal law, the legal effects on the nature of Israeli criminal responsibility given its disengagement from Gaza in 2005, and the criminal responsibility under international law of a non-State actor that was exercising de facto administrative and governmental control during the period being investigated.

B. Applicable international criminal law

31. The applicable body of international criminal law for any investigation would include the jurisprudence compiled by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which has fully examined violations of the laws of war, as contained in the jurisdictional statutes setting up such tribunals, established under the authority of the Security Council. It should also include the list of international crimes enumerated in the Rome Statute of the International Criminal Court.

32. The crimes described in the London Agreement establishing the Nuremberg Tribunal in 1945 were subsequently confirmed as part of customary international law by the International Law Commission in 1950 under the rubric of Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal.[11] These principles are treated by most international law experts as constituting "peremptory norms" as defined in article 53 of the Vienna Convention on the Law of Treaties (1988).[12] Thus, if the Nuremberg categories of criminality qualify as peremptory norms embedded in international customary law, these crimes remain valid and relevant for the purpose of assessing the Israeli attacks under the labels of "crimes against peace", "war crimes" and "crimes against humanity". Reliance on the relevance of these crimes, especially crimes against peace, is singularly important to allow

[11] *Yearbook of the International Law Commission, 1950*, vol. II, para. 97.

[12] "A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

assessment of the underlying allegation that the Israeli attacks commencing on 27 December 2008 were intrinsically criminal because of their incapacity to maintain the distinction between military and civilian targets, a contention that Israeli political and military leaders challenge. If a solid basis in fact and evidence could be provided to back up this contention, it would provide the grounds for contending that the highest political and military leaders could be held potentially criminally responsible.

33. Alleged crimes associated with battlefield operations and command policy, such as the targeting of schools, mosques, ambulances, residential homes and health facilities, should be investigated to the extent possible, including evidence pertaining to the existence of deliberate intent or gross negligence. Extenuating circumstances should be taken into account, including allegations that buildings and their near surroundings were being used for combat purposes. It is important that this evidence be gathered quickly, and that the cooperation of the parties be solicited to the extent that the investigation establishes a prima facie case with respect to war crimes, and the responsible perpetrators can be identified, then the investigating report should either recommend that the parties be encouraged to establish criminal law procedures by which such individuals can be indicted, prosecuted, accorded due process and punished if found guilty, or propose some alternative mechanism. It is quite likely that the investigation will be able to establish that certain practices and incidents have the characteristics of war crimes, but that it will be impossible to identify the supposed perpetrator(s), at least not without the cooperation of the parties engaged in combat.

34. Alleged crimes associated with legally dubious use of weaponry, such as white phosphorous (which burns through clothing, sticks to skin and burns flesh to the bone), flechette bombs (which expel razor sharp darts), and Dense Inert Metal Explosives (DIME) bombs (causing intense explosions in a small area and body parts to be blown apart) should also be investigated. None of these weapons is, per se, explicitly banned by international law, but there is considerable support for the view that their use in dense urban areas where civilians are known to be or are habitually present would be a war crime. An investigation is needed to establish the extent of such use, and the specific circumstances under which use occurred. To the extent that a basis for criminal prosecution is established, the orbit of responsibility should focus on the command levels of decision with respect to policies and practices governing use, and generally accord serious but subordinate attention to the identity of low-level perpetrators carrying out orders. Here too the cooperation of Israeli governmental authorities should be evaluated as a means of achieving accountability; if not regarded as reliable, alternative approaches should be recommended.

35. The practices of Hamas alleged to constitute war crimes should also be investigated, including the firing of rockets and mortar shells aimed at civilian targets; the alleged use of children and civilians as “human shields”; and the abuse of the protected status of certain structures either to hide weaponry or as places of sanctuary for carrying on combat operations. The extent to which these latter practices are distinct crimes or serve to mitigate or excuse failures by Israel to respect the immunity of such targets needs to be determined. Here also, it is important to concentrate on the appropriate level of military and political command to determine the locus of possible criminality, and to recommend how accountability should be assessed.

C. Availability of mechanisms of accountability

36. An investigation should also address the mechanisms of accountability evaluated in terms of jurisdictional competence and political plausibility if it determines that substantial grounds for holding individuals and other political actors criminally responsible exist. Since Israel is not a member of the International Criminal Court, the most efficient mechanism for assessing accountability would be to establish, under the authority of the Security Council, an ad hoc criminal tribunal for occupied Gaza, following the precedents of the 1990s (although this does not seem politically plausible under current conditions). It would also be theoretically possible for the Security Council, acting under Chapter VII of the Charter, to refer the situation to the Court for further action. It is arguable (although contested) that the General Assembly might establish such a tribunal by invoking its authority to "establish such subsidiary organs as it deems necessary for the performance of its functions". Whether such an initiative is related to the functions of the Assembly is an unresolved matter. There is also some question as to whether the fact that the Security Council, in its resolution 1860 (2009), decided to remain seized of the matter makes its constitutionally inappropriate for the Assembly to take any action relating to the situation in Gaza resulting from the Israeli military operations.

37. Ideally, Israel, as the sovereign State exercising control over the territory where the alleged offences took place, should be the locus of judicial assessment, whether by its normal criminal law procedures or through the establishment of a special ad hoc process - but for the reasons previously discussed (see paragraph 7 above), this is extremely unlikely to take place. Nonetheless, human rights groups in Israel and occupied Palestine are compiling as much information as possible relating to allegations of war crimes to provide the legal grounds for recourse to national legal systems.

38. From the outlook of competence and plausibility, the most available accountability initiatives are associated with national criminal law procedures in those countries, such as Belgium and Spain, that give to their courts legal authority to prosecute war crimes under the rubric of universal jurisdiction, provided that the accused individual is physically present. It is likely that such an option would be influenced by the existence of a persuasive report under the auspices of the United Nations that recommended accountability.

39. The above-mentioned situation has led the Minister for Justice of Israel, Daniel Friedman, to be designated to protect any Israeli detained abroad in accordance with the public pronouncement made by Prime Minister Olmert at a gathering of military officers a few days after the Gaza ceasefire went into effect: "The Government will stand like a fortified wall to protect each and every one of you from allegations." Israel also warned that it would retaliate in the event that Israelis are arrested and charged abroad. Note that potential initiatives in national judicial settings are not limited to battlefield specific offences, but can be extended to encompass alleged crimes at the highest political and military levels of Government. The case involving the indictment of the former head of State of Chile, Auguste Pinochet, adjudicated these issues in the Spanish and British legal systems, as well as in Chile itself, during the late 1990s and early 2000s.

VII. THE BROADER SETTING OF THE ATTACKS

40. At the conclusion of the present report, it seems appropriate to reaffirm the connection between Israeli security concerns and the Palestinian right of self-determination. As long as Palestinian basic rights continue to be denied, the Palestinian right of resistance to occupation within the confines of international law and in accord with the Palestinian right to self-determination, is bound to collide with the pursuit of security by Israel under conditions of prolonged occupation. In this respect, a durable end to violence on both sides requires an intensification of diplomacy with a sense of urgency, and far greater resolve by all parties to respect international law, particularly as it bears on the occupation as set forth in the Fourth Geneva Convention. Furthermore, it is important to acknowledge that the time has long passed for the implementation of Security Council resolution 242 (1967) requiring Israel to withdraw from Palestinian territories, for Israel to close unlawful settlements, desist from efforts to alter the demographics of East Jerusalem, respect the advisory opinion of the International Court of Justice of 2004 on the Wall, and bring the occupation to a genuine end, either through negotiations or by unilateral action.

VIII. RECOMMENDATIONS

41. **The Special Rapporteur recommends that:**

(a) An advisory opinion on the obligations of a Member State to cooperate with special procedures of the Human Rights Council in relation to the application of Article 56 of the Charter of the United Nations and the relevant provisions of the Convention on the Privileges and Immunities of the United Nations be requested;

(b) A procedure for conducting an expert inquiry from the perspective of the role of the Human Rights Council into allegations of war crimes associated with Israeli military operations in Gaza from 27 December 2008 to 18 January 2009 be established;

(c) It be recognized that the Palestinian right of resistance under international law within the limits of international humanitarian law continually collides with Israeli security concerns as occupying Power, requiring basic adjustments in the relationship of the parties premised on respect for the legal rights of the Palestinian people, and that sustainable peace in Gaza requires the permanent lifting of the blockade in the short term, and a diplomatic process that seeks peace in accordance with the requirements of international law in the long term.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*

Summary

This report examines developments related to human rights in the Occupied Palestinian Territories from the period from July through December 2009. The Special Rapporteur gives primary attention to the establishment, activities and main findings of the United Nations Fact-Finding Mission on the Gaza Conflict. Reactions to the Mission report, including criticisms and objections from the international community, are also reviewed.

The Special Rapporteur considers the question of Israeli settlements and their impact on the enjoyment of human rights. In this regard, the current initiatives of the Government of Israel in relation to the settlements are discussed, and reactions at the local and international levels are examined. Recent efforts to demonstrate against the construction of a wall in the West Bank by the Government of Israel are also discussed.

The report gives considerable attention to the ongoing blockade of Gaza by the Government of Israel. In this context, the implications of the blockade for efforts to rebuild following Operation Cast Lead are highlighted, as well as persistent calls from the international community for Israel to lift the blockade. The Special Rapporteur recalls the situation of Palestinian refugees, and emphasizes the need to keep their plight on the agenda of any effort to establish peace. Finally, the report welcomes a civil society-led campaign to boycott, divest from and sanction Israel for its occupation of Palestinian territories.

* Late submission.

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I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has again been compelled to prepare this report without the benefit of the cooperation of the State of Israel. In practical terms, this has meant a continuing refusal to grant access to the Occupied Palestinian Territories to a representative of the United Nations. This violates Israel's obligations as a Member State, it impairs the capacity of the Human Rights Council to serve the international community, and denies the people living under occupation a critical outlet to convey grievances regarding violations of international humanitarian law or international human rights law, thus interfering with the ability of the United Nations and Member States to exercise their responsibilities to stop these violations. This report, then, is based on the best efforts of the Special Rapporteur to gain reliable information bearing on the range of issues arising from the continuing occupation, including from secondary sources and the testimony of witnesses. In the future an effort will be made to visit the Gaza Strip in a formal mission facilitated by the Government of Egypt. The Special Rapporteur has been given assurances that the Government of Egypt intends to grant him permission to enter Gaza by way of the Rafah Crossing.

2. This report covers developments related to human rights in the Occupied Palestinian Territories (OPT) from July through December 2009. Most developments are connected to issues discussed in prior reports of the Special Rapporteur. New concerns addressed in the present report include the treatment, by the Human Rights Council and other organs of the United Nations, of the report of the United Nations Fact-finding Mission on the Gaza Conflict, and the role of civil society initiatives that seek to protect human rights in the OPT, in particular given the inability or unwillingness of the United Nations and other international actors to uphold human rights and the severity of the deprivations confronting Palestinians, who have been living for so long under the burdens of a harsh occupation. This harshness has long been flagged as being of an emergency character with respect to the 1.5 million residents of the Gaza Strip, especially since the imposition of the unlawful Israeli blockade, beginning in June 2007, which has been widely condemned as a flagrant and serious violation of the prohibition on collective punishment expressed in article 33 of the Fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War, which unconditionally condemns collective punishment. There are also some new concerns that have been prompted by the announcement by the Government of Israel of a temporary and partial 10-month freeze on settlement expansion in the West Bank and the resultant resistance to this ban by settlers and their settler organizations, often taking the form of recourse to violence against Palestinians, their persons, their property and their public facilities. Israel has not displayed due diligence in discharging its primary responsibility as occupying Power to protect the occupied civilian population.

II. The United Nations Fact-finding Mission on the Gaza Conflict

3. The United Nations Fact-finding Mission on the Gaza Conflict released its report (FFM report)[1] on 15 September 2009. It was discussed by the Human Rights Council on 29 September 2009. The Mission undertook a comprehensive investigation of allegations of war crimes committed by both Israel and Hamas during Operation Cast Lead, which was carried out by Israel in the Gaza Strip from 27 December 2008 to 18 January 2009 and

[1] A/HRC/12/48.

resulted in the death of 1,434 Palestinians (960 of whom were civilians), injuries to 5,303 Palestinians, and the death of 13 Israelis (3 of whom were civilians). The mandate of the Fact-finding Mission was as follows: "To investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, after or during."[2] The investigation was carried out over a period of three months by a four-person mission led by Justice Richard Goldstone, former member of the South African Constitutional Court and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. The other members of the mission were Hina Jilani, Advocate of the Supreme Court of Pakistan; Christine Chinkin of the London School of Economics and Political Science; and Desmond Travers, formerly an officer in the Irish Defence Forces.

4. The main findings of the FFM report reinforced conclusions reached earlier by an Arab League fact-finding mission[3] headed by John Dugard, former Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, and by a range of respected international, Israeli and Palestinian human rights organizations.[4] The most significant general conclusion reached was that during Operation Cast Lead the attacks by the Israel Defense Forces (IDF) were aimed at the population of the Gaza Strip as a whole and, as such, constituted collective punishment that violated Israel's obligations arising out of its "effective occupation"[5] of Gaza.[6]

5. This main finding of collective punishment, together with a series of specific abuses in incidents where the IDF was found to have deliberately targeted civilians and civilian structures, led the Fact-Finding Mission to conclude that crimes against humanity might have been committed by Israel.[7] The FFM report also concluded that the rockets fired from Gaza into Israeli territory were indiscriminate, and as such their use constituted war crimes that amounted to crimes against humanity.[8] Given the asymmetric casualty totals and Israel's initiation of Operation Cast Lead, far more attention was given in the FFM report to the allegations of IDF criminality than to that of Hamas.

6. The rather elaborate recommendations in the FFM report were preoccupied with the challenge of overcoming "the culture of impunity" that had immunized similar criminality in the past, and sought mechanisms of accountability that would result in the prosecution of perpetrators. At the same time, the FFM report, in recognition of the general international policy of allowing political actors to establish their own domestic procedures of accountability, recommended that Israel and the appropriate authorities in Gaza be given six months to establish their own independent, credible investigations of allegations and put in place procedures to assess accountability.

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[2] Ibid., para. 151.

[3] Independent Fact-Finding Committee on Gaza to the League of Arab States, *No Safe Place*, 30 April 2009, available at http://www.arableagueonline.org/las/picture_gallery/reportfullFINAL.pdf.

[4] See inter alia, Human Rights Watch, *Rain of Fire. Israel's Unlawful Use of White Phosphorus in Gaza*, March 2009; "Israel/Gaza: Operation Cast Lead: 22 days of death and destruction", Amnesty International, July 2009; "Guidelines for Israel's Investigation into Operation Cast Lead", B'Tselem, position paper, February 2009; Palestinian Centre for Human Rights, *Targeted Civilians*, 2009.

[5] Israel, since its disengagement of 2005, no longer directly occupies Gaza, but continues to have the legal duties of an occupying Power under international humanitarian law due to its total control of the crossings into and out of Gaza, as well as the air space and coastal access.

[6] See A/HRC/12/48, para. 1883.

[7] Ibid., para. 1335.

[8] Ibid., para. 108.

7. This process is supposed to have been monitored by a body of independent experts appointed by the Human Rights Council, and, if the Council deems the results unsatisfactory, then it is to refer the report to the Security Council for transfer to the International Criminal Court for appropriate action.[9] Further, the FFM report recommended that countries with laws conferring universal jurisdiction on national criminal courts pursue investigation, detention and indictment of alleged perpetrators, as appropriate.[10]

8. The FFM report was discussed in the Human Rights Council and resolution S-12/1 was adopted on 16 October 2009 by a vote of 25 in favour, 6 opposed, and 11 abstaining. On 15 October 2009, the United Nations High Commissioner for Human Rights told the Human Rights Council of her support for the FFM report and its recommendations, urging action to counter impunity by investigating and prosecuting those against whom substantial evidence existed to support war crimes accusations. Significantly, the High Commissioner asserted that holding war criminals accountable should not be considered as an obstacle to a peace process, which is the position taken by leading Member States of the United Nations in response to similar allegations regarding criminal charges directed at Sudanese officials responsible for Darfur.[11] On 5 November 2009, the General Assembly adopted resolution 64/10 by a vote of 144 in favour, 18 opposed, and 44 abstaining, calling upon Israel and the Palestinian side to undertake, within a period of three months, independent, credible investigations, with provision for referral to the Security Council in the event that the parties do not carry out satisfactory self-investigations. The Secretary-General has been tasked with the responsibility of monitoring the process and reporting to the General Assembly as to whether there has been compliance. To date there has been no appointment of a panel of international law experts to evaluate the assessment process as recommended by the FFM.

A. Criticisms of the report of the United Nations Fact-finding Mission on the Gaza Conflict

9. As the United Nations Fact-finding Mission on the Gaza Conflict has framed the discussion of Israeli accountability under international humanitarian law during Operation Cast Lead, the Special Rapporteur considers it important to discuss the status of the report and criticisms directed at it. Israel and the United States of America both levelled heavy criticism at the report, contending that it was biased and one-sided. On a more technical level there was a suggestion that United Nations rules on fact finding were not adhered to, as Professor Chinkin, a member of the mission, had already been on record as supporting the allegations prior to her appointment.[12] Justice Goldstone explained that if the mission had been a strictly judicial undertaking, then Professor Chinkin would have been disqualified, but given the framework of inquiry, the qualifications for membership were competence and objectivity in the discharge of the inquiry.[13] There were a variety of highly emotional attacks on the FFM report made by top Israeli political leaders, among other persons associated with the Government of Israel. The former Israeli Ambassador to the

[9] Ibid., paras. 1968–1969.

[10] Ibid., para. 1975.

[11] See statement by the United Nations High Commissioner for Human Rights at the twelfth special session of the Human Rights Council, available at http://www.unhchr.ch/huricane/huricane.nsf/view01/6781752DD0ED2F1DC12576500047E3D3?opendocument.

[12] "Israel's bombardment of Gaza is not self-defence, it's a war crime", *The Sunday Times*, 11 January 2009.

[13] Brandeis University Debate, 6 November 2009. A video of Justice Goldstone's intervention is available at http://www.youtube.com/watch?v=XtbHifKM6sM.

United Nations, Dore Gold, contended that the Goldstone report was the "most serious and vicious indictment of the State of Israel bearing the seal of the United Nations" since the anti-Zionist resolution of 1975.[14]

10. The more substantive argument against the approach taken in the report was that it neglected to take into account the actuality of a conflict in which Israel, as a democratic State, was entitled to defend itself by all effective means against Hamas, which is officially listed internationally as a terrorist organization. The implication of this argument seemed to be that the nature of the parties, in this instance, suspends the normal application of the rules of international humanitarian law. The representative of Israel to the General Assembly attacked the text of the report as disregarding Israel's right to self-defence and that as such it amounted to a gift to terrorism. In fact, the FFM report affirmed Israel's right to use force to defend itself, limiting its findings to the widely-supported conclusion that it was criminally unlawful to use force against the Gazan population as a whole, and also criminally unlawful to target civilians deliberately or to strike intentionally at protected buildings, including a variety of lethal attacks on United Nations facilities in Gaza that were lending shelter to Gazan civilians. There were also objections made by the United States representative to the call for the involvement of the Security Council or General Assembly in securing implementation of the report, claiming that the Human Rights Council was the appropriate forum. That argument was set forth despite — or possibly because of — the lack of any enforcement role or capability. Such efforts to steer subsequent action relating to the report away from implementation procedures seems designed to preserve Israeli impunity, and prompted the respected Gazan human rights leader and recipient of the Robert F. Kennedy Award, Raji Sourani, to remark: "We hope the Goldstone Report doesn't end as piles of paper."[15]

B. Objections from Palestinians to the report of the United Nations Fact-finding Mission on the Gaza Conflict

11. Most attention has been paid to Israeli complaints directed at the FFM report. Virtually no attention has been paid to Palestinian complaints, and in truth, the representatives of the Palestinian Authority have devoted themselves to the implementation of the recommendations contained in the report without expressing objections. Yet there are objections that should be considered as part of a comprehensive effort to gain a clearer understanding of the issues, as well as of the debate.

12. First of all, the FFM report pays no attention to the surrounding circumstances of a temporary Israel-Hamas ceasefire that had been put in place in June 2008, with notable success in reducing cross-border violence, especially as regards rockets. It also ignores the provocative violence of Israel during the ceasefire, especially the incident of 4 November 2008 in which Israel killed six Palestinians inside Gaza, as well as the frequent attempts by Hamas representatives to extend the ceasefire for as long as 10 years if Israel would lift the blockade and open the crossings. It is notable that these overtures by Hamas were made notwithstanding the failure by Israel to fulfil its commitments during the temporary ceasefire by easing, if not lifting, the blockade, which was in any event intrinsically unlawful under the Fourth Geneva Convention. The Israeli Ministry of Foreign Affairs

[14] "Dore Gold Illustrates UN Goldstone Report Bias Against Israel In Brandeis Debate", Israel News Agency, 5 November 2009.

[15] "UN human rights chief endorses Goldstone Gaza report", *Haaretz*, 2 November 2009.

acknowledges that the number of rockets fired from Gaza into Israel declined by 80 per cent during the ceasefire.[16]

13. From the perspective of international law, these elements raise serious questions as to whether Israel was entitled to act "defensively" under the circumstances, especially as it refused to explore the relevance of a diplomatic alternative to unbridled military force against an impoverished and crowded Gazan society, force that lacked clear military targets or even an opposing military. Also notable is the failure of the FFM report to take account of the refusal of Israel to allow civilians, including women and children, as well as the disabled, to exit Gaza and become refugees. This policy of locking civilians into a combat zone during sustained military attacks, denying them the right to seek refuge, is not explicitly prohibited in any existing human rights treaty or covenant, but seems clearly inconsistent with the prohibition of customary international law on cruel and inhumane tactics, and appears to be at odds with the fundamental duty of Israel, under the Fourth Geneva Convention, to provide protection to an occupied population. Finally, it is notable that the FFM report devotes considerable sympathetic attention to the captivity of the single Israeli soldier, Gilad Shalit, but no comparable concern is expressed in the report for the thousands of Palestinians being held in detention (estimated to be between 8,000 and 10,000, many without charge).

14. These serious gaps in the FFM report suggest that the contention of an anti-Israeli bias is without foundation. In fact, despite the refusal of Israel to cooperate with the Mission, the report indicates incredibly diligent efforts to meet with witnesses sympathetic to the arguments of the Israeli Government, including paying expenses associated with providing testimony received from the mayor of Sderot and from Israelis directly involved in Operation Cast Lead. Given the credibility of the members of the Mission, and in particular of Justice Goldstone himself, who insisted on including allegations of Palestinian war crimes within the FFM undertaking, it would seem irresponsible and frivolous to mount an argument against the findings and recommendations built around either the claim that anything emanating from the Human Rights Council is bound to be biased, or that the report, by finding the IDF responsible for the commission of war crimes, is by the very nature of its conclusions exhibiting an anti-Israeli, or in some dramatically-inflamed claims, even an anti-Semitic bias.

C. Intrinsic unlawfulness

15. The FFM report was based on a fact-finding mission. It was probably correct for this reason to overlook the underlying concern as to whether the rather restrictive legal framing of the FFM inquiry is suitable for this kind of asymmetric encounter, in which the Palestinian side lacked any weaponry to defend itself against a modern military machine and Israel defined its war aims as extending to the civilian infrastructure of the Gaza Strip. The ratio of casualties on both sides, even leaving aside the widespread trauma induced among the civilian population (estimated by some psychologists as being as high as 90 per cent), exhibits clearly the one-sided character of the encounter.[17] In addition, the property damage caused by Operation Cast Lead was entirely inside Gaza.[18] Is reliance on such a

[16] See the Ministry of Foreign Affairs website at http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Palestinian+terror+since+2000/Terror+in+Gaza+Two+months+since+the+Hamas+takeover+16-Aug-2007.htm.

[17] See above para. 3.

[18] For more information on the extent of damage suffered during Operation Cast Lead, please refer to the reports indicated in footnote 3 above. See also Office for the Coordination of Humanitarian Affairs (OCHA), OPT, http://www.ochaopt.org/gazacrisis/index.php?section=3.

blunt instrument of destruction, particularly under circumstances of effective occupation, ever capable of being reconciled with the values and principles embodied in international humanitarian law? At the very least, the character of Operation Cast Lead suggests the importance of raising such a question within the setting of the Human Rights Council or, as an alternative, encouraging or formally requesting the International Committee of the Red Cross to examine the topic.

D. Implementing the report of the United Nations Fact-finding Mission on the Gaza Conflict: universal jurisdiction

16. Among the most controversial, yet consequential, recommendations of the FFM report, is its endorsement of seeking accountability by way of "universal jurisdiction" through national judicial systems that contain such legislative authorization. The recommendation is formulated as follows: "In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of the grave breach provisions of the Geneva Conventions of 1949, prevent impunity and promote international accountability."[19]

17. In addressing ordinary international crimes, such as piracy or counterfeiting, it has long been the case that national courts exercise their authority to attach legal consequences, including for crimes, to behaviour that takes place beyond territorial jurisdiction. What is new is the assertion of this authority in relation to war crimes, crimes against humanity, genocide and torture. Most countries do not have such an authorization or do not exercise their authority in relation to war crimes committed outside national territory. For those that do, it is possible to pursue allegations of war crimes in relation to those who acted on behalf of either Israel or Hamas during Operation Cast Lead, to arrest, indict, prosecute, and punish.

18. Although there are political ways to insulate potential defendants from such a legal process, in national courts reliance on universal jurisdiction is not subject to the sorts of constraints that block efforts to achieve accountability within the United Nations system. As indicated in the FFM recommendation, recourse to universal jurisdiction is only deemed appropriate in those situations where there are substantial grounds to believe that a government cannot or will not take advantage of its own prerogative (and duty) to investigate authoritatively on its own. That is, the first line of defence against impunity is through the governmental procedures of the State whose nationals are suspected to be perpetrators. Some Israeli journalists and public figures have called on the Israeli Government to fulfil this obligation, arguing that even if the FFM report can be set aside because of its supposed bias and the auspices under which it was produced, this does not mean that the IDF acted in full accordance with international humanitarian law during Operation Cast Lead.[20]

19. It has been reported that the Israeli Foreign Minister at the time of Operation Cast Lead and currently an opposition leader, Tzipi Livni, cancelled a visit to London in December 2009, because of the expectation that she would be arrested and charged with war crimes.[21] A spokesperson for the Israeli Ministry of Foreign Affairs has confirmed that

[19] A/HRC/12/48, para. 127.

[20] For example Professor Avi Sagi of Bar Ilan University, *Haaretz*, 14 December 2009. Available at http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=1134917.

[21] "Israeli opposition leader Tzipi Livni 'cancels London visit over prosecution fears'", *The Daily Telegraph*, 14 December 2009, available at http://www.telegraph.co.uk/news/worldnews/

an arrest warrant had been issued in Britain charging Ms. Livni with orchestrating the attacks in Gaza.[22] Some confusion exists, as Ms. Livni's office released a statement indicating that her trip was cancelled due to a scheduling conflict two weeks prior to her departure date.[23] The issuance of this arrest warrant, although later withdrawn, has prompted efforts to amend British law as a matter of urgency to ensure that diplomatic contact with Israeli officials will not be threatened.[24]

20. It is important to remember that there have been other situations involving controversial foreign public figures in which concerns about their possible detention and arrest has arisen. The most famous British case involved the detention of the former Chilean head of State, Augusto Pinochet, in 1998 in response to a Spanish request for extradition to face torture and other criminal charges associated with his years as head of State in Chile. There have also been some recent problems faced by Israeli officials who were considering a visit to Britain. The Minister of Defence, Ehud Barak, was granted immunity from the legal process by the British Government while on a visit to London to deliver a speech.[25] In October 2009, Deputy Prime Minister Moshe Ya'alon, was apparently advised by the Israeli Government to cancel a speaking engagement in London because he might be arrested.[26]

III. Settlements in the Palestinian territories and their impact on the enjoyment of human rights

A. Settlement freeze

21. On 25 November 2009, Prime Minister Netanyahu proposed a 10-month freeze on settlement growth in the West Bank, which was approved by Israel's security cabinet by a vote of 11–1.[27] Mr. Netanyahu described the initiative as following from the urging of "our friends" that once Israel takes "the first meaningful step" towards peace "the Arab world and the Palestinians will follow".[28] The Prime Minister described the freeze as "a policy of restraint regarding the settlements which will include a suspension of new permits and new construction in Judea and Samaria" reassuring the settlers with "a promise to enable a normal life to continue for three hundred thousand Israeli citizens, our brothers and

middleeast/israel/6811578/Israeli-opposition-leader-Tzipi-Livni-cancels-London-visit-over-prosecution-fears.html.

[22] See also "UK ponders law change after Tzipi Livni arrest warrant", BBC News, 15 December 2009, available at http://news.bbc.co.uk/2/hi/middle_east/8415161.stm.

[23] "British court issued Gaza arrest warrant for former Israeli minister Tzipi Livni", *The Guardian*, 14 December 2009. Available at http://www.guardian.co.uk/world/2009/dec/14/tzipi-livni-israel-gaza-arrest.

[24] "UK to review war crimes warrants after Tzipi Livni arrest row", *The Guardian*, 15 December 2009, available at http://www.guardian.co.uk/world/2009/dec/15/israel-tzipi-livni-arrest-warrant.

[25] "Israeli minister Ehud Barak faces war crimes arrest threat during UK visit", *The Guardian*, 29 September 2009. Available at http://www.guardian.co.uk/world/2009/sep/29/ehud-barak-war-crimes-israel.

[26] "General Moshe Yaalon cancels London trip after arrest fear over Gaza bombing", The Times, 6 October 2009. Available at http://www.timesonline.co.uk/tol/news/uk/article6862322.ece.

[27] Israeli Prime Minister's Office, "Statement by PM Netanyahu on the Cabinet Decision to Suspend New Construction in Judea and Samaria", available at http://www.pmo.gov.il/PMOEng/Communication/EventsDiary/eventfreeze251109.htm.

[28] "Mideast: settlements 'moratorium' still short of freeze", IPS News, 25 November 2009, available at http://ipsnews.net/news.asp?idnews=49421.

sisters".[29] The announcement was viewed positively by the Government of the United States, but encountered criticism from both the Palestinian Authority and the leadership of the settler movement.[30]

22. Palestinian criticism centred on the fact that the freeze did not include public buildings in the West Bank settlements, several thousand residential units under construction, or any building in occupied East Jerusalem. The original call for a freeze, by President Barack Obama, did call for a temporary freeze to be extended to the whole of the OPT, including East Jerusalem. The disappointing response of the United States to the Israeli initiative was articulated by Secretary of State Hillary Clinton: "Today's announcement by the Government of Israel helps move forward towards resolving the Israeli-Palestinian conflict. We believe that through good-faith negotiations the parties can mutually agree on an outcome which ends the conflict and reconciles the Palestinian goal of an independent and viable state based on the 1967 lines, with agreed swaps, and the Israeli goal of a Jewish state with secure and recognized borders that reflect subsequent developments and meet Israeli security requirements".[31] One can only wonder about how big a departure from 1967 borders are envisaged to "reflect subsequent developments" and "meet Israeli security requirements". Such an assertion by a senior official of the United States Government seems to be a virtual invitation to Israel to continue creating facts on the ground, presumably even if these facts occur in violation of international humanitarian law. It is also notable that, in his statement announcing the freeze, the Israeli Prime Minister twice used the settler terminology of Greater Israel, that is, "Judea and Samaria", rather than the language adopted by the United Nations and the international community, that is, "the occupied West Bank" or simply "the West Bank", which could be interpreted as staking an implicit claim for the eventual annexation of the West Bank, and not as a step towards the establishment of a viable Palestinian state.[32]

23. The settlement movement, represented by Danny Dayan, chair of the main settler body, defiantly expressed objections: "We are 300,000 citizens living in 150 communities. It is impossible to freeze us. I don't know how it will happen, but we will break this freeze."[33] A variety of legal and non-violent settler initiatives have reinforced the Dayan statement, as well as an array of unlawful violent expressions of opposition to the freeze. The scope of the freeze is definitely less than meets the eye. Despite the freeze, construction will continue on 3,000 housing units in West Bank settlements for which permits have already been issued, and the freeze does not apply to public facilities such as schools, shops, meeting and administrative halls. It will, however, delay the construction of 18,000 housing units for which permits have been issued, but will not be built during the freeze. In addition, it has been reported that hundreds of construction permits were obtained by various settlements just prior to the announcement of the freeze. A Likud minister, Benny Begin, has said that the settlement population could grow by 10,000 even during the period of the freeze. To further diminish the impact of the freeze, after a large settler demonstration in Tel Aviv, the Prime Minister offered settlements some new tax breaks and other economic benefits, as well as reassuring settlers that after the freeze period "my

[29] Geoffrey Aronson, "Netanyahu pledges to restrain settlement expansion – does it matter?", *Foundation for Middle East Peace*, vol. 19, No. 6 (November–December 2009), available at http://www.fmep.org/reports/archive/vol.-19/no.-6/PDF.

[30] See for instance, "Let us make peace, declares Netanyahu", *The Jerusalem Post*, 26 November 2009.

[31] "Israel's announcement regarding settlements", Hillary Clinton, available at http://www.state.gov/secretary/rm/2009a/11/132434.htm.

[32] See footnote 29 above.

[33] "Israel settlement freeze: Benjamin Netanyahu promises 10-month halt, angering allies", *Christian Science Monitor*, 25 November 2009.

government will revert to the policies of previous governments in relation to construction".[34]

24. As has been pointed out many times in past reports of the Special Rapporteur and his predecessors, the settlements are all unlawful due to the prohibition in article 49 (6) of the Fourth Geneva Convention. This provision prohibits the transfer of the population of an occupying Power to the occupied territory, particularly in this case where Israeli withdrawal to the 1967 borders — as legally prescribed by Security Council resolution 242 — is gravely compromised by the extensive settlement development, its related network of Israeli-only roads, the ongoing construction of the separation barrier, and the sustained effort to establish favourable facts on the ground, which would ultimately be relied upon by Israel as the basis for negotiating some agreed outcome. Finally, there have been hints by Mr. Netanyahu that if the Palestinian Authority does not soon reciprocate to the extent of agreeing to start peace talks, Israel may suspend the partial freeze.[35] Whether such a suspension would be significant beyond the atmospherics of pre-negotiation give and take is questionable, considering the large gap between what Israel seems to regard as its best offer and what the Palestinians are seeking as an acceptable outcome.

B. The Israeli national regional priorities plan

25. There are further developments that suggest the real intentions of Israel with respect to the future of the settlements, and that undermine the credibility of the freeze as a prelude to the withdrawal of Israel from the West Bank, at least from the territory outside the so-called settlement blocs. In this respect, the 21 votes to 5 adoption by the full Israeli cabinet of a plan to fund settlements within the framework of "national regional priorities" to the extent of $30 million for about 90 settlements, homes for 110,000 existing settlers, is a disturbing development.[36] Such investment would not make any sense if Israel is contemplating relinquishing substantial control over the West Bank, as these settlements are spread out all over the occupied territory. As the respected Palestinian negotiator, Saeb Erekat, has observed, these moves demonstrate that the freeze is "a sham", and reveal Israel's real goals.[37] A close cabinet associate of Mr. Netanyahu, Yuval Steinitz, Minister of Finance, confirmed this concern by pointing out that the priorities plan shows that the Netanyahu Government continues to support the settlers despite the freeze.[38] A strident critique has appeared in *Haaretz* under the byline of Zvi Bar'el: "The folly lies in how the new map renders void the decision to freeze construction in the settlements. … The objective, then, is to create housing opportunities in the settlements and increase the number of settlers, as well as other dubious facts on the ground."[39] What seems most destructive of prospects for the realization of the Palestinian right of self-determination is the treatment of former "fringe settlements" as if they were part of settlement blocs, making the national regional priorities plan a major expansion of permanent settlements. However, the Prime Minister reacted by declaring that nothing is permanent until final status talks have been concluded.[40] The Palestinian Authority has reportedly considered responding by issuing a directive to prohibit Palestinians from working in West Bank settlements.[41]

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[34] See footnote 33 above.

[35] Ibid.

[36] "Israel votes new funding for settlements", Reuters Alertnet, 13 December 2009.

[37] Ibid.

[38] Ibid.

[39] "The map of national folly", Zvi Bar'el, *Haaretz*, 14 December 2009, available at http://www.haaretz.com/hasen/spages/1134595.html.

[40] "Palestinians. National priority map is blueprint for settlement expansion", *Haaretz*, 19 December

C. Attack on Hassan Hader Mosque

26. One of the worst incidents of settler violence following establishment of the freeze has been the burning of Hassan Hader Mosque in Yasuf village south of Nablus, on the night of 11 December 2009. The library of the mosque was burned, destroying copies of the Koran and other holy objects.[42] Graffiti written on the walls confirmed that this was a so-called "price-tag" punitive act against Palestinians, with the aim of offsetting the burdens imposed on settlers by the freeze. As a supporter of the arson, Rabbi Yosef Elitzur of a yeshiva in Yitzhar explained: "If the Jews don't have quiet – the Arabs won't have quiet either; if the Arabs win because of violence against Jews, Jews will win because of violence against Arabs."[43] By and large, however, Jewish leaders, including the Prime Minister and President, decried the crime against the mosque and called for an investigation and punishment of the arsonists.[44] Many rabbis, including several from nearby settlements, have denounced the crime, calling it "a distortion of Jewish values" and proclaiming that religious sites are inviolate, being outside the domain of national struggle.[45] Robert Serry, the United Nations Special Coordinator for Middle East Peace Process, made the following comment on the incident: "Desecrating a place of worship is deplorable. This attack is part of a broader and ongoing phenomenon of settler violence against Palestinian civilians, property, and land. Far too little is being done by Israeli authorities to enforce the rule of law on violent extremists, leading to a climate of impunity."[46] There have been dozens of other "price-tag" incidents occasioned by the freeze, involving settler violence against Palestinian property and agriculture, especially olive trees that the occupying Power is obligated to protect as a matter of the highest priority.[47] Furthermore, there have been concerns related to insufficient protection from Israeli security forces and limited investigations.

D. East Jerusalem settlements

27. The initial observation is to take note of the original effort to persuade the Government of Israel to place a temporary ban on all settlement growth, including East Jerusalem. To include East Jerusalem would have demonstrated at least some openness to allowing the Palestinians to look forward to a state with Jerusalem as its capital. To persist with "natural growth," especially when linked with the West Bank freeze, the accelerated

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2009, available at http://www.haaretz.com/hasen/spages/1134699.html. See also "Labor ministers: help periphery, not settlements", Ynet, 12 October 2009, available at http://www.ynet.co.il/english/articles/0,7340,L-3817996,00.html.

41 "Palestinians try to wean themselves off West Bank settlements", *The Jewish Journal*, 14 December 2009, available at http://www.jewishjournal.com/israel/article/palestinians_try_to_wean_themselves_off_west_bank_settlements_20091214/.

42 "Settlers attack West Bank mosque and burn holy Muslim books", *The Times*, 11 December 2009, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article6953281.ece.

43 "The people who want to set things ablaze", Ynet, available at http://www.kibush.co.il/show_file.asp?num=37197.

44 "Netanyahu to officials: catch 'criminals' behind mosque attack", *Haaretz*, 19 December 2009, available at http://www.haaretz.com/hasen/spages/1134455.html.

45 See for instance "IDF on high alert after mosque arson", *The Jerusalem Post*, 12 December 2009, available at http://www.jpost.com/servlet/Satellite?cid=1260447421277&pagename=JPArticle%2FShowFull.

46 UN Daily News. 14 December 2009, available at http://www.un.org/news/dh/pdf/english/2009/14122009.pdf.

47 See for instance OCHA publications, e.g. Protection of Civilians, for updated information. All reports are available at http://www.ochaopt.org.

rate of house demolitions and evictions and the denial of residency rights to Palestinians, seems to convey an unwillingness on the part of Israel to include any provision for a Palestinian capital in Jerusalem in a negotiated end to the conflict. This impression is strengthened by Prime Minister Netanyahu's announcement that his office, as well as municipal authorities, would henceforth have to approve demolition orders.[48] Of course, this could mean greater restraint in the future. Time will tell.

28. Israelis argue that the eviction of Palestinian occupants was to restore the homes of Jews that had been seized during the period 1948–1967 when East Jerusalem was occupied and administered by Jordan. Yet in 2009 more Palestinians were stripped of their residency rights than in any year between 1967 and 2007. In the course of the year, according to Israeli figures, 4,577 Palestinians were deprived of residency status.[49] Palestinians interpret this pattern as an effort to alter the demographic balance in East Jerusalem so as to strengthen Israeli claims to the whole of Jerusalem. There are now approximately 200,000 Jewish settlers in East Jerusalem, which brings the respective populations in Jerusalem to about 65 per cent Jewish (500,000) as compared to 35 per cent Palestinian (250,000). Attention was given to a statement made by European Union (EU) Foreign Ministers on the Middle East peace process in early December, especially the paragraph pertaining to East Jerusalem. A leaked early draft prepared by Sweden definitely supported the idea of East Jerusalem as the capital of the future Palestinian state, which upset the Government of Israel.[50] After intense lobbying the final EU ministerial statement was much more equivocal, concluding in vague general terms: "If there is to be genuine peace, a way must be found through negotiations to resolve the status of Jerusalem as a future capital of two states."[51] The statement was much more supportive of the Palestinians in relation to demolitions and evictions, which were condemned as violations of Palestinian rights under occupation and as Israeli violations of international law. The Human Rights Council possesses the authority to insist on Israel ending its occupation of the entire Occupied Palestinian Territory, including East Jerusalem, both as the basis for a just, lasting, and comprehensive peace and in view of the persistent failure of Israel to uphold its legal duties as the occupying Power, as these are specified by international humanitarian law.

IV. Demonstrations against the wall in the West Bank

29. As earlier reports have demonstrated, the construction of the separation wall on occupied Palestinian territory that has been continuing since 2002 is one of the clearest examples of the unlawful character of the Israeli occupation of the West Bank, in direct violation of several fundamental Palestinian human rights, including the right of self-determination. This assessment has been confirmed by a 14–1 vote of the International Court of Justice in an Advisory Opinion, which called upon Israel to dismantle the wall and pay reparations to Palestinians who have been harmed by its construction.[52] These

[48] On this matter see collection of articles regarding Israeli Plans for East Jerusalem Settlement Expansion, Peace Now, 18 November 2009, available at http://peacenow.org/entries/East_Jerusalem_settlement_expansion.

[49] For analysis see Isabel Kershner, "Jewish Nationalists Clash with Palestinians", *Financial Times*, 1 December 2009.

[50] "EU trying to 'provoke' Israeli government, analyst says", *EU Observer*, 1 December 2009. Available at http://euobserver.com/9/29081.

[51] "Europe softens Middle East statement after condemnation from Israel", *The Guardian*, 8 December 2009.

[52] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of the International Court of Justice, 9 July 2004.

conclusions were accepted by an overwhelming vote of the General Assembly, and rejected without qualification by Israel.[53] Not surprisingly, Palestinian residents of the West Bank most directly affected by the wall have tried to interfere with and object to, and to the extent possible, prevent its construction, relying almost totally on non-violent tactics. These acts of resistance are continuing at present. Israel has been charged with use of excessive force, causing several deaths and injuries in dealing with anti-wall demonstrations and activists, among whom are Palestinians, Israelis and peace activists from foreign countries. Witnesses and human rights groups have reported use of live ammunition on several occasions, as well as tear gas and rubber bullets.[54] Weekly demonstrations continue at the wall sites in the Palestinian villages of Bi'lin and Ni'lin.[55] In December 2009, Abdallah Abu Ramah, high school teacher and coordinator of Bil'in Popular Committee, was arrested in his home at 2 a.m. in the presence of his wife and children, while the house was surrounded by seven military jeeps, surely a terrifying and humiliating experience that served no security purpose.[56] Mr. Abu Ramah was charged with the unlawful possession of arms which, incredibly, turned out to be a collection of used Israeli tear gas canisters that had been shot by the Israeli security forces at the protestors. Similarly, the internationally respected human rights figure, leader of the Stop the Wall Coalition and known for his advocacy of non-violent tactics, Jamal Juma, was arrested on 16 December 2009 and charged with the crime of "incitement". The manifest absurdity of such charges strongly suggests that Israeli intention is to demoralize the anti-wall campaign by criminalizing the non-violent human rights activism, a pattern that should be a matter of grave concern to the Human Rights Council. Additional night raids on anti-wall activists have been carried out by Israeli security forces in Nablus on several recent occasions.[57]

V. The blockade of Gaza

30. One year after Operation Cast Lead, the humanitarian situation in Gaza not only remains deplorable, but has worsened. The total blockade of the Gaza Strip remains in full effect, having lasted now for nearly three years, contributing to deteriorating physical and mental health for 1.5 million persons. A series of recent deaths from swine flu have caused fears of an onslaught of the disease against a population whose resistance has been reduced due to an inadequate diet and medical care, and otherwise living under constant threat.[58] Further, the sanitation system continues to deteriorate, not only adding to the hazards of life in Gaza, but resulting in the dumping of 40–50 million litres per day of partially treated or untreated sewage into the Mediterranean Sea, as well as contaminating parts of the water supply in Gaza and endangering the fish in coastal waters.[59] After the end of hostilities in Gaza last January, States gathered at a donor conference in Sharm el-Sheikh pledged $4.5 billion in funds for the reconstruction of Gaza. However, Israel has extended its blockade to

[53] General Assembly resolution ES-10/15, adopted on 20 July 2004 at the tenth emergency special session.

[54] See for instance "Eight Palestinians wounded near Jerusalem, dozens suffer tear gas attacks in Nil'in, demonstration in support of Swedish initiative in Bil'in", Al Jazeerah Info, 4 December 2009.

[55] See for instance "Non-violent protests against West Bank barrier turn increasingly dangerous", *The Guardian*, 27 April 2009.

[56] See for instance http://freedetainees.org/category/abdullah-abu-rahma or http://www.indymedia.org.uk/en/2009/12/443605.html.

[57] More information is available at the Stop The Wall Campaign, http://www.stopthewall.org/news/.

[58] "Swine flu cases confirmed in Gaza", Maan News Agency, 6 December 2009, available at http://www.maannews.net/eng/ViewDetails.aspx?ID=244570.

[59] According to Gaza Gateway at http://www.gazagateway.org/.

include virtually all building materials, thereby preventing efforts to rectify the extensive damage wrought by Operation Cast Lead.

31. Electricity is also only partially available to the population. The latest figures released by the Gaza Electricity Distribution Company (GEDO) show that electricity supply has been cut to 25 per cent below actual demand, is only available for eight hours each day, and then only four days a week.[60] GEDO expects that the electricity shortage will increase to 35 per cent during the coming winter months, leaving residents without electricity for 18–32 hours per week. Such shortages, arising in part from restrictions on the availability of spare parts for repair, are an aspect of the unlawful collective punishment associated with the blockade. The shortage of cooking fuel and electricity has also made it almost impossible for bakeries, factories, and greenhouses to operate normally, worsening conditions of poverty and unemployment.[61]

32. There are uncontested reports that an underground fence, extending for 10–11 kilometres, as much as 18 metres below the surface, is being built on Egyptian territory close to the Gaza Strip border. The stated purpose of this construction is to protect Egyptian national security and guard against infiltrations of perpetrators of terrorist activities to be carried out inside Egypt. On the other hand, there may be some genuine Israeli concern regarding weapons smuggling to Gaza through the tunnels that also serve as a humanitarian lifeline to Gaza, due to the severity and long duration of the unlawful Israeli blockade of goods needed for normal living. As is understandable for a society facing harsh externally imposed economic coercion, an alternative economy has emerged in the Gaza Strip, producing a vibrant black market. The destruction and disruption of the tunnels is discussed only insofar as it bears on Israel's legal responsibilities, which as an occupying power, has legal responsibility to protect the civilian population of the Gaza strip. Above all, the central reality is that the blockade is unlawful, a continuing and massive form of collective punishment. As such, it represents a fundamental violation of Israel's responsibility to protect the civilian population of the occupied Gaza Strip.

33. The United Nations Relief and Works Agency (UNRWA) has started to build mud houses for those Palestinians made homeless by the attacks a year ago; the first mud house was recently completed, and the announced plan is to build 120 mud houses at a cost of $10,000 each.[62] The houses take three months to build and are a direct response to the absence of blockaded building materials such as cement, glass, and steel. This gesture of relief is welcome, but it is pathetically small in relation to the thousands made homeless by Operation Cast Lead.

34. Many world leaders, including Tony Blair, the envoy of the Quartet, and President Barack Obama, as well as the General Assembly, have called upon Israel to lift the blockade, open the crossings, and end this regime of collective punishment afflicting the entire population of the Gaza Strip, but so far to no avail. Israeli defiance of these calls to end the blockade has been consistently ignored, creating a crisis of confidence in the sincerity and true intentions of the international community. Even the persistent rumours of an impending prisoner swap, in which Gilad Shalit would be released along with many hundred Palestinian prisoners, do not promise an end to the blockade.[63] Nor has the absence of Israeli casualties due to rocket attacks post Operation Cast Lead, or the low incidence of such attacks, produced any change. In the face of these tremendous challenges, it is Gazan

[60] "Gaza power cuts up to 32 hours per week", Maan News Agency, 13 December 2009.

[61] For more information see The Humanitarian Monitor, OCHA, November 2009, available at http://www.ochaopt.org.

[62] "UNRWA builds mud homes in Gaza", Ynet, 13 December 2009.

[63] "Israel debates prisoner swap", Al Jazeera, 21 December 2009.

civil society that has demonstrated the most consistent resolve against the blockade. Several convoys of activists bringing medical supplies and food have attempted to cross into Gaza from Egypt, and have encountered difficulties when seeking transit permission from Cairo. Such initiatives are symbolic expressions of commitment to wage a legitimacy war on behalf of the Palestinians so long as their basic rights are being suppressed and their collective well-being subject to extraordinary stress. These initiatives also serve to expose the limited capacity of and effort by the United Nations to fulfil its responsibilities to protect the civilian population of Gaza from this oppressive occupation that has lasted for more than 42 years.

VI. The plight of Palestinian refugees

35. An important and unwelcome change in the overall posture of the Palestine/Israel conflict is the decreasing attention, in relevant diplomatic and human rights discourse, devoted to the plight of Palestinian refugees, in particular regarding the extent to which their rights as refugees should be fulfilled. Since the Special Rapporteur's mandate is concerned only with the OPT, discussion will necessarily be limited. Yet the wider implications for the total Palestinian refugee population of over 4 million should not be ignored. The underlying question is whether the refugees living in Gaza and the West Bank enjoy the right of return under international law if they were forced out or fled in 1948. The fundamental text is General Assembly resolution 194 (III) adopted on 11 December 1948, and especially paragraph 11: "Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return ...".

36. By its nature a General Assembly resolution has no independent binding authority, and does not create legal obligations. Yet in this case it seemed to express a consensus widely shared at the time by governments as to the rights of the parties, and thus deserving of implementation. This language of paragraph 11 has been generally interpreted as conferring an unconditional right of repatriation, in accordance with customary international law, although implementation has been inconsistent due to the control exercised by sovereign States over who may enter their territory. More carefully considered, the second part of the paragraph looks towards implementation, instructing the Conciliation Commission (at the time representing the United Nations in trying to resolve the conflict) "to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees ...".

37 Israel has over the years used its diplomatic muscle to minimize Palestinian expectations with regard to exercising a right of return. However, up to and including the 1967 War the refugee issue remained salient. The canonical Security Council resolution 242 unanimously called in 1967 for "a just settlement of the refugee problem" as an essential element in its conception of peace, but the shift from the language of paragraph 11 of General Assembly resolution 194 (III) represents a partial retreat as it leaves open the question of what would constitute "a just settlement" and who would determine what is "just". It refers not to the rights of refugees but to "the refugee problem". Fast forward to 2009, and there is little discussion of the current plight of the refugees living for generations in miserable conditions in Gaza and the West Bank. The Special Rapporteur shares the assessment recently made by Karen AbuZayd, the Commissioner-General of UNRWA, that for these refugee issues to remain unresolved 60 years after the dispossession and displacement of several hundred thousand Palestinians is unacceptable.

In her words the acknowledgement of "the 60-year-old injustice" would be "a first step towards addressing the consequences of that injustice".[64] Ms. AbuZayd movingly expresses her concern in the form of an appeal: "As forced displacements continue across the West Bank, as Palestinians are evicted from their homes in East Jerusalem, I ask a simple question. Is it not time for those engaged in the peace process to muster the will and the courage to address the Palestine refugee question."[65]

VII. Boycotts, divestments and sanctions

38. Operation Cast Lead shocked the conscience of humanity, giving rise to feelings of solidarity around the world with the ordeal and struggle of the Palestinian people. These feelings were intensified by the awareness that neither the neighbouring States nor the United Nations, nor its most powerful Member States, were willing or able to protect the Palestinian people and uphold their rights. The spectacle of a people under siege, as has been the case now for over 30 months in the Gaza Strip, has deepened this sense that there exists some responsibility for people everywhere to take appropriate, non-violent action. Civil society's global Boycott, Divestment and Sanctions (BDS) campaign, aimed at bringing non-violent economic and social pressure to bear to end the Israeli occupation, is the outgrowth of these sentiments, and it has been expanding at a rapid rate during the last few years. This sense of an anti-occupation movement of worldwide scope has come to resemble in many respects the anti-apartheid movement that made important contributions to the transformation of the political climate in South Africa in the late 1980s.

39. The boycott dimension of BDS takes many forms. For example, the boycott in Europe of products produced by Israeli settlements; Britain has now allowed stores to put stickers on food and other products reading "Israeli settlement produce". Soccer games and other athletic events involving Israel have been cancelled or protests mounted. Similar efforts have been made with respect to academic and cultural interaction. Artists and performers have been asked to refuse invitations from Israel, or at least to contribute the proceeds of a performance to Palestinian relief. Stores and companies around the world have been boycotted based on their dealings for profit in the OPT. On the divestment front, contracts have been terminated or bids not made. In addition, a growing number of churches and universities are extending their efforts to invest in a spirit of social responsibility, and are excluding companies that are perceived to be profiting from the Israeli occupation. Individuals and NGOs have come out in support of BDS in increasing numbers. It is a central battleground in the legitimacy war being waged by and on behalf of Palestinians. It is also making use of persuasive and coercive non-violent means to secure the human rights of Palestinians living under oppressive and unlawful conditions of occupation that the actions of diplomacy or the authority of the organized international community seem unable to correct. BDS represents the mobilized efforts of global civil society to replace a regime of force with the rule of law in relation to the OPT.

VIII. Recommendations

40. **The following recommendations drawn from the body of the report are emphasized as matters of urgency:**

[64] "Confronting Dispossession", Karen AbuZayd, Maan News, 9 December 2009.
[65] Ibid.

(a) The Human Rights Council should call for the full implementation of the recommendations of the report of the United Nations Fact-finding Mission on the Gaza Conflict with respect to ensuring that accountability for war crimes associated with Operation Cast Lead takes place in accordance with due process for those accused;

(b) Members of the Human Rights Council should be urged to convey to their Governments a call for the implementation of the report in relation to the exercise of universal jurisdiction against anyone who is present on or enters their sovereign territory and for whom substantial evidence of war crimes exists;

(c) The Human Rights Council should commission or prepare a study of one-sided or asymmetric warfare in relation to claims to use of force and international humanitarian law, especially when the claimant State also has the status of being the occupying Power;

(d) The rights of Palestinian refugees to a just solution, especially in circumstances of prolonged occupation, should be reasserted and be an integral element in future peace negotiations;

(e) Consideration should be given to the Boycott, Divestment, and Sanctions campaign as a means of implementing human rights, including the right of self-determination, and guidelines should be provided for such a campaign.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk

Summary

The report addresses Israel's compliance with its obligations under international law, in relation to the situation in the Palestinian territories that it has occupied since 1967. Israel's persistent lack of cooperation with the fulfilment of the mandate of the Special Rapporteur, as well as other United Nations human rights mechanisms, is highlighted. The Special Rapporteur focuses attention on concerns regarding the expansion of Israeli settlements, in particular in East Jerusalem, the consequences of the Israeli blockade of the Gaza Strip and the treatment of Palestinian children detained by Israeli authorities.

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I. Introduction

1. Unfortunately, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 needs to again call to the attention of the membership of the Human Rights Council the continuing refusal of the Government of Israel to allow the Rapporteur to visit the occupied Palestinian territories. Repeated attempts have been made to engage the Government of Israel in discussion with the hope of reversing the policies that led to the detention and expulsion of the Special Rapporteur from Ben-Gurion Airport on 14 December 2008, but so far without any response. Efforts will be made to seek the necessary cooperation of the Government of Israel in relation to the obligation of the Special Rapporteur to discharge official undertakings of the United Nations. Such cooperation should be understood as a fundamental legal obligation incident to membership in the Organization.

2. As repeated efforts to call this situation to the attention of the Human Rights Council and the General Assembly have to date produced no positive results, the Special Rapporteur appeals on the occasion of this report for a more robust attempt to secure the cooperation of the Government of Israel. It should be recalled that Article 104 of the Charter of the United Nations declares that the Organization "shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". Article 105, paragraph 2, specifies that those who represent the United Nations shall enjoy in the territory of State Members: "such privileges and immunities as are necessary for the independent exercise of their function in connexion with the Organization". These provisions were elaborated in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, and then implemented via the Agreement between the Swiss Federal Council and the Secretary General of the United Nations, dated 19 April 1946. Article VI, Section 22, thereof, entitled "Experts on Missions for the United Nations", is particularly relevant, setting forth the rather extensive duties of Members to cooperate with such representatives as special rapporteurs and to avoid interfering with their independence.

3. It should be pointed out that the Government of Israel has also not cooperated with other recent important initiatives of the Human Rights Council relating to the occupied Palestinian territories, including the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) and the report of the independent international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance (A/HRC/15/21). This pattern of non-cooperation with official undertakings of the Human Rights Council should produce a concerted attempt by this organ and the Office of the Secretary-General to do what can be done to obtain the future cooperation of the Government of Israel.

4. Closely related to issues associated with non-cooperation are several outstanding matters bearing on non-implementation. The report of the International Fact-Finding Mission on the Gaza Conflict on the basis of its findings of severe and systematic violations of international humanitarian law recommended that several steps be taken to assess the accountability of the perpetrators of criminal acts committed during the Gaza conflict (2008/09). There is currently no sign of any attempt to mobilize effective support for the implementation of these recommendations. Moreover, evidence of an Israeli willingness to impose credible levels of accountability for criminal acts of its soldiers and leaders in accordance with international standards remains absent. These conclusions were reaffirmed by the report of the Committee of independent experts that assessed investigations by Israel and the Palestinian sides into the Gaza conflict (A/HRC/15/50). In addition, the same

conclusions seem to pertain to the report of the independent international fact-finding mission on the incident of the humanitarian flotilla of 31 May 2010.[1] Thus, a strong impression is being formed within the international community that a lack of political will exists with which to implement recommendations based on authoritative findings that Israel has been guilty of flagrant violations of international humanitarian law and international criminal law. This impression of unwillingness to push forward with implementation fosters widespread perceptions of impunity with respect to the conduct of Israel, and in the case of flotilla incident limits and delays the opportunity of flotilla passengers to pursue remedies for harms unlawfully inflicted. This dynamic of evasion and delay weakens overall respect for international law, as well as the credibility of the Human Rights Council in relation to its own initiatives. More substantively, it deprives the Palestinian people living under occupation of their rights to receive the benefits of protection conferred in circumstances of occupation by international law and, specifically, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the First Additional Protocol to the Geneva Conventions of 1949.

5. Given the long duration, the severity and continuing nature of the violations of many fundamental legal obligations of Israel as the occupying Power, these failures of implementation of international humanitarian law are experienced on the ground through various acute forms of abuse and suffering endured on a frequent, often on a daily, basis by the civilian population of the occupied Palestinian territories. Many political leaders have confirmed this assessment in recent months, and yet the organized international community remains silent. For instance, the Foreign Minister of Germany, Guido Westerville, after a recent visit to Gaza declared that the persistence of the blockade was "not acceptable".[2]

6. Furthermore, the report of the Independent International Fact-Finding Mission on the incident of the humanitarian flotilla found that the violence used by the Israel Defence Forces when the flotilla was attacked was "not only disproportionate but demonstrated levels of totally unnecessary and incredible violence" as well involving "an unacceptable level of brutality".[3] The report concludes that the Israeli attack resulted in "grave violations" of international human right and humanitarian law, as specified in article 147 of the Fourth Geneva Convention.[4] It also solicits cooperation from the Government of Israel to identify the perpetrators of this violence, whose identity was hidden by masks worn during the attack on the flotilla. Such information was being sought "with a view to prosecuting the culpable".[5] As a result of these findings, the Government of Israel is obliged to end the blockade in all its aspects with a sense of urgency, to cooperate in the identification of perpetrators of the violence and of the leaders responsible for the underlying policies so that effective procedures of accountability can be employed and finally to compensate individuals and surviving family members in appropriate amounts for the unlawful harm suffered. Moreover, civil society actors that engage in such missions for genuine humanitarian purposes should be allowed to carry out their work without interference.

7. The Rapporteur believes that there are important issues of language that arise from the cumulative effects of Israeli violations of international humanitarian law, human rights law and criminal law. It becomes misleading to treat these violations as distinct behavioural

[1] At the time of the submission of this report, there is still outstanding the report and recommendations of the Panel of Inquiry into the flotilla incident established by the Secretary-General and the Turkel Commission formed by the Government of Israel.

[2] Ma'an News Agency, "German minister calls on Israel to lift Gaza blockade," 8 November 2010.

[3] A/HRC/15/21, para. 264.

[4] Ibid., para. 265.

[5] Ibid., para. 267.

instances disconnected from broader consequences that are either designed by intention or the natural outcome of accumulating circumstances (so-called "facts on the ground"). These concerns about language are accentuated because Israel is the stronger party in diplomatic settings and generally enjoys the unconditional support of the United States of America. Indeed, unlawful Israeli behaviour that starts out as "facts" have over time been transformed into "conditions", or in the words of the American Secretary of State, Hilary Clinton, "subsequent developments" that are treated as essentially irreversible. Such transformation is true of several aspects of the occupation, including at a minimum the settlement blocs and accompanying infrastructure of roads and security zones, as well as the separation wall. To call appropriate attention to the effects and implications of these unambiguously unlawful patterns, and their somewhat perverse ex post facto attempted "legalization" and "normalization" requires stronger expository language to better understand the unbridled assault upon Palestinian rights and prospects for meaningful self-determination. It is against this background that this report has decided to employ such terms as "annexation", "ethnic cleansing", "apartheid", "colonialist" and "criminality" as more adequately expressing the actual nature of the situation in the occupied Palestinian territories. Such labels can be perceived as emotive, and admittedly require a finding by a court of law to be legally conclusive. However, such language, in the Special Rapporteur's view, more accurately describes the realities of the occupation as of the end of 2010 than the more neutral-seeming description of factual developments that disguises the structures of this occupation which has undermined the rights under international law of the Palestinian people for 43 years.

8. Against this background, the Rapporteur deems it appropriate at this time to renew the call of the former Special Rapporteur on the occupied Palestinian territories, John Dugard, for a referral of the situation to the International Court of Justice for an authoritative decision as to whether, "elements of the [Israeli] occupation constitute forms of colonialism and of apartheid".[6] It should be emphasized that the crime of apartheid is no longer attached to the racist policies of the South African regime that generated the International Convention on the Suppression and Punishment of the Crime of Apartheid. It is now a crime associated with an "institutionalized regime of systematic oppression … by one racial group over any other racial group … committed with the intention of maintaining that regime".[7] The crime of apartheid is also treated as "a grave breach" of article 85, paragraph 4 (c), of the First Geneva Protocol, an international treaty with 169 parties, and widely regarded as universally binding because it is declaratory of customary international law. As will be illustrated in the present report, the dual discriminatory structure of settler administration, security, mobility, and law as compared to the Palestinian subjugation seems to qualify the long Israeli occupation of the West Bank as an instance of apartheid. The referral to the International Court of Justice should also seek clarification as to whether the pattern of continuing unlawful settlement, manipulation of residence credentials, expulsions in East Jerusalem qualify as "ethnic cleansing" and, if so, how this behaviour should be viewed from the perspective of the international law of belligerent occupation.

9. It is also important to underscore what should be self-evident, namely, that Israel has State responsibility for all violations of international humanitarian law in the territories under occupation, above all, for the settlements. State responsibility cannot be evaded by delegation or failure to deal with violations of Palestinian rights in the occupied territories arising from the behaviour of municipal or private sector actors, as in connection especially with claims of unlawful settlement building and ethnic cleansing allegations in East Jerusalem.

[6] A/HRC/4/17, summary, tenth paragraph.

[7] See Rome Statute of the International Criminal Court, article 7, para. 2 (h).

II. Reviving the direct peace talks

10. At present, there has been a pause in the peace negotiations between Israel and the Palestinian Authority and feverish diplomatic efforts are being made to continue discussions between the parties. These efforts are relevant to the Rapporteur, as the generally accepted route to the fulfilment of the right of self-determination for the Palestinian people living under occupation has been to achieve an Israeli withdrawal in accordance with Security Council resolution 242 (1967) or on the basis of an agreement between the parties. Whether such negotiations can be effective and legitimate is itself a much contested question that will not be considered here, nor will the presumed outcome of establishing an independent Palestinian state in the occupied territories be assessed from the perspective as to whether the accumulation of facts on the ground has made such an outcome unattainable as a practical matter. In a recent report to the General Assembly (A/65/331), the Special Rapporteur put forth the argument that the developments in the West Bank and East Jerusalem have transformed a de jure framework of occupation into a de facto condition of annexation. The Rapporteur remains convinced that Israeli settlements, including related infrastructure roads, buffer zones and the separation wall, continue to be the single most important obstacle to resuming the peace talks, assuming that such talks can make constructive contributions to the realization of Palestinian rights, which is far from self-evident. The Palestinian Authority has repeatedly said that it would not resume negotiations without an unqualified freeze on settlement expansion, including East Jerusalem. President Mahmoud Abbas stated: "We want a complete cessation of settlement construction. We don't want to be deceived with another moratorium or a half moratorium or a quarter moratorium. If they want us to talk to the direct talks, the settlements must stop completely".[8] The chief Palestinian negotiator, Saeb Erekat, made the same avowal: "There are no compromises over settlement construction … The Israeli government must choose between peace and settlements, because it can't combine the two together".[9]

11. Further, the Rapporteur believes that there are grounds for concern with respect to maintaining the rights of the Palestinian people in relation to the inducements offered to Israel to extend the partial moratorium on settlement expansion. Since this question is one of principle, it remains relevant despite the announcement of the Government of the United States that it will no longer press the Government of Israel to freeze settlement expansion. It is important to bear in mind that the unlawfulness of the settlements has been confirmed over and over again by reference to the textual language of article 49(6), of the Fourth Geneva Convention, by decisions and resolutions of the General Assembly and the Security Council and by numerous statements on the part of respected world leaders. Therefore, providing Israel with substantive benefits for temporarily and partially halting an unlawful activity that infringes on Palestinian prospects for self-determination raises disturbing issues of principle and precedent. The former American Ambassador to Israel, Daniel Kurtzer, has referred to such an effort by the United States to renew the negotiations as designed "to reward Israel for its bad behavior" in the past and present.[10] It is also widely reported that, if Israel accepts the offer, it will never again be asked to impose a moratorium on settlement expansion in either the West Bank or East Jerusalem. What is most relevant

[8] Khaled Abu Toameh, "Abbas: Israel seeking to 'close door to right of return'", *The Jerusalem* Post, 8 November 2011.

[9] Ibid.

[10] "With settlement deal, U.S. will be rewarding Israel's bad behavior", *Washington Post*, 21 November 2010. Robert Fisk has phrased an objection in even harsher language: "The current American bribe to Israel, and the latter's reluctance to accept it, in return for even a temporary end to the theft of somebody else's property would be [normally] regarded as preposterous". "An American bribe that stinks of appeasement", *The Independent*, 20 November 2010.

here is the disregard of the legal rights of the Palestinians living under occupation. If a pattern of repeated violation of rights, as here, is to be treated as a new platform of legality, then a terrible precedent is being established for these parties and generally. There can be no positive significance to a negotiating process that incorporates an acceptance and legitimization of Israeli settlements and their infrastructure of roads, which constitute a fundamentally unlawful dimension of the prolonged Israeli occupation of the West Bank and East Jerusalem. In this respect, only a permanent commitment to freeze settlement growth would signal the minimal good faith required to support the belief that peace talks are a viable path at this stage to reach the essential goals of Palestinian self-determination and a sustainable peace with security for both peoples.

12. On the matter of Palestinian self-determination, the most basic right whose exercise is precluded by the continuation of the occupation, Palestinian Authority has stated that if the talks fail it will establish a Palestinian state on its own even in the face of the occupation. President Abbas expressed this view as follows: "If we fail in [the negotiations], we want to go to the United Nations Security Council to ask the world to recognize the Palestinian state".[11] This is consistent with the frequently discussed plans for Palestinian statehood articulated by the Palestinian Authority Prime Minister, Salam Fayyad. Mr. Fayyad has announced plans for constructing in the West Bank the institutional components of Palestinian statehood, and his efforts have been viewed as credible and impressive in many independent quarters.[12] In Mr. Fayyad's recent words, "I firmly believe [Palestinian statehood] can happen. We need to build up a sense of inevitability about this. I think it will happen next year".[13] A report issued by the World Bank in October 2010 also encouraged these expectations, suggesting that if the Palestinian Authority maintains "its performance in institution-building and delivery of public services …, it is well-positioned for the establishment of a Palestinian state at any point in the near future".[14] Nevertheless, it needs to be understood that such a Palestinian state could be viewed as falling far short of realizing the minimum content of an acceptable enactment of self-determination, lacking in resolution of outstanding core issues such as refugees, Jerusalem, borders, water and settlements. In a notable recent development, with many legal and political implications, Brazil and Argentina formally recognized Palestine as a state within its 1967 borders, which in effect, seems to be the territorial vision of Palestinian self-determination contained in Security Council resolution 242 (1967)(subject to minor border adjustments, but not sufficient to allow annexation of the settlement blocs in "exchange" for largely arid land abutting Gaza, or to transfer Arab villages currently behind the green line) and encompassing the crucial non-territorial issue of refugees.

13. Another matter of concern for the Rapporteur during the reporting period is the passage of an Israeli law that would subject any agreement reached in intergovernmental negotiations to be made subject to a national referendum unless approved by 80 or more members of the Knesset.[15] If an agreement were to be reached that embodied the rights and duties of the respective governmental actors, adding internal requirements of approval by either a parliamentary super-majority or a national referendum would only unnecessarily burden that process. Saeb Erekat has gone a step further and stated that the new legislation

[11] *"Abbas: Israel seeking to 'close door to right of return'"*.

[12] See e.g. Robert Serry, "Is the two-state solution fading?", 27 April 2010, speech at Truman Institute, Hebrew University.

[13] Reuters, "Palestinians demand immediate statehood to counter Israeli "unilateralism'" 9 November 2010.

[14] World Bank, "A Palestinian State in Two Years: Institutions for Economic Revival" (September 2009), para. 3.

[15] See Chaim Levinson, "Knesset mandates referendum to withdraw from annexed land", *Haaretz*, 23 November 2010.

"is making a mockery of international law".[16] States do customarily require some form of legislative endorsement of international treaty obligations. In this instance, the public validation by Israel of any agreement reached might add to its political legitimacy and the likelihood of future respect and, if it failed to gain sufficient Israeli support, could signal the unsustainability of the agreement. Thus, this new constraint on the finality of a negotiated settlement can at best be viewed as ambivalent, and not itself unlawful, although it might be imprudent, if the objective is to end the conflict through a negotiated agreement, a position that is increasingly confronted by doubts.

III. Continuing expansion of settlements in the occupied Palestinian territories

14. Given the centrality that has been accorded by both sides to the settlement phenomenon, the Rapporteur believes that more detailed attention to the facts and legal implications of recent settlement expansion seems appropriate. The Israeli 10-month self-delimited "moratorium" on settlement expansion in the West Bank expired on 26 September 2010, leading to the breakdown of the briefly resumed peace process and giving rise to lengthy negotiations aimed at re-establishing the moratorium that have now been abandoned. However, several points must be noted. First, the 10-month moratorium did not stop settlement construction but only slowed the pace of expansion in some parts of the West Bank;[17] it did not purport to freeze settlement construction in occupied East Jerusalem, contending, contrary to the international legal and political consensus, that the whole of Jerusalem, as expanded by Israeli law since 1967, is unoccupied, and that the whole city is the capital of Israel, leaving no part of the city to be available as the capital of a future Palestinian state. In the West Bank, settler construction of public facilities such as schools and community centres as well as thousands of housing units already under construction continued unabated during the moratorium. Second, according to the movement Peace Now, a surge of settlement building took place in the first six weeks following the end of the moratorium on 26 September.[18] Further, the settlers managed to start to build 1,629 housing units, and to dig the foundations for 1,116 of them. Work started in 63 settlements, 46 of them east of the separation wall and 17 on the western side of it. In all of 2009, according to the Israeli Central Bureau of Statistics data, work on 1,888 new housing units have started. Had the construction continued at the same speed without the moratorium, there would have been 1,574 units during the 10-month period. In the six weeks following the end of the freeze, the settlers managed to start a similar number of units attesting to the reality that the settlement freeze was no more than a 10-month delay in the construction.[19] In fact, the rate of settlement construction quadrupled compared to what it had been during the two years before the moratorium.[20] Third, and perhaps most importantly, the underlying premises of the moratorium were never drawn into question, namely, that it was a matter of Israeli discretion to initiate or terminate a settlement freeze. Official diplomacy never considered the relevance of the continuing violation arising from the presence of the settlements or the questionable status of the 500,000 Israeli settlers who

[16] "Erekat on referendum: Israel making a mockery of int'l law", *The Jerusalem Post*, 23 November 2010.

[17] See Peace Now, "Eight Months into the Settlement Freeze", 2 August 2010.

[18] See Peace Now, "In 6 weeks the settlers almost made up for the 10 months Settlement Free," 13 November 2010.

[19] Ibid.

[20] See International Middle East Media Center, "Rate Of Israeli Settlement Construction Quadrupled In Last Month", 21 October 2010.

now reside in the West Bank and East Jerusalem and benefit from a preferential legal and administrative structure, which contributes to the impression of apartheid (as a result of its discriminatory, coercive and ethnically specified characteristics). In this respect, the magnitude of the settlement phenomenon, combined with its persistence and character, also warrant concern that the occupation is a form of colonialist annexation that has been established with a clear intention of permanence.

A. The de facto annexation of East Jerusalem

15. The Israeli insistence on excluding East Jerusalem from the partial moratorium and its overall attitude toward its status is of further concern to the Rapporteur. Prime Minister Binyamin Netanyahu, along with other Israeli leaders, has repeatedly confirmed continuing rejection by Israel of United Nations resolutions and other relevant aspects of international law recognizing that the occupied Palestinian territory includes East Jerusalem. Mr. Netanyahu dramatized this point when he recently stated that "Jerusalem is not a settlement – Jerusalem is the capital of the State of Israel. Israel has never restricted itself regarding any kind of building in the city, which is home to some 800,000 people – including during the 10-month construction moratorium in the West Bank. Israel sees no connection between the peace process and the planning and building policy in Jerusalem, something that hasn't changed for the past 40 years".[21] Although such an assertion amounts to defiance of international law, it is a significant expression of Israeli diplomatic posture, casting further doubt on what could be expected to emerge from a negotiating process that attempts to foreclose a fundamental Palestinian right to have the part of historic Jerusalem occupied by Israeli in 1967 as its national capital. Again, it is disturbing to note the absence of formal objection by the international community and interested Governments to such an Israeli posture taken in advance of negotiations.

16. The Rapporteur finds that by December 2010, the pace of settlement expansion in East Jerusalem had in fact escalated. On 4 November 2010, the Government of Israel issued tenders for 238 new housing units in the East Jerusalem settlements of Pisgat Zeev and Ramot[22] and the following day announced plans for construction of 1,352 new housing units elsewhere in East Jerusalem. Continued construction in addition to settlers' forcibly taking over Palestinian homes in East Jerusalem has resulted in the expulsion of Palestinian residents from their homes. Palestinian families, some of whom have lived in their homes for generations, have been expelled by Israeli police and settlers. In July 2010, a large Palestinian family that had lived in their home in the Old City for more than 70 years was expelled by police-backed settlers who then took over the house.[23] In November 2010, settler organizations took control of two houses in Palestinian neighbourhoods of Jabal al-Mukkaber and al-Tur in East Jerusalem resulting in forcible eviction of several Palestinian families from their homes.[24] The Sheikh Jarrah neighbourhood has also been the subject of persistent attempts by Israeli settler groups to take over land and property in order to establish new settlements in the area. As a result, over 60 Palestinians have lost their homes and another 500 remain at risk of forced eviction, dispossession and displacement in the

[21] Attila Somfalvi, "PM responds to Obama: Jerusalem not a settlement", *Yediot Aharanot*, 10 November 2010.

[22] Amnesty International UK, "East Jerusalem: Israel's 238 housing units plan threatens Palestinian human rights", 15 October 2010.

[23] Harriet Sherwood, "Israeli settlers evict Palestinian family from their home of 70 years", *The Guardian*, 29 July 2010.

[24] B'Tselem, "New settler enclaves in East Jerusalem", 2 December 2010.

near future.[25] In Silwan neighbourhood of East Jerusalem, Israeli families have forcibly taken over Palestinian homes, turning them into guarded settlement compounds flying Israeli flags.[26] Many of the settler organizations are backed by private donors from abroad,[27] raising the issue of international complicity, as well as Israeli State responsibility, with these continuing violations of international law. Moreover, The Government of Israel and the Jerusalem Municipality support the settlers' actions in Palestinian neighbourhoods in East Jerusalem and the Old City by allocating private security guards, paid for by taxes, to protect the compounds; sending security forces to accompany takeover of Palestinian houses; funding and promoting building and development projects in the compounds; and transferring Government assets to the control of the organizations.[28] This support further illustrates the institutional and systematic discrimination against the Palestinian residents of Jerusalem by Israel, as well as ongoing Israeli efforts to create what are euphemistically called "facts on the ground" for the annexation of East Jerusalem.

B. Expulsions from East Jerusalem as a means to annexation

17. The Special Rapporteur believes that the expulsions from East Jerusalem go beyond those linked to house seizures or demolitions – and beyond the immediate dire consequences to individuals and families facing the loss of their homes – and form part of the broader picture of annexation, not as an Israeli legal claim but enacted increasingly as evidence of an Israeli political project. Israel carries out new punishments against Palestinians in Jerusalem, including threats of the revocation of Jerusalem residency rights of Palestinians living legally in Jerusalem.

18. In one of the most egregious examples, in July 2010, four Palestinian citizens of Israel, who were elected members of the Palestinian Legislative Council, including one former Council minister, were given notice that their right to Jerusalem residency was being revoked, after the four politicians refused to renounce their ties to Hamas.[29] Efforts to expel these parliamentarians were resumed in the summer of 2010 and finally, on 8 December 2010, one of these individuals was deported from Jerusalem.[30] The expulsion of the Council's members from Jerusalem is a violation of the article 49(6) of the Fourth Geneva Convention, which explicitly prohibits the forcible transfer of protected persons. It also sets a particularly dangerous precedent for the removal of more than 270,000 Palestinians living in East Jerusalem.[31] As the Special Rapporteur has noted before, it is particularly worrying that Israel appears ready to forcibly transfer these individuals based on their supposed lack of allegiance to the state of Israel.[32] Israel, as an occupying Power, is prohibited from transferring civilian persons from East Jerusalem and from forcing Palestinians to swear allegiance or otherwise affirm their loyalty to the State of Israel. The revocation of residency permits, home demolitions and evictions, settlement construction, the separation of East Jerusalem from the rest of the West Bank and its annexation to Israel,

[25] Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA-OPT), "Fact sheet: The Case of Sheikh Jarrah", October 2010.

[26] See e.g. Wadi Hilweh Information Center Silwan, "Settlers took over a house in Al-Farouq neighborhood in Silwan", 23 November 2010.

[27] See "New settler enclaves in East Jerusalem".

[28] Ibid.

[29] See B'Tselem, "In dangerous precedent, Israel revokes residency of four Palestinians affiliated with Hamas from East Jerusalem and acts to forcibly transfer them", 18 July 2010.

[30] Associated Press, "Israel expels Hamas MP jailed over Jerusalem status", 9 December 2010.

[31] "In dangerous precedent, Israel revokes residency".

[32] Statement of the Special Rapporteur, "Israel must avoid further violations of international law in East Jerusalem," 29 June 2010.

and other Israeli measures to push Palestinian residents out of the city will cumulatively make the creation of a viable Palestinian state, with its capital as East Jerusalem, impossible.[33]

19. The evidence mounts that from a longer vantage point, the overall pattern combining forced expulsions of Palestinians outwards and of Government-supported voluntary transfers of Israeli settlers inwards reflects a systematic policy of Israel to set the stage for an overall dispossession of Palestinians and the establishment of permanent control over territories occupied since 1967. According to a United Nations report, forced population transfer, or ethnic cleansing, is defined as the "systematic, coercive and deliberate … movement of population into or out of an area … with the effect or purpose of altering the demographic composition of a territory … particularly when that ideology or policy asserts the dominance of a certain group over another".[34] There is no question that, with its policy of Palestinian expulsion and dispossession in Jerusalem, Israel continues to be responsible for a gradual, incremental, yet cumulatively devastating policy designed to achieve the ethnic cleansing of Palestinians.

IV. West Bank roads and international complicity in perpetuating the occupation

20. The Rapporteur strongly believes that the wider infrastructure of occupation and in particular the dual system of roads represents a growing violation by Israel, the occupying Power, of the International Convention on the Suppression and Punishment of the Crime of Apartheid and, more pertinently, of apartheid as an instance of a crime against humanity as specified in the statute governing the operations of the International Criminal Court. The dual system of roads, as correlated with legal regimes, creates two domains in the West Bank: one for privileged Israeli settlers and the other for subjugated Palestinians living under an occupation. This is particularly visible in the Government and international funding of a network of alternative roads designed to facilitate Palestinian travel, while institutionalizing Israeli military control over the existing main roads, which are then accessible only to Israeli settlers. Many of these roads are also being constructed or upgraded in Area C – the approximately 62 per cent of the West Bank, which according to the 1995 Oslo agreement remains under Israeli administrative and military control, and where the material conditions of the Palestinians living in Area C compares extremely unfavorably with conditions in areas A and B, and even with the wretched conditions under blockade in Gaza. In those cases, the roads remain under control of the occupying Power and thus largely inaccessible to Palestinians (except those very few who obtain a permit), while the international aid and money used to pay for the roads is money – diverted from funding streams ostensibly aimed at improving the lives of Palestinians living under occupation – instead benefits the occupying Power.

21. The Office for the Coordination of Humanitarian Affairs has reported that Israeli authorities continue to implement measures to restrict Palestinian movement and access and, at the same time, to facilitate the movement of Israeli settlers.[35] These measures include, namely, the expansion of the alternative ("fabric of life") road network;

[33] Carter Center, "Carter Center Calls for End to East Jerusalem Deportations, Respect for International Law" (22 July 2010). Available from www.cartercenter.org/news/pr/palestine-072210.html.

[34] The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers, Preliminary Report prepared by A. S. al-Khawasneh and R. Hatano (E/CN.4/Sub.2/1993/17), paras. 15 and 17.

[35] OCHA-OPT, "West Bank Movement and Access Update" (June 2010).

checkpoints (including partial checkpoints); and the unstaffed obstacles, including roadblocks, earthmounds, earth walls, road gates, road barriers and trenches.[36] These measures exact a price from Palestinians. For example, the "fabric of life" roads, which often require the seizure of private Palestinian lands, reconnect a few of the Palestinian communities that were disconnected due to the restricted access of Palestinians to a main road or due to the obstruction of a road by the separation wall. They, however, continue to reinforce the exclusion of Palestinians from the primary road network and undermine the territorial contiguity between different areas.[37]

22. Whether inadvertently or not, the role of the international donor community has led to a consolidation of Israeli control in the West Bank through the two-tiered system of roads. The United States Agency for International Development (USAID) has acknowledged that all its West Bank projects in Area C, including road construction, must be carried out through prior coordination with the Government of Israel.[38] In other words, USAID and American taxpayers are financing, and thereby further entrenching, the Israeli de facto annexation of the West Bank.[39] In one specific example, USAID announced in June 2010 that United States taxpayers had paid for road construction in the West Bank, boasting that "after completion of a road project in the southern West Bank, trade between Dahriyeh and the neighboring city of Beer Sheva (approximately 100,000 residents total) increased dramatically".[40] The West Bank area between Dahriyeh and Beer Sheva lies largely within Area C, thus aid funds designated for Palestinian residents is instead helping Israel finance the occupation. In another example in a nearby area, Nidal Hatim, a resident of Battir village near Bethlehem, described his inability to use Route 60, the main road from Bethlehem to his home village and the principal north-south traffic artery through the West Bank; "To go on the highway, we have to go through the checkpoint and turn around. I have a West Bank Palestinian ID, so I can't go through the checkpoint".[41] Instead, he takes a side road that is currently being built by the Palestinian Authority with USAID support. The side road, still under construction, weaves around and under the four-lane Route 60, which is now used mostly by Israeli settlers. Upon completion, this "fabric of life" road is expected to be the sole access point connecting the villages in the western section of Bethlehem governorate with the urban area of Bethlehem.[42] According to the Israeli human rights organization B'Tselem, "the dual road system in the West Bank will in the long run cement Israeli control. The tunnel that connects with Battir can be controlled by one army jeep".[43] The Palestinian Authority grants approval for some of the roads. However, that does not change the legal consequence of an outside-Government funding infrastructure that consolidates the process of de facto annexation already under way in the

[36] Ibid.

[37] Ibid.

[38] Letter from USAID dated 9 June 2010. Available from www.usaid.gov/wbg/misc/2010-WBG-11.pdf.

[39] See further Akiva Eldar, "US taxpayers are paying for Israel's West Bank occupation", *Haaretz*, 16 November 2010: "The roads are one of the initiatives of the United States Agency for International Development for building infrastructure in underdeveloped countries. Israel has already proudly left the club of developing countries and is not among the clients of USAID. Nevertheless, it appears the Smith family of Illinois is making the occupation a little less expensive for the Cohen family of Petah Tikva."

[40] USAID, "Fact Sheet: Water Resources and Infrastructure", (June 2010). Available from www.usaid.gov/wbg/misc/WRI%20-%20INP%20Fact%20Sheet.pdf.

[41] Nadia Hijab and Jesse Rosenfeld, "Palestinian Roads: Cementing Statehood, or Israeli Annexation?", *The Nation*, 30 April 2010.

[42] "West Bank Movement and Access Update".

[43] "Palestinian Roads". See also Badil, "The implications of losing access to route 60". Available from www.badil.org/en/documents/category/33-ongoing-displacement.

occupied Palestinian territory. Such funding could arguably result in the outside Government supplying the funds being deemed complicit in the illegal occupation.

V. Continuation of the Gaza blockade

23. It is important to underscore at the outset the conclusions drawn by the report of the independent international fact-finding mission on the incident of the humanitarian flotilla. The report reached a series of conclusions that are likely to become authoritative so far as the international assessment is concerned and have some wider policy implications with regard to the continuing blockade and occupation of Gaza. Perhaps, the most important of these implications, as of 31 May 2010, is "the firm conclusion that a humanitarian crisis existed" at the time in Gaza on the basis of a "preponderance of evidence from impeccable sources" that "is too overwhelming to come to a contrary opinion".[44] The report of the Mission further concludes that the existence of a humanitarian crisis is enough by itself to make the blockade "unlawful"[45] and, by extension, to regard the interception of the flotilla in international waters as a violation of international law.[46] It should be noted that the core unlawfulness of the blockade, quite independent of its overall humanitarian effects, is that it constitutes a clear, systematic and sustained instance of collective punishment imposed on an entire civilian population in direct violation of article 33 of the Fourth Geneva Convention. One dramatic further finding is "that a deplorable situation exists in Gaza", such that action by humanitarian organizations to break an unlawful and cruel blockade of this sort is fully justified.[47] This is especially so when, as here, "the international community is unwilling for whatever reason to take positive action".[48] Such an interpretation of the situation confronting the people of Gaza, and having persisted and worsened ever since Israeli sanctions were imposed in 2006 and dramatically escalated by the blockade established in 2007, is a powerful vindication of the humanitarian rationale for the flotilla offered by its organizers and denied by Israeli officials, who repeatedly refute that any humanitarian crisis exists in Gaza.

24. The Rapporteur has found that the situation of the civilian population in Gaza continues to be of critical concern. In 2010, Israeli uses of force resulted in 58 Palestinians killed in Gaza (including 22 civilians) plus 233 Palestinians injured (including 208 civilians).[49] Israel has declared a buffer zone that extends for 1,500 metres into Gaza from the border fence (comprising 17 per cent of Gaza), and Israeli military personnel fire at farmers and children who are pursuing normal peaceful activities close to the border.[50] Israeli naval forces also restrict Gaza fishing boats to three nautical miles from shore and fire warning shots should these boats go beyond this limit.[51] These characteristics of the ongoing Israeli relationship to Gaza are strongly confirmatory of the legal and factual assessment that Gaza remains an occupied territory.

[44] A/HRC/15/21, paras. 261 and 263.
[45] Ibid., para. 261.
[46] Ibid., para. 262.
[47] Ibid., para. 275.
[48] Ibid., para. 276.
[49] OCHA-OPT, "Protection of Civilians Weekly Report", 10–23 November 2010.
[50] See OCHA-OPT, *Between the Fence and a Hard Place*, (2010). See the next chapter for further on this topic.
[51] Ibid.

25. Despite the announced easing of the blockade after the flotilla incident of 31 May 2010, the dire humanitarian situation persists in Gaza.[52] Unfortunately, despite some selective easing of the blockade, its essential features persist with continuing hardship and hazard for the entire civilian population of Gaza.[53] The most recent statistics available, for instance, suggest that an average of 780 truckloads per week of humanitarian goods had entered Gaza in late November 2010 (as compared to 944 truckloads after the reported easing of the blockade on 20 June 2010) and this total was only 28 per cent of the weekly average before the blockade was imposed in June 2007.[54] According to a recent report by 25 non-governmental organizations, Gaza requires 670,000 truckloads of construction material to rebuild after the Israeli assault in January 2009. However, the Israeli authorities have only permitted an average of 715 truckloads per month since the "easing" of restrictions in June 2010.[55] At this rate it will take 78 years to rebuild Gaza, with a completion date in 2088. It is also notable that 53 per cent of the total import was for food items as compared to 20 per cent prior to the blockade, suggesting the decline of the non-food requirement for civilian normalcy. There has also been no increase in industrial fuel since the beginning of 2010. As a result, total available electricity is 40 per cent below the estimated daily demand of 280 MW.[56] Daily power cuts of up to 12 hours negatively affect such essential services as water supply, sewage treatment and removal, and health facilities.[57] Twenty per cent of Gazans have access to water only for one day out of five (and then for 6–8 hours), fifty per cent have access only one day in four; and a further thirty per cent every second day.[58] In September 2010, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that, owing to the continuing blockade, it cannot meet the enrolment needs of 40,000 Gazan school children.[59] These facts demonstrate the persistence and unlawful character of the blockade, being both a form of unlawful collective punishment amounting to a crime against humanity and a denial of material necessities to a civilian population living under occupation in violation of international humanitarian law.

VI. Abuse of children by Israeli authorities in the occupied territories

26. In 2010, there were several reports of the abuse of Palestinian children in the West Bank including East Jerusalem. It is recalled that children are treated as entitled to high

[52] See Prime Minister Netanyahu's Office's statement following the Israeli Security Cabinet meeting, 20 June 2010. Available from www.mfa.gov.il/MFA/Government/Communiques/2010/Prime_Minister_Office_statement_20-Jun-2010.htm.

[53] See generally Amnesty International UK et al, "Dashed Hopes: Continuation of the Gaza blockade", 30 November 2010. See also Gisha, "Unraveling the closure of Gaza: what has changed and what hasn't since the Cabinet decision and what are the implications?", July 2010. Available from www.gisha.org/UserFiles/File/publications/UnravelingTheClosureEng.pdf. For further update, see also Gisha, "Facts Behind MFA Report on 'Easing' of Gaza Closure". Available from www.gisha.org/index.php?intLanguage=2&intItemId=1890&intSiteSN=119.

[54] "Protection of Civilians".

[55] "Dashed Hopes: Continuation of the Gaza blockade".

[56] Ibid.

[57] Ibid. See also OCHA-OPT, "Gaza's electricity crisis: the impact of electricity cuts on humanitarian situation", May 2010.

[58] Ibid.

[59] UNRWA, "40,000 students turned away from UNRWA schools due to Gaza closure", 15 September 2010.

standards of protection in situations of arrest or when enduring occupation. Article 37(b) of the Convention on the Rights of the Child provides: "The arrest or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time". Article 76 of the Fourth Geneva Convention specifies that "Proper regard shall be paid to the special treatment due to minors". Further, Article 77, paragraph 1, of the First Additional Protocol to the Geneva Conventions reinforces this legal obligation as follows: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of age or for any other reason". The treatment by Israeli authorities of Palestinian children living under occupation does not at all comply with these provisions.

27. The Rapporteur utterly deplores and strongly condemns the fact that, since 2000, 1,335 Palestinian children (including 6 children in 2010) have been killed as a result of Israeli military and settler presence in the occupied Palestinian territories.[60] The arbitrary opening of fire by Israeli military against Palestinian children is particularly appalling. Since March 2010, Israeli soldiers along the border with Gaza have shot 17 children while they collected building gravel in the Gaza buffer zone to support their families. The children were shot whilst working between 50 and 800 metres from the border. Adults and children continue to do this dangerous work as Israeli authorities refuse to allow the entry of construction material into the Gaza Strip and there are few job opportunities available.[61]

28. The Rapporteur is further dismayed at the continual arrests and detention of Palestinian children by Israeli authorities. In 2010, Israeli authorities arrested children at checkpoints, off the street or, most commonly, from the family home. In the case of house arrests, large numbers of Israeli soldiers typically surrounded the family home in the middle of the night. Children were beaten or kicked at the time of arrest and put at the back of a military vehicle where they were subject to further physical and psychological abuse on the way to the interrogation and detention centre. Upon arrest, children and their families were seldom informed of the charges against them.[62] Children were often subject to abuse during interrogation.[63] At the end of October 2010, 256 children remained in Israeli detention, including 34 between the ages of 12–15 years.[64] As of August 2010, 42.5 per cent of Palestinian children in Israeli prisons were not held in facilities separate from adults.[65]

29. The continued reports of inhumane and degrading treatment, including sexual assault, of children in detention is further deplorable. In Silwan neighbourhood of East Jerusalem, at least 81 minors from Silwan have been arrested or detained for questioning (mostly in the middle of the night), the vast majority on suspicion of stone-throwing following confrontations between Palestinians and settlers in the neighbourhood, where

[60] See Defence for Children International/Palestine Section (DCI-Palestine), "Detention Bulletin: November 2010".

[61] Ibid.

[62] DCI-Palestine, "Submission to European Parliament Sub-Committee on Human Rights: Hearing on Situation in Prisons in Israel and Palestine", 25 October 2010. Available from www.dci-pal.org/english/doc/press/Prison_Conditions_EU_Parliament_25_Oct_2010.pdf.

[63] Ibid.

[64] DCI-Palestine, "Detention Bulletin: October 2010".

[65] "Submission to European Parliament Sub-Committee on Human Rights" (citing figures provided by the Israeli Prison Service). See also B'Tselem and Hamoked, "Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency", October 2010, p. 33.

there is tension resulting from settlers' taking control of houses and archeological sites.[66] Some of those arrested were under the age of 12. An increasing number of testimonies by children and their families pointed to gross violations of the rights of children during interrogation.[67] In the Ariel settlement in the occupied West Bank, children reported that they had been given electric shocks by Israeli interrogators in the settlement.[68] The children, one as young as 14 years of age, were each accused of throwing stones at a settler bypass road in the occupied West Bank. Following the electric shocks, the boys provided their interrogators with confessions, although they maintained their innocence.[69] In May 2010, a 14-year-old boy reported that his interrogator in the Israeli settlement block of Gush Etzion, in the occupied West Bank, attached car battery jump leads to the boy's genitals and threatened to electrify the cable. After further abuse, the boy confessed to throwing stones, although he maintains his innocence.[70]

30. Each year, approximately 700 Palestinian children (under 18) from the West Bank are prosecuted in Israeli military courts after being arrested, interrogated and detained by the Israeli army.[71] Observers have been shocked by the disparities between the special regard for children imposed by international legal norms and the actual practices of Israeli military and security forces. A recent visit by a British Parliamentary group is illustrative: Sandra Osborne, after visiting a military court used to prosecute children at Camp Ofer, near Ramallah, remarked during a Parliamentary debate on the subject, "it was a visit to a military court that shocked us to the core".[72] Among the shocking features were the following: the child defendants – 13 and 14 years of age – were brought into the courtroom with their legs shackled in changes and handcuffed, usually behind their backs; their jail sentences were lengthened by as much as three times unless they pleaded guilty; the judge had no interaction with the child defendants and was reported never even to look at them; proceedings and signed confessions were in Hebrew, a language most of these children did not know.[73] The scene being described resembles the administration of justice in the South Africa of apartheid that the Special Rapporteur visited on a formal mission on behalf of the International Commission of Jurists in 1968.

31. The apartheid dimension of this abusive atmosphere is also accentuated by the dual legal system that is operative in the occupied territories, with settler children – who are rarely apprehended in any event for their violent act – being prosecuted in Israeli civilian courts, while Palestinian children are brought before the military court system. Among the discriminatory features of the two systems is the imposition of higher degrees of accountability at lower ages, Palestinians being held responsible as adults at the age of 16, while the Israeli age is 18. The failure to uphold minimum standards in relation to the treatment of Palestinian children detained and imprisoned is an extreme violation of Israeli

[66] See generally B'Tselem, "Caution: Children Ahead - The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing", December 2010. See also, Wadi Hilweh Information Center, "Silwanian Children at the Frontline", 12 May 2010. Available from http://silwanic.net/?p=2966.

[67] See, "Child protection laws broken during Silwan interrogations", *The Jerusalem Post*, 25 November 2010.

[68] DCI-Palestine, "Detention Bulletin, September 2010".

[69] Ibid.

[70] Ibid. DCI-Palestine and PCATI have submitted complaints against the Israeli army and police interrogators and demanded an investigation into reports that an Israeli interrogator in the settlement of Gush Etzion attached car battery jump lead to the genitals of a 14-year-old boy in order to obtain a confession to stone throwing.

[71] "Submission to European Parliament Sub-Committee on Human Rights".

[72] *Haaretz*, "Otherwise Occupied/Labour is concerned", 13 December 2010.

[73] Ibid.

obligation to do all that is possible, subject to reasonable security measures, to respect the status of protected persons as mandated by the Fourth Geneva Convention. Such an assessment is rendered more disturbing when account is taken that almost all of these arrests of children are generated by their resistance to unlawful patterns of Israeli settlement building and expansion, along with related ethnic-cleansing measures being applied at an accelerating rate in East Jerusalem.

VII. Recommendations

32. **The Special Rapporteur recommends that:**

(a) Intensified efforts be made to induce Israel to cooperate with the proper discharge of this mandate, including allowing access to the occupied Palestinian territories by the Special Rapporteur;

(b) Efforts be undertaken to have the International Court of Justice assess allegations that the prolonged occupation of the West Bank and East Jerusalem possess elements of "colonialism", "apartheid" and "ethnic cleansing" inconsistent with international humanitarian law in circumstances of belligerent occupation and unlawful abridgements of the right of self-determination of the Palestinian people;

(c) Intensified efforts be made to attach legal consequences to the failure by Israel to end the blockade of the Gaza Strip in all of its dimensions;

(d) The Human Rights Council organize an inquiry, possibly jointly with the International Committee of the Red Cross or the Government of Switzerland, into the legal, moral and political consequences of prolonged occupation, including prolonged refugee status, with an eye toward convening Governments to negotiating further protocols to the Geneva Conventions of 1949;

(e) Steps be taken by the Human Rights Council to implement the recommendations of the report of the United Nations Fact-Finding Mission on the Gaza Conflict in the light of the failure of Israel to address allegations in a manner that accords with international standards as well as the conclusions of the Independent International Fact-Finding Mission into the incident of the humanitarian flotilla;

(f) Measures are taken to ensure that no Palestinian child is detained inside Israel or in the occupied Palestinian territories in contravention of article 76 of the Fourth Geneva Convention; children are not brought before military courts; cases of mistreatment and abuse of children are thoroughly and impartially investigated; and all evidence against children obtained through ill-treatment or torture be rejected by the courts.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*

Summary

In the present report, while noting the continuing non-cooperation of Israel, the Special Rapporteur underscores the widespread and abusive use of administrative detention procedures by Israel. He calls attention to hunger strikes by Palestinian prisoners in protest against administrative detention. Amid escalating violence by Israel in Gaza, the Special Rapporteur examines Israel's policy and practice of targeted killings.

* Late submission.

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I. Introduction

1. As with previous reports,[1] the Special Rapporteur needs to note the continuing non-cooperation of Israel with this mandate. As earlier, the Special Rapporteur, as well as others associated with the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights, has tried unsuccessfully to persuade the Government of Israel to adopt a more constructive posture that accords with its treaty obligations as a State Member of the United Nations. Since the beginning of the Special Rapporteur's tenure in May of 2008, despite repeated efforts, there has not been any alteration of the refusal of Israel to cooperate with this mandate. This has made it impossible for the Special Rapporteur, in his periodic reports, to take into fuller account the official explanations of Israel for the occupation policies and practices that it adopts, especially those that are found to be in violation of international humanitarian law or international human rights law. Despite this non-cooperation, the Special Rapporteur has made every effort to represent the positions of Israel fairly in relation to controversies associated with alleged Israeli violations of human rights relating to its occupation of Palestinian territory since 1967. The recent formal announcement by Israel of a complete refusal to cooperate with the Human Rights Council with respect to the totality of its activities underscores the difficulties confronting this mandate.

2. The Special Rapporteur has attempted in various ways to mitigate the impact of these limitations on his mandate arising from being excluded from the occupied Palestinian territory, and thus unable to meet with Palestinians living under occupation and communicate with Israeli officials administering the territory. Official missions of the mandate in these years have been designed to encourage those with knowledge and experience of the conditions in the occupied Palestinian territory to meet with the Special Rapporteur in neighbouring countries. The Special Rapporteur has relied on well-documented reports and data on various aspects of the occupation from generally reliable sources to identify trends bearing on human rights issues, such as expansion of settlements, settler violence, and house demolitions.

3. In this regard, a mission was undertaken between 10 and 20 February 2012. The principal purpose of the mission was to assess the degree to which conditions of life for refugees residing in neighbouring countries are relevant to the realization of the rights of those subject to the occupation regime within the territory occupied in 1967. This encompasses their efforts to realize the Palestinian right of self-determination. It should be noted that the mission did not investigate whether the refugees were being treated in accordance with international law by their host Governments, as such an inquiry would exceed the geographic scope of the mandate. The Special Rapporteur, especially in the light of the denial of access to the occupied Palestinian territory, believes that it is vitally important to assess to what degree refugee rights are relevant to any negotiated peace arrangement reached between Israel and the designated representatives of the Palestinian people and to any other internationally sanctioned effort to realize Palestinian rights. The intention of the mission was to also visit the Gaza Strip, with an offer of assistance from the Government of Egypt, and also to include visits to refugee camps in Jordan, the Syrian Arab Republic and Lebanon. However, regional conditions gave rise to a number of impediments: security conditions in northern Sinai made travel from Cairo to the Rafah Crossing insecure at the time of the mission, which required the Special Rapporteur to forego the planned visit to Gaza; the civil strife in the Syrian Arab Republic made it impractical to visit Palestinian refugee camps in that embattled country; and the

[1] See, for example, A/HRC/16/72 and A/HRC/13/53.

Government of Lebanon rejected the visit to assess the outlook on issues relevant to the mandate among Palestinian refugees in that country.

4. Despite these impediments, the February mission turned out to be very valuable due to the meetings that were held, and the opportunity to focus on some issues that arose during the period of the mission that had not been anticipated. The Special Rapporteur wishes to acknowledge with gratitude the friendly assistance and cooperation he received from the Palestinian Authority, the Governments of Egypt and Jordan, the Arab League, and representatives of Palestinian and Israeli non-governmental organizations (NGOs) that often went to considerable trouble to meet with him, sharing their information and understanding of facts and laws associated with Israeli occupation policies and practices that are relevant to protecting the human rights of the Palestinian people.

5. Several general conclusions emerged from meetings held in the course of the mission, especially those with members of the refugee communities, that have significant implications relating to the protection of the human rights of Palestinians living under occupation:

(a) Widespread disillusionment with the so-called "peace process" as a path to the realization of Palestinian self-determination;

(b) Equal disillusionment with the roles played by the Quartet and the United Nations, as well as with the road map to a permanent two-State solution to the Israeli-Palestinian conflict, with respect to the protection of the fundamental human rights of the Palestinian people;

(c) Rejection of armed resistance as a tool to achieve positive progress toward realization of rights, past armed resistance having led to an intensification of hardships and suffering associated with life under Israeli occupation;

(d) Widespread support for reliance on various forms of non-violence as the most effective way to move the Palestinian struggle forward and, in this regard, significant support for civil society movements leading such initiatives, including reliance on the BDS campaign (boycott, divestment, and sanctions), pursuit of judicial remedies under universal jurisdiction in relation to alleged international crimes of Israeli political and military leaders, and efforts of humanitarian NGOs to challenge the blockade of Gaza;

(e) Short-term pessimism about the achievement of Palestinian rights due to Israeli policies, especially expansion of settlements and the purported annexation of East Jerusalem;

(f) Long-term optimism arising from regional developments, especially the Arab Spring and its demonstration of the transformative potentialities of mobilized popular resistance;

(g) The importance of including representatives of Palestinian refugee communities in all future moves to reach a sustainable resolution of the core Israel/Palestine conflict;

(h) Opposition to the "land for peace" formula that over-territorializes the conflict;

(i) Growing appreciation that the Israeli military occupation that has continued for 45 years requires a special legal regime that takes account of long-term occupation and recognizes the humanitarian need to protect the civilian population by way of a rigorously adhered to rule of law and by the civil governance of institutions, policies and practices;

(j) Uncertainty pertaining to the future, if any, of the unresolved "statehood bid" by the Palestinian Authority formally presented to the General Assembly on 25 September

2011, followed by admission of Palestine as a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

6. It is clear that the views of the refugee communities, while diverging in emphasis from the opinions of Palestinians living in the occupied Palestinian territory, are influential in determining public opinion within the occupied territory, due to the widespread links of close family and community ties. The acceptance or rejection of alternate political approaches or outcomes by Palestinian refugees living outside of the occupied Palestinian territory is one of the key determinants as to whether Palestinians inside the occupied territory are likely to accept or reject a negotiated outcome.

II. Administrative detention and hunger strikes

7. It was the Special Rapporteur's intention to review the treatment of Palestinians from the occupied Palestinian territory being detained in Israeli prisons as a sequel to the analysis of this dimension of occupation contained in a prior report (A/66/358). What was somewhat unanticipated was the urgency emerging in the occupied Palestinian territory on this issue, requiring the Special Rapporteur to focus even greater attention on the Israeli practice of holding Palestinians under administrative detention during which evidence, if it exists at all, is held in secret, no charges are filed, and no trials held. The number of detainees in administrative detention rose from 286 in September 2011 to 309 in January 2012.[2] What is now called "administrative detention" was formerly known as "internment". Internment was a colonial procedure used to remove individuals from society even if no criminal charges were made. Administrative detention has been relied upon by a large number of countries, especially in recent years, to detain terrorist suspects who are alleged to pose a threat to domestic security, for whom there is either insufficient evidence or the evidence of supposed criminality cannot be made available without exposing sensitive sources of intelligence or illegal practices (such as torture). The practice is highly controversial, and the Working Group on Arbitrary Detention and respected human rights organizations such as Amnesty International allege that the practice is unacceptable from a human rights viewpoint, as it is so often abused to imprison innocent persons who are prisoners of conscience, opponents of policy or organizers of non-violent protests.[3] On the basis of careful examination of high-profile targets of such detention procedures, it seems to be mainly used by Israel against individuals not engaged in violent activities, and hence they are inappropriately held in administrative detention even taking into account the highly questionable rationale of a severe and imminent security threat the nature of which is not disclosed.

8. The current Israeli reliance on administrative detention has become particularly controversial for a series of reasons: frequent use and prolonged confinement of people who seemingly do not pose security threats; exceedingly harsh treatment amounting to cruel and unusual punishment accompanying arrest, interrogation and detention in violation of human rights and international humanitarian law obligations; and conflict with fundamental obligations of an occupying power to uphold the well-being and normalcy of the civilian population living under occupation, as prescribed by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).[4] There is

[2] B'Tselem, detention statistics, available from www.btselem.org/administrative_detention/statistics.

[3] See, for example, reports of the Working Group on Arbitrary Detention A/HRC/4/40 (para. 41) and A/HRC/10/21 (para. 54). See also Amnesty International's analysis at www.amnesty.org/en/ai_search?keywords=administrative%20detention&op=Search&form_id=search_theme_form&form_token=48e71c33a438fc234e25f6718caa142c.

[4] The basic profile of the use by Israel of administrative detention during the years 2011-2012 has been summarized by B'Tselem and is available from www.btselem.org/administrative_detention/statistics.

another issue generally overlooked in the application of administrative detention, given standard Israeli arrest procedures: the terrifying secondary impact of night-time arrests on family members, especially young children. Psychological studies of Palestinian children 12 and under show a disturbingly high correlation between witnessing a parent beaten or humiliated by Israeli soldiers and the loss by the child of a will to live.

9. In opposition to administrative detention, several Palestinians have highlighted their objections to the practice by engaging in dramatic open-ended hunger strikes that have received widespread international attention from human rights NGOs, public officials, and public opinion, particularly in the region. It should be comprehended that to embark upon a hunger strike of long duration is an extreme form of non-violent protest. It has been used on many past occasions, including famously by Mahatma Gandhi in his struggles against British imperialism and by a group of Irish Republican Army (IRA) political prisoners in the Maze Prison in Northern Ireland, in protest against conditions of their confinement. Ten of these IRA hunger strikers died in prison, with Bobby Sands being the first and most prominent, an event in 1981 that was later credited with leading the British Government to change its approach to the IRA, treating it as a political actor rather than an a terrorist organization. This led, a few years later, to the Good Friday Agreement that established an enduring, if fragile, accommodation in Northern Ireland. This background is mentioned to give a political context to the use of hunger strikes as part of the broader Palestinian shift in tactics from armed resistance to an array of non-violent tactics associated with popular resistance.

10. The first of these recent hunger-strike cases involves a Palestinian activist named Khader Adnan, a baker by profession living in a small village near Jenin and spokesperson for the political wing of the Palestinian Islamic Jihad, who had been previously held in administrative detention and was imprisoned by West Bank military authorities on eight separate occasions. Mr. Adnan was arrested at his home at 3 a.m. on 17 December 2011 by a large number of Israeli soldiers, brusquely handled, cuffed and blindfolded in the presence of his pregnant wife and two daughters under the age of 5, and taken off roughly in a military jeep to prison. From the outset of his detention Mr. Adnan commenced a hunger strike, accompanied by a refusal to speak with interrogators until he was released or charged, and similar steps taken to end the practice of administrative detention affecting the hundreds of Palestinians now being held by Israel. Mr. Adnan continued his strike for 66 days, well beyond the time his medical condition was considered to be critical, and despite this visitors reported that Mr. Adnan had both legs and one arm shackled to the bed even while under observation in an Israeli prison hospital. After an appeal to a military tribunal was rejected, on the basis of secret evidence, Mr. Adnan's lawyers appealed to the Israeli Supreme Court, but only minutes before court was scheduled to hear arguments, an agreement was reached in which Mr. Adnan ended his strike and Israel agreed to shorten his period of detention by calculating the duration of his term on the basis of the day of arrest rather than the day that his administrative detention was decreed. He was also given reassurance that his detention would not be extended at the date of expiry absent the surfacing of substantial new evidence against him. Since Mr. Adnan resumed eating, he has had various medical difficulties, reported by Physicians for Human Rights-Israel, including surgery to remove an intestinal blockage that was causing great pain. It is not clear whether Mr. Adnan will recover his full health.

11. A second recent case involves a young unmarried Palestinian woman named Hana Shalabi who also lives in a village near Jenin with her family. She had been among those released in the prisoner exchange on 18 October 2011 that traded 1,027 Palestinians for a single Israeli military soldier. In the months subsequent to this release she had been living quietly with her family, gradually recovering from her prison ordeal that had seemed to render her incapable of normal social interaction, much less militant political activity. Ms. Shalabi was rearrested on 17 February 2012 leading to an administrative detention

order of six months, which was subsequently reduced to four months. She was also the victim of an abusive arrest that in some respects resembled the experience of Mr. Adnan, but was even more violent, including to Ms. Shalabi's family members who were present: as many as 100 soldiers making the arrest at her place of residence, rough physical handling, blindfolding, and humiliating insults, including of a brother who tried to protect his sister. After being taken to the Salem Detention Center, Ms. Shalabi was reportedly subject to further beatings, humiliating treatment, and other clear and severe violations of her rights. She began her hunger strike at the outset of this new period of administrative detention. The parents of Ms. Shalabi were also on a hunger strike in solidarity with their daughter. After she had gone more than 40 days without food, Ms. Shalabi's physical condition was reported to be life threatening and deteriorating. Respecting her rights to refuse food, medical experts of the Israeli Prison Service formally declined to mandate force-feeding to end the strike. Her appeal was rejected by a military tribunal that refused to shorten her period of administrative detention, citing secret evidence that she constituted a security threat. The Palestinian Authority's Minister of Prisoners' Affairs reported that Israel had offered to release Ms. Shalabi if she could be transferred from her West Bank home to either Gaza or Jordan, in violation of the Fourth Geneva Convention's prohibition against forcible removal of a protected person from the territory under occupation. On 1 April, Ms. Shalabi was indeed transferred to Gaza on this basis, and barred from returning to her home and family in the West Bank for three years. Aspects of Ms. Shalabi's case have the appearance of a being vindictive response by Israel to her strong opposition to the practice of administrative detention.

12. Both of these highly publicized hunger strikes exhibit the extreme dedication to risk life itself to protest against the practice of administrative detention, especially the use of administrative detention absent any proof of a genuine security threat and the unduly harsh and terrifying Israeli arrest procedures. These developments have called attention to other complaints associated with administrative detention as used against a variety of Palestinians with no known connection to violent activism, as well as to 26 members of the Palestinian Legislative Council who have been detained without charges for several years for no apparent reason other than that they were elected in the 2006 elections. These hunger strikes have not only highlighted the violative use by Israel of administrative detention, but also have mobilized others currently held in detention to engage in open-ended hunger strikes and activated Palestinian solidarity initiatives among Palestinians living under occupation and others elsewhere. For instance, there is a large public mural in a public space in Belfast, Northern Ireland with images of Mr. Adnan and Ms. Shalabi and statistics about overall Palestinian imprisonment. So far, Israel has exhibited no disposition to abandon, or even review, its reliance on administrative detention as a regular aspect of occupation, or other contentious aspects of its prison policy, including its unlawful transfer of prisoners outside of the territory held under occupation. Israel did relent slightly at the last hour in relation to Mr. Adnan, reaching an agreement with his lawyer, seemingly to avoid having a hunger striker die and become a martyr for his people, which might possibly have sparked Palestinian resistance activity.

13. It is the judgment of the Special Rapporteur that the use of administrative detention, other than in rare circumstances where a demonstration of extraordinary and imminent security justification supported by evidence is made before a judge in conference with the lawyer of the defendant, who is given an opportunity to contest evidence and charges, constitutes a violation of the rights of a protected person under international law. Several provisions of the Fourth Geneva Convention make unlawful the arrest and detention procedures relied upon by Israel in its treatment of Ms. Shalabi. Article 3, paragraph 1, contains the general directive that all persons held by an occupying authority "shall in all circumstances be treated humanely", which is elaborated upon in article 27 in a manner relevant to Ms. Shalabi's treatment: "Protected persons are entitled, in all circumstances, to

respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." Further, articles 71 to 73 indicate that any kind of prison sentence must be pronounced by a "competent" court in which the person accused has access to the evidence against them and the opportunity to present evidence with the assistance of legal counsel. Articles 7, 9, and 10 of the International Covenant on Civil and Political Rights are clear in their prohibition of "inhuman and degrading treatment" and of "arbitrary detention" as well of the rights of anyone accused of criminal conduct to have an opportunity to mount a defense in a competent court. For instance, article 9, paragraph 2 declares: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of the charges against him."

14. It is time, in the judgment of the Special Rapporteur, that the Human Rights Council initiate specific action to condemn the reliance on administrative detention in relation to Palestinian civilians living under prolonged occupation. After 45 years, it is no longer credible to contend that the special security considerations that gave rise to the administrative detention law during the period of British Mandate control of Palestine still should allow military administrators to routinely order administrative detention, often for years. Under these circumstances it would be appropriate for the Council to act on its concerns regarding reliance by Israel upon administrative detention, and possibly its broader concerns regarding Israeli occupation policies, by commissioning a study of the practice of administrative detention in relation to the obligations of an occupying power towards an occupied people. The current series of ongoing hunger strikes, which may well represent only the beginning of a broader trend, are shining a bright light on the malpractice of administrative detention, and more generally on Israeli prison conditions, challenging the United Nations to take action. It should be noted that the practice of administrative detention is now also in use by a number of other Governments in the context of "anti-terrorism" policies; some of those Governments appear to be relying on the Israeli model, thus raising the violations of international law and human rights inherent in administrative detention to the level of an international, not only Israeli, concern.[5]

15. During the mission, the Special Rapporteur met with the Minister of Prisoners' Affairs of the Palestinian Authority, Issa Qaraqe, who provided further information on the current scope of administrative detention, but also discussed the full range of grievances associated with conditions confronting the approximately 4,300 Palestinians currently confined to Israeli prisons. Among the violations that the Minister mentioned were the following: denial of family visits for periods as long as five years; frequent imposition of solitary confinement, sometimes for as long as 10 years, with severe psychological and physical harmful effects; reliance on an "illegal combatant law" to permit continued detention after the term of imprisonment has expired, applied to nine prisoners from Gaza; detention of children for long periods without family access and held far from the place of residence, with reports of torture and coerced confessions; and initial interrogations frequently held at Israeli settlements beyond the reach of the International Committee of the Red Cross, family members and lawyers. The large number of Palestinians languishing in Israeli jails is itself a violation of the Fourth Geneva Convention, article 76, which requires that detention take place within the territory under occupation, and prohibits their transfer to prisons in the territory of the occupying power. It is a tragic display of double standards that so much international attention, even solemn international appeals, were dedicated to a single Israel soldier held in captivity for several years, while no significant effort is made to

[5] For video on administrative detention and hunger strikes, see http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=8123

secure the release of or ensure that international prison standards are being met with regard to thousands of Palestinian prisoners.[6]

III. Extrajudicial executions in Gaza by Israel

16. The targeted killing of Palestinian individuals amounts to extrajudicial execution or assassination—a de facto form of summary execution of an individual that provides no opportunity for a legal defence or even judicial review, denying the accused any possibility to demonstrate innocence and to receive the comprehensive protection of due process. In the 1990s, Israel strongly rejected accusations that it engaged in targeted killing. The Israel Defense Forces (IDF) issued a statement in response at that time: "There is no policy, and there never will be a policy or a reality, of wilful killings of suspects … the principle of the sanctity of life is a fundamental principle of the IDF".[7] Despite such an affirmation, Israel has subsequently openly and extensively relied on targeted killing, resulting in an estimated 287 Palestinians being killed, mainly in Area A of the West Bank or in Gaza between 2002 and 2008, 234 of whom were targeted, the others being identified as "collateral damage".[8]

17. Clearly demonstrating the falseness of the purported rejection by the IDF of "wilful killing of suspects," the Israeli Supreme Court set forth four conditions governing what it deemed to be the lawful recourse to targeted killing.[9] The Supreme Court's finding was based on the idea that the targeted person must be "directly participating in hostilities", and rejected the Government's claim that it was permissible to treat suspects as "unlawful combatants" who could be killed regardless of their immediate activity.[10] In subsequent instances of targeted killing, the IDF has not conformed to those Supreme Court guidelines, which themselves still stand in violation of the prohibitions of targeted killing under international law.[11] On the contrary, Israel has relied on this tactic, recently using drone attack aircraft, especially in Gaza. Beyond the overarching illegality of targeted assassination, such attacks often kill or wound others than the identified target, and in any event such intrusions of violence spread terror among the general population.

18. The concern of the Government of Israel regarding the potential danger facing its citizens who live within the range of rocket and/or mortar fire from Gaza is appropriate, but cannot justify provocative actions that are themselves in direct violation of international law in response. It should be noted that one of the most successful examples of the suppression of such rocket fire was enabled by a negotiated ceasefire, namely the one held between Israel and Gaza in 2008, until it was breached by a lethal Israeli bombing attack in Gaza on 5 November 2008. It is also notable and understandable that the world media is attentive to Israeli concerns regarding the reported one million Israelis that live within

[6] Further information is available at the website of B'Tselem: www.btselem.org/statistics/detainees_and_prisoners.

[7] Cited in Lisa Jajjar, "Lawfare and targeted killing: developments in the Israeli and US contexts", *Jadaliyya*, 15 January 2012. Available from www.jadaliyya.com/pages/index/4049/lawfare-and-targeted-killing_developments-in-the-i.

[8] It is noted that these figures do not include killings that occurred during Israel's war on Gaza, Operation Cast Lead.

[9] See *The Public Committee against Torture in Israel et al. v. The Government of Israel et al.*, judgement of the Israeli Supreme Court, HCJ 769/02, 13 December 2006. Available from http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.htm.

[10] Ibid.

[11] For a detailed and wide ranging consideration of the status of targeted killing, see the authoritative study by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.6).

range of Gaza rocket and mortar fire, a situation which, although rarely resulting in Israeli casualties, definitely spreads acute fear among the general population. What is not reasonable, however, is to ignore the far more insecure, and in fact physically perilous, existence that has been inflicted upon the 1.5 million Gazans who have been living within the confines of a military blockade for more than five years, or to treat as a mere statistic the circumstances of the numerous Palestinians killed or wounded by Israeli military attacks and who die unnecessarily because of restrictions on travel or restrictions on medical services or supplies imposed by Israel. Unlike the Israelis, the Palestinians enduring such vulnerabilities have no "Iron Dome" anti-missile system to offer the population some measure of protection or militarily relevant retaliatory capabilities. The most recent exchange of fire across the Israel/Gaza border shows this vast disparity: 25 Palestinians killed, including several children, with no serious Israeli casualties. What is notably unusual, even gross, is that a sport-like, score-keeping approach has become a popular feature of Israeli media when its military launches attacks against Gaza.[12]

19. The recent upsurge of violence by Israel in Gaza is illustrative of a pattern that has been repeated on several occasions, generating fear and anxiety on both sides of the border. In the above-mentioned instance, relative calm in cross-border relations had existed for several months. It was interrupted from time to time, principally by Israeli border security personnel shooting Palestinians who strayed into the broad buffer zone enforced by Israel on the territory of the Gaza Strip, which restricts the use of approximately 29 per cent of the land mass in Gaza.[13] This calm was broken on 9 March 2012 by the targeted killing of Zoher el-Keisi, Secretary-General of the Popular Resistance Committees in Gaza, who was alleged, although without any show of evidence, to be planning "a terrorist incident". What followed was the predictable escalation: in response to the attack by Israel, approximately one hundred rockets were fired at Israel, many of which were intercepted by the Iron Dome anti-missile system; most others fell harmlessly, except for several rockets that did some damage to a school in the Beer Sheba area and wounded eight Israelis. The Israel Air Force responded with strikes killing 16 Palestinians alleged to be militants and several others. Palestinian groups beyond the direct control of the de facto authorities of Gaza, namely the Popular Resistance Committees and the Islamic Jihad, responded with several hundred more rockets, and this provoked further retaliatory raids by Israel that killed and wounded several dozen Palestinians. Throughout the several days of attacks the de facto authorities in Gaza repeatedly indicated their readiness to restore the ceasefire, which they have consistently maintained, with the exception of seeming to allow retaliation in response to targeted killings by Israel.

20. This renewed violence has been described by Israeli commentators as "planned escalation" with the intention of testing the new Iron Dome anti-missile system under battlefield conditions, and possibly to thwart some future attack launched by Palestinian militants from across the border in the northern Sinai region of Egypt. Roni Shaked described the "nature of the vicious terror circle" as follows in the largest Israeli daily, *Yedioth Ahronoth*: "targeted killing, retaliatory rocket attack, Israeli response, revenge reprisal, and so on and so forth."[14] Writing in *The Jerusalem Post*, Yaakov Katz, with apparent access to official Israeli sources, called attention to an attack of a few months ago that killed eight Israeli soldiers near the Egyptian border, and claimed that this attack last

[12] For example, on Channel 10 in Israel, a graphic scoreboard was broadcasted depicting the "score" of killings as 25 Palestinians against zero Israelis.

[13] Information received during the mission in February 2012.

[14] Roni Shaked, "Targeted-killing policy is backfiring on Israel," *Yedioth Ahronoth*, 11 March 2012, translation available from www.al-monitor.com/pulse/contents/articles/security/01/03/targeted-killings-are-no-longer.html.

August was organized by Mr. el-Keisi, and that a new attack of a similar sort was in the planning stages and needed to be avoided by a pre-emptive strike of this nature. Mr. Katz indicated that Israeli authorities anticipated a retaliatory response of 100 rockets per day during the period of the attacks, but concluded that "this was a price the government felt it was capable of paying". The fuller rationale for the sequence was described by Katz in chilling language as being "maintenance work" in Gaza, "to mow the lawn … with regard to terrorism", and thereby boost deterrence and defer another round of violence.[15]

21. What seems steadfastly overlooked in Israel and elsewhere has been the resolve of the governing authorities in Gaza to renounce violence (except to prevent retaliation). This is a development criticized by more militant groups in Gaza, including the Islamic Jihad, along with the reality often ignored by the international media that the recent flare-ups of violence have resulted from Israel having initiated violent, lethal and unlawful action, including in this instance the targeted killing of Mr. el-Keisi. Such commentary is not meant to minimize the genuine anxiety about the rocket attacks in southern Israel, but it is to take account of the potential to improve security on both sides of the border between Israel and the Gaza Strip through negotiations rather than reliance on extrajudicial killings and other forms of extreme violence.

22. There are several conclusions to be drawn in relation to this continued troubled relationship between Israel, the occupying power, and the occupied Gaza Strip: (a) targeted killing is both a violation of international law and understood to be a provocation leading to further lethal violence; (b) the de facto authorities in Gaza do not themselves engage in retaliation and they seek to maintain an effective ceasefire, but seemingly permit or are unable to prevent some militant factions in Gaza from firing rockets in response to a prior Israeli attack; (c) Israel continues to rely on excessive or disproportionate use of force in Gaza, thereby continuing what was referred to as the Dahiya doctrine in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), whenever its security interests are engaged—comparative casualty figures bear out this line of reasoning; (d) there are risks of a second massive Israeli attack on the Gaza Strip, likely to be a larger scale Operation Cast Lead, an attack on Gaza from land, sea and air that continued for three weeks, which inflicted heavy civilian casualties and caused extensive damage to civilian properties, especially homes.[16]

23. The Special Rapporteur believes that there is renewed urgency for the international community to respond to these developments, as well as to the continuing Israeli rejection of negotiated ceasefire in favour of its pattern of reliance on targeted assassination and other extrajudicial killings. The parallel need for "speaking with one voice", so recently heard in the Security Council's statement of 21 March 2012 regarding the Syrian Arab Republic (S/PRST/2012/6), could be applied to the Gaza crisis as well. Relying on the General Assembly-endorsed principle of the responsibility to protect, the Security Council called on the Government of the Syrian Arab Republic to "immediately cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centres … [and] bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism". The statement continued that "similar commitments would be sought … from the opposition and all relevant elements to stop the fighting … and to bring about a sustained cessation of armed violence in all its forms by all

[15] Yaakov Katz, "Analysis: easy to start, hard to end", *Jerusalem Post*, 10 March 2012. Available from www.jpost.com/Defense/Article.aspx?id=261274.

[16] For influential public advocacy of such an attack, which is often alluded to by Israeli journalists and officials, see Efraim Inbar and Max Singer, "The Opportunity in Gaza," BESA Center Perspectives Paper No. 167 (Begin-Sadat Center for Strategic Studies), 15 March 2012.

parties". If the responsibility to protect is to attain legitimacy as an application of international law, it must be applicable everywhere, in particular the situation of prolonged occupation that prevails in the occupied Palestinian territory. Otherwise, the responsibility to protect will be discredited due to selective application.

IV. Settlement expansion

24. Settlement expansion has accelerated in the course of the last several months. At least 3,500 units were under construction in 2011, and 1,850 buildings were being built for housing units. This does not include Israeli settlement construction in East Jerusalem.

A. Settlement outposts

25. The most significant development bearing on settlement expansion, and of primary importance to the Israeli settlement project overall, is reflected in a series of moves by the Government of Israel that purport to "legalize" 100 or so settler "outposts". They had been previously regarded as illegal even under Israeli law because they were not constructed on Government-held land in Area C. In this area, approximately 450,000 Israeli settlers live in settlements held to be "legal" under Israeli law while remaining, as are all settlements, illegal under international humanitarian law, under the Fourth Geneva Convention (art. 49, sixth paragraph).

26. The Ministry of Justice has established a committee for examining private lands in Judea and Samaria, headed by a former Israeli Supreme Court Chief Justice, Edmond Levy, who spoke out publicly against removing Israeli settlers from Gaza. The Committee also includes in its membership Alan Baker,[17] a prominent international lawyer and former Government official who previously authored a "legal opinion" that found that the settlement outposts should be legalized under Israeli law provided only that Palestinian owners of the land were paid compensation and that the settlement was established in good faith. Given the geographic dispersion of the settlements throughout the West Bank, if the purported legalization takes place as expected, it would make clear beyond any reasonable doubt that a viable and independent Palestinian State will not be established. It would bring to finality the seemingly endless assertions that settlement expansion "is making" or "might make" a two-State solution impossible, and force recognition that the expansion of illegal Israeli settlements has already made the creation of a viable, contiguous Palestinian State, and thus a just, lasting and comprehensive "two-State solution," impossible.

27. Plans exist to convert outposts, usually consisting of temporary house trailers strung together, into settlements consisting of several hundred housing units. If this dynamic of legalization, which has so far mainly flown below the radar of international public perception, is formalized, it is likely to be viewed as a major provocation by Palestinians. It should be noted that in the past several months, the attempts by Israel to enforce its own law regarding these outposts, most prominently the Migron outpost, have perversely generated retaliatory violence against Palestinian persons and property by Israeli settlers, known as "price tag" reprisals. This insulting term refers to the practice of Israeli settlers burning Palestinian olive groves, destroying agricultural land, or attacking Palestinian

[17] Tovah Lazaroff, "Netanyahu names c'tee to examine outpost issue", *Jerusalem Post*, 30 January 2012. Available from www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=255784
The Association for Civil Rights in Israel, "Attempting to Distinguish Settlements from Outposts Creates a False Distinction," 30 April 2012 www.acri.org.il/en/2012/04/22/attempting-to-distinguish-settlements-from-outposts-creates-a-false-distinction/

residents or their buildings, including mosques, in their own towns or villages, and identifying those attacks as the "price tag" for actions taken by the IDF and the Government of Israel against the outposts.

28. In a recent development, the Israeli High Court of Justice issued a judgment requiring the structure on the Migron outpost to be removed by 1 August 2012, thus rejecting the request of the State of Israel to postpone the dismantling of this large and controversial outpost until November 2015. Although Prime Minister Benjamin Netanyahu declared that the Government of Israel operates in accordance with Israeli law, past experience suggests that Israeli authorities back off in the face of settler resistance, which has already been threatened in relation to dismantling Migron. It should be noted that several years ago, Israeli authorities pledged, at the urging of the Quartet, to remove two dozen outposts established after 2001 as a confidence-building gesture in relation to the push for negotiations by those insisting that the Road Map is the only path leading to a peaceful resolution of the conflict, but has never done anything to carry out the pledge.[18]

29. Israeli law has up to now viewed the outposts as illegal because they are on private Palestinian land, but this is changing. On 24 April 2012, the Government of Israel purported to "legalize" three of the older outposts—Bruchin, Roehelin, and Sansana—in what appears to be a trend towards abandoning its formal distinction between legal and illegal settlements. In practice Israel has consistently used its soldiers to protect outpost settlers and has connected the outposts to electricity grids, which signifies a normalization of their existence. If all outposts are taken into account, it is estimated that there are more than 100 spread throughout the West Bank, in addition to the 120 official settlements.

B. Settler violence

30. The settlements are unlawful, and impede Palestinian hopes for a sustainable peace based on the withdrawal by Israel from the lines that were outlined in Security Council resolution 242 (1967), adopted unanimously in the immediate aftermath of the 1967 war. These settlements have been the cause of serious secondary harm to Palestinians living under occupation. The most obvious harm is associated with the appropriation of land for the construction of settler-only roads linking settlements to each other and to pre-1967 Israel. Equally harmful is the surge of settler violence directed against Palestinian persons and property, which creates a continuing atmosphere of violence and insecurity, if not terror, in several regions of the West Bank, including East Jerusalem. Hebron and its surroundings seem particularly afflicted by frequent incidents of settler violence and reports of constant high tensions between Israeli settlers and the indigenous population, including young schoolchildren who are often threatened or even assaulted by Israeli settlers on their way to school. What is also troubling is the tendency of the Israeli military forces to protect the settlers during their violent rampages, and to fail to investigate and apprehend Israeli settlers responsible for violent assault and destruction of property. The latest statistics reinforce this unfortunate reality associated with the continuation of prolonged occupation, and are a dramatic example of the consequences of that occupation on Palestinians living for decades in a setting of rightlessness, disempowerment and vulnerability due to the lack of the protection of the rule of law.

[18] See Security Council resolution 1515 (2003), in which the Council endorsed the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict.

C. Demolition of homes and other structures

31. While in Amman, the Special Rapporteur's delegation met with the leaders of the Israeli Committee Against House Demolitions, a widely respected NGO that has opposed these demolitions as unlawful instances of collective punishment and violations of Palestinian property rights. Also participating in the meeting was a Palestinian resident of the West Bank, Salim Shawamreh, who has had his house demolished on five separate occasions on the grounds that he lacked the proper construction permit, which he had dutifully applied for on numerous occasions without gaining Israel's permission to build. His case is illustrative of a common Palestinian complaint that their property rights are indirectly usurped through the denial of formal permits and the subsequent issuance and execution of demolition orders, which are often executed in the middle of the night with no advance notice to the inhabitants. For instance, in the case of Mr. Shawamreh, he was given 15 minutes to remove any family belongings or furniture. The recent statistics show that a total of 262 structures, both residential and non-residential, were demolished in the West Bank from September 2011 through January 2012.[19] In the week of 8–14 February alone, over 40 structures were demolished, which displaced 126 Palestinians, including 62 children. It was the highest number of demolitions reported in a week since June 2011.[20]

32. For Palestinians living under occupation in the occupied Palestinian territory, the consequences of this policy of displacement are severe. According to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the actions by Israel of dispossession in Occupied East Jerusalem and the West Bank (as well as towards the Palestinian citizens of Israel itself) amount to a "strategy of Judaization".[21] She found that "the Israeli authorities promote a territorial development model that excludes, discriminates against and displaces minorities, particularly affecting Palestinian communities", and that such exclusion exists "side by side with the accelerated development of Jewish settlements".[22] The Special Rapporteur expanded upon her comment, concluding that "as a whole, it is clear that Israeli policies and practices for the Palestinian population in East Jerusalem and the West Bank violate international human rights and humanitarian law".[23]

V. Gaza blockade and current conditions

33. The Special Rapporteur continues to be concerned about the human rights and humanitarian consequences of the illegal blockade of the Gaza Strip by the occupying power, but remains even more concerned about the denial of the right to self-determination inherent in the continuing Israeli occupation of Gaza. While the Israeli settlers were withdrawn in 2005, and the permanently stationed Israeli soldiers were withdrawn to the borders of the Strip, Gaza remains occupied by Israel. The form of occupation changed, but the occupying power remains in full control of the borders and even buffer zones on the Gaza side of the borders; the entry and exit of all people, goods and services into and out of

[19] Office for the Coordination of Humanitarian Affairs (OCHA), Monthly Humanitarian Monitor (January 2012), p. 12.

[20] OCHA, Protection of Civilians Weekly Report (8–14 February 2012), p. 2.

[21] Special Rapporteur on adequate housing, "Israel's policies violate right to housing and need urgent revision", press release of 13 February 2012.

[22] Ibid.

[23] Preliminary remarks of the Special Rapporteur on adequate housing on her mission to Israel and the occupied Palestinian territory. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E.

Gaza and thus the entire economic growth or stagnation of Gaza; and the coastal waters, air space and underground of the territory of Gaza. Of course Israeli military forces also continue to use force against Gaza, frequently in violation of the Geneva Conventions relating to the protection of victims of international armed conflicts. Most of the land borders of the Gaza Strip remain surrounded by an Israeli-controlled wall. The level of the political, economic, social and military control by Israel over a Gaza ensures that Gazans, like their counterparts in the West Bank, have no means of exercising their internationally recognized right of self-determination.

34. Gaza remains fundamentally blockaded, although for the first time since the blockade started in July 2007, there have been some extremely limited and exceptional adjustments to restrictions on the scope of permissible imports and the allowance of a minute amount of exports after months of negotiations. Specifically, 13 truckloads of date bars for school lunches given to Palestinian children living in the West Bank have been allowed to leave Gaza, along with two truckloads per week of overseas exports. But even this small adjustment of restrictions appears to be temporary and limited to the occasion, and has had no discernible effects on the overall Gaza economy, which remains stalled since the Israeli blockade was established.

35. Current figures from the Office for the Coordination of Humanitarian Affairs disclose that 40 per cent of Gazans live below the poverty line, 28 per cent of the labour force is unemployed, and 75 per cent of the population is dependent on regular foreign assistance as dispensed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[24] Furthermore, the majority of the Gaza population continues to be confronted by regular power cuts of 8 to 16 hours per day due to fuel shortages, and from time to time the shutdown of the Gaza power plant creates a 60 per cent electricity deficit, producing loss of power for up to 18 hours per day. In addition to the extreme difficulties of this electricity shortage for the general population, these power cuts have caused acute danger to hospital patients, particularly cardiac and dialysis patients and babies dependent on incubators. There are special difficulties confronting the fishing sector of the Gaza economy, where a 90 per cent poverty level exists, explaining the large number of young children working to maintain subsistence levels for families in this poorest group. Fishermen face frequent attacks from Israeli patrol boats, with 93 such attacks reported in 2011.[25]

VI. Housing in Gaza

36. The restriction on the import of construction materials has prevented or delayed the repair of damage done to Palestinian housing caused by Operation Cast Lead in 2008/09. It has also made Palestinians more dependent on tunnel smuggling and black markets. It is estimated that 10 times more construction materials (especially concrete and steel bars) are imported via the tunnels than are allowed to enter legally at the Kerem Shalom crossing. It has been reported that the blockade prevents international relief efforts from providing safe and adequate housing for the civilian population in Gaza subject to continuous occupation since 1967. The Special Rapporteur on adequate housing visited Gaza on 7 and 8 February 2011, and had this to report on the overall situation:

> I am gravely concerned at information received that only a minority of the projects aimed at improving housing and vital services in Gaza, which have been submitted for approval by the international community, have been approved by the authorities. I have raised these concerns with the Israeli authorities who have informed me of

[24] Information received during the mission in February 2012.

[25] UNRWA Gaza Field Office, Gaza Weekly Update (2–8 January 2012).

their efforts to address this situation and of upcoming measures. I would like to urge Israel to end the blockade in order to ensure that the minimum needs of the population living in Gaza are met."[26]

VII. Right of self-determination

37. It is beyond controversy that the Palestinian people enjoy an inalienable right of self-determination that is confirmed by article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as being set forth in the Charter of the United Nations. The General Assembly and the Security Council have both confirmed that the right of self-determination is possessed by the Palestinian people, and should be realized through a sustainable solution to the conflict.[27] The International Court of Justice viewed the construction of the separation wall on occupied Palestinian territory as a violation of the right of self-determination belonging to the Palestinian people.

VIII. Recommendations

38. **The Special Rapporteur recommends that:**

(a) In the light of widespread abusive administrative detention procedures and practices, a resolution of censure be adopted by the Human Rights Council, and a special body be tasked with preparing a detailed study of the application of administrative detention as applied by Israel in the occupied Palestinian territory;

(b) In view of the persistence of occupation for nearly half a century, with no end in sight, the Human Rights Council should commission a study of the adequacy of international humanitarian law to cover the situations caused by prolonged occupation and provide Israel and the international community with appropriate recommendations;

(c) Support be given for a request to the International Court of Justice for an Advisory Opinion on the Israeli practice of transferring detained Palestinians to prisons in Israel, denying normal visitation rights, possibly joined to a broader request for legal clarification of the special character of prolonged belligerent occupation;

(d) The Human Rights Council take emergency notice of an Israeli legislative initiative that purports to legalize settlement "outposts", currently unlawful under Israeli law, which would both further increase Israeli settlement land claims and correspondingly undermine Palestinian rights, including with respect to Palestinian self-determination;

(e) The Human Rights Council should give increased attention to the refusal by Israel to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

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[26] Preliminary remarks of the Special Rapporteur on adequate housing (note 23 above).

[27] This was confirmed by the Commission on Human Rights in its resolution 2005/1.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*

Summary

In the present report, submitted pursuant to Commission on Human Rights resolution 1993/2, the Special Rapporteur notes the continuing non-cooperation of Israel and addresses its Operation "Pillar of Defense" and the general human rights situation in the Gaza Strip. He also considers the expansion of Israeli settlements, and businesses that profit from Israeli settlements and the situation of Palestinians detained by Israel.

* Late submission.

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I. Introduction

1. Once again it is necessary to highlight the failure of the Government of Israel to cooperate in the implementation of the mandate of the Special Rapporteur, even to the extent of allowing him to enter occupied Palestine. Such entry is required to gain first-hand information about alleged human rights and international humanitarian violations by the occupying Power, and appropriate cooperation by Member States in such official undertakings as prescribed in Articles 104 and 105(2) of the Charter of the United Nations. It is further specified in the Convention on the Privileges and Immunities of the United Nations, especially article VI, section 22 thereof, on experts performing missions for the United Nations. To allow mandate holders to carry out their assignments in accordance with best practices, it is important that the Human Rights Council insist that Member States comply with these obligations.

2. The Special Rapporteur wishes to raise another concern regarding the independence, credibility and effectiveness of his mandate. Since the Special Rapporteur assumed this position, UN Watch, a "pro-Israel" lobbying organization accredited as a non-governmental organizations with the Economic and Social Council, has issued a series of defamatory attacks demeaning his character, repeatedly distorting his views on potentially inflammatory issues. This smear campaign has been carried out in numerous settings, including at the Human Rights Council, as well as university venues where the Special Rapporteur gives lectures in his personal capacity on subjects unrelated to the mandate. The organization's smears have been sent to diplomats and United Nations officials, including the Secretary-General, who has apparently accepted the allegations at face value, issuing public criticism of the Special Rapporteur. It is disappointing that such irresponsible and dishonest attacks have been taken seriously, with no effort to seek the views of the Special Rapporteur or verify the accuracy of the allegations. To set the record straight, the Special Rapporteur proposes that United Nations Watch be investigated to determine whether it qualifies as an independent organization that operates in accord with its name and stated objectives, and is not indirectly sponsored by the Government of Israel and/or other "pro-Israel" lobbying groups affiliated with the Government, as well as whether its programme of work is of direct relevance to the aims and purposes of the United Nations.[1] Even a superficial review of its website confirms the lobby's preoccupation with character assassination, and the absence of an organizational agenda that corresponds to its claim to exercise oversight over United Nations activities.[2] Despite its efforts to discredit the Special Rapporteur, United Nations Watch has never offered substantive criticisms or entered into any serious discussion of the reports of the Special Rapporteur. Such defamation of a special procedures mandate holder is detrimental to the independence and substantive intention of any mandate. It diverts attention from the message to the messenger, and shifts public interest away from the need to protect human rights in contexts that have been identified by the Human Rights Council as of particular concern. The Special Rapporteur recommends that this issue be viewed in relation not only to his mandate, but also as a matter of principle relating to ensuring a responsible role for non-governmental organizations within the United Nations system. In like manner, it seems important to encourage a greater willingness on the part of senior United Nations officials to defend special procedures mandate holders subject to such diversionary attacks, or at the least, not to be complicit.

[1] See http://csonet.org/?menu=30.

[2] See www.unwatch.org.

3. To fulfil the mandate to the extent possible under the above-mentioned circumstances, the Special Rapporteur completed a mission to the Gaza Strip from 1 to 3 December 2012. The aim of the mission was to investigate issues pertaining to the economic and social rights of civilians in Gaza, which have received considerable attention given the comprehensive Israeli blockade in place since mid-2007, which continues to impose unacceptable hardships on the civilian population. During his mission, the Special Rapporteur also investigated the effects of a major military attack by Israel, named Operation "Pillar of Defense", which was conducted from 14 to 21 November 2012.

4. There have been several general developments occurred since the previous report relevant to the mandate was submitted to the Human Rights Council. Perhaps the most significant development occurred on 29 November 2012, when the General Assembly voted to recognize Palestine as a non-member observer State, a status that is a step on the path to the realization of the collective and inalienable right of self-determination that belongs to the Palestinian people as a whole.

5. The Special Rapporteur was invited to deliver the opening address at an international conference devoted to the theme of "Expanding the legal paradigm for Palestine" on 8 and 9 May 2013 at Birzeit University involving distinguished experts from several countries. Given that he was unable to attend the event in person, the Special Rapporteur addressed the audience via Skype. In his presentation, he emphasized the limits of international humanitarian law international humanitarian law in the context of prolonged occupation, a concern that he expressed in previous reports. Three overlapping legal regimes were distinguished:

(a) International humanitarian law international humanitarian law, as contained in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (fourth Geneva Convention) and Additional Protocol I: useful for identifying violations associated with behaviour of the occupying Power towards the civilian population of the occupied territory, including construction of settlements, collective punishment, targeted assassinations, diversion of water, excessive force, conditions of detention and imprisonment. There is an additional deficiency here arising from the failure of parties to the Geneva Conventions to uphold the duty set forth in common article 1 "to respect and to ensure respect for the present Convention in all circumstances". If a pattern of persistent violation is present and sustained for a period of years, as in the case of the occupation of Palestine by Israel, steps should be taken to encourage compliance. Such a collective responsibility by all contracting parties to "repress grave breaches" is made clearer in Protocol I, articles 86 and 91, a treaty that has the status of customary international law.

(b) Oslo framework: allocation of administrative and governmental responsibilities to areas A (Palestinian), B (joint Palestinian-Israeli) and C (Israeli) that creates a different legal regime, given the different standards of protection and access to law accorded to Israeli settlers and Palestinians living in the West Bank. The Oslo process, with its five-year timeline for the resolution of final status issues, constituted a humane acknowledgement that a belligerent occupation of a society had to be ended. United Nations and European Union reports indicate that the Palestinian presence in area C (which covers 61 per cent of the land but only 4 per cent of the Palestinian population) is under constant pressure and threat of elimination. It is estimated that 350,000 Jewish settlers in about 200 settlements and outposts are living in area C, having appropriated the preferred land, situated mainly on high ground, making use of disproportionate amounts of water exploited from local aquifers, at the expense of the Palestinian population. In other words, the Oslo formula has facilitated additional encroachments on Palestinian territory that violate the obligation under the fourth Geneva Convention on the Occupier to refrain from altering the nature of the occupied country or appropriating its resources.

(c) Prolonged occupation: there is no currently applicable international legal framework that captures the extent to which the interests and well-being of the civilian population are jeopardized, perhaps irreversibly, if the occupation lasts longer than five years. The occupation of Palestine by Israel has lasted 46 years, a period that has caused serious mental disorders associated with living for decades without the protection of laws and rights and with stifling restrictions on mobility and travel. The occupation by Israel shows no signs of ending. The prolonged state of exception has facilitated what the fact-finding mission on Israeli settlements of the Human Rights Council aptly described as "creeping annexation".[3] The unlawful Israeli annexation and demographic manipulations in East Jerusalem have created fundamental threats to the Palestinian right of self-determination. In the opinion of the Special Rapporteur, such issues have a direct bearing on the upholding of the right to self-determination, and represent a flaw or insufficiency in the conventional conceptions of international humanitarian law and international human rights law. This flaw or insufficiency should be addressed by the International Committee of the Red Cross (ICRC) by convening an international conference to draft a convention for occupations that surpass five years; otherwise, the manifold issues relating to prolonged occupation should be examined by a commission of inquiry composed of relevant international law experts.

6. It has been widely accepted in commentary on the Israel/Palestine conflict that the only path to a sustainable and just peace, and the fulfilment of the Palestinian right to self-determination, is through direct negotiations. Strong efforts have been made in recent months by the Governments concerned, with the United States of America acting as the principal intermediary. The Arab Peace Initiative of 2002 has been revived and modified to allow for "land swaps", which appears to be a means of incorporating major settlement blocs into Israel and opening the door to territorial adjustments in response to the security interests of Israel.

7. The Special Rapporteur is sceptical of the value of direct negotiations at this time, especially in relation to the protection of the human rights of Palestinians, above all their right to self-determination. The political preconditions for effective negotiations do not seem to exist: for Israel, a pro-settler Government with a seemingly expansionist vision of the territorial scope of Israel and annexationist policies in the West Bank, including East Jerusalem, does not seem inclined to withdraw to the pre-1967 borders or to address such other issues as the division of Jerusalem, the rights of Palestinian refugees, the non-diversion of water from Palestine's aquifers and the sovereign equality of a Palestinian State.

II. Gaza Strip

A. Operation "Pillar of Defense"

8. Israel launched Operation "Pillar of Defense", the most sustained use of force since Operation "Cast Lead", on 14 November 2012, and continued it for eight days. The timeline of the violence leading up to the attack is complex, with no clear relationship of cause and effect.[4] There were incidents of border violence and rocket fire in the days before, yet there is widespread agreement that the definitive moment came when the Hamas

[3] A/HRC/22/63, para. 101.

[4] "Israel launches Pillar of Defense amid Gaza escalation", Haaretz, 20 November 2012. Available from www.haaretz.com/news/diplomacy-defense/timeline-israel-launches-operation-pillar-of-defense-amid-gaza-escalation.premium-1.479284.

military leader, Ahmed Jabari, was assassinated in a targeted killing. It was a safe assumption that the assassination of such a high-value target would trigger strong retaliation from Gaza. This was confirmed by widely-respected Israeli peace activist Gershon Baskin, who confirmed that Jabari, at the time he was killed, was in the final stages of negotiating a long-term ceasefire with Israel. In an article published during the operation, Baskin pointed out that Israel had tried every military option to crush the capacity and will of Gaza to engage in violent resistance, adding that "the only thing it has not tried and tested is reaching an agreement for a long-term mutual ceasefire."[5] As Baskin pointed out, Jabari had long been in Israeli crosshairs and was known to have masterminded the capture and detention of the Israeli soldier Gilad Shalit. Jabari was the leader who had kept Shalit alive and in good health while in captivity for several years, and had prevented rogue militias in Gaza from engaging in violence against Israel. He had also acted to uphold prior ceasefires that had stemmed the level of violence on the Gazan border in recent years, which directly contributed to keeping Israeli casualties at zero since Operation "Cast Lead."

9. Israel justified Operation "Pillar of Defense" as a defensive response to Gaza rocket fire. The United States of America, along with several European countries, supported this claim. The United States Department of State expressed this sentiment when the attacks started: "We support Israel's right to defend itself, and we encourage Israel to continue to take every effort to avoid civilian casualties".[6] Supporters of Palestine regarded Israel's concerted use of force against urbanized and vulnerable Gaza as "aggression" and "criminal". Israeli military analysts argued that the strategic purpose of Operation "Pillar of Defense" was to restore deterrence in the light of the recent increase in violence emanating from Gaza and to destroy the capacity of Gazan military forces to launch long-range rockets.[7] Both sides claimed victory when the ceasefire agreement brokered by Egypt-came into effect on 21 November 2012. The Israeli side avoided a ground attack that had turned the tide of public opinion against its operation in 2009, and took some steps to avoid civilian casualties. On the Gazan side, casualties to police and militants were greatly reduced by avoiding targeted facilities and taking secure shelter, and damage to rocket launchers was reduced by greater mobility and use of underground launching sites. The terms of the ceasefire lend support to the claim of the de facto authorities in Gaza that Israel had given ground: agreeing not to engage in future targeted assassinations, and to meet to discuss the opening of crossing points for goods and people. The implementation of the ceasefire agreement is discussed below.

10. The mission of the Special Rapporteur had the objective of gathering information on the situation in the Gaza Strip in the light of a United Nations study that suggested that Gaza's viability would be at serious risk by 2020.[8] The Special Rapporteur did not abandon that goal, but additional concerns arose regarding Operation "Pillar of Defense", since the ceasefire went into effect only 10 days before the Special Rapporteur's arrival. Several aspects of the attacks raised serious international humanitarian law issues bearing on the use of excessive force in relation to a population living under conditions of occupation. Although Israel implemented its plan of "disengagement" in 2005, it did not end its legal responsibilities as the occupying Power. This conclusion reflects Israel's control of entry

[5] "Israel's Shortsighted Assassination", *New York Times*, 16 November 2012. Available from www.nytimes.com/2012/11/17/opinion/israels-shortsighted-assassination.html?_r=0].

[6] United States. Department of State press statement, 14 November 2012. Available fromwww.state.gov/r/pa/prs/ps/2012/11/200551.htm.

[7] Shlomo Brom et al., *In The Aftermath of Operation Pillar of Defense*, Institute for National Security Studies, Tel Aviv, 2012, pp. 7-8.

[8] United Nations country team, *Gaza in 2020: A liveable place?* August 2012. Available fromwww.unrwa.org/userfiles/file/publications/gaza/Gaza%20in%202020.pdf.

and exit to Gaza by land, sea and air; its frequent violent incursions; and a blockade maintained since mid-2007. The situation in Gaza has been likened to a large open-air prison in which the inmates control the interior while the guards control the perimeter.

11. The Special Rapporteur conducted three activities during his mission: visits to targeted areas and meetings with families affected adversely by Operation "Pillar of Defense"; briefings with United Nations officials and with national and international representatives of non-governmental organizations active in Gaza; and meetings with local journalists, doctors and individuals acquainted with the policies and practices of and discussions held at the senior level of the de facto authorities. It was an intense yet illuminating means to acquire a direct appreciation of the overall situation of human rights in Gaza.

12. The Special Rapporteur visited Ismail Mohamed Abu Tabiekh Aslan, a neighbourhood of Gaza City situated near the border with Israel that had experienced heavy artillery and missile attacks. Some residents reported that drones were used to attack. The Special Rapporteur met with adult residents, mainly men, who spoke of how the attacks had damaged the modest infrastructure (especially electricity and water storage) of this extremely poor neighbourhood, and had killed their livestock, which were crucial to their meagre livelihood. They also spoke of their shared sense of vulnerability during the attacks, with no facilities available to offer protection. A deep psychological impact was widely reported, especially affecting young children who were experiencing nightmares, bedwetting and panic attacks.

13. The Special Rapporteur visited the destroyed residence of the Al Dalou family, which lost 10 family members, including four young children during the attack. Jamel Mahmoud Yassin Al Dalou, the surviving grandfather of the four dead children, described himself as a trader in foodstuffs who lived with his family in the Nasser neighbourhood and enjoyed better living conditions than most Gazans. Mr. Al Dalou stated that, during the November attacks:

> Every one of us was a target. The sky was full of Israeli planes and drones, everything that moved could be hit. I left to go to my business by taxi to bring needed food to the family, but while there, people came to me crying and told me my house had been hit, the worst news I've ever received in my life. I rushed home to find many working to remove the rubble of the destroyed house.

On the deaths of his children and grandchildren, Mr. Al Dalou commented:

> If they cannot deal with Islamic militants, should they attack children? We have no problem if Israelis attack militants, but this was a great injustice. I lost my family. I sleep on the street. Only my son and I survived. This is one of the worst crimes. Where is the international court to prosecute the perpetrators? They destroy our houses, take our land and destroy our women and children. To whom can I complain?

This man's voice represented the pain and grief encountered throughout the visit. Essentially, the other victims and survivors of the attacks with whom the Special Rapporteur spoke told the same story. From the perspective of international humanitarian law, what seems striking is that several of the damaged structures were situated in clearly demarcated residential districts. There is a new yardstick by which to assess responsibility for military strikes on civilian targets. On the one side, missile technology has become more accurate, allowing for less accidental or collateral damage. At the same time, this greater accuracy leads to the presumption that direct hits on civilian residences are deliberate, and thus exhibit criminal intention. In certain instances, there may have been someone acknowledged as a militant living in a residential building, but such a presence does not justify targeting an entire residential complex. In such circumstances, the collateral

damage to civilians far outweighs the direct damage inflicted on legally acceptable targets. The Special Rapporteur was informed by several Gazans that rockets were neither stored nor fired from residential districts, but were stored underground and launched from open spaces. The Special Rapporteur was briefed by United Nations officials and civil society representatives who had observed and investigated compliance with human rights law and international humanitarian law during Operation "Pillar of Defense". The concerns noted above were affirmed, and the Special Rapporteur's attention was drawn to other important issues. Israel's intentional targeting of journalists covering the military operation was highlighted as a concern that had to be addressed by the international community. The view was repeatedly expressed that Israel's attacks constituted a part of its continuous collective punishment of Palestinians. In this respect, complaints regarding Israeli impunity for such actions, including the lack of will of the international community to address Israeli impunity firmly, were frequent. One representative insisted that "justice required the accountability of Israelis and upholding the rights of Palestinians." The Special Rapporteur was informed that Israeli attacks had shifted from being restricted to specific targets in the first four days of Operation "Pillar of Defense", which appeared to avoid serious civilian casualties and damage, to later attacks on civilian and agricultural targets and a reliance on less accurate forms of weaponry, particularly shelling by naval and land artillery. It was also noted that the attacks had led to the internal displacement of more than 60,000 people, who had no refuge after leaving their place of residence. There was widespread agreement that the possibility of peace depended on an end to the blockade and the shifting of commerce from the tunnels to the crossings. Israel was blamed for its lack of clarity in relation to the definition and breadth of access restricted areas. The Special Rapporteur was left with the strong impression that the ceasefire agreement, even if were to be fully implemented, was merely a stop-gap measure, and that more fundamental changes had to be taken to allow Gaza to focus its energies on long-term viability.

14. The Special Rapporteur met with several representatives of fishermen in Gaza, including Nizar Ayaash, Head of the Fishermen's Association, and Mohammed El Asi, Head of the Tawfeq Association. Approximately 3,700 fishermen supply food for some 50,000 Gazans. The fishing industry has been hit hard by Israeli restrictions and interference with fishing operations. Fishing had been restricted to three nautical miles, which limits productive activity severely, as most edible fish are found between 12 and 20 nautical miles from shore. The attacks made during Operation "Pillar of Defense" appeared to target buildings on shore belonging to the Fishermen's Association, and did extensive damage to the structures and destroyed or damaged 85 fishing vessels. The Special Rapporteur was informed that there were high hopes that restrictions would be eased after the ceasefire, and to some extent they were. There was a green light to fish the coastal zone up to six nautical miles, although Israeli gunboats were accused of often harassing fishing activities, firing at the boats, arresting fishermen, excluding their boats from the enlarged zone and even shelling boats for no reason. It is difficult for most Gazan fishermen to earn enough to sustain a minimum standard of living for his family. Many have given up fishing. The Special Rapporteur was also informed that the buildings attacked were never used to store weapons, and that this had been confirmed by both ICRC and the international media. It is evident that, under conditions of blockade, the difficulties of providing the population with ample, healthy food have been compounded by budgetary constraints that limit the capability of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to overcome the shortfall. Allowing Gazans to take full advantage of their fishing resources would seem to be a primary obligation of the occupying Power.

15. The mission also met with Palestinian women who had either been prisoners themselves or had close relatives in prison. One was the internationally known Palestinian, Hana Shalabi, who had been released from an Israeli prison in the Shalit exchange in October 2011, then re-arrested in an abusive manner at her family home. Ms. Shalabi was

not accused of a crime, but held under administrative detention, which is inconsistent with international humanitarian law requirements of prompt charges and trial in the event of detention. On her second arrest, Ms. Shalabi commenced a hunger strike that put her at grave risk of death. Israeli authorities agreed to her release, but only on the condition that she be deported to Gaza, which is away from her family. Such a deportation was clearly punitive, and was disturbingly insensitive to Ms. Shalabi's needs for family and medical support after her experience. The Special Rapporteur recorded other accounts of prison conditions confronting Palestinians: solitary confinement, denial of family visits, punishment of prisoners on a hunger strike, punishment for purely political activity, and inadequate medical facilities and treatment. The Special Rapporteur also heard complaints about the difficulties encountered in access to United Nations officials to express grievances, summed up by one comment: "When you live this experience it is completely different from talking about it." The situation of Palestinian prisoners in discussed in detail below.

B. Economic and social conditions

16. Several meetings were held with United Nations officials and non-governmental organization representatives and experts relevant to an assessment of social and economic conditions. Field visits were conducted to examine some of the difficulties with water and sewage facilities, and to view damage inflicted by Operation "Pillar of Defense". The mission met with the Deputy Director of UNRWA in Gaza, who imparted some key information. His general conclusions are important:

(a) UNRWA is "vastly underfunded" to give needed services, especially food, to that portion of the Gazan population that is dependent on aid;

(b) The character of dependence is so acute as to qualify as an of "emergency";

(c) The Israeli blockade is responsible for this crisis of dependency, with an astounding 70 per cent of Gazans being aid-dependent today, compare with only 10 per cent prior to the blockade in 2007;

(d) The struggle to restore housing destroyed during Operation "Cast Lead" was expected to be completed in 2013, but that goal was now unachievable given the $20 million in damage done during Operation "Pillar of Defense";

(e) The water situation is desperate, with 90 per cent of Gazan aquifers "unfit for human consumption" and Israel diverting a disproportionate share of the coastal aquifer.

17. It was emphasized that allowing exports would "do wonders" to restore economic viability. Another concrete step would be for Israel to allow Palestinian agricultural activity nearer to the buffer zone that Israel establishes for security reasons on the Gaza side of the border. The insufficiency of electricity availability and the contaminated water supply are among the most serious challenges. It was reported that the tunnel network forces the population to rely on the black market for many consumer goods, a dynamic that strengthens Hamas, which gains large revenue by taxing tunnel traffic, and weakens the Palestinian Authority, which obtains revenue from products that enter or leave Gaza through the crossings.

18. To improve longer-term prospects in Gaza, several steps are essential:

(a) Lifting the blockade is necessary if the economy is to be normalized, which would still require five to 10 years of unimpeded effort;

(b) Financing the construction of a major desalination facility;

(c) Shifting agricultural production to less water-intensive crops;

(d) Installing solar networks for heat and electricity;

(e) Improving sewage treatment to avoid further pollution of the Mediterranean Sea.

19. The mission also met with members of the WASH Cluster,[9] who stressed the urgent need for supporting self-sufficiency and enhanced water quality. Scarcity and supply issues had been reportedly aggravated by Israel when it cut Gaza off from West Bank aquifers, an act that apparently violated the arrangements concerning the allocation of water in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II agreements). Israel is implementing an approach that treats Gaza as an entirely independent entity, while from a Palestinian perspective it would be preferable to treat the West Bank and Gaza as one, especially in water policy. Israel currently diverts 92 per cent of aquifers for its own use, thus depriving Gaza of the most efficient way to satisfy its water needs. The practical option for Gaza is a major investment in desalination capabilities, although suspicions were expressed that Israel was seeking to sell its desalination technology to Gaza. Without desalination and water purification initiatives, the public health hazard of contaminated water is likely to prove catastrophic for Gaza. It was alleged that Israel allows Gaza to invest in its own programme of infrastructural improvements, and then bombs the improvements made. The extent of Israel's responsibilities as occupying Power with regard to such matters as water and electricity, which are essential aspects of protecting the civilian population, is paramount. It was recommended that desalination and sewage facilities should be regarded as improper targets in the event of Israeli attacks. It was claimed that past targeting of such facilities had discouraged foreign donors from reinvesting, and that difficulties encountered in importing spare parts posed an obstacle to maintenance works. Emphasis was put on the need for more electricity to pump water, enabling more efficient use of Gaza's food-producing potential. There were also reports of water wastage owing to faulty treatment facilities, increased salinity in ground water and administrative problems with foreign funding because of the split in control between, on the one hand, formal recognition by Israel of the Palestinian Authority as still controlling Gaza, and on the other, the de facto status of the authorities.

20. Fundamental to the viability of Gaza is the question of food security The Gaza Strip is 321 square miles, and the latest population estimate is 1.75 million residents, making it one of the most densely populated and impoverished territories in the world. These underlying conditions have been aggravated by Israel's maintenance of a security buffer zone on the Gaza side of the border that deprives Palestinian farmers of 34 per cent of available agricultural land. Periodic Israeli incursions have destroyed wells and farm animals, and have made it hazardous to work the land. Operation "Pillar of Defense" inflicted considerable damage on agricultural structures and animal shelters throughout Gaza. The Special Rapporteur was informed that agriculture seemed to have been particularly targeted. To have any hope of achieving long-term viability, the agricultural sector depends on an end to the blockade; improved access to seeds; better irrigation; secure access to the land; a reduced and demarcated buffer zone; and the renewal of exports of key products in viable quantities. Long-term projections that assume continued population growth and improving living conditions, including less dependence on international donors, are uniformly pessimistic about the future of Gaza, especially if it continues to be cut off from the West Bank and the outside world.

[9] See www.washcluster.info/.

21. The gravity of the situation was dramatized recently by confrontations between Gazans and UNRWA as a result of food shortfalls.[10] The United Nations projection of the collapse of Gaza as a viable entity by 2020 was confirmed by representatives of non-governmental organizations, who even suggested that such a projection was optimistic, especially in relation to water quality and availability, and that 2016 was more realistic. Present conditions are threatening to unleash a health epidemic. There are reports of widespread mental difficulties being experienced by virtually the entire juvenile population. UNRWA felt that it would be only possible to improve the overall situation in Gaza if its annual budget were increased by $200 million to $300 million, which seems unlikely at present. The non-governmental organization Action against Hunger has noted that any prospect for agricultural sufficiency and livelihood capacity will depend on Gaza reclaiming at least 50 per cent of the coastal aquifer.

C. Health in Gaza

22. The Special Rapporteur met with health experts associated with the World Health Organization, the United Nations Children's Fund (UNICEF) and the Gaza Community Mental Health Programme. They presented a grim picture of the health situation in Gaza. One unexpected finding was their shared assessment that the health effects of Operation "Pillar of Defense" were more severe than those that followed from Operation "Cast Lead", despite fewer casualties. An increased perception of deliberate targeting of neighbourhoods and agricultural settings, more fear arising from recollections of past violence, and greater sensitivity to extreme vulnerability were cited. Mental health experts referred to the extent to which each major violent incursion in Gaza destroys whatever progress had been achieved in recent years and causes a net depressive mood and reality summarized by the word often encountered in such briefings: "de-development".

23. With regard to medical care, there were reports of an increase in referrals for treatment in Israel and Egypt (for instance, 8,000 in 2007, up from 16,000 in 2011) for persons suffering from cancer and cardiac conditions, as well as other diseases that could not be treated in Gaza. The increase was explained as partly caused by the deterioration of medical equipment in Gaza, the inability to import spare parts and the failure to invest in advanced medical facilities. Despite these shortcomings, health specialists did report some improvement in the overall medical situation following the Mavi Marmara incident in 2010, when it became easier to receive travel permits (95 per cent of requests were approved, although often with harmful delays) and to import certain medical equipment. The Special Rapporteur received reports of tragic deaths caused by delays in issuance or denial of travel permits for those needing urgent treatment.

24. During Operation "Pillar of Defense", public health facilities were severely strained and the population came to depend on the assistance of non-governmental organizations, amidst reports of a high incidence of physical and mental injuries. Workers at the Gaza Community Mental Health Programme emphasized the degree to which the impact of the siege and wartime violence on the mental well-being of the civilian population had been both adverse and cumulative. They spoke of the high level of stress observed in most Gazans, with secondary symptoms of despair, hopelessness and powerlessness, and somatic complaints originating with acute stress, such as high blood pressure among children. There were suggestions that the stress and economic challenges of sustaining livelihoods seemed connected with a rise in domestic violence, post-traumatic stress and indications that, for

[10] Mohammed Omer, "Anger at UNRWA in Gaza grows", Al Jazeera, 1 May 2013. Available from www.aljazeera.com/humanrights/2013/04/20134294185559594.html.

children older than 7 years, there were reactivated haunting memories of the horrors experienced during operation "Cast Lead". It was stressed that medical experts were themselves survivors of trauma-inducing situations who required counselling. While people in Gaza suffering from physical ailments seek help, those with mental difficulties tend not to, being culturally inhibited from acknowledging mental problems. Even taking this into account, it was reported that there was a treatment gap of 70 to 80 per cent between those who need help but do not receive it because of shortages in the health system. Added to this is the serious health concern relating to disease associated with contaminated water and inadequate nutrition that has led to widespread stunting in children. These impressions were elaborated upon in a meeting with Dr. Eyad El-Serraj, a psychiatrist, who confirmed the observations made by other health specialists and emphasized a variety of issues that were aggravating the situation, including refusals by Israeli hospitals to accept patients from Gaza who were unable to pay the exorbitant costs of treatment. He recommended the creation of a private patients' fund that could be drawn upon for medical treatment outside of Gaza.

D. Ceasefire implementation

25. The ceasefire agreement[11] between the de facto authorities in Gaza and Israel embodied an understanding that, beyond an immediate cessation of hostilities, Israel would refrain from incursions and targeted assassinations in Gaza and would also allow the movement of people and goods at the crossings. Despite the various interpretations of the ceasefire understanding, with some Israelis contending that it was only an agreement to be discussed, there was a general expectation, at least among Palestinians, that Israel would loosen its stranglehold over the civilian population and make life more tolerable. During the period under review, both sides largely refrained from resuming hostilities, although several developments suggested that Israel had not adhered to the spirit of the ceasefire agreement. There were few signs of a loosening of the blockade and, in latter weeks, targeted assassinations of suspected militants and incursions by the Israel Defense Forces into Gaza resumed. The excessive use of force by the Israeli security forces in the enforcement of access restricted areas continued with disturbing regularity. Several setbacks in recent weeks and months are highlighted below.

26. The Special Rapporteur is disturbed by excessive use of force in the enforcement of access restricted areas on land and at sea, as well as by military incursions with bulldozers into Gaza. He is also concerned at the punitive measures taken by Israel, such as rescinding the fishing zone and closing border crossings, which amount to the collective punishment of the civilian population.

27. On 22 February, the Israel Defense Forces reportedly fired live ammunition at a group of Palestinians enjoying a picnic approximately 400 metres from the border fence, resulting in three Palestinians being injured. On 9 and 19 February, a total of six fishermen were arrested in separate incidents less than six nautical miles off the coast. In both incidents, the fishermen were released the same day, but their boats were confiscated. On 18 and 21 February, a total of four fishermen were shot and injured by Israeli forces three nautical miles from shore. Two were shot by rubber bullets, while the remaining two, including one minor, were injured by shrapnel from live bullets.

28. Allegedly in response to a rocket fired on 26 February by the Al-Aqsa Martyrs Brigade, which caused no casualties, Israel closed the Kerem Shalom crossing and

[11] See "Conflict along the Gaza Strip", Reuters, 21 November 2012. Available from http://live.reuters.com/Event/Conflict_on_the_Gaza_Strip/57460762.

tightened restrictions in the access restricted areas on land and at sea. It also adopted severe measures to enforce the areas, including live-fire shooting without warning, which in some cases left civilians, including farmers, seriously injured. Four Palestinians have been killed and 106 injured by Israel in access restricted areas since the ceasefire.[12] Israeli naval forces increased their attacks on Palestinian fishermen within six nautical miles by using rubber and live bullets, at times without advance warning, despite the ceasefire agreement that had extended the fishing zone from three to six nautical miles. Israel Defense Forces tanks and bulldozers have also made numerous incursions over the past months into Gaza to undertaken levelling and excavations.

29. On 21 March, Israel again reduced the maritime area along the coast, reducing it by three nautical miles.[13] Fishermen aiming to fish in areas up to six nautical miles were ordered by Israel by megaphone to return to within three nautical miles. On 23 and 24 March, Israeli naval forces opened fire on Palestinian boats located at 1.5 nautical miles from the coast.[14]

30. The Special Rapporteur is concerned at Israel's periodic closure of the Kerem Shalom crossing as a retaliatory measure to tighten the stranglehold on Gaza. Kerem Shalom is the crossing point for goods, of which approximately 40 per cent is food and other basic supplies, including cooking gas. Its prolonged closure leads to shortages of basic items and higher prices of commodities. After 21 March, Israel closed the Kerem Shalom crossing, bringing the movement of goods to a halt for the second time after the earlier closure from 27 February to 3 March. Restrictions were also imposed at the Erez crossing, limiting movement to humanitarian cases holding permits. The Israeli authorities re-opened Kerem Shalom for a day on 28 March, after having closed it for seven successive days. Crossings at Erez and Kerem Shalom resumed again, subject to the pre-21 March restrictions, on 2 April.

31. While the occupying Power's continued illegal blockade of Gaza and its failure to uphold its responsibilities to ensure the protection of civilians remain of utmost concern, the Special Rapporteur is alarmed at what appears to be the use of collective punishment on the entire civilian population of Gaza by Israel.

32. The ceasefire agreement will continue to be tested, but the Special Rapporteur is mindful that the continued blockade of Gaza remains of primary concern to the residents of Gaza. The Israeli stranglehold is such that Gaza's monthly exports consist of a few truckloads of cut flowers, date bars, cherry tomatoes and spices.[15] Israel's blockade is stunting the potential for economic development in the Gaza Strip.

III. Palestinian detainees in Israeli prisons and detention centres

33. The Special Rapporteur continues to be concerned by reports on the treatment of thousands of Palestinians who are detained or imprisoned by Israel. At the end of the period

[12] OCHA, Protection of Civilians Weekly Report, 19-25 February 2013. Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2013_03_01_english.pdf.

[13] Ibid., 19-25 March 2013. Available from www.ochaopt.org/documents/ochaopt_weekly_breifing_notes_2013_03_25_english.pdf.

[14] Ibid., 19-25 February 2013 (see footnote 12).

[15] State of Israel, Ministry of Defense, Gaza Crossing – Weekly Report, 10 – 16 March 2013. Available from www.cogat.idf.il/Sip_Storage/FILES/5/3895.pdf.

under review, the Government of Israel had in custody some 4,800 Palestinians.[16] The Special Rapporteur deeply regrets that Israel continues to ignore problems that he and other United Nations human rights bodies have repeatedly described in official reports relating to the detention of Palestinians.[17] The results are Israeli violations on a massive scale. While the Special Rapporteur highlights hereunder cases and issues of concern within the period under review, the following policies and practices remain serious, ongoing concerns: detention without charge and other forms of arbitrary detention, such as Israel's misuse of administrative detention; torture and other forms of ill, inhumane and humiliating treatment; coerced confessions; solitary confinement, including of children; denial of equality of arms; denial of visits by family members and ICRC; denial of access to legal representation; unacceptable conditions in prisons and detention centres; lack of access to required health care, at times amounting to medical neglect; and denial of access to education, including for children. These concerns are punctuated by Israel's flagrant disregard of article 76 of the fourth Geneva Convention.

34. Israel's treatment of Palestinian children in detention continues to alarm. Many of the Special Rapporteur's concerns in this respect were raised in his report to the General Assembly in September 2011.[18] UNICEF recently reminded the international community that Israel's treatment of Palestinian children routinely violated the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[19] It concludes that "in no other country are children systematically tried by juvenile military courts that, by definition, fall short of providing the necessary guarantees to ensure respect for their rights."[20] It also concluded that "the ill-treatment of [Palestinian] children who come in contact with the [Israeli] military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing." In a clarifying indication of the extent of the problems, UNICEF pointed out that its conclusions were based, among other things, on 10 years of consistent allegations. Another clarifying indication of the extent of the problems comes by way of one of its recommendations: "Israeli authorities should give immediate consideration to establishing an independent investigation into the reports of ill-treatment of children in the military detention system, in accordance with the 2002 recommendations made by the […] Special Rapporteur on the situation of human rights [in the] Palestinian territories occupied since 1967." More than 10 years of serious violations against Palestinian children remain to be answered for by Israel. It is telling to contrast the treatment that Israel metes out to Palestinian children with the treatment it affords Israeli children, including settlers in Palestine.[21] This contrast is one way of comprehending the grossly discriminatory nature of Israel's occupation.

35. The death of Arafat Jaradat, on 23 February 2013, while in an Israeli facility, constitutes another criminal mark on Israel's detention regime. While no cause of death was

[16] See B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces, at www.btselem.org/statistics/detainees_and_prisoners.

[17] See A/66/358, A/66/370, A/67/550, A/HRC/7/17 and A/HRC/20/32.

[18] A/66/358.

[19] *Children in Israeli military detention: observations and recommendations*, UNICEF, February 2013. Available from www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.

[20] Ibid., p. 1.

[21] A/67/550, para. 16.

formally recorded,[22] the Palestinian Authority's chief medical examiner, Saber Aloul, observed the autopsy and reported clear indications of ill-treatment and torture on the body of the previously healthy 30-year-old Palestinian. He reported that Mr. Jaradat's death had been caused by nervous shock resulting from severe pain owing to injuries inflicted through direct and extreme torture. Dr. Aloul found that Mr. Jaradat displayed severe bruising on his upper back, deep bruising along the spine and significant bruising on both sides of the chest. The autopsy uncovered bruising on both of his arms and inside his mouth, blood around his nose and three fractured ribs.[23] The death of a prisoner during interrogation is always a cause for concern, but Israel remains firmly committed to impunity for its officials who interrogate Palestinians, as evidenced by a study that determined that, between 2001 and 2011, more than 700 complaints of abuse by Israeli security agents interrogating Palestinians resulted in not one criminal investigation.[24] In this context, there is a clear need for an outside, credible investigation to clarify the circumstances that led to Mr. Jaradat's death.

36. On 2 April 2013, another Palestinian died while imprisoned by Israel. By all accounts, Maysara Abu Hamdiyeh died from cancer. Still, the Special Rapporteur received credible allegations regarding inadequate health care that may amount to medical neglect. Such allegations included a four-month delay in sending Mr. Abu Hamdiyeh to a hospital, providing him with the wrong medication, and then transferring him to an eye doctor when he was suffering from throat pain and had swollen lymph and salivary glands. The Special Rapporteur was informed that Israel had denied Ms. Abu Hamdiyeh's sons visitation rights for 11 years, and did not release him even when it was confirmed that his cancer was terminal. Mr. Abu Hamdiyeh died chained to a bed in a prison, without the presence of – or even any chance to say goodbye to – his family. His death in these circumstances should be considered in the context of years of reports of lack of access to health care and medical neglect suffered by Palestinians detained by Israel.[25] According to information provided to the Special Rapporteur, at least 54 cases of clear medical neglect have resulted in the death of Palestinians in Israeli prisons.

37. The sense of hopelessness ground into Palestinian prisoners by Israel has caused many to launch hunger strikes to protest against their treatment and conditions of their detention.[26] At the end of the period under review, seven Palestinians were on a hunger strike:[27] Samer Al-Barq, Samer Al-Issawi; Younis Al-Hroub, Muhammad Ahmad An-Najjar, Zakariyah Al-Heeh Ibrahim Al-Sheikh Khalil and Hazem Al-Tawil. Each was protesting against being detained indefinitely without charge. Mr. Al-Issawi had been on a hunger strike for an extraordinarily long period and was in danger of death. According to media reports, Israel was offering to release him on the condition that he \ be forcibly

[22] Mission of Israel to the UN in Geneva, Autopsy on Palestinian detainee Arafat Jaradat, 28 February 2013. Available from http://embassies.gov.il/UnGeneva/NewsAndEvents/Pages/Autopsy-on-Palestinian-detainee-Arafat-Jaradat.aspx.

[23] www.alhaq.org/images/stories/PDF/2012/Arafat_Jaradat.pdf.

[24] "Torture and abuse under interrogation", B'Tselem, 1 January 2011. Available from www.btselem.org/torture/impunity.

[25] See A/66/358 and A/67/550. See also "Oversight and Transparency in the Israeli Penal System", Physician's for Human Rights – Israel, July 2008. Available from www.phr.org.il/uploaded/דוח%20שקיפות%20ובקרה.pdf.

[26] "Palestinian on Hunger Strike 'in Mortal Danger'", theRealNews.com, 23 March 2012. Available from http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=8123.

[27] "Eight on Hunger Strike: Hunger Strikes are the Weapon of Prisoners in the Fight Against Administrative Detention", Addameer, 10 March 2013. Available from www.addameer.org/etemplate.php?id=584.

deported to another country. Such a deportation would likely violate article 49 of the fourth Geneva Convention, which prohibits the forced transfer or deportation of protected persons from occupied territories. This was the treatment meted out to Ayman Sharawna, who ended his nearly seven month-long hunger strike in mid-March in return for deportation to Gaza for 10 years.

38. It is interesting to note that Mr. Sharawna and Mr. Al-Issawi were released from Israeli detention on 18 October 2011 in connection with the deal between Israel and Hamas that resulted in the release of Israeli soldier Gilad Shalit. It should be of concern to Israelis, Palestinians and international actors that the Government of Israel appears increasingly willing to break the terms of that deal. While 1,027 Palestinian prisoners were released in exchange for one Israeli soldier, Israeli authorities have since re-arrested at least 15 of the Palestinians who were released. At the end of the period under review, 12remained imprisoned. To the Special Rapporteur's knowledge, none of those imprisoned was subject to any criminal or other charge. Similarly, Israel has demonstrated its readiness to disregard the agreement reached on 14 May 2012 with representatives of Palestinian prisoners that ended the hunger strike in which at least 1,000 Palestinians participated. According to that agreement, in return for ending the hunger strike, Israel would remove prisoners from solitary confinement, allow family visits, limit the use of administrative detention, and make efforts to improve general conditions.[28] All reports indicate that Israel has backtracked on each element. Israel's detention regime, in particular, seems designed to disrupt Palestinian society, producing an atmosphere of arbitrariness, instability and powerlessness. The Special Rapporteur reminds the international community that more than 750,000 Palestinians have been detained by Israel since the occupation began in June 1967 – around 20 per cent of the Palestinian population.

IV. Settlements

39. The Special Rapporteur is concerned by Israel's consistent and systematic expansion of settlements through subsidies, expropriations, house demolitions and demolition orders, granting permits for homes in settlements and intensifying the exploitation of Palestinian natural resources. In the first quarter of 2013, Israel demolished 204 Palestinian homes and structures, displacing 379 Palestinians.[29]

40. The report of the fact-finding mission mandated by the Human Rights Council to investigate the implications of the Israeli settlements reconfirmed that Israel had full control of the settlements in the Occupied Palestinian Territory since 1967 and continued to promote and sustain them through infrastructure and security measures. It concluded that the establishment of the settlements in the West Bank, including East Jerusalem, was "a mesh of construction and infrastructure leading to a creeping annexation that prevents the establishment of a contiguous and viable Palestinian State and undermines the right of the Palestinian people to self-determination".[30] The process of "creeping annexation" that is slowly redrawing the contours of the West Bank contrasts with Israel's purported annexation of East Jerusalem, but both are clearly violations of the fourth Geneva Convention.

[28] See "End of hunger strike by security prisoners", 14 May 2012, at http://unispal.un.org/UNISPAL.NSF/0/2FA82C2602EA28E585257A13004C821D.

[29] OCHA, Protection of Civilians Weekly Report, 23-29 April 2013. Available from http://unispal.un.org/UNISPAL.NSF/0/9128D6CBDC71A71C85257B60004D974C.

[30] A/HRC/22/63.

41. Already in July 1979, 12 years after the first illegal Israeli settlement of Kefar Ezyon was established in the West Bank, the report of the Security Council Commission established under resolution 446 (1979) to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, arrived at similar findings, namely that the pattern of the settlement policy was causing "profound and irreversible changes of a geographical and demographic nature in those territories, including Jerusalem", and that, in the implementation of its policy of settlements, Israel had "resorted to methods – often coercive and sometimes more subtle – that included the control of water resources, the seizure of private properties, the destruction of houses and the banishment of persons", and ha "shown disregard for basic human rights, including in particular the right of the refugees to return to their homeland".[31] The Commission recommended, inter alia, that, as a first step, "Israel should be called upon to cease on an urgent basis the establishment, construction and planning of settlements in the occupied territories. The question of the existing settlements would then have to be resolved".

42. Almost 34 years later, and following another international fact-finding mission, Israel continues to flout international humanitarian law with total impunity, including the obligation as specified in article 49(6) of the fourth Geneva Convention not to transfer its population into the occupied territory. Israel's commitment to the settlement enterprise was succinctly expressed decades ago by former Prime Minister Ariel Sharon, when he stated:

> In my opinion, what determines our fate for many generations to come are the Jewish settlements. Without underestimating the importance of war and military combat in the defense of our country, I think that, in establishing settlements in the Galilee, in the Negev, in the Golan Heights, in Judea and Samaria, in the Jordan Valley and in the Gaza Strip, I had the privilege as the chairman of the Settlement Affairs Ministers Committee and as the Defense Minister to decide about the establishing 230 settlements all over Israel […]. To me, the settlements are the most important thing.[32]

43. It is telling of Israel's policy and intentions with regard to settlements that, after the General Assembly, in its resolution 67/19, decided to accord to Palestine non-member observer State status at the United Nations on 29 November 2012, Prime Minister Netanyahu authorized 3,000 new units in settlements. Israel's population registry indicates that the number of settlers in the West Bank, including East Jerusalem, grew by 4.5 per cent in 2012 to an estimated total of 650,000 settlers.

44. In the course of Israel's unrelenting settlement expansion, 6,676 residential units were approved in 2012, including 3,500 residential units intended for the controversial "E-1" corridor between East Jerusalem and Maale Adumim. In its report of March 2013 to the Ad Hoc Liaison Committee, the Government of Palestine explained that construction in the Bab Ash-Shams/"E1" area "would complete the Israeli wedge of settlements that stretches from occupied East Jerusalem down to the Dead Sea, thus separating the northern from the southern West Bank, and destroying all hope for a free, sovereign and viable State of Palestine".[33]

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[31] S/13450.

[32] *Ariel Sharon – Life Story: A Biography*, "1977 – 1982 Settlement Fever and the Peace with Egypt", available from www.ariel-sharon-life-story.com/12-Ariel-Sharon-Biography-1977-1982-Settlement-Fever-and-the Peace-with-Egypt.shtml.

[33] Report of the Government of Palestine to the Ad Hoc Liaison Committee, 19 March 2013 (available from www.mopad.pna.ps/en/images/PDFs/SoP_AHLC%20Report_14%203%202013_Final%20Print.pdf), p. 13.

45. In East Jerusalem, settlers continue their efforts to expand, including through forced evictions. According to figures collected by the Office for the Coordination of Humanitarian Affairs, 299 Palestinians were displaced in the West Bank, including East Jerusalem, in January and February 2013, as against 879 Palestinians displaced throughout 2012.[34]

46. The case of the Shamasneh family, in Sheikh Jarrah since 1964 but now subject to eviction proceedings by the General Custodian and Israeli Jewish landowners, is symptomatic of a wider trend. Although some Palestinian families in Sheikh Jarrah come under the provisions of the Protected Tenants Act of 1972, the Shamasneh family reportedly are not eligible for protection as they did not have a written rent agreement between 1964 and 1967. A ruling on the case by the Israeli High Court was expected on 20 May 2013.[35]

47. In another case of forcible displacement of Palestinians, the Israeli Municipality and the Ministry of Transport are undertaking construction in Beit Safafa to complete a highway to serve the expansion of settlements in and around the southern part of East Jerusalem, and to expedite the annexation of Gush Etzion. Palestinian residents were not consulted during the planning process and will not benefit from the highway, which will cut across the centre of Beit Safafa. Once the highway is completed, Beit Safafa residents will find themselves in a fragmented community with further loss of freedom of movement and access to essential services. The Special Rapporteur will follow closely the appeal by residents of Beit Safafa for an immediate stop order in the Israeli High Court, scheduled for 26 June 2013.[36]

48. Settler violence continues unabated and affects Palestinians, including children, on a daily basis. In 2013, 146 cases of settler-related violence resulting in Palestinian casualties or property damage have been reported to date.[37] Incidents of settler violence range from physical assaults against Palestinians, including shooting live firearms and stone-throwing, to vandalism against schools, mosques and private property. Hundreds of olive trees and other agricultural assets owned by Palestinians have already been damaged in 2013. Beyond the intended effect of intimidating and harming Palestinians, a worrying aspect of this violence has been the almost non-existent efforts of the Israel Defense Forces to protect Palestinians or to investigate settler abuses. All too often, as repeatedly captured on video, Israeli forces arrive at the scene of violence instigated by Israeli settlers, stand by as passive witnesses, or worse, respond by firing tear gas canisters and rubber-coated metal bullets at the Palestinians. If the advocacy by the Head of the Jewish Home Party, Naftali Bennett, for changing the rules of engagement is successful, it will imbue settlers with a greater sense of impunity.

49. Israel's newly-formed coalition shows no sign of breaking with the State's policy of disregard for international law. The Minister for Housing, Uri Ariel, just before the visit by United States President Barack Obama to Israel and Palestine, declared on television that "building will continue in accordance with what the government's policy has been thus

[34] OCHA, Humanitarian Monitor Monthly Report, February 2013 (available from http://unispal.un.org/unispal.nsf/47d4e277b48d9d3685256ddc00612265/b624803c42fee33885257b39004d09fd?OpenDocument), p. 18.

[35] Ibid., pp.12-15.

[36] The Civic Coalition for Palestinian Rights in Jerusalem, Urgent Appeal for Action, 6 April 2013. Available from http://civiccoalition-jerusalem.org/human-rights-resources/publications/submissions/urgent-appeal-action-0.

[37] OCHA, Protection of Civilians Report, 30 April to 6 May 2013. Available from http://unispal.un.org/UNISPAL.NSF/0/6111ACFD5B247B8C85257B66004C31B0.

far". [38] The Special Rapporteur believes that, without Israel demonstrating good faith compliance with the Geneva Conventions with respect to settlements, the political preconditions for peace negotiations do not exist.

V. Businesses that profit from Israeli settlements

50. In his report submitted to the General Assembly in October 2012,[39] the Special Rapporteur focused attention on business enterprises that profit from Israeli settlements. A central part of the report was the highlighting of a selection of businesses that had engaged in profit-making operations in relation to Israeli settlements. The Special Rapporteur noted his commitment to seeking clarification from these businesses and, in this respect, wishes to mention briefly the responses received from them. Additional recent developments in relation to businesses that profit from Israeli settlements are discussed thereafter.

51. Of the 13 businesses highlighted in the above-mentioned report, responses were received from Assa Abloy, Cemex, Dexia, G4S, Motorola and Volvo. No reply was received from Ahava, Caterpillar, Elbit Systems, Hewlett-Packard, Mehadrin, the Riwal Holding Group and Veolia Environment. It is disappointing that the latter six businesses decided that it was not necessary to respond to allegations of serious human rights and international humanitarian law abuses and violations. Hewlett-Packard and Veolia Environment did not respond despite the fact that they are signatories to the Global Compact, which implies a good faith commitment to adhere to the guidelines for corporate behaviour.

52. Volvo's response clarified that Merkavim no longer produced buses that transport prisoners from Palestine to Israel. However, Volvo repeated its argument that, while "it is regrettable and sad if our products are used for destructive purposes [,] we have no means to ultimately control how and where our products are used." The Special Rapporteur notes that this line of argument has been adopted by other companies, and intends to examine its adequacy against applicable international laws, standards and commitments in a future report.

53. Motorola informed the Special Rapporteur that:

> As a well-respected and responsible corporate citizen, our global activities are conducted in accordance with United States, local, country and other applicable laws, as well as our own code of business conduct. Our company has a comprehensive set of policies and procedures that address human rights that are designed to ensure that our operations worldwide are conducted with the highest standards of integrity.

It is regrettable that this reply does not respond to the allegations, which were that Motorola provided surveillance and communications systems that constituted integral parts of the infrastructure of Israeli settlements and checkpoints along the wall, and that such systems facilitated the implementation of improper restrictions on Palestinians' freedom of movement within their own territory. It would be of particular interest to know how Motorola's due diligence policy takes into account such allegations when Motorola next considers additional sales to the State of Israel.

[38] "Israel Settlements Will Continue To Expand, Says New Housing Minister Uri Ariel", Reuters, 17 March 2013.

[39] A/67/379.

54. The Special Rapporteur received somewhat positive responses from Assa Abloy, Dexia, G4S and Cemex. Assa Abloy clarified that its Mul-T-Locks factory was moved from Barkan, Palestine, to Yavne, Israel, in 2011. The Dexia response clarified that the relevant entity was Dexia Israel Limited and that, as a non-retail bank, did not provide credit to private individuals. It also confirmed that Dexia Israel Limited has a role in servicing loans from the Government of Israel to settlements. G4S confirmed its intention to exit its contracts with the customers in question and further confirmed that such contracts expired from 2012 to 2015. It also provided an overview of its progress in putting its human rights policies and practices in place, which it expected to do in 2013. Cemex confirmed that it understood that Israel is the occupying Power in Palestine, and clarified that its plants in Mishor Adumim, Mevoh Horon and Atarot produce exclusively concrete, not other construction materials. Cemex asserted that the Yatir quarry is not an Israeli settlement, but referred in this connection to a decision of the Israeli High Court of Justice that characterized the matter as a political rather than a legal issue. While Cemex also referred to the occupying Power's duty, under article 55 of the Hague Convention of 1907, to safeguard the capital of the State occupied, the Special Rapporteur recalls that the profits from the quarry go to Cemex, which holds 50 per cent ownership, and Kfar Giladi Quarries. Still, the Special Rapporteur was encouraged to be informed that Cemex, in response to his report, was "considering the possibility of executing a new internal audit on the Cemex Israel [sic] concrete plants" in order to check compliance with the principles of the Global Compact Group."

55. International attention is increasingly drawn to the activities of Israeli and international business enterprises involved in profit-making in occupied Palestine. The fact-finding mission mandated by the Human Rights Council to investigate Israeli settlements denoted a range of potential violations that stem from such activities.The fact-finding mission concluded that private entities had enabled, facilitated and profited from the construction and growth of the settlements, either directly or indirectly,[40] and recommended that private companies assess the human rights impact of their activities, and take all necessary steps, including by terminating their business interests in the settlements, to ensure they did not have an adverse impact on the human rights of the Palestinian people. It also recommended that the Working Group on Business and Human Rights be seized of the matter.[41]

56. The case for action against businesses profiting from the Israeli occupation has been strengthened by recent reports from a wide range of actors. A report compiled by 22 major international human rights and humanitarian organizations made explicit links between the settlements, businesses and Israel's critical trade with Europe.[42] A leading Palestinian human rights organization, Al-Haq, reported on the responsibility of States members of the European Union for the huge settlement produce industry.[43] Palestinian farming and civil society organizations collectively reported on the extent to which international trade with Israeli agricultural companies is destroying Palestinian agriculture.[44] A confidential report

[40] A/HRC/22/63, para. 110.

[41] Ibid., para. 117.

[42] *Trading Away Peace: How Europe helps sustain illegal Israeli settlements*, October 2012. Available from www.fidh.org/IMG/pdf/trading.pdf.

[43] *Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law*, Al-Haq, 2013. Available from www.alhaq.org/publications/Feasting-on-the-occupation.pdf.

[44] *Farming Injustice: International trade with Israeli agricultural companies and the destruction of Palestinian farming*, February 2013. Available from www.bdsmovement.net/files/2013/02/Farming-Injustice-Briefing-Feb2013-web.pdf.

by the European Union heads of mission to Jerusalem contained recommendations to ensure that European consumers are not misled into purchasing settlement products that are labelled as originating from Israel.[45] In that report, the heads of mission also called for European Union citizens and companies to be informed of the financial and legal risks involved in purchasing property or providing services in Israeli settlements. Against this backdrop, according to media reports, the High Representative for Foreign Affairs and Security Policy of the European Union, Catherine Ashton, wrote to the Ministers for Foreign Affairs of the European Union to call for enhanced efforts by Member States to enforce fully and effectively European Union labelling legislation vis-à-vis Israel. It is in this context of increasing awareness that the Special Rapporteur will continue to report on businesses that profit from Israel's prolonged occupation of Palestine.

VI. Recommendations

57. **The Special Rapporteur recommends that:**

(a) ICRC or a commission of inquiry composed of relevant international law experts convene to examine issues particular to prolonged occupation and move towards a convention to address such occupations;

(b) Israel allow Palestinians to make use of their maritime area, up to 20 nautical miles, in accordance with its commitments under the Oslo II agreements;

(c) Israel lift its illegal blockade of Gaza and clearly demarcate access restricted areas, which should only be established in accordance with applicable international legal standards and commitments undertaken by the State of Israel;

(d) The international community, with Israel's full cooperation, as an ad hoc and temporary solution, finance the construction of a major desalination facility in Gaza, instal solar networks for heat and electricity, and urgently improve sewage treatment to avoid further polluting the Mediterranean Sea. At the same time, Israel should respect legitimate Palestinian water rights and desist from appropriating a disproportionate quantity of water from shared aquifers;

(e) The international community, with Israel's full cooperation and in direct consultation with farmers in Gaza, support a shift in agricultural production in Gaza to less water-intensive crops, including by facilitating access to seeds, support the improvement of irrigation networks, and ensure that farmers may utilize their farmland;

(f) The international community, with Israel's full cooperation, create a private patients' fund that could be drawn upon to support medical treatment outside of Gaza, as needed;

(g) The international community establish a commission of inquiry into the situation of Palestinians detained or imprisoned by Israel; the inquiry should have a broad mandate, to examine Israel's record of impunity for prison officials and others who interrogate Palestinians;

(h) The international community investigate the activities of businesses that profit from Israel's settlements, take appropriate action to end any activities in occupied Palestine and ensure appropriate reparation for Palestinians affected;

[45] Copy on file with the Special Rapporteur.

(i) The Office of the United Nations High Commissioner for Human Rights, with the support of the Human Rights Council, establish a mechanism to support special procedures mandate holders who are subject to defamatory attacks, especially those that divert attention from the substantive human rights concerns relevant to their respective mandates.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk

Summary

The present report is the final report of the current Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Commission on Human Rights resolution 1993/2 A and Human Rights Council decision 2/102. In the report, the Special Rapporteur addresses Israeli settlements in the West Bank, including East Jerusalem, and the wall in the context of the tenth anniversary of the advisory opinion of the International Court of Justice, and considers the policies and practices of Israel in occupied Palestine in light of the prohibition on segregation and apartheid. He also addresses concerns in relation to the deterioration of the human rights situation of Palestinians living under the Israeli blockade in the Gaza Strip.

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I. Introduction

1. In his final presentation to the Human Rights Council, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 would like to underscore the importance of this mandate as providing an independent witness to the evolving effects of the continuing occupation of Palestine by Israel. This exposure is centred upon the presentation of information received on the persistence of severe violations of international humanitarian law and international human rights law. Bearing witness provides a record of violations by Israel and its defiant attitude, and challenges the United Nations to take steps to ensure compliance. It should be remembered that the suffering of the people of Palestine is inseparably linked to the partition arrangements initially proposed by the United Nations in 1947, and which were never implemented or revised in a manner that takes full account of the rights of the Palestinian people, above all their inalienable right of self-determination.

2. It was unfortunate that Israel refused even minimal cooperation with this mandate to the extent of allowing the Special Rapporteur to have access to occupied Palestine during the past six years or of responding to several urgent appeals addressing specific situations of immediate concern that fell within the purview of the mandate. This Special Rapporteur was expelled in December 2008 when attempting to enter Israel to carry out a mission of the mandate to visit occupied Palestine, and detained overnight in unpleasant prison conditions. Such humiliating non-cooperation represents a breach of the legal duty of States Members of the United Nations to facilitate all official undertakings of the organization. Although it has been possible to gain information needed to report on the situation confronting Palestinians living under occupation, non-cooperation deprives the mandate of direct interaction, including the receipt of testimony bearing on international law grievances from representatives of the Palestinian people. It is to be hoped that the next Special Rapporteur to be appointed will receive sufficient backing from the Human Rights Council to induce cooperation from Israel and better protection against defamatory attacks by some non-governmental organizations (NGOs) than was the experience of the current mandate holder.

3. *International Law.* An abiding theme of the reports of the Special Rapporteur during the past six years has been the consistent failure of Israel to comply with clear legal standards embodied in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and elsewhere in international humanitarian law and international human rights law. This pattern, as will be detailed below, is flagrant in relation to the wall, settlements, East Jerusalem, the Gaza Strip, water and land resources, and the human rights of Palestinians living under occupation. Also relevant is the failure of the United Nations to ensure implementation of the recommendations as to international law contained in two high-profile Human Rights Council reports of 2009 and 2013, respectively those of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) and of the fact-finding mission to investigate the human rights implications of the Israeli settlements (A/HRC/22/63). To the extent such a pattern is tolerated, it undermines respect for international law.

4. *Palestine.* In the light of the General Assembly's recognition of Palestine as a non-member observer State in Assembly resolution 67/19 of 29 November 2012, it seems appropriate to refer to territory under Israeli occupation as "Palestine" rather than as "Occupied Palestinian Territories". Such a shift in language also emphasizes the inadequacy of the international law framework available to address a condition of prolonged occupation that has now extended for more than 45 years. Special steps and procedures need to be adopted that will confer rights and establish the rule of law. To

sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist and ethnic-cleansing goals of Israel, especially in relation to the West Bank, including East Jerusalem.

5. *Corporate responsibility*. Recent reports have underscored the potential implications for corporations and financial institutions that engage with and profit from Israeli settlements. The establishment and continued development of settlements is in violation of article 49(6) of the Fourth Geneva Convention, an assessment reinforced by the International Court of Justice in its advisory opinion of 2004 on the wall. Such an initiative has tried at all times to proceed cooperatively with the economic actors involved, and has acknowledged instances of compliance with international law and relevant United Nations guidelines and the encouraging recent indication of governmental and European Union reinforcement of these emergent obligations. This trend also converges with and reinforces the social mobilization of civil society in a variety of initiatives, especially the growing boycott, divestment and sanctions campaign.

6. *"Legitimacy war"*. In the pursuit of Palestinian rights under circumstances of prolonged occupation, there is increasing reason to believe that despite the authority of international law and the expressed will of States Members of the United Nations, the situation is essentially frozen, if not regressing. In addition, Palestinians seem increasingly disillusioned with armed resistance and with traditional intergovernmental diplomacy. Palestinian hopes for the realization of their fundamental rights have now shifted to engagement in a "legitimacy war", which involves a worldwide struggle to gain control over the debate about legal entitlements and moral proprieties in the conflict supported by a global solidarity movement that has begun to sway public opinion. The United Nations has a crucial role to play in this process by lending support to Palestinian claims of rights and providing assessments of associated grievances resulting from the violation by Israel of international humanitarian law and international human rights principles and standards.

7. *Language*. The Special Rapporteur believes that the language used to consider Palestinian grievances relating to international humanitarian law and international human rights law in Palestine needs to reflect everyday realities, and not remain beholden to technical wording and euphemisms that mask human suffering resulting from violations. It seems therefore appropriate to describe such unlawful impositions on the people resident in the West Bank by reference to "annexation" and "colonial ambitions" rather than "occupation". Whether these impositions constitute "apartheid" is discussed in more detail below. Such clarifications at the level of language reinforce the contention that it is a matter of urgency to pursue more concerted efforts within United Nations venues to implement the rights of the Palestinian people.

8. *Emergency in Gaza*. Developments in the region, combined with an unlawful blockade maintained since mid-2007, has created a serious emergency situation in the Gaza Strip that threatens the entire population. From the perspective of international law, as argued in prior reports (A/HRC/20/32), Gaza remains "occupied", despite the implementation by Israel of its "disengagement" plan in 2005, due to the control of borders, airspace and coastal waters, and periodic military incursions. The present situation is dire, as massive infrastructural failures cause daily hardship for the population, who are also at risk of epidemics. At the time of writing, with insufficient quantities of fuel reaching Gaza, electricity is available only for short periods, making it impossible for hospitals to provide proper treatment for seriously ill patients suffering from cancer and kidney ailments. The situation is aggravated by persisting tensions between the Palestinian Authority and the governing authorities in Gaza, and by the breakdown of cooperation along the border with Egypt. Egyptian security concerns in Sinai have led to greater restrictions at the Rafah crossing, and to the destruction of the tunnel complex in southern Gaza that had eased some

of the difficulties caused by the blockade. Some countries, notably Turkey and Qatar, have responded to this situation by providing emergency relief, but much more assistance is required, including pressure upon Israel to end the unlawful blockade.

9. *Urgency*. The stark reality is that the beleaguered occupied people of Gaza, over half of whom are children, are not receiving the protection to which they are entitled under international humanitarian law, which imposes an overall duty on the occupying Power to act in such a manner as to protect the civilian population from harm. Given the failure of Israel to live up to these obligations as set forth in the Fourth Geneva Convention, the United Nations and international society generally is challenged to take urgent action. The principles embedded in the concept of the responsibility to protect would seem to have a special applicability to the emergency conditions currently existing in Gaza that are being brought to the attention of the world by graphic pictures of sewage in the streets; widespread flooding; seasonal cold, including snow; and children entrapped by these conditions.

II. The wall and the 2004 advisory opinion

10. July 2014 will mark 10 years since the International Court of Justice gave its near unanimous advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1). The refusal of Israel to implement this assessment of international law by the highest judicial body in the United Nations is cause for serious concern.

11. The question put to the Court by the General Assembly bears repeating: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, …, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"[1] The International Court of Justice was unequivocal in its reply. In summary, it concluded that the construction of the wall in occupied Palestine, including East Jerusalem, and its associated regime, was contrary to international law. The crucial point is that it would not have been unlawful for Israel to build a security wall on an established international border, but to encroach unilaterally on territory occupied in 1967 was a flagrant violation of international law. The Court stated that Israel had a continuing duty to comply with its international obligations in this regard. It found that Israel was obliged to end the illegal situation, cease construction and dismantle the wall in the Occupied Palestinian Territory, and to make reparations for all damage caused as a result of the wall (A/ES-10/273 and Corr.1, para. 145).

12. In addition to the conclusions addressing the obligations of Israel, the Court stated that all States are obliged not to recognize the illegal situation arising from the wall, and that States parties to the Fourth Geneva Convention were obliged to ensure compliance by Israel with that Convention. Finally, the Court suggested that the United Nations, and especially the General Assembly and the Security Council, should consider further action to overcome this illegal situation resulting from the construction of the wall and its associated regime (ibid., para. 163 (3)(D) and (E)).

13. In clear defiance of international law, Israel has continued construction of the wall and maintains on its website a map of 30 April 2006 showing its revised route.[2] At the time

[1] General Assembly resolution ES-10/14.

[2] See www.securityfence.mod.gov.il/Pages/ENG/route.htm.

of the advisory opinion, the Secretary-General estimated that approximately 180 km of the wall had been completed (A/ES-10/273 and Corr.1, para. 82). Since that time, parts of the wall have been re-routed.[3] In 2013, the Secretary-General reported that approximately 62 per cent of the wall had been completed (A/68/502, para. 22). A further 10 per cent was under construction, and construction of the remaining 28 per cent of the planned route had not yet commenced. Upon completion, the wall is expected to run approximately 708 km.

14. About 85 per cent of the planned route of the wall lies within the West Bank, and will cut off and isolate 9.4 per cent of the West Bank territory, including East Jerusalem and so-called No-Man's Land.[4] Palestinian communities affected by the wall experience varying degrees of isolation and restrictions on their freedom of movement. The seam zone's[5] associated permit regime requires Palestinians to continually apply for temporary permits to allow them to reside in their home area and carry on aspects of their lives that require entering or exiting the seam zone. In order to have access to farming land beyond Israeli-controlled access gates, leave and return for work, have access to education, health and other services, visit family and friends or arrange for visits to those communities for non-resident Palestinians, prior permission by Israeli authorities is necessary. This permit procedure imposes daily hardships on many Palestinians.[6]

15. The Ministry of Defense states that "the Security Fence does not annex territories to the State of Israel, nor will it change the status of the residents of these areas".[7] Israel maintains that the purpose of the wall is to ensure security and protect Israeli citizens from terrorist attacks. In 2011, the Israeli High Court of Justice supported this reasoning regarding security in rejecting NGO petitions which claimed that the permit regime was aimed at expropriating and annexing Palestinian land and which argued that its exclusive application to Palestinians, and not, for example, to settlers in the zone, was discriminatory and comparable to the Pass Laws of apartheid-era South Africa.[8] However, the High Court's assertion does not overcome the conclusion by the International Court of Justice that the grave infringements of the rights of Palestinians caused by the wall in the Occupied Palestinian Territory were not necessary to satisfy legitimate Israeli security requirements (A/ES-10/273 and Corr.1, para. 136).

16. If protection of Israeli citizens were indeed the only reason for the wall and the associated regime, it begs the question of why Israel continues to support the expansion of illegal settlements in the West Bank, thus moving an increasing number of Israeli citizens into the very area from which it says the risk emanates. That continued settlement on West Bank land, including East Jerusalem, cut off by the wall seems to be creating a fait accompli amounting to de facto annexation, is a grave concern raised by the Human Rights Council, which has demanded that Israel comply with the advisory opinion (Council resolution 22/26).

17. For Palestinian residents isolated from the rest of the West Bank by the wall, and living under the permit regime and other restrictions, the issue is not only about status, but

[3] Some decisions of the Israeli High Court have reconnected communities with the West Bank. Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory (OCHA-oPt), Barrier Update (July 2011), p. 5.

[4] See www.ochaopt.org/documents/ochaopt_atlas_barrier_affecting_palestinians_december2011.pdf.

[5] A designated "closed military zone" between the wall and the Green Line.

[6] See HaMoked: Center for the Defence of the Individual, "The permit regime: human rights violations in West Bank areas known as the 'seam zone' " (2013). www.hamoked.org/files/2013/1157660_eng.pdf.

[7] See www.securityfence.mod.gov.il/Pages/ENG/route.htm.

[8] OCHA-oPt, Barrier Update, p. 8; HaMoked, "The permit regime", pp. 14–15. See also Virginia Tilley (ed.), *Beyond Occupation* (2012), pp. 151-155.

also about how life is made untenable, inducing more and more Palestinians to abandon their land and leave. By way of illustration, for years, the village of Nabi Samuel reportedly attempted to improve the village school. The village's location in the seam zone complicates access to outside education. The United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator stated on her 2011 visit to the village: "I am horrified by the way the Barrier affects Palestinians. It divides communities and inhibits the provision of services. I visited a one-room school with no windows and very few facilities, which can't be improved because the planning rules don't allow it. This is unacceptable."[9] In September 2013, the village succeeded in installing a container on the school ground to serve as an additional classroom. However, the school is now in danger of losing one of its two rooms for lack of a building permit.[10] These acutely burdensome living conditions lead to the displacement of long-term residents. In 2012, the Village Council noted that over the past decade at least 10 families have left the village, which counts some 260 residents.[11]

18. Another case in point is the approximately 25 houses making up the village of Al-Numan. It is also encircled by the wall, with its only access through an Israeli checkpoint, and restricted from unlicensed building activity, effectively preventing families and the population of the village from growing, as housing needs cannot be met.[12] Consequently, the villagers have seen their own number fall while observing the neighbouring illegal Har Homa settlement's steady growth in occupied territory. In 2006 Al-Haq published a case study on the indirect forcible transfer taking place in Al-Numan.[13] These are but two concrete examples of the obstacles communities face daily. In 2012, the Office for the Coordination of Humanitarian Affairs estimated that approximately 7,500 Palestinians still lived in the seam zone,[14] down from an estimated 10,000 people in 2003.[15] Upon completion of the wall, an estimated 25,000 Palestinians would be located in the seam zone, a figure which does not include the Palestinian population in East Jerusalem.[16]

19. Regular demonstrations against the wall and its associated regime staged in affected villages are often violently suppressed.[17] A website for the village of Bil'in, a farming community, describes its struggle thus: "[Bil'in] is fighting to safeguard its land, its olive trees, its resources … its liberty… Supported by Israeli and international activists, Bil'in residents peacefully demonstrate every Friday in front of the 'work-site of shame'. And every Friday the Israeli army responds with both physical and psychological violence."[18]

20. The impact of the wall on people's lives is reflected in the progress report of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (see A/ES-10/599). As at June 2013, 36,803 claim forms

[9] OCHA, Barrier Update, p. 14.

[10] Documentation collected by OHCHR.

[11] See www.unrwa.org/galleries/photos/nabi-samuel-"we-are-living-inside-prison.

[12] See www.alhaq.org/advocacy/topics/wall-and-jerusalem/594-visiting-a-ghost-town-drawing-attention-to-the-plight-of-al-numan-village.

[13] Available from www.alhaq.org/10yrs/images/stories/PDF_Files/2%20Al-Numan%20Village%20-%20a%20case%20study%20of%20indirect%20forcible%20transfer%20-%20November%202006.pdf.

[14] OCHA-oPt, "The humanitarian impact of the barrier" (July 2012), p. 1 (www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2012_english.pdf).

[15] The Special Rapporteur believes that both the re-routings of sections of the wall and Palestinians leaving due to the wall and its associated regime have contributed to the decrease in numbers.

[16] OCHA-oPt, Barrier Update, p. 11.

[17] See Palestinian Grassroots Anti-apartheid Wall Campaign, www.stopthewall.org/2013/04/07/further-suppression-demonstrations-occupation; B'Tselem, www.btselem.org/demonstrations; and the Russell Tribunal on Palestine, *Findings of the South Africa Session* (2011).

[18] See www.bilin-ffj.org/index.php?option=com_content&task= blogcategory&id=15&Itemid=34.

for registration of damage had been received and, of the almost 9,000 claims decided, all but 576 claims were found to meet the eligibility criteria for inclusion in the register. Claimants may submit claims under categories of losses including: agriculture; commercial; residential; employment; access to services; and public resources.[19]

21. In his first report to the General Assembly, the Special Rapporteur recommended seeking the assistance of the Security Council for the implementation of the advisory opinion (A/63/326, para. 51(b)). In the face of the unequivocal opinion of the International Court of Justice, and of General Assembly resolution ES-10/15, in which the Assembly called on Israel to comply with the advisory opinion, Israel has defiantly acted as if international law and international judicial authority has no bearing on its policies and behaviour. With the tenth anniversary of the advisory opinion approaching, it is time again to examine what legitimate action by the international community can be taken to achieve compliance with international law, as set out by the International Court of Justice. It is often supposed that because the legal findings of the Court were embedded in an "advisory opinion" it has no bearing on the status of the legal obligations of Israel. This is incorrect. An advisory opinion of the International Court of Justice is as determinative with respect to the authority of international law as a judgement in a dispute between two or more States, but unlike such a judgement between States that can be directly enforced by reliance on Article 94 of the Charter of the United Nations, an advisory opinion cannot be so implemented. However, this difference does not weaken the obligation of Israel to act in accordance with this authoritative determination of international legal obligations, and its failure to do so puts it in breach of international law and responsible for the cumulative harm inflicted on the Palestinian people. It is past time for the United Nations to take action that seeks to protect the rights of the Palestinian people bearing on the sanctity of their territory and its relation to the underlying right of self-determination.

III. Israeli settlements and the fragmentation of occupied Palestine

Facts on the ground

22. The hallmark of Israel's 46-year prolonged annexing occupation of Palestine has been the determined pursuit by Israel of settlement construction and expansion in the West Bank, including East Jerusalem, in defiance of its international law obligations (A/68/513, paras. 4–5). This was clearly reflected in the findings of the international fact-finding mission on the implications of Israeli settlements (A/HRC/22/63). Throughout the past six years, the Special Rapporteur has periodically reported on the expansion of settlements and outposts[20] in the West Bank, including East Jerusalem (in breach of Israel's own commitment to freeze settlement expansion, including natural growth under the 2003 Quartet road map), and the impact of associated policies and practices on the human rights of Palestinians living in the occupied territory.[21] While the pro-settlement camp claims that "settlements aren't the problem",[22] this view stands in sharp contrast to the facts on the ground.

23. Increasing fragmentation of the West Bank, including East Jerusalem, by way of a combination of policies and practices including, but not limited to: the wall; the creation of

[19] Rules and Regulations Governing the Registration of Claims, art. 11, para. 1. Available from www.unrod.org/docs/UNRoD%20Rules%20and%20Regulations.pdf.

[20] Outposts are settlements which, although often established with some kind of Government support, are not officially recognized under Israeli law.

[21] A/63/326, A/HRC/13/53/Rev.1, A/65/331, A/HRC/16/72, A/66/358, A/HRC/20/32.

[22] See www.jpost.com/Opinion/Editorials/Settlements-arent-the-problem-330306.

seam zones; checkpoints; zoning and planning restrictions; demolition of homes and forced evictions (particularly of Bedouin communities in Area C); revocation of residency rights; the designation of vast tracts of land in the West Bank as closed military zones or natural reserves; and the expropriation of land for settler agriculture or industrial zones, may irreversibly disrupt the contiguity of the West Bank, undermining a just and sustainable two-State solution.[23]

24. Peace Now, an Israeli NGO, called attention to "Bibi's settlements boom" in 2013, reporting that tenders had been published for 3,472 new units in settlements, and that plans had been promoted for 8,943 new settlement units in the eight months since the Netanyahu Government took office in March 2013.[24] Despite a brief and limited 10-month moratorium on settlement construction in 2010 during the last round of unsuccessful peace talks (which also demonstrated the ability of Israel to halt settlement activity if desired), Israel issued tenders for the construction of 5,302 housing units in the West Bank, including East Jerusalem, during the period from March 2009 to January 2013.[25]

25. The timing of announcements regarding settlement expansion has also been provocative, with the two most recent announcements coinciding with the first and second round of Palestinian prisoner releases by Israel in the context of the renewed peace negotiations that began in August 2013. The passage of time under the status quo has not been a neutral factor for Palestinians, as more "facts on the ground" are created daily, strengthening the position of Israel in its preferred mode of power-based negotiations (as opposed to negotiations based on rights and international law). Despite protestations over settlement activity by the United Nations, and notably also by the United States of America[26] and the European Union, Israel continues to use State power and resources to promote its defiant settlement policies. The Secretary-General has described Israel as playing a leading role in the construction and expansion of settlements (A/68/513, para. 3).

26. This latter factor is important to note if the removal of existing settlements were to occur as part of a peace agreement. Approximately half of all settlements in the West Bank can be classified by type as either "quality of life", or a mixture of "quality of life/ideological", which tend to be inhabited by predominately secular or mixed settler populations.[27] Israel might be able to re-incentivize economic settlers, who were persuaded to move to the West Bank settlements through various government benefits and incentives, to re-settle to the west of the pre-1967 borders of Israel. However, it would have a more difficult time removing the more religious settlers who live in approximately 70 settlements across the West Bank, all the more so as population growth in the settlements (approximately 2.8 per cent) continues to outstrip population growth in Israel.[28] It also remains to be seen whether an emergent settler unity precludes implementing a future peace agreement based on inducing economic settlers to return to Israel. Certainly, it may be anticipated that ideological settlers would do their best to prevent such a division and the implementation of such an agreement.

[23] A/HRC/25/38, A/HRC/25/40, A/68/502 and A/68/513.

[24] See http://peacenow.org/Bibis%20Settlements%20Boom%20-%20March-November%202013%20-%20FINAL.pdf.

[25] See http://peacenow.org.il/eng/sites/default/files/summary-of-4-years-of-netanyahu-government.pdf.

[26] See www.haaretz.com/news/diplomacy-defense/1.556645; www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[27] Among 136 West Bank settlements listed by Peace Now, 25 settlements fall under the type "quality of life", 35 under the type "quality of life/ideological", 70 under the type "ideological" and six under the type "ultra-orthodox" (see http://peacenow.org.il/ eng/content/settlements-and-outposts).

[28] Palestinian Centre for Human Rights submission to Special Rapporteur, 22 November 2013.

27. A small minority within the ideologically motivated settlers has been responsible for most of the violence committed against Palestinian men, women and children and against their homes and properties. In the first 10 months of 2013, 361 incidents of settler violence were reported, including 87 resulting in the injury of Palestinians (compared to a total of 366 incidents in 2012).[29] Most of these incidents occurred in the Nablus, Ramallah and Hebron governorates. Settler violence is reinforced by a lack of accountability and the related failure of Israeli law enforcement forces to protect vulnerable Palestinian communities (A/68/513, paras. 42-52).

28. Housing demolitions and displacement of Palestinian communities also kept up with the settlement boom in 2013. From January to October 2013, 533 Palestinian homes and livelihood structures were demolished, including 205 residential structures, displacing 969 people, including 441 children. International donor-funded structures, paid for by taxpayers around the world, were not spared from demolition, and 96 donor-funded structures, including residential, livestock-related and water and sanitation facilities in the West Bank were demolished by Israeli authorities.

29. Herding communities living in small villages in Area C have been particularly vulnerable to these Israeli practices. In 2013, the United Nations High Commissioner for Human Rights twice spoke out against the demolition of at least three Bedouin and herder communities in the northern Jordan Valley.[30] Violations by Israel of international law extend to actively preventing the provision of urgent humanitarian assistance from the international community to the affected Palestinian communities.[31]

The future of outposts

30. In July 2012, the Government-appointed committee to examine the state of construction in the West Bank, chaired by Supreme Court Justice (Ret.) Edmund Levy (the Levy Committee), issued its report on the legal status of Israeli settlements in the West Bank and, in particular, set forth recommended steps to regularize the construction of "illegal settlements" (outposts) in the West Bank (currently numbering over 100). It concluded that the international laws of occupation, including the Fourth Geneva Convention, did not apply to Israel's unique situation in Judea and Samaria (the name given the West Bank in internal Israeli discourse and signalling a claimed biblical attachment), and that Israelis had the legal right to settle in the West Bank despite the international consensus.

31. The conclusions of the Levy Committee not only reflected disregard of international law but also set forth a quasi-legal retroactive endorsement of outposts, formally unauthorized under Israeli law. In fact, the Committee determined that existing outposts were "carried out with the knowledge, encouragement and tacit agreement of the most senior political level, government ministers and the Prime Minister, and therefore such conduct is to be seen as implied agreement".[32] A previous report of 2005 by Talia Sasson, a former Chief State Prosecutor, concerning the illegal outposts had not gone so far as to implicate the senior-most political echelon of the country, but had found the World Zionist Organization (fully funded from the State Treasury), the Ministry of Construction and Housing, the Civil Administration in Judea and Samaria, and the Assistant to the Defense Minister complicit in the establishment of new unauthorized outposts, and exposed an

[29] See www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_11_25_english.pdf.

[30] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E.

[31] www.ochaopt.org/documents/unhc_obstriction_humanitarian_assistance_english.pdf.

[32] See http://unispal.un.org/UNISPAL.NSF/0/D9D07DCF58E781C585257A3A005956A6.

unelected bureaucracy in charge of creating new outposts without political authorization or oversight.[33]

32. The Special Rapporteur notes that while Sasson's report labelled the outposts as illegal under Israeli law and recommended their dismantlement, developments on the ground since then have shown that successive Israeli Governments preferred to follow the approach endorsed post facto by the Levy Committee. Of 1,708 units constructed in West Bank settlements in the first half of 2013, 180 units were located in outposts (see A/HRC/25/38). In May 2013, Israel announced plans to legalize four outposts in the West Bank (in other words to recognize them as official settlements).[34] While the Netanyahu Government never adopted the Levy report, the Knesset Constitution, Law and Justice Committee is expected to debate the report early in December 2013, indicating that it is being taken seriously at the highest levels in Israel.[35]

"Demographic balance" in East Jerusalem

33. The status of East Jerusalem remains one of the most contentious issues to be resolved in the Israeli-Palestinian conflict. It is worth recalling that in its resolution 478 (1980), the Security Council affirmed that the Basic Law of Israel proclaiming Jerusalem, including the annexed area, as the capital of Israel constitutes a violation of international law and does not affect the application of the Fourth Geneva Convention in Palestine, including East Jerusalem.

34. For Palestinians living in East Jerusalem, their situation would not be as precarious if, despite the illegality of annexation, they were treated equally and afforded access to quality education, health care and housing. Instead, Palestinians living in East Jerusalem are regarded as "permanent residents" and subject to a gradual and bureaucratic process of ethnic cleansing.[36] This has consisted of revocation of residency permits, demolitions of residential structures built without Israeli permits (often virtually impossible to obtain),[37] and forced evictions of Palestinian families, in violation of the basic right to adequate housing, enshrined in the International Covenant on Economic, Social and Cultural Rights.

35. A 2013 report by the United Nations Conference on Trade and Development on the Palestinian economy in East Jerusalem detailed Israeli policies that have impeded the natural growth of the Palestinian economy. It also noted that Palestinians are made to pay high municipal taxes in return for poor services and disproportionately low public expenditure in East Jerusalem.[38] This has been particularly evident with respect to education, characterized by a shortage of classrooms, a high overall dropout rate of 13 per cent among Palestinian schools in East Jerusalem, and a general neglect of the Arab schooling system in comparison to their Jewish counterparts literally metres away in West Jerusalem.[39]

36. The situation in East Jerusalem today is a microcosm of the fragmentation of territory taking place across the West Bank. Israel actively seeks to undermine the Palestinian presence to serve its goal of preserving a Jewish majority in East Jerusalem.

[33] See www.mfa.gov.il/mfa/aboutisrael/state/law/pages/summary%20of%20opinion%20concerning%20unauthorized%20outposts%20-%20talya%20sason%20adv.aspx.

[34] See www.haaretz.com/news/diplomacy-defense/israel-to-legalize-four-west-bank-settlement-outposts-slated-for-demolition-1.524291.

[35] See www.jpost.com/Diplomacy-and-Politics/Knesset-panel-to-debate-Levy-Report-333137.

[36] A/65/331, para. 14, and A/HRC/20/32, para. 32.

[37] A/68/513, paras. 30–33.

[38] See http://unctad.org/en/PublicationsLibrary/gdsapp2012d1_en.pdf.

[39] See www.acri.org.il/en/2013/09/02/ej-edu-report-13.

This has been a policy of Israel for decades, acknowledged by the Jerusalem Municipality, to maintain a demographic balance of approximately 70 per cent Jewish to 30 per cent Palestinian in Jerusalem.[40]

37. Since 1996, an estimated 11,023 Jerusalem Palestinians have lost their resident status and right to live in occupied East Jerusalem.[41] During the period 2004–2013, 492 housing units were demolished in East Jerusalem, displacing 1,943 Palestinians. These figures account only for officially demolished housing units and do not include homes demolished by some owners after receiving a demolition order to avoid perverse heavy municipal penalties and demolition costs associated with the destruction of their own homes.[42]

38. The most problematic plan advanced in East Jerusalem in recent years has been the expansion of settlements and infrastructure around Har Homa, Gilo and Givat Hamatos, as well as the E1 settlement bloc to the east, which threatens to cut off East Jerusalem from the rest of the West Bank.[43] Eventual peace depends crucially on ensuring that Palestinian rights in East Jerusalem are not further jeopardized.

Corporate complicity in international crimes

39. Over the past two years, the Special Rapporteur focused attention on companies involved in business and financial activities related to the Israeli settlement enterprise as well as the possibility of corporate complicity in international crimes related to Israeli settlements in the West Bank, including East Jerusalem.[44]

40. The effort to focus on business activities in the settlements was made, in part, to bring a measure of accountability with respect to the emergent human rights obligations of companies in conformity with international law and the Guiding Principles on Business and Human Rights. The Special Rapporteur's intention was not only to provide a sound legal basis upon which to assess the complicity of businesses in international crimes related to the settlements, but also to clearly set out the risks and associated costs in terms of reputation, as well as the potential legal consequences of doing business in the settlements.

41. The responses received from some of the 13 companies analysed in an earlier report (A/67/379) were mixed. Nonetheless, there have been a number of recent developments in relation to the involvement of other businesses involved in the settlements to indicate that public pressure and media attention does bring some ethical dividends, and has encouraged Governments to be more vigilant.

42. Some positive developments in this regard include Royal HaskoningDHV, a Dutch company, which announced in September 2013 its decision to terminate a contract with the Jerusalem Municipality to build a wastewater treatment plant in East Jerusalem.[45] In December, Vitens, a Dutch water utility company, decided to cut its ties with Mekorot, the Israeli national water company, citing concerns in relation to the adherence of international laws.[46] Earlier, in August 2013, the Swedish-Norwegian bank Nordea excluded Cemex, one of the companies taken up in the Special Rapporteur's earlier report, from its investment

[40] "EU Heads of Mission Jerusalem Report 2012".

[41] Submission to Special Rapporteur by the Civic Coalition for Palestinian Rights in Jerusalem (November 2013).

[42] At 30 November 2013 (www.btselem.org/planning_and_building/east_jerusalem_statistics).

[43] "EU Heads of Mission Jerusalem Report 2012".

[44] A/67/379, A/HRC/23/21, A/68/376.

[45] See https://www.un.org/apps/news//story.asp?NewsID=45812&Cr=palestin&Cr1=.

[46] See www.jpost.com/Diplomacy-and-Politics/Dutch-firm-severs-ties-with-Mekorot-over-West-Bank-policy-even-as-Israel-Jordan-PA-sign-major-water-deal-334597.

portfolio, due to its extraction of non-renewable natural resources from occupied Palestine.[47] Such examples should lead the way for more countries and companies to follow suit, as well as alerting Governments to their responsibility to urge companies subject to their authority to act in accordance with international law.

43. While due diligence on the part of businesses is an inherent aspect of corporate responsibility, Governments also have the obligation, as noted by the fact-finding mission on settlements, to take measures to ensure that they do not recognize an unlawful situation arising from the illegal activities of Israel.[48] In this regard, the European Union guidelines which establish that all agreements between Israel and the European Union for grants, prizes and financial instruments funded by the European Union must now unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967 represents a step in the right direction.

44. The Special Rapporteur is also encouraged by the recent issuance by the Government of the United Kingdom of Great Britain and Northern Ireland of guidelines for businesses, which for the first time outline the risks of trading with Israeli settlements, and specifically warn of the legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognized as a legitimate part of the territory of Israel.[49]

Trade with the settlements

45. The diligence shown by the European Union and some of its Member States regarding the responsibility of businesses operating in occupied Palestine naturally leads to the following question: Are the same human rights standards applied by countries when it comes to trade relations with the settlements? If the statements issued by the European Union and the United States protesting the expansion of settlements reiterate their illegality and illegitimacy, then steps should be taken to ensure that related actions also reflect a genuine commitment to human rights and respect for international law, for example by ceasing trade with the settlements starting with a ban on imports of settlement produce.

46. While produce originating in the Israeli settlements is not entitled to benefit from preferential tariff treatment under the European Union-Israel Association Agreement, fresh agricultural produce exported from the settlements — but falsely labelled as “made in Israel” — can still be found on many supermarket shelves across the European Union due to the voluntary nature of labelling requirements. Considering the fact that the European Union remains one of the most important trading partners for the settlements, with annual exports worth $300 million, a ban on settlement produce would have a significant impact. It should also not be forgotten that trade with settlements is linked to the violation of human rights with respect to Palestinian communities denied access to fertile agricultural land, water and other natural resources.

47. So long as illegal settlements are supported through trade, statements protesting the expansion of settlements from the main trading partners of Israel will have little resonance on the ground, and third party States will continue to be associated with the violation of human rights in occupied Palestine.

[47] Palestinian BDS National Committee, submission to Special Rapporteur (November 2013).

[48] A/HRC/22/63, paras. 116–117.

[49] See www.theguardian.com/world/2013/dec/09/uk-government-warns-over-business-israeli-settlements.

IV. The Gaza Strip

48. In the space of six years since this Special Rapporteur assumed this mandate, the population of the Gaza Strip has lived through two major Israeli military operations (Cast Lead from December 2008 to January 2009 and Pillar of Defence in November 2012), and endured Israel's illegal blockade (in place since June 2007). Both conflicts inflicted disproportionate casualties and devastation on the Palestinian civilian population. This has been well documented by the United Nations.[50]

49. Since June 2013, the humanitarian situation in Gaza has worsened. In recent months, the destruction by the Egyptian authorities of most underground tunnels, which although problematic had been a lifeline to the residents, has had a particularly serious impact on the availability of fuel at affordable prices in Gaza. This has led to severe power shortages, resulting in shutdowns of sewage treatment facilities, and disruptions to specialized health services, such as kidney dialysis, operating theatres, blood banks, intensive care units and incubators, putting the lives of vulnerable patients in Gaza at risk.[51] The frequent closures of the Rafah crossing in recent months have generally prevented access to affordable health care in Egypt, which remains essential given the limitations of the Gaza health system.

50. The most egregious violations of human rights committed by Israel have been in its enforcement, using excessive force, of arbitrary access to restricted areas at sea and on land, profoundly affecting the lives of Palestinian fishermen and agricultural farmers and households dependent upon them. The more pervasive forms of human rights violations also linked to the blockade have been well documented by the Secretary-General (A/68/502), and include inter alia, severe restrictions on movement into and out of Gaza from Israel and adverse impacts on the rights of Palestinians in Gaza to education, health and work. In addition, severe export restrictions (and limitations on imports) undermine the potential of the Gaza economy, and accentuate the impoverished conditions that prevail in Gaza.[52] The recent refusal of Israel to allow exports from Gaza to the West Bank, despite a Dutch donation of a container security scanner, is emblematic of the denial of the right to development in Gaza, and undercuts claims by Israel that its actions are taken to serve genuine security concerns.[53]

V. The question of apartheid and segregation

51. In 2011, the Special Rapporteur reiterated the call made by his predecessor in 2007, for a referral to the International Court of Justice for an advisory opinion on the question of whether "elements of the [Israeli] occupation constitute forms of colonialism and apartheid".[54] More precisely, he recommended that the Court be asked to assess the allegations that the prolonged occupation of the West Bank and East Jerusalem possess elements of "colonialism", "apartheid" and "ethnic cleansing" inconsistent with international humanitarian law in circumstances of belligerent occupation and unlawful abridgement of the right to self-determination of the Palestinian people.[55] Since no advisory opinion has been sought following the aforementioned reports of successive Special Rapporteurs, in the present report the Special Rapporteur assumes part of the task of

[50] A/HRC/12/48, A/HRC/22/35/Add.1 and A/HRC/23/21.
[51] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14028&LangID=E.
[52] See www.cogat.idf.il/Sip_Storage/FILES/0/4320.pdf.
[53] See www.haaretz.com/news/diplomacy-defense/.premium-1.562465.
[54] A/HRC/16/72, para. 8, A/HRC/4/17, p. 3.
[55] A/HRC/16/72, para. 32(b).

analysing whether allegations of apartheid in occupied Palestine are well founded. He discusses Israeli policies and practices through the lens of the international prohibition of ethnic discrimination, segregation and apartheid.

Legal framework

52. Apartheid is prohibited under international law, and Israel, as a State and an occupying Power, is bound by this prohibition. Under Protocol I additional to the Geneva Conventions, which is declaratory of international law and therefore widely regarded as universally binding, "practices of 'apartheid' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination" are included as grave breaches.[56] Further, the International Law Commission has noted that Governments at the United Nations Conference on the Law of Treaties (1968) generally agreed that the prohibitions constituting peremptory norms included apartheid.[57] In addition, article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that "States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction".[58] At the second universal periodic review of Israel in October 2013, South Africa recommended that Israel "prohibit policies and practices of racial segregation that disproportionately affect the Palestinian population in the OPT" (A/HRC/25/15, para. 136.202).

53. Apartheid involves the domination of one racial group over another, and some may argue that neither Israeli Jews nor Palestinians constitute racial groups per se. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, in its definition of racial discrimination, makes it clear that race is in fact not the sole factor, but that racial discrimination may be based on "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". The Committee on the Elimination of Racial Discrimination has stressed that under the definition in article 1 "the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples".[59]

54. The International Convention on the Suppression and Punishment of the Crime of Apartheid, in article 2, provides a detailed definition of the crime of apartheid, providing that it "shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa", and applies to "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them". The Rome Statute of the International Criminal Court echoes these core elements (art. 7, para. 2(h)) and further specifies that for such acts to constitute "crimes against humanity" they must be "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (art. 7, para. 1). Without prejudice to any possible differences in the elements of apartheid as an international crime and an internationally wrongful act, apartheid will be treated as a single concept for the purpose of the present report, which will be framed around the inhuman acts laid out in article 2(a)–(f)

[56] Art. 85(4)(c), A/HRC/16/72.

[57] Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), arts. 40–41 and commentaries.

[58] Regardless of the possibility that the Convention's inclusion of apartheid applies exclusively to South Africa, the Convention prohibits all forms of racial segregation. See Committee on the Elimination of Racial Discrimination, general recommendation No. 19 (1995).

[59] General recommendation No. 24 (1999), para. 1.

of the International Convention on the Suppression and Punishment of the Crime of Apartheid.[60]

Acts potentially amounting to segregation and apartheid

55. Article 2(a) concerns denial of the right to life and liberty of person, including by (i) murder; (ii) serious bodily and mental harm, infringement of freedom, and torture, and (iii) arbitrary arrest and illegal imprisonment. With respect to article 2(a)(i), continuing excessive use of force by Israeli security forces (ISF) and a lack of accountability for violations of international humanitarian law and international human rights law is well-documented by successive United Nations resolutions and reports.[61] Palestinians are killed as a result of regular Israeli military incursions into occupied Palestine; lethal use of force against demonstrators; official endorsement of targeted killings; and large-scale military operations.[62]

56. According to B'Tselem, between 1987 and 2000 just under 1,400 Palestinians were killed by ISF.[63] After the year 2000, deaths of Palestinians caused by ISF accelerated, with more than 6,700 deaths, as at October 2013.[64] Of this number, over 3,100 were civilians not involved in hostilities. B'Tselem's statistics show that during Israel's "Cast Lead" operation in Gaza, of the 344 children reportedly killed, 318 did not take part in hostilities. During the same operation, of the 110 Palestinian women recorded as killed, two were police officers and the remaining 108 did not take part in the hostilities. During operation "Pillar of Defence", approximately 100 Palestinian civilians, a third of whom were children, were reportedly killed as a result of ISF actions (A/HRC/22/35/Add.1, para. 6).

57. Additional deaths were caused by the ISF policy of targeted killing, which resulted in the killing of 369 Palestinians during the period September 2000–December 2013. Moreover, on average, for every person killed as a target of ISF, one or two other persons have been killed in any given operation. Thus, during the same period, 453 Palestinians who were not targets were also killed.[65]

58. Individual accounts by former soldiers of the Israel Defense Forces (IDF), published by the Israeli NGO Breaking the Silence, bear witness to Israeli policy in respect to the occupied people: " 'Prevention of terror' is the stamp of approval granted to any offensive IDF action in the Territories, obscuring the distinction between the use of force against terrorists and the use of force against civilians. In this way, the IDF is able to justify actions that intimidate and oppress the Palestinian population overall."[66]

59. Under a simple interpretation, the term murder, as referred to in the International Convention on the Suppression and Punishment of the Crime of Apartheid, signifies the unlawful taking of life. Therefore, the taking of lives — outside the limited circumstances in which international humanitarian law and international human rights law do not absolutely prohibit this — potentially constitutes an element of apartheid, in the context of a systematic and institutional regime in which these unlawful killings form part of acts

[60] Israel is not a party to the Convention and it is debated whether it was intended to apply exclusively to South Africa. Nonetheless, it continues to inform the prohibition of apartheid in international law.

[61] E.g. A/68/502, A/67/372, A/66/356, A/65/366, A/HRC/22/35; General Assembly resolution 67/118; and Human Rights Council resolutions 22/28 and 19/16.

[62] Russell Tribunal, *Findings* (2011), para. 5.22.

[63] See www.btselem.org/statistics.

[64] Ibid.

[65] See www.btselem.org/statistics.

[66] *Israeli Soldier Testimonies 2000-2010*, p. 26 (www.breakingthesilence.org.il/testimonies/publications).

carried out in order to maintain dominance over Palestinians. The relatively high proportion of civilian casualties caused by ISF in occupied Palestine is notable in this respect.

60. In regard to article 2(a)(ii) and (iii), detention by Israel of Palestinians is closely linked to the occurrence of torture and ill-treatment. According to the Prisoner Support and Human Rights Association, Addameer, in September 2013, there were some 5,000 Palestinian political prisoners, including 137 administrative detainees.[67] Many detainees are transferred to prisons in Israel, in violation of the Fourth Geneva Convention (art. 76).[68]

61. In 2012, the Committee on the Elimination of Racial Discrimination urged Israel to end administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law (CERD/C/ISR/CO/14-16, para. 27). Similar recommendations were made by a number of States during the most recent universal periodic review of Israel (A/HRC/25/15). The Committee further recommended that Israel ensure equal access to justice for all persons living in territories under its effective control, noting that Jewish settlers in occupied Palestine are subject to a civil law regime, while a military regime applies to Palestinians in the West Bank, including East Jerusalem.

62. Despite the absolute prohibition of torture,[69] Palestinians detained by Israel continue to be subjected to torture and ill-treatment (A/68/379).[70] Methods of torture and ill-treatment reportedly include: sleep deprivation; excessive use of handcuffs; beatings; verbal abuse; stress positions; solitary confinement; humiliation; and threats of killing, sexual assault and house demolitions, against the detainee or his or her family.[71]

63. In 1999 the Israeli High Court said that using certain methods of physical pressure for the purpose of "breaking" a detainee are unlawful and that interrogation methods must be fair and reasonable, and respectful of human dignity.[72] While representing an important recognition of the illegality of certain methods of torture employed against Palestinian detainees, the decision failed to outlaw torture by allowing the "ticking bomb" or "necessity" defence. According to Addameer, "necessity" is used by interrogators as a blanket defence with little to no accountability.[73] The Public Committee against Torture in Israel reported that of 701 formal complaints of torture submitted between 2001 and 2010, none resulted in a criminal investigation.[74]

64. Palestinian children are not exempt. In 2013, UNICEF concluded that "Ill-treatment … appears to be widespread, systematic and institutionalized"[75] in the case of Palestinian children held in the Israeli military detention system. Israeli authorities seem to have taken some limited steps towards meeting the UNICEF recommendations,[76] including by piloting test summons in two West Bank areas instead of conducting frightening night arrests of children.[77] While this is clearly a needed development, it also shows just how

[67] See www.addameer.org/einside.php?id=9.
[68] See www.addameer.org/etemplate.php?id=302.
[69] Draft Articles.
[70] A/68/379.
[71] See www.addameer.org/etemplate.php?id=294 and www.stoptorture.org.il/en/skira1999-present.
[72] See www.btselem.org/torture/hcj_ruling.
[73] See www.addameer.org/etemplate.php?id=294.
[74] *Accountability Still Denied* (2012), p. 4 (www.stoptorture.org.il/files/PCATI_eng_web.pdf). The formal complaints may not be representative of the actual number of victims.
[75] *Children in Israeli Military Detention*, p. 1 (www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf).
[76] See www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.
[77] See also A/68/379 and CRC/C/ISR/CO/2-4.

basic the denial and lack of protection of Palestinian children's rights is under the Israeli military legal regime. By comparison, Israeli settler children in conflict with the law are subject to regular Israeli law. According to Defence for Children International, as at October 2013, 159 Palestinian children were in Israeli military detention.[78] On average, around 700 children are detained and prosecuted per year, most commonly on charges of throwing stones.[79]

65. The regular denial by Israel of the right to life and liberty of significant numbers of Palestinians is reflected in its policies, laws and practices in occupied Palestine.

66. Article 2(b) refers to the imposition of living conditions calculated to cause a group's physical destruction in whole or in part. It seems unlikely that the policies, laws and practices of Israel can be said to have as their aim the physical destruction of the occupied people.[80]

67. Article 2(c) concerns measures calculated to prevent participation in the political, social, economic and cultural life of the country and the full development of a racial group, including and especially by denying them their rights to work, to education, to leave and to return to their country, to nationality, and to freedoms of movement and residence, opinion and expression, and peaceful assembly and association.

68. Violations of many of these rights have already been touched on in preceding sections. For instance the violations by Israel of the rights to work, education, freedom of movement and residence, and freedom of expression and assembly have been illustrated in the context of discussing the wall and its associated regime, and policies and laws related to the development of settlements, including in East Jerusalem. The rights to work, to freedom of movement, and to leave and return to one's country, are particularly relevant to Gaza. In the West Bank, the denial of rights to Palestinians is made possible by the existence of parallel legal systems operating in the same territory: one set of civil and criminal laws for Israeli settlers and another for Palestinian Arabs, subject to Israeli military orders, as well as other laws. While the Israeli High Court of Justice formally exercises judicial oversight of the Israeli administration in occupied Palestine, according to NGOs, case law illustrates a trend whereby major policy decisions of government, e.g. relating to the wall and settlements, tend to be immune from judicial intervention, and that human rights and protection under international humanitarian law have not been adequately upheld by the High Court in its rulings.[81] The creation of Israeli legal zones for settlers and the resulting segregation was noted in the 2013 report by the independent fact-finding mission on settlements (A/HRC/22/63). The Committee on the Elimination of Racial Discrimination in 2012 expressed that it was "extremely concerned" at policies and practices amounting to de facto segregation and that it was "particularly appalled at the hermetic character of the separation of the two groups" (CERD/C/ISR/CO/14-16, para. 24).

69. It is clear that Israeli measures, in the form of policies, laws and practices, have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of Palestine and arguably also prevent their full development in both the West Bank and the Gaza Strip.

[78] See www.dci-palestine.org/content/child-detainees.

[79] See www.addameer.org/etemplate.php?id=296.

[80] The United Nations has questioned whether Gaza will be a liveable place in 2020 ("*Gaza in 2020: A Liveable Place*?" 2012). Considering the situation in Gaza, the Russell Tribunal found that Israeli policies aimed at causing displacement of Palestinians, rather than their physical destruction.

[81] Information from Diakonia.

70. Article 2(d) refers to measures designed to divide the population along racial lines including by the creation of separate reserves and ghettos for the members of a racial group or groups, and the expropriation of landed property. The expropriation of Palestinian land is an obvious part of the expansion of settlements and of the construction of the wall. The fragmentation of Palestinian land and creation of separate reserves and enclaves, including the plans threatening to cut off East Jerusalem from the rest of the West bank, is well documented (A/HRC/22/63). The final conclusions of the Russell Tribunal on Palestine state: "Israel has through its laws and practices divided the Israeli Jewish and Palestinian populations and allocated them different physical spaces, with varying levels and quality of infrastructure, services and access to resources. The end result is wholesale territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated. The Tribunal heard evidence to the effect that such a policy is formally described in Israel as *hafrada*, Hebrew for 'separation' ".[82] The Special Rapporteur has previously drawn attention to the dual system of roads in the West Bank, as a clear example of segregation, where Palestinians are largely relegated to alternative roads and forced to take long detours (A/HRC/16/72, paras. 20–22).

71. It seems incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their land.

72. Article 2(e) refers to exploitation of labour. There exist historical reports[83] as well as current campaigns and reports[84] which address poor working conditions of Palestinian citizens working in Israel or in settlements. However, it is noted that there has been a sharp drop in Israeli use of Palestinian workers since the 1990s, especially as it is now impossible for Gazans to work in Israel and since in the West Bank the construction of the wall has further diminished the number of Palestinians working in Israel or for Israeli employers.[85]

73. Article 2(f) concerns persecution of those who oppose apartheid. This provision potentially relates to a wide range of human rights violations against Palestinians in the Occupied Palestinian Territory, who as a people desire self-determination and oppose the segregation, restrictions and discriminatory regime imposed by Israel on them. In this sense, the punitive response often meted out to those who demonstrate against the wall and its associated regime, or more generally oppose Israeli violations of human rights, arguably fall under this provision.

74. An individual case in point concerns the Palestinian human rights defender Issa Amro, who is a founder of the NGOs Youth Against Settlements and Hebron Defenders. In 2012, Mr. Amro was arrested and detained 20 times without charge.[86] At the time of writing, he had been detained multiple times in 2013 and had been hospitalized, allegedly following a beating by ISF while in detention. In August 2013, a number of special rapporteurs, including this Special Rapporteur, expressed deep concern at the alleged ongoing judicial harassment, intimidation and abusive treatment of him. According to the Special Rapporteur on the situation of human rights defenders: "This is an unacceptable campaign of harassment, intimidation and reprisals against Mr. Amro, and other human

[82] Russell Tribunal, *Findings*, para. 5.39.

[83] See http://unispal.un.org/UNISPAL.NSF/1ce874ab1832a53e852570bb006dfaf6/57c45a3dd0d46b09802564740045cc0a?OpenDocument.

[84] See www.business-humanrights.org/Links/Repository/1023856, http://www.dci-palestine.org/documents/palestinian-children-invisible-workers-israeli-settlements.

[85] Russell Tribunal, *Findings*, para. 5.40.

[86] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E.

rights defenders who peacefully advocate for the rights of Palestinians in the West Bank, including by cooperating with [United Nations] human rights bodies."[87]

75. An example of an Israeli citizen, belonging to the Druze minority, who has reportedly been imprisoned for his conscientious objection to serving in the Israeli army is Omar Saad. In an open letter to the Prime Minister and Minister of Defense he explained: "I couldn't imagine myself wearing military uniform and participating in the suppression of my Palestinian people". He asked: "How can I be a soldier standing at Qalandia checkpoint or any other checkpoint, after I experienced the injustices at these checkpoints? How can I prevent someone from Ramallah to visit his city, Jerusalem? How can I guard the apartheid wall? How can I be a jailer to my own people while I know that the majority of prisoners are freedom prisoners and seekers of rights and freedom?"[88]

76. It is strongly arguable that those who oppose Israeli measures amounting to apartheid risk persecution because of their opposition.

Systematic oppression

77. None of the human rights violations discussed in the context of possibly constituting "inhuman acts" for the purpose of the International Convention on the Suppression and Punishment of the Crime of Apartheid or the Rome Statute can be said to be isolated events. Rather, their commission reflects systematic and discriminatory Israeli policies, laws and practices, which determine where in the occupied land Palestinians may or may not travel, live and work. Laws and policies have also institutionalized just how lightly a civilian Palestinian life may be weighed, when placed on the scales against claims of overarching security concerns, contrasting with the legal protection of the Israeli constitutional system given to unlawful Israeli settlers. The combined effect of the measures designed to ensure security for Israeli citizens, to facilitate and expand settlements, and, it would appear, to annex land, is *hafrada*, discrimination and systematic oppression of, and domination over, the Palestinian people.

VI. Concluding remarks

78. Through prolonged occupation, with practices and policies which appear to constitute apartheid and segregation, ongoing expansion of settlements, and continual construction of the wall arguably amounting to de facto annexation of parts of the occupied Palestinian territory, the denial by Israel of the right to self-determination of the Palestinian people is evident. The Draft Articles on Responsibility of States for Internationally Wrongful Acts provide guidance as to the consequences of serious breaches of peremptory norms under international law. In this respect there is authority[89] to suggest that the following prohibitions have attained the status of peremptory norms: aggression through military occupation and imposition of military blockades on ports and coasts,[90] racial discrimination and apartheid, and torture. In addition, the right to self-determination itself has been recognized as a peremptory norm which applies *erga omnes*.[91]

79. Under article 40, paragraph 2, of the Draft Articles, for breaches of peremptory norms to be "serious" they must "involve a gross or systematic failure of the responsible

[87] Ibid.
[88] See www.wri-irg.org/node/20565.
[89] Draft Articles, chap. III.
[90] General Assembly resolution 3314(XXIX).
[91] Draft Articles, chap. III, commentary.

State to fulfil the obligation". Without prejudice to an authoritative determination of whether the breaches of the discussed peremptory norms qualify as "serious", it is noted that the violations discussed in the context of the prolonged occupation appear deliberate, organized, institutionalized and longstanding. In the commentary, the International Law Commission considers it likely that competent international organizations, including the Security Council and the General Assembly will address such serious breaches. The implications for Member States for serious breaches of this nature include an obligation to cooperate to bring an end to breaches, and an obligation not to recognize or maintain the illegal situation.[92]

80. Finally, from the point of view of international criminal law, with the General Assembly's recognition of Palestinian statehood, the opportunity for Palestine to accept the jurisdiction of the International Criminal Court is now clear. While a declaration was lodged by the Palestinian Minister of Justice in 2009 purporting to accept its jurisdiction "for acts committed on the territory of Palestine since 1 July 2002",[93] it seems the Court's decision of 3 April 2012 on the question of jurisdiction[94] had the effect of closing the preliminary examination.[95] An acceptance of jurisdiction would potentially bring a measure of accountability for key individuals, and address violations related to the crime of apartheid and other issues flowing from the more than 400 communications on crimes allegedly committed in Palestine, received by the Office of the Prosecutor of the International Criminal Court since 2009.[96]

VII. Recommendations

81. **In this, his final report, the Special Rapporteur takes the opportunity to reiterate some past recommendations and add several new ones, namely that:**

(a) Palestinian legal rights, including the right of self-determination, be fully respected and implemented in attempts to reach a peaceful and just resolution of the conflict between these two peoples;

(b) The General Assembly request the International Court of Justice to issue an advisory opinion on the legal status of the prolonged occupation of Palestine, as aggravated by prohibited transfers of large numbers of persons from the occupying Power and the imposition of a dual and discriminatory administrative and legal system in the West Bank, including East Jerusalem, and further assess allegations that the prolonged occupation possesses legally unacceptable characteristics of "colonialism", "apartheid" and "ethnic cleansing";

(c) The Human Rights Council appoint an expert group to propose a special protocol to the Fourth Geneva Convention with the specific purpose of proposing a legal regime for any occupation that lasts for more than five years;

[92] Ibid., art. 41.

[93] See www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf.

[94] See www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf.

[95] See www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20%20Preliminary%20Examination%20Activities%202013.PDF.

[96] See www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-cdnp/palestine/Pages/palestine.aspx.

(d) The international community comprehensively investigate the business activities of companies and financial institutions registered in their own respective countries, which profit from the settlements of Israel and other unlawful Israeli activities, and take appropriate action to end such practices and ensure appropriate reparation for affected Palestinians. Member States should consider imposing a ban on imports of settlement produce;

(e) Future investigations consider whether other foreign corporate connections with unlawful occupation policies additional to settlements (e.g. separation wall, Gaza blockade, house demolitions, excessive use of force) should not be also deemed "problematic" under international law, and treated in a manner analogous to the recommendations pertaining to settlements;

(f) The Government of Israel cease expanding and creating settlements in occupied Palestine, start dismantling existing settlements and returning its citizens to the Israeli side of the Green Line, provide appropriate reparations for the damage due to settlement and related activity since 1967, and act diligently to protect Palestinians living under Israeli occupation from settler violence;

(g) The Government of Israel forthwith lift the unlawful blockade of Gaza, cease military incursions, allow Gazans to benefit fully from their natural resources situated within their borders or off the coast of Gaza, and take account of a deepening emergency in Gaza;

(h) The Human Rights Council pay increased attention to the failure by Israel to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[97] and to the protection of Special Rapporteurs from defamatory attacks diverting attention from substantive issues integral to the mandate.

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[97] In 2013, the Special Rapporteur joined 71 other independent experts in an appeal to Member States to cooperate with their mandates (www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14083&LangID=E).

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono

Summary

The present report, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, is primarily based on interviews and briefings held with victims, civil society representatives, human rights defenders, and Palestinian officials, among others, in Amman and Cairo in September 2014. The Special Rapporteur made every effort to contact Palestinian victims and witnesses via video and teleconference. In the report, he addresses a number of concerns pertaining to the situation of human rights in the Occupied Palestinian Territory, and in particular, on their impact on children.

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I. Introduction

1. Since assuming his mandate in June 2014, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 as spared no effort to secure cooperation of the concerned countries and to conduct a mission to Israel and the Occupied Palestinian Territory, in order to have the opportunity of seeing, hearing and asking his own questions directly to Palestinian victims and various witnesses regarding the situation of human rights in the Occupied Palestinian Territory. To that end, the Special Rapporteur made great efforts to build a relationship of trust with representatives of both Israel and of the State of Palestine.[1]

2. From the outset, together with thematic special procedures mandate holders, the Special Rapporteur expressed serious reservations to the Government of Israel about the nature of Israeli policies and practices in the Occupied Palestinian Territory. Joint letters of allegation and urgent appeals were sent on serious alleged violations of international humanitarian law and international human rights law. The concerns raised included the alleged failures to abide by international legal principles leading to the killings of civilians in the Gaza Strip during Israel's 2014 military operation; the alleged excessive use of force by Israeli security forces during a peaceful demonstration in the West Bank; and the steps being taken by the Government of Israel, which would reportedly lead to the forced eviction and forcible transfer of Palestinian Bedouin communities currently residing in the central West Bank.[2]

3. The Special Rapporteur appreciated the openness to dialogue shown by the representatives of the Governments of Israel and Palestine in Geneva. In June 2014, immediately after taking up his position, the Special Rapporteur informed them of his intention to visit the Occupied Palestinian Territory. In response to a formal request to undertake a country visit by the Special Rapporteur in August 2014, the Permanent Observer Mission of State of Palestine expressed its willingness to assist with the mission, including for consultations with relevant consultations and meetings with relevant authorities. No formal response was received from the Permanent Mission of Israel. The Special Rapporteur persevered in his efforts to seek access through informal dialogue with the Permanent Representative of Israel in Geneva; as at late December 2014, however, none had been granted.

4. Owing to the failure of Israel to provide full and free access to the Occupied Palestinian Territory, the present report is based primarily on information collected during the first mission conducted by the Special Rapporteur to the region, including to Amman, on 20 and 21 September 2014, and to Cairo, from 22 to 28 September 2014, to hold interviews and briefings with, inter alia, victims, civil society representatives, human rights defenders and Palestinian officials. Representatives of United Nations entities and non-governmental organizations and Palestinian officials, including ministers, travelled to Amman from the West Bank, including East Jerusalem, to meet with the Special Rapporteur.

5. Given the lack of access via Israel, the Special Rapporteur had hoped to visit Gaza through the Rafah crossing; this was not possible, however, owing to circumstances beyond his control. In order to hear directly from interlocutors based in Gaza, he held video and teleconferences with those directly affected by the recent escalation of hostilities. The Special Rapporteur extends his sincere appreciation to all those who provided him with

[1] See A/69/301 and Corr.1.

[2] See A/HRC/28/85.

testimony and information pertaining to the situation of human rights in the Occupied Palestinian Territory. He is also grateful for the full cooperation extended to him during the mission by the Government of the State of Palestine and for the assistance given by the Governments of Egypt and Jordan.

6. The report begins by addressing the humanitarian crisis in the Gaza Strip and the impact of the latest round of violence between Israel, on the one hand, and Hamas and other Palestinian armed groups, on the other, from 7 July to 26 August 2014. The information recorded and provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) showed that 2,256 Palestinians were killed, of whom 1,563 were civilians, including 538 children.[3] The numbers speak volumes about the scale of the devastation, but statistics alone cannot do justice to the intensity of human suffering or explain the impact that the conflict will have on Palestinians living in Gaza for months and years to come. It is hoped that the information and testimonies received by the Special Rapporteur will provide a glimpse of the human narrative of those two tragic months and illuminate some of the challenges and problems that lie ahead, particularly with regard to health and education in Gaza.[4]

7. In the present report, the Special Rapporteur will also address a number of equally important issues of serious concern affecting human rights in the Occupied Palestinian Territory and make a number of recommendations to the Government of Israel.

8. The present report is not an exhaustive account of the impact of Israeli occupation policies and practices on the rights of Palestinians that were brought to the attention of the Special Rapporteur. Indeed, there is a long list of pressing human rights issues that merit attention: from the expansion of settlements to settler violence; discriminatory policies in East Jerusalem; and the involvement of businesses in the Occupied Palestinian Territory, to name but a few. The Special Rapporteur intends to address these and other issues in future reports. However, as a starting point, the Special Rapporteur has placed most weight on the accounts he heard directly from the victims of the recent hostilities, and hopes to narrate faithfully the ordeal of those who lived through the traumatic 51 days of conflict, focusing in particular on the impact of children, who account for more than half the population of 1.8 million people in Gaza and represent the future of Palestine.

9. On a final introductory note, the Special Rapporteur reiterates that it is in Israel's own interest to grant the mandate holder full and unconditional access to Israel and the Occupied Palestinian Territory.[5] The Special Rapporteur continues to believe that the engagement of Israel would contribute to the effective and even-handed implementation of the mandate. Cooperation with the mandate would be a manifestation of the responsibility of a Member State to respect and protect human rights.

[3] erification of data continues.

[4] In the present report, the Special Rapporteur will not consider individual incidents of alleged international law violations in the Occupied Palestinian Territory in the context of military operations conducted since 13 June 2014, which a commission of inquiry was tasked to do by the Human Rights Council in its resolution S-21/1.

[5] The request to enter Israel was made in order to meet with relevant Israeli authorities to discuss the situation of human rights in the Occupied Palestinian Territory. The Special Rapporteur is not mandated to investigate the situation of human rights in Israel.

II. Situation of human rights in the Gaza Strip

A. Overview

10. As many Palestinians in Gaza reminded the Special Rapporteur, the seven-year blockade by Israel, coupled with the access-restricted areas along its border often imposed with excessive use of force by the Israel Defense Forces, forces the Palestinian people living in Gaza to live in a perpetual state of humanitarian crisis.[6] At the most basic level, this has restricted Palestinian agriculture and fishing, and all too frequently impinged upon the right to life of Palestinian farmers and fishermen. According to information provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the severe restrictions on imports and exports have also denied Palestinians in Gaza the right to meaningful economic development and indeed dragged Gaza back towards a state of de-development, leaving 80 per cent of the population chronically dependent on aid. Frequent power shortages and periodic winter flooding have further exacerbated living conditions for Palestinians in Gaza. Moreover, before the escalation of hostilities during the summer of 2014, Palestinians in Gaza had lived through two previous conflicts with Israel, in 2008 and 2009, and again in 2012, which led to destruction and devastation. Israel may have withdrawn its soldiers from Gaza in the context of its unilateral disengagement in 2005; in terms of the control over the territory it exercises, however, it remains the occupying Power.

11. According to the OHCHR, in the latest round of violence between Israel on the one hand, and Hamas and other Palestinian armed groups on the other, from 7 July to 26 August 2014 (operation "Protective Edge") 2,256 Palestinian fatalities were recorded, of whom 1,563 were civilians, including 538 children.[7] This surpassed the combined number of casualties of the two previous conflicts in Gaza. On the Israeli side, 66 soldiers and five civilians were reportedly killed. The Special Rapporteur is aware that thousands of indiscriminate rockets were reportedly fired by Palestinian armed groups from Gaza. The stark disparity in casualty figures on the two sides, however, reflects the skewered balance of power and the disproportionate cost borne by Palestinian civilians, raising questions as to whether Israel adhered to the international law principles of distinction, proportionality and precautions. The 51-day conflict, tempered only by fleeting humanitarian pauses, adversely affected just about every human right, including the rights to adequate housing, health, water, education, work and, last but not least, life.

B. Destruction of civilian homes and infrastructure

12. The most striking aspect of the military operations conducted by Israel was its apparent deliberate targeting of civilian homes and multi-storey apartment blocks, which resulted in entire families being buried under the rubble of their homes.[8] In what many witnesses cited as the most egregious example of disproportionality, a multi-storey apartment block known as the "Gaza Twin Towers" was razed to the ground towards the

[6] The Secretary-General and the United Nations High Commissioner for Human Rights have consistently noted that the Israeli blockade of Gaza contravenes international law; see A/69/347, paras. 30 – 34, and A/HRC/25/40, paras. 24 – 30.

[7] See Office for the Coordination of Humanitarian Assistance, Gaza Strip, Humanitarian Dashboard, November 2014.

[8] "Families under the rubble: Israeli attacks on inhabited homes", Amnesty International, 5 November 2014.

end of Israeli military operations. Other apartment towers flattened by Israeli strikes included the 12-storey al-Zafer tower 4, the Italian tower and the al-Basha tower. Countless reports of schools, mosques and hospitals allegedly targeted during the military operations were also received. An international non-governmental organisation reported that 25 ambulances of the Palestinian Red Crescent were also hit, including 12 that were either destroyed or rendered inoperable.

13. Prominent human rights defenders based in Gaza observed, "never in our lives have we seen that level of destruction", referring to certain neighbourhoods and towns that were particularly hard hit, such as Shuja'iya, Khuza'a and Rafah. Even experienced humanitarian workers, exposed to some of the worst conflict zones across the world, informed the Special Rapporteur that what they saw in Gaza was "shocking, by all accounts". Three months after the ceasefire, the impact of Israeli strikes on the water and sanitation facilities in Gaza were still being felt, with 20 to 30 per cent of households, or 450,000 people, still without access to municipal water because of the damage caused.[9]

14. UNRWA schools serving as emergency shelters for internally displaced persons, the exact position of which had been notified to the Israeli Defense Forces, were allegedly targeted by shells or other munitions on at least seven separate occasions, resulting in at least 42 deaths, including 11 UNRWA staff members. In one incident involving a UNRWA school in Jabaliya, on 30 July, Israeli shelling allegedly killed 16 people and injured another 100. According to UNRWA, it had already informed the Israeli military authorities of the location of the school 17 times, including once only a few hours prior to the attack. The Special Rapporteur notes that the Secretary-General established, in November 2014, a board of inquiry to review and investigate a number of specific incidents in which death or injuries occurred at and/or damage was done to United Nations premises. The Special Rapporteur is also aware that Israel has established its own fact-finding assessment mechanism and has opened a number of criminal investigations into certain selected cases of alleged violations of international law. It remains to be seen if this can bring any measure of meaningful accountability to Palestinian victims in the light of the criticism levelled by observers to date.[10]

C. Mass displacement

15. At the height of the escalation of hostilities, an estimated 500,000 people were internally displaced across Gaza, many of them forced to take shelter in UNRWA schools,[11] government-run schools or with extended family or friends.[12] Many of the school buildings were not designed to serve as shelters, and the sheer number of internally displaced persons seeking shelter reportedly resulted in severe overcrowding and put a considerable strain on sanitation facilities. According to a humanitarian aid worker who visited the schools, the general overcrowding of schools with limited capacity had led to a lack of privacy for families and inadequate hygiene and sanitation conditions that brought about various stress-

[9] Office for the Coordination of Humanitarian Assistance, 'Gaza Strip: Humanitarian Dashboard', November 2014

[10] See Decisions of the Israel Defense Forces Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2, 7 Decmber 2014, and "Israel's Gaza probe raises questions", Al Jazeera, 8 December 2014.

[11] As at October 2014, 18 UNRWA school buildings still served as collective centres for approximately 38,346 internally displaced persons, an estimated 60 per cent of whom are children.

[12] As at November 2014, an estimated 100,000 people were still internally displaced in Gaza and in need of immediate assistance. See Office for the Coordination of Humanitarian Assistance, 'Gaza Strip: Humanitarian Dashboard', November 2014

related ailments, including dermatological conditions. Beyond the school shelters, host families were also reportedly rapidly overwhelmed by the burden of having to host as many as 30 extended family members and relatives, putting considerable financial and psychological strain on all family members. The desperation was summed up by a woman who, exasperated, told a United Nations staff member distributing food items that, "I don't want food; I want a future for my children".

16. A Palestinian human rights defender originally from Shuja'iya explained that "those people's minds were as hard as a rock and so attached to their land that they would never leave so easily". Nonetheless, within minutes of the Israeli assault on that particular neighbourhood on 20 July, he recalled how the bombs, tank shells and naval artillery "shook the ground like an earthquake and opened the gates of hell". By 6 p.m., 150,000 people were reportedly trying to flee the area. A Palestinian staff member of a non-governmental organization, speaking also as a mother and former resident from Beit Hanoun, described how the Israelis had called and ordered them to evacuate their home. "We only had a few moments to gather important documents and to take the children out", she said. "When you look at the framed photos of family and friends on the wall and feel the warmth of your own home, it's not easy to just leave not knowing if you will ever come back again."

17. Israel reportedly gave warnings prior to some airstrikes by telephone, text messaging and leaflet drops across the Gaza Strip. Palestinian human rights defenders, however, explained that, in such a confined and densely populated area, for many people there was simply nowhere to run, no safe passage or safe haven, not even in the United Nations shelters. This was particularly the case for the most vulnerable residents: young children, the elderly, pregnant women and the physically disabled. Some witnesses pointed out that young Palestinians in Gaza would choose to go from one potential death in Gaza to another by crossing the Mediterranean in rickety boats in an attempt to reach Europe, which showed and how desperate people were to leave Gaza.

D. Civilian casualties: families and children

18. According to OHCHR, some 69 per cent of the Palestinians killed during the hostilities in Gaza were civilians. An Israeli organization compiling its own statistics on Palestinian fatalities has so far found the Palestinian civilian to combatant casualty ratio to be somewhat lower, at 48 per cent.[13] On both counts, serious questions arise with regard to Israel's adherence to the principles of international humanitarian law.

19. The most striking aspect of the most recent conflict was the way in which most civilian victims were not simply bystanders on the street in the wrong place at the wrong time. As the Special Rapporteur heard time and again, most victims were families killed in missile strikes on their own homes, usually at night. Palestinian human rights defenders noted that some entire families, including the Najar and Abu Kaware families, were "simply wiped off the registries".

20. In the non-exhaustive list of cases brought to the attention of the Special Rapporteur, almost all of the families listed lost one or more infants or children, killed in attacks on their homes. In some cases, pregnant women and elderly persons were also killed. This non-exhaustive list includes the following names: Al-Haj, Al-Batsh, Al-Awdat, Shuheebar,

[13] This ratio is based on 54 per cent of verified fatalities. See Meir Amit Intelligence and Terrorism Information Center, "Examination of the names of the Palestinians killed in Operation Protective Edge", 1 December 2014.

Abu Jarad, Al-Hallaq, Ammar, Abu Jame' Siyam, Al-Qassas, Abu Eeta, Al-Najjar, Al-Helu, Abu Jaber, Abu Khousa, Abu Zaid, Duhair, Al-Hashash, Abu 'Amer, Breeker, Mu'ammar, Balata, Al-Khalili, Al-Bayoumi, Al-Farra, Abu Suleiman, Abu Madi, Al Ghoul, Al-Majdalawi, Abu Nijm-Al Masri, Al-Bakri, Uwaida, Wahdan, Al-Dalu, Al-Louh, Kellab, Abu Dahrouj, Mheesin, Joudeh and Tanboura. Overall, at least 999 family members were reportedly killed inside their houses, including 329 children. A further 233 people were killed in the vicinity of their houses, in some cases while attempting to flee.[14]

21. The most recent round of conflict was in fact far deadlier for children than the previous hostilities in 2008 and 2009 and in 2012. On average, 10 children died every day over a period of 50 days – an appalling statistic by any measure, which cannot be dismissed as collateral damage. According to UNRWA, the conflict over the summer resulted in up to 1,500 new orphans, including at least 560 UNRWA students, who were in need of sustained child protection and welfare support. Palestinian human rights organizations described the reported high civilian toll as "a direct consequence of Israel's large scale, deliberate and systematic military attacks against family homes". All the information received to date by the Special Rapporteur supports the validity of this claim.

22. Israel has justified its use of force against civilian infrastructure by noting that Palestinian armed groups had fired rockets indiscriminately from the above-mentioned facilities.[15] However, the testimonies heard by the Special Rapporteur from human rights defenders and victims from Gaza, collaborated by the sheer scale of destruction that can be seen in satellite imagery made available by the United Nations, raises serious questions as to whether the Israel Defense Forces adhered to principles of proportionality and distinction.[16] It is also relevant to recall that the High Contracting Parties to the Fourth Geneva Convention affirmed in its declaration of 17 December 2014 that "no violation of international humanitarian law by any party to a conflict can relieve the other party from its own obligations under international humanitarian law".

23. Long after the ceasefire, unexploded remnants of war continue to pose a threat, particularly to children in Gaza. It is estimated that 7,000 unexploded ordinances are still littered across the Gaza Strip under the rubble and debris of flattened neighbourhoods. At the end of October 2014, the United Nations Mine Action Service reported at least seven civilian fatalities as a result of unexploded remnants of war, and 14 others injured.[17] In the latest such incident, on 4 December 2014, four Palestinian women, including three children, were reportedly injured (two of them with serious shrapnel wounds) at the home of the Abu Mer'ie family when one family member picked up an oddly shaped piece of metal. The family had just returned to their house in the al-Zaytoun neighbourhood in Gaza City a few days earlier in order to carry out repairs.[18]

[14] Information provided by Al Mezan Centre for Human Rights and Lawyers for Palestinian Human Rights. See also Al Mezan Centre for Human Rights and Lawyers for Palestinian Human Rights, "Complaint concerning destruction and damage to family houses in the Gaza Strip with associated loss of life and injury to Palestinian residents, during Israel's military operation between 7 July 2014 and 26 August 2014".

[15] Mission of Israel to the UN in Geneva, "What you can't see on the UN maps of Gaza", and "Hamas' exploitation of civilian facilities", 26 August 2014.

[16] See Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, Assessment of physical damages in Gaza using satellite images (Before and after).

[17] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, Monthly Report, September 2014.

[18] Palestinian Centre for Human Rights, Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territory (04-10 December 2014), 11 December 2014.

24. In August 2014, the Special Rapporteur addressed a letter of allegation to the Government of Israel on emblematic cases of alleged disproportionate or indiscriminate attacks that had resulted in the killing of innocent civilians, including children. While no response to the letter had been received as at 9 December 2014, the Military Advocate General ordered a number of cases to be closed, including one of the cases raised by the Special Rapporteur together with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the killing of two disabled Palestinian women at a care centre in Beit Lahiya on 12 July 2014.[19]

E. Right to health

25. According to the Palestinian Ministry of Heath, more than 11,100 Palestinians, including 3,374 children, were injured during the hostilities in July and August 2014.[20] Ministry officials noted that an estimated 3,500 patients were admitted to hospital requiring surgical interventions. Many Palestinians, including children, are now struggling with life-long disabilities. An estimated 30 per cent of children in Gaza were exposed to high levels of traumatic stress. Tens of thousands of men, women and children live with the trauma of having witnessed the horrific killings of family members, friends and neighbours before their own eyes.

26. Health professionals based in Gaza recounted to the Special Rapporteur that, while treating dozens of patients every day in the emergency ward, the hospitals where they worked also came under attack from Israeli airstrikes and shelling. A representative of the World Health Organization (WHO) reported that 75 hospitals, primary health centres and clinics were damaged and in need of repair or maintenance. One hospital (Al Wafa) and five other primary health centres had been totally destroyed, while two others and five clinics had sustained major damage; 63 health-care facilities suffered minor damage. In one attack, on 19 July, the Shuhada al-Aqsa hospital in central Gaza was hit by multiple rounds of tank shells, reportedly killing one patient, a nurse and three medical staffers. The same attack destroyed the operating theatres and life support units of the hospital, severely hampering its ability to care for patients.

27. The right to health for the population in Gaza during the conflict was affected not only by direct hits on hospitals and medical facilities (a total of 23 medical personnel were reportedly killed), but also as a result of the lack of access to medical facilities. Health professionals pointed out that the precarious security conditions made it difficult for staff and patients alike to reach hospitals and clinics. Access was reportedly severely limited to an estimated 60 per cent of primary health centres, while some 30 per cent of medical personnel had no regular access to their workplaces. Palestinian doctors also explained to the Special Rapporteur that treating patients with pre-existing health conditions had been complicated by the loss of patient records, destroyed following airstrikes on medical facilities.

28. Around 600 patients were reportedly referred for treatment outside of Gaza, including in hospitals in the West Bank, Egypt, Jordan, Turkey and Germany, given the lack of medical equipment and specialised doctors available in Gaza. In September 2014, many of these patients from Gaza were still being treated abroad, separated from their families in a foreign environment in need of continuous monitoring following surgical

[19] Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2, 7 December 2014

[20] Office for the Coordination of Humanitarian Affairs, Gaza Crisis Appeal, September 2014 Update (available from www.ochaopt.org/documents/gaza_crisis_appeal_9_september.pdf), p. 8.

interventions. These relatively fortunate patients accounted for, however, only a fraction of the thousands of Palestinians in need of treatment unavailable within Gaza, but not granted permits by Israel to leave the territory. Palestinian doctors and health professionals in Gaza explained that the inadequacy of their own medical facilities and the lack of trained specialists were a consequence of the years of blockade that prohibited the import of potential "dual-use" materials and the travel restrictions imposed by the Israeli authorities that prevented young doctors and medical personnel from receiving advanced medical training abroad.

29. In such circumstances, Palestinian health specialists pointed out that the presence of a number of foreign doctors in Gaza during the conflict had helped considerably, but could not compensate for the inadequate facilities available in Gaza. According to health specialists in Gaza, the medical equipment most needed included radioscopy, ultrascan and optical equipment, as well as drugs, vaccines and other basic disposables, such as gloves and gauze. The electricity crisis that resulted from the strike on the only power station in Gaza on 29 July, during Israeli military operations, also weighed heavily on the provision of health care, as back-up generators were pushed to the limit.

30. On 21 September 2014, the Special Rapporteur visited King Hussein hospital in Amman where a number of Palestinian patients from Gaza were being treated. One young Palestinian woman had been injured when three Israeli missiles hit her family home near Khan Younis without any warning on the evening of 8 July 2014. Her three brothers and grandmother were killed instantly, and a total of 12 family members suffered injuries. She suffered further injuries when the ambulance, which was evacuating her, was hit on route to the hospital, resulting in a serious injury to her hip and shrapnel injuries across her body.

31. The Special Rapporteur also met with a 14 year-old girl from Beit Hanoun, who lost both her legs and suffered shrapnel wounds and internal injuries when, on 25 July 2014, an Israeli strike hit a UNRWA school, which was being used as a shelter. Her distraught father recounted that she had lost her mother and three brothers in the same attack. According to his testimony, they had decided to evacuate their home a week after the start of hostilities. They first sought shelter at Beit Hanoun hospital, but had moved on to the UNRWA school serving as an emergency shelter, which they thought a safe haven. Despite the visible pain on the girl's face, she expressed her eagerness to return to school, and shared her dream: "One day, I want to become a teacher". Children with conflict-inflicted disabilities will certainly require long-term care and support at both school and home. Doctors, health professionals and teachers all highlighted the long-term consequences for the population at large.

32. Community health workers in Gaza informed the Special Rapporteur that they were already dealing with many new cases of children suffering from bedwetting, difficulties in sleeping, nightmares, panic attacks, speech problems, a loss of appetite and alienation from parents. Among other recent findings, the Special Rapporteur received an increasing number of reports of physical violence against children within their families and communities occurring in the context of increased stress faced by parents and relatives. There were also reportedly cases of sexual abuse, particularly of adolescent girls in shelters and in host communities.[21]

33. Israel reportedly justified its strikes on schools and hospitals in Gaza by claiming that militants were firing rockets from inside those premises; according to the Palestinian doctors from Gaza who spoke with the Special Rapporteur, no rockets had been fired from

[21] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, Monthly Report, October 2014.

within hospitals. The doctors added that, in any case, they should not be punished for what occurred in the vicinity of hospitals.

F. Right to education

34. Two months of Israeli military operations in Gaza also had a profound impact on access to education and disrupted schooling for children in Gaza. A total of 228 schools (approximately one third) of all schools, including 83 UNRWA schools, were damaged during the attacks; 26 schools were totally destroyed or damaged beyond repair. Schools in Gaza reopened three weeks late, on 14 September 2014, and began with an initial period of psychosocial support and recreational activities for children.[22] With on average only one counsellor per school, however, education experts in Gaza raised concerns about the shortage of trained teachers qualified to offer adequate psychosocial support to children. Education specialists added that teachers themselves had been victims of traumatic experience and would also require appropriate support.

35. According to the Education Cluster, which brings together non-governmental organizations, United Nations agencies, academics and other partners under the shared goal of ensuring predictable, well-coordinated and equitable provision of education for populations affected by humanitarian crises, attendance at the start of the year was mixed as a result of the massive internal displacement of Palestinian families. UNRWA and Government-run schools allowed the transfer of displaced students to schools closer to their current places of residence, but some 87 schools were still operating double shifts. A number of teachers expressed concerns that overcrowded classrooms of up to 60 pupils affected the quality of education. Education specialists also pointed out that many of the schools that served as shelters during the conflict had valuable equipment damaged or missing.

36. Schools in Gaza are already reportedly seeing more aggressive behaviour in pupils, while mental health specialists have warned that the traumatic events experienced by children during the conflict would have a lasting impact on cognitive development and have broader social implications. Community health workers also expressed concern that, in some children, their traumatic experience could nurture a desire for revenge. It was also unclear whether schools would be able to cope with any influx of disabled children requiring specialized educational assistance.

37. In Gaza, the higher education sector, which serves up to 95,000 students, was also seriously affected by the hostilities. Many of the 28 higher education institutions in Gaza were damaged during the conflict. The hostilities also affected the number of new enrolments for the new term. Education specialists noted, however, that the blockade was also responsible for changing the views of parents about the value of investing in higher education for their children in the context of perpetually high unemployment rates and the lack of job prospects for highly qualified graduates. Schools moreover lacked essential equipment and resources to motivate students and were unable to offer opportunities for academic exchanges or to bring in foreign expertise to contribute to the development of students.

[22] UNRWA reportedly coordinated with the Ministry of Education to make use of its satellite television channel and self-learning materials in order to make education accessible to all children in Gaza, including those not residing in UNRWA shelters.

G. Recovery and reconstruction efforts

38. The rebuilding of lives and livelihoods following intensive bombardment, mortar fire and ground operations across Gaza is a momentous task that will continue for some time to come. The Palestinian Government of National Consensus reportedly estimated the cost of relief, recovery and reconstruction for Gaza at $4 billion. The international community pledged up to $5.4 billion for Gaza reconstruction at the donor conference held in Cairo in October 2014, but many pledges have not been fulfilled. UNRWA had estimated the total funding required for the provision of rental subsidies to families with no alternative shelter, reconstruction of destroyed homes and repair for those with damage at $720 million; as at December 2014, however, only $100 million had been pledged, leaving a shortfall of $620 million. According to UNRWA, the impact of ceasing payments to affected families would be dramatic, forecasting that tens of thousands of refugee families would find themselves with inadequate shelter and no support during the harshest months of winter.[23]

39. Some 100,000 people remain displaced and in need of continuing assistance; 450,000 are disconnected from the water network owing to damage and/or low pressure, while approximately 22,000 housing units require rebuilding or substantial repair. Despite the Gaza reconstruction mechanism brokered by the United Nations and that came into effect in early November, the delivery of essential building materials has been painfully slow. Four months after the ceasefire and with the onset of winter, the United Nations Special Coordinator for the Middle East Peace Process conceded, during a visit to Gaza in December 2014, that the operating environment continued to face many challenges, including a fragile and informal ceasefire that had not yet solidified and a lack of empowerment of the Government of National Consensus in Gaza with no control over the crossings. Such difficult issues, coupled with insufficient financial assistance from donors, had only worsened the atmosphere in an already devastated Gaza. As the Special Coordinator stated during his briefing to the Security Council a few days later, "this temporary mechanism is not a substitute for the lifting of all closures on Gaza as laid out in Security Council resolution 1860 (2009)".[24]

40. After 51 days of bombardment, the conditions of life in Gaza have shifted ever closer to the dismal forecast made in 2012 by the United Nations country team, which questioned whether Gaza would be a liveable place by 2020.[25] The shortages in construction materials and related price hikes have contributed to an already high level of unemployment generally, but particularly in the construction sector, which used to absorb 10 per cent of the Gaza workforce, and also increased rates of poverty and food insecurity. In a report on assistance to the Palestinian people, the United Nations Conference on Trade and Development found that Israeli constraints in general and restrictions on the mobility of Palestinian workers in particular across the Occupied Palestinian Territory had had a disproportionately high impact on Palestinian women.[26] Information received by the Special Rapporteur also indicated that the widespread poverty and retreat of discouraged Palestinian men from the labour market is a consequence of the lack of employment opportunities. Human rights defenders in Gaza repeatedly stressed that the humanitarian

[23] UNRWA, "Urgent funding required to address unprecedented destruction in the Gaza Strip", 18 December 2014.

[24] Department of Political Affairs, Security Council briefing on the situation in the Middle East, Special Coordinator for the Middle East Peace Process, Robert Serry, 15 December 2014.

[25] United Nations country team in the Occupied Palestinian Territory, "Gaza in 2020: A liveable place?", August 2012.

[26] TD/B/61/3.

crisis and the denial of basic human rights in Gaza was an entirely man-made result of the prolonged occupation and blockade, arguing that people in Gaza have the skills, knowledge, capability and determination to achieve sustainable peace based on human rights and to pursue sustainable economic development without reliance on international aid if only the blockade were lifted and the occupation ended.

III. Situation of human rights in the West Bank

A. Excessive use of force by Israeli security forces

41. According to OHCHR, in 2014 alone there were at least 50 Palestinian fatalities in incidents involving Israeli security forces in the West Bank, including East Jerusalem, a figure almost double the 27 Palestinian fatalities reported in 2013 in similar circumstances.[27] Most worryingly, information available to the Special Rapporteur suggests that these incidents are not isolated, but part of an increasing pattern whereby Palestinian civilians (often children) who pose no serious threat to Israeli security forces are deliberately shot and injured with rubber-coated steel bullets, or increasingly killed with live ammunition by "trigger-happy" soldiers.[28]

42. The period of heightened tensions across the Occupied Palestinian Territory, from 12 June to 31 August 2014, also witnessed a striking increase in the lethal use by Israel of force in the West Bank, including East Jerusalem, leading to the death of 27 Palestinians, including five children, the youngest of which was only 11 years old. These reported killings have continued in recent months. On 16 October 2014, a 13-year-old child was shot with live ammunition allegedly by Israeli security forces and killed in the village of Beit Liqya in Ramallah governorate. The boy had reportedly been shot on his way back from the village's playground and was not participating in clashes involving stone-throwing by Palestinian youths taking place at around the same time, some 150 metres away from the site of the incident.[29]

43. The actions taken by the Israeli security forces appear to be at odds with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The plausibility of the use of firearms in self-defence or the defence of others against the imminent threat of death or serious injury is questionable in many of the cases involving Palestinians exercising their right to peaceful protest.

B. Right to peaceful protest

44. Concerns at the excessive use of force by Israeli security forces in the context of peaceful demonstrations received, ironically, global attention on Human Rights Day in 2014, when a Palestinian Minister, Ziad Abu Ein, died following confrontations with Israeli security forces during an olive tree planting ceremony celebrating Human Rights Day and protesting against an illegal Israeli settlement outpost nearby the occupied West Bank village of Turmus'aya. On the same day in Jalazone refugee camp in the West Bank, Israeli security forces reportedly shot a 14-year-old Palestinian boy in the head with live

[27] OHCHR, "Zeid says Israel must take action to curb rise in protest fatalities in Occupied Palestinian Territory", 12 December 2014.

[28] See Amnesty International, "Trigger-happy: Israel's use of excessive force in the West Bank", 2014.

[29] See Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report, 14 – 20 October 2014.

ammunition, leaving him seriously wounded, during protests triggered by the death of Ziad Abu Ein.[30]

45. According to a Palestinian non-governmental organization, in an incident on 31 August 2014, a 16-year-old Palestinian youth was allegedly shot in the head with a rubber-coated bullet and killed by Israeli security forces in the Wadi al-Joz neighbourhood of East Jerusalem. The youth was reportedly going to the mosque when he was caught up in clashes between Palestinian youths and Israeli security forces.

46. Television audiences across the world witnessed closed-circuit television footage capturing the moments, on 15 May 2014 in the town if Beituniya in the West Bank, when two Palestinian teenagers, Nadim Nuwara and Muhammad Salama, were shot and killed. Neither of the teenagers posed any immediate threat to Israeli security forces, which were positioned more than 60 metres away. A member of the Israeli paramilitary border police was reportedly arrested on 12 November 2014, and an indictment for manslaughter of Nadim was filed at the Jerusalem district court on 23 November.[31] Whether the suspect will be charged and a sentence commensurate to the crime is handed down remains to be seen. No arrest has been made in connection with the killing of Muhammad Salama.

47. On 12 November 2014, the Government of Israel responded to a joint letter of allegation addressed in August by the Special Rapporteur and several thematic mandate holders regarding the case of the reported killing of civilians during peaceful demonstrations in the West Bank in July, including that of Hashem Khader Abu Maria, who worked as coordinator for Defence for Children International, and of two others. In its response, the Government pointed out that the civilians had been "killed during violent clashes between Palestinians and Israeli security forces … in the course of which Israel Defense Forces soldiers were subject to severe acts of violence, including the throwing of stones, Molotov cocktails, and improvised explosives". The Government added that a criminal investigation had been immediately opened into the incidents, but that, "in light of the highest concerns given to the integrity of the investigation, and in accordance with the law, the Criminal Investigations Department cannot disclose information regarding on-going investigations'.[32]

C. Israeli security forces search operations in Palestinian refugee camps

48. Over the past three years, the number of Israeli search operations in Palestinian refugee camps and Palestinians refugees detained by Israeli security forces has increased considerably, from 293 operations in 2012 to 568 operations during the period from January to September 2014. This has resulted in more Palestinian refugees injured and killed, including children, in the context of these operations.

[30] OHCHR, "Zeid says Israel must take action" (see footnote 27).

[31] A report concluded that the border policeman identified was the person who killed Nuwwara. See DCI-Palestine and Forensic Architecture, "The killing of Nadeem Nawara and Mohammad Mahmoud Odeh Abu Daher in a Nakba Day protest outside of Beitunia on May 15th, 2014".

[32] See A/HRC/28/85.

Israel Security Forces search operations, fatalities, injuries and detention of Palestinians, including minors, across West Bank refugee camps*

	2012	*2013*	*2014***
Search operations	293	471	568
Detainees	351 (including 6 minors)	420 (including 59 minors)	473 (including 68 minors)
Fatalities	0	12 (including 3 minors)	11 (including 1 minor)
Injuries	38 (including 5 minors)	486 (including 95 minors)	650 (including 54 minors)

Source: United Nations

*Jenin, Tulkarm, Nur Shams, Camp No.1, Balata, Askar, Al Far'a, Shufat, Amari, Kalandia, Jalazone, Deir Ammar, Aqabt Jaber, Ein Sultan, Aida, Beit Jibrein, Dehiesha, Arroub and Fawwar refugee camps.

**1 January to 30 September 2014

49. The repeated incursions by Israeli security forces into Palestinian communities have not been without consequences. A needs assessment conducted by UNRWA on the mental health of Palestine refugee children throughout the West Bank in October and November 2014 found that 37 per cent of sampled Palestine refugee children from camps, and 51 per cent of sampled children from Bedouin communities, reported witnessing Israeli security forces breaking into their homes, while some 13 per cent of sampled refugee and Bedouin children reported witnessing the killing or injury of a relative or friend by explosive objects and materials left behind by the Israeli security forces. It was found that 22 per cent of sampled Palestine refugee children in camps and 44 per cent of sampled Bedouin children were at greater risk of having a psychiatric disorder. Since February 2014, UNRWA has been providing psychosocial counselling services to more than 15,000 children under the age of 18 years in schools, health clinics in refugee camps and other localities. Children reportedly comprise approximately 70 per cent of all counselling cases. The most widely reported symptoms included enuresis and encopresis complaints (24 per cent), behavioural problems (20 per cent) and anxiety complaints (13 per cent). Other issues affecting children identified by UNRWA school counsellors included discipline problems, aggression and poor academic achievement.

D. Punitive house demolitions

50. House demolitions ordered by Israel in response to a string of Palestinian attacks on Israelis in recent months are of particular concern to the Special Rapporteur.[33] Between 1 June and 30 November 2014, the Israeli authorities reportedly demolished or sealed five homes, displacing 34 Palestinians, including 16 children. According to the United Nations Resident Coordinator and Humanitarian Coordinator, as at 3 December 2014, another six families in the West Bank and East Jerusalem were at risk. The home of Abd al-Rahman al-Shaludi, the Palestinian who allegedly killed a 22-year-old woman and a three-month-old Israeli infant in a car attack in Jerusalem in October, was among those demolished.

51. The justification made by the Israeli authorities for home demolitions is that it serves as a deterrent to prevent future "terrorist" attacks.[34] The Special Rapporteur has not,

[33] OHCHR, "Palestinian homes must cease to be a target, UN human rights experts say", 25 November 2014.

[34] Human Rights Watch, "Israel: Stop Punitive Home Demolitions", 22 November 2014.

however, come across any supporting evidence for this to date. Indeed, in 2005, a military committee appointed by then chief of the Israel Defense Forces (and current Minister for Defence) Moshe Ya'alon recommended a moratorium on home demolitions after it had found little proof that they served as an effective deterrent to future terrorists.[35]

52. Aside from the questions of "effectiveness", from an ethical and legal standpoint, family members who have committed no crime should not be punished for the actions of a relative. In short, punitive home demolitions are an act of collective punishment that contravenes international law. It is therefore all the more disconcerting that the Supreme Court of Israel continues to sanction the practice, which deprives innocent Palestinians of the right to adequate housing.[36] All those accused of being responsible for acts of violence should be tried before a court of law and, if found guilty, sentenced for their crimes; the State cannot, however, go beyond what is sanctioned by international law.

53. On 27 November 2014, the Ministry of Foreign Affairs of Israel responded to a joint press release issued by this Special Rapporteur and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, in which they called upon Israel to cease targeting Palestinian homes. In its response, Israel sought to deflect attention from its resort to the illegal practice of home demolitions by making unfounded accusations that "the mandate holders have turned a blind eye to terrorism, incitement, celebrations of violence and encouragement of extremism carried out by Palestinians and their leaders". Any incitement to hatred and violence must of course be condemned in all its forms, but genuine deterrence needs to look at the root causes of violence. Punitive home demolitions only add to the frustration and despair felt by people living under the prolonged Israeli military occupation. It sows the seed of more hatred, particularly in children, that may fuel the cycle of more violence in the future.

IV. Arrest and detention of Palestinian children

54. Around 8,000 Palestinian children under the age of 18 have reportedly been detained and prosecuted by the Israeli military courts since 2000. According to information provided by a Palestinian non-governmental organization, as at October 2014, there were 201 Palestinian children held in Israeli prisons, 23 of whom were between the ages of 14 and 16. The ill-treatment of Palestinian children by Israeli security forces from the time of arrest to the end of detention in Israeli military facilities has been well documented across the United Nations, from the reports of the Secretary-General and the High Commissioner, to the United Nations Children's Fund (UNICEF), which in February 2013 reported that "the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalised throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing."[37]

55. The situation of Palestinian children has also received significant attention across the United Nations human rights mechanisms, including during the consideration of the reports submitted by Israel to the Committee on the Rights of the Child in June 2013,[38] in the context of the universal periodic review in October 2013,[39] and most recently by the Human

[35] Asher Schechter, "Immoral, ineffective: Destroying terrorists' homes is nothing but empty revenge", *Haaretz*, 20 November 2014.

[36] See www.hamoked.org/files/2014/1158616_eng.pdf.

[37] UNICEF, Children in Israeli Military Detention: Observations and Recommendations, February 2013.

[38] CRC/C/ISR/CO/2-4,.

[39] A/HRC/WG.6/17/ISR/1.

Rights Committee in October 2014.[40] The key concerns related to cases of night-time arrest, handcuffing, blindfolding, strip-searching, physical and verbal abuse, and denial of access to a lawyer or to parents, and the fact that many children are forced to sign confession documents in Hebrew, which they do not understand.

56. It appears that Israel has taken note of some of the recommendations made by UNICEF in its report, including by introducing some procedural adjustments;[41] for example, in April 2013, Israel reduced the amount of time that children accused of what Israel classes as "security offences" spend in detention prior to their first court hearing (from eight days to four days, or even 24 hours, depending on the age of the child), although this time may be doubled in special circumstances. These time frames are nonetheless reportedly still twice as long as those prescribed in the laws applicable to children from Israeli settlements. It was also reported that, in April 2014, Israel introduced a pilot scheme of issuing summonses to children as an alternative to terrifying night-time arrests; many summonses are, however, reportedly delivered after midnight, putting into question the good faith application of the pilot scheme. Two years since the UNICEF report, the information received by the Special Rapporteur suggests that the findings made by UNICEF remain valid.

57. The Head of the Palestinian Commission for Detainees and ex-Detainees Affairs, Issa Qaraqe, informed the Special Rapporteur that affidavits from many children released from detention confirmed that beatings and torture were "commonplace" and resulted in chronic psychological problems for young children. This was collaborated by the findings of a non-governmental organization, which collected 105 sworn testimonies from children between November 2012 and July 2014. Of the 105 testimonies, 99 children had had their hands tied; 85 had been blindfolded; 72 had been shown or had signed documents in Hebrew, which they did not understand; 63 had experienced physical abuse; 49 had been arrested in the middle of the night (usually between midnight and 5 a.m.); 48 had been transferred on the floor of a vehicle; 47 had received threats; 41 had experienced verbal abuse; and 27 had been strip-searched. Only 13 had been informed of their right to silence; and just six had received a summons in lieu of night arrest. Parents had been present throughout interrogation in only six cases, and five children had been reportedly allowed to consult a lawyer prior to interrogation. Three children had been placed in solitary confinement at some stage of their detention.[42] Most of these acts of ill-treatment reportedly occurred during the first 24 hours following arrest.

58. According to information received from a Palestinian non-governmental organization, the vast majority of Palestinian children brought before a military court reportedly pleaded guilty under the pressure of interrogation, also because it was the fastest way to be freed from Israeli custody. Of the 287 cases involving child detainees in 2012 and 2013, the conviction rate was an extraordinarily high 99.5 per cent among the 181 children charged.

59. Moreover, according to information received by the Special Rapporteur, an estimated 60 per cent of Palestinian child detainees from the Occupied Palestinian Territory are held in prisons and detention facilities inside Israel, in violation of article 76 of the Fourth Geneva Convention. For children, this mean that they receive fewer families visits because of the time it takes to obtain a permit or due to the fact that permits are denied for

[40] CCPR/C/ISR/CO/4.

[41] See UNICEF, Children in Israeli Military Detention, Observations and Recommendations, Bulletin No. 1, October 2013.

[42] Military Court Watch, "Children in Military Custody: 2 years on", 1 September 2014.

reportedly unspecified "security" reasons. Palestinian children are reportedly not allowed to use a telephone while in detention.

60. A representative of a non-governmental organization described the approach taken by Israel to the issue as having "moved on from its position of denial of the problem to dealing with it as a press relations issue". Evidence suggests that Israel has not taken sufficient remedial action to make a real difference on the ground to improve the situation of Palestinian children in detention. Many children come out of Israeli detention suffering from post-traumatic stress disorder or other illnesses associated with experiencing deeply traumatic events.

61. According to one testimony received from a Palestinian non-governmental organization by the Special Rapporteur, on 6 January 2014, a 13-year-old Palestinian boy from the village of Hizma in the Jerusalem Governorate was playing football with friends in a field when clashes reportedly erupted between stone-throwing youths and Israeli soldiers stationed in a hilly area opposite the playing field. As he and his friends attempted to run away, they were reportedly stopped, beaten severely and subjected to an electric stun gun by plain-clothed Israeli police officers before being taken away in a police vehicle to Ofer prison near Ramallah. For one week, the boy was subjected to daily interrogation sessions, which allegedly included further beatings, verbal abuse and the denial of the use of the bathroom. He was issued with a two-year suspended sentence and a fine of 7,500 shekels. Since his arrest, his academic performance has deteriorated, and he no longer leaves the house alone.

62. In another account received from a Palestinian non-governmental organization, a 14 year-old Palestinian youth was arrested on 11 March 2014 for the fourth time in two years when clashes erupted between Palestinian youths and Israeli settlers. The youth was transported to Maskoubieh detention facility, where he was repeatedly beaten and subjected to verbal abuse. The court reportedly sentenced the youth to house arrest for five days and ordered him to stay away from the Al Aqsa Mosque area for 30 days, in addition giving him a fine of 3,000 shekels. The youth today suffers from post-traumatic stress disorder, and his academic achievements are reportedly deteriorating.

63. The staggering number of Palestinian children subjected to similar experiences of terrifying arrest and detention in Israeli custody and the trauma of the ill-treatment is of serious concern. Impunity for these violations is likely to perpetuate the ill-treatment of children in the future. It was noted that most Palestinian families reportedly do not file complaints of mistreatment with the Israeli authorities for fear of retaliation or because they have lost faith in the judicial system. Of the 23 complaints filed by Palestinian families in 2012 and 2013 with the assistance of Defence for Children – Palestine, the status of most of the complaints were unknown as at September 2014.

V. Forcible transfer of Palestinian Bedouins

64. The situation of thousands of Palestinian Bedouin and herder communities resident in the central West Bank, including the East Jerusalem periphery, and the risk of their forcible transfer to three government-designated township sites at Al-Jabal, Nuweima and Fasayil in the Jerusalem and Jericho Governorates of the West Bank, is cause for deep concern. If the plans of the Israeli Civil Administration, referred to as the "Bedouin Regulation", are approved, between 5,000 and 11,000 individuals from up to 46 rural communities could be evicted from their current place of residence and relocated to these sites. The implementation of the plans would entail the demolition of Bedouin homes and

schools, in clear violation of international law, and approximately two thirds of those affected would be children.[43]

65. Although the Israeli authorities claim that the Bedouin communities wish for an improvement in their living conditions and do not object to relocation, information received from representatives of Bedouin communities and non-governmental organizations suggests otherwise. Notwithstanding, the Israeli Civil Administration Higher Planning Council approved the deposit of plans for the Nuweima and Fasayil transfer sites in June 2014, and opened them for public objection for a period of 60 days, beginning in August and September respectively.[44] All affected Bedouin communities reportedly also faced pending demolition orders.

66. Information received by the Special Rapporteur suggests that there are a number of problems with the plan, including the limited availability of grazing land in the designated townships, the likelihood that traditional livelihoods and the culture of these communities will be undermined, and the fact that one of the proposed sites is located next to a refuse dump, raising serious health concerns. Most importantly, the communities themselves are not willing to relocate. Some are also located in an area that has been allocated for the expansion of Israeli settlements, including in the area known as "E-1", which allegedly is intended to create a contiguous built-up settlement area between the Ma'ale Adummim settlement and Jerusalem.[45] If that is realized, East Jerusalem would be further disconnected from the rest of the West Bank and the territorial contiguity of the Occupied Palestinian Territory further undermined.

67. Israel has reportedly been reinforcing its plans to transfer the Palestinian Bedouins by creating a "coercive environment" through a number of policies and practices, including by restricting access to grazing land and markets, the denial of access to basic services and infrastructure, the rejection of applications for building permits, and the demolition and threat of demolition of homes, schools and livelihood structures, including tents and portable latrines – all of which have contributed to forcing Bedouin communities out of their present areas. According to an international non-governmental organization, between January 2008 and July 2014, more than 5,000 Palestinians were displaced as a result of house demolitions and evictions in the West Bank, including East Jerusalem. Moreover, from 2009 to 2012, Palestinians reportedly submitted 1,640 building permit applications, of which only 37 (or 2.3 per cent) were approved.

68. Part of this coercive environment has involved Israeli interference in the delivery of international donor assistance. UNRWA reported that, in one such case, on 27 February 2014, a donation from a European Union diplomatic mission to the school of Khan al-Ahmar, comprising a swing set, a free-standing slide and two half-barrel climbing frames, was reportedly confiscated and removed by the Israeli Civil Administration. Israel reportedly stated that the items were confiscated because the metal legs of the swing set would need to be sunk into concrete, which constituted "construction" requiring a building permit.

69. An international non-governmental organization involved in the provision of humanitarian aid to vulnerable Palestinian communities informed the Special Rapporteur

[43] See also UNRWA, "UNRWA urges donor community to take firm stand against mass forcible transfer of Palestinian Bedouins", 21 September 2014.

[44] See Amira Hass, "West Bank Bedouin fighting Israel's plan for forcible relocation", *Haaretz*, 3 December 2014.

[45] During an Israeli Parliamentary discussion on 27 April 2014, the head of the Coordination of Government Affairs in the Territories reportedly discussed the plans to clear out the Bedouins from the E-1 settlement area.

that, since 2009, more than 1 million Euros worth of its humanitarian aid objects and projects had been subjected to Israeli stop-work, demolition or seizure orders, reportedly affecting 230 shelters, three schools and more than 135 water and sanitation structures.

70. The demolitions and evictions have a significant impact on the lives of Palestinian families and their children, as frequent displacement disrupts livelihoods and reduces the standard of living, with limited opportunities for access to basic services. The effect of displacement on children has been particularly disruptive owing to frequent changes of school and unsettling changes to their daily lives, resulting in symptoms including post-traumatic stress disorder, depression, anxiety and poor academic achievement.

71. International law prohibits the mass forcible transfer or forced eviction in an occupied territory except under exceptional circumstances. Israel, as the occupying Power, has the obligation to protect the civilian population in the occupied territory, and to administer it for the benefit of that population. It is certainly not compatible with the destruction and confiscation of private property, including homes, livelihood structures and water and sanitation facilities, which deprive the Palestinian population of their basic social and economic rights.

72. On 14 October 2014, the Special Rapporteur, together with the Special Rapporteur on the right to adequate housing, the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the right to food and the Special Rapporteur on minority issues addressed a joint urgent appeal to the Government of Israel regarding the alleged plans to forcibly transfer the Bedouin communities. The mandate holders reminded Israel of its human rights obligations and requested an explanation of the plans and the steps taken by the Government to ensure that the areas affected by the relocation plans would not be slated for settlement expansion or construction of the wall. They also requested information of the mechanisms used to ensure adequate, informed and genuine participation by the Bedouin communities and their representatives in the discussions and the decision on the three "townships" planned by the Israeli Civil Administration. As at 15 December 2014, no response had been received.

VI. Concluding remarks

73. The Special Rapporteur's observations and interactions with victims and witnesses living in the Occupied Palestinian Territory in the several months since assuming his mandate suggest that the protection that international humanitarian law and international human rights law should be providing for civilians, including children, across the Occupied Palestinian Territory is distressingly absent. It is especially deplorable that Palestinian children are suffering the brunt of occupation policies and practices of Israel, whether as a result of the blockade and hostilities in Gaza, the excessive use of force by Israeli security forces in the context of legitimate protests and peaceful demonstrations, as well as search operations in the refugee camps, and abuse and ill-treatment in Israeli prisons. Voices from across the Occupied Palestinian Territory called in unison for accountability, an end to the blockade and an end to the occupation. If another round of deadly violence is to be avoided, the underlying problems perpetuating the conflict and the almost daily violation of the human rights of the Palestinian people must be addressed and those responsible brought to justice.

VII. Recommendations

74. **With regard to the situation in Gaza, the Special Rapporteur recommends that the Government of Israel:**

(a) Implement in good faith the Gaza reconstruction mechanism brokered by the United Nations and allow delivery of construction materials, including cement;

(b) In accordance with Security Council resolution 1860 (2009), urgently lift the blockade of Gaza, which constitutes a form of collective punishment that has a disproportionate impact on the lives of innocent civilians and children;

(c) Conduct prompt, thorough, effective, independent, impartial and transparent investigations into all alleged incidents of killing of civilians during the hostilities, and make public the findings and any steps taken regarding accountability.

75. **With regard to the situation of children in Israeli military detention, the Special Rapporteur recommends that the Government of Israel:**

(a) Ensure that arrests of children only take place during daylight hours, except in rare and exceptional circumstances;

(b) Provide children and their legal guardians with a written statement in Arabic informing them of their legal rights in custody;

(c) Allow all children to consult with a lawyer of their choice prior to questioning;

(d) Ensure that every interrogation is audio-visually recorded and a copy of the tape provided to the defence counsel prior to the first hearing;

(e) Cease immediately the ill-treatment and abuse of children in detention, including the practice of putting children in solitary confinement;

(f) Exclude, in all cases, evidence obtained by the military courts as a result of torture or ill-treatment.

76. **With regard to the excessive use of force by Israeli security forces, the Special Rapporteur recommends that the Government of Israel:**

(a) Ensure that Israeli security forces comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(b) Conduct thorough, effective, independent and impartial investigations into all cases involving the lethal use of force, and make those findings public without delay.

77. **The Special Rapporteur furthermore recommends that the Government of Israel cease immediately punitive home demolitions, and provide adequate compensation to innocent family members whose homes have been unlawfully demolished.**

78. **With regard to the plans that would allegedly result in the forcible eviction and transfer of Palestinian Bedouin and herder communities in Area C of the West Bank, the Special Rapporteur recommends that the Government of Israel:**

(a) Abandon, and desist from implementing, plans entailing the forcible transfer of Palestinian Bedouin and herder communities in the West Bank, including in the East Jerusalem periphery;

(b) Provide adequate compensation and restitution for individuals and communities who have been forcibly evicted and had their property destroyed.

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono examines the overall lack of effective protection of the rights of Palestinians living under Israeli occupation since 1967 and addresses the non-cooperation of Israel with the mandate. He reviews allegations of violations of human rights related to the surge in violence in the Occupied Palestinian Territory in 2015. The report further illustrates continuing concerns regarding the protection of human rights and respect for international humanitarian law by reviewing selected recommendations related to the Occupied Palestinian Territory of the second universal periodic review of Israel. It also draws on communications addressed by the Special Rapporteur to the Government of Israel to illustrate continuing concerns.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

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I. Introduction

1. The present report examines the need for effective protection of the rights of Palestinians living under Israeli occupation since 1967. Since assuming his mandate in June 2014, the Special Rapporteur has been struck by the abundant amounts of information and reports on violations of international human rights law and international humanitarian law, on the one hand, and the seeming inability of the international community to match what is known of the situation with more effective protection of Palestinians in the Occupied Palestinian Territory.

2. The Special Rapporteur emphasizes the importance of Palestinian, Israeli and international civil society organizations, human rights defenders, United Nations actors and other international bodies working tirelessly to improve the situation of human rights and provide a protective presence for Palestinians against the effects of Israeli policies and practices related to the occupation. However, year after year, violations of international humanitarian law and of civil, political, economic, social and cultural rights continue to be reported. Key recommendations to the Government of Israel presented by the Secretary-General, the United Nations High Commissioner for Human Rights and independent mandate holders, such as the Special Rapporteur, to the General Assembly and the Human Rights Council remain largely unimplemented. In the present report, the Special Rapporteur examines the outcome of the second universal periodic review of Israel and discusses key recommendations made by States regarding areas of broad, ongoing concerns in the Occupied Palestinian Territory, on the issues of settlements, the blockade, Palestinian prisoners and detainees and accountability, and responses by the Government of Israel.

3. As an occupied people, under international humanitarian law, Palestinians in the Occupied Palestinian Territory are "protected persons". Yet there is a disconnect between the rights and protections afforded to them under international humanitarian law, and international human rights law in particular, and actual protection. Israel, as the occupying Power, holds the primary responsibility for addressing this disconnect. The Special Rapporteur wishes to illustrate some facets of the vulnerability of individual Palestinians resulting from Israeli policies and practices. He will do so by reference to letters of allegation and urgent appeals that he and other special procedure mandate holders addressed to the Government of Israel in 2014 and 2015, raising alleged violations of international humanitarian law and international human rights law in specific cases.

4. While the mandate of the Special Rapporteur is focused on investigation of violations by Israel of the principles and bases of international law (see Commission on Human Rights resolution 1993/2 A), the Special Rapporteur has previously noted the fact that both Palestinians and Israelis have been victims of the protracted Israeli-Palestinian conflict. The scale of the impact, however, whether in terms of casualty figures or wider impacts, differs significantly in that the daily lives of Palestinians are affected by the Israeli occupation. The destructive impact of the Israeli-Palestinian conflict is particularly clear in times of active hostilities, such as in the summer of 2014 in Gaza, or as has been witnessed particularly in the fourth quarter of 2015, especially in the West Bank, during escalations in violence.

5. According to the Office for the Coordination of Humanitarian Affairs, in October and November 2015 the escalation of violence resulted in the deaths of more than 100

Palestinians and some 11,300 injured, and 17 Israeli fatalities and some 170 injured.[1] The Special Rapporteur wishes to reiterate two points, related to the current violence, which are interlinked. The first is that any wanton act of individual violence, whether committed by Palestinians or Israelis, is unacceptable and must be investigated and prosecuted in accordance with international standards. The second is that the upsurge of violence with serious concerns of excessive use of force by Israeli security forces in the context of attacks and alleged attacks by Palestinians and during clashes, and ongoing settler violence, is arising within a pre-existing context. Anyone seeking to quell the unrest would, notwithstanding the unequivocal position that individual perpetrators of crimes must be held responsible, need to look to the context and related root causes of the overall heightened tension. To simply condemn individual attacks does not offer any viable way out of the violence rolling over the Occupied Palestinian Territory.

6. It is part of the current context that there seems to be an atmosphere of despair, particularly among the Palestinian youth, at the prolonged interference by Israeli authorities in every aspect of Palestinian life, the general absence of accountability for violations and abuses committed against them and the absence of any immediate prospects of an improvement in the situation.

7. On 13 July 2014, in a letter addressed to the Secretary-General, the President of the State of Palestine, Mahmoud Abbas, formally requested that "the territory of the State of Palestine be placed under an international protection system by the United Nations". President Abbas highlighted the long-standing occupation and the prevention of the exercise of the right of Palestinians to self-determination. In the letter, three overarching objectives of the protection system for Palestine were detailed including ensuring respect for human rights, fundamental freedoms and international law and international humanitarian law and to providing protection for the Palestinian people and civilian population from the ongoing occupation and acts of aggression by Israel (see S/2014/514, annex).

8. On 21 July 2014, the Secretary-General transmitted the letter to the President of the Security Council (S/2014/514). On 21 October 2015, the Secretary-General, referencing his earlier letter, further transmitted a summary of historical precedents of international protection regimes for areas of territories and their inhabitants (see S/2015/809, annex). The Secretary-General requested the President of the Security Council to bring his letter dated 21 October 2015 and the accompanying annex to the attention of the members of the Security Council.

9. The Special Rapporteur will not comment on the specifics of the request for international protection, except to reiterate that long-standing Israeli policies and practices in the Occupied Palestinian Territory, such as continued settlement expansion, the construction of the wall, and the blockade of Gaza, are illegal under international law and well-known to entail ongoing and serious violations of the human rights of Palestinians.

II. Non-cooperation by Israel with the mandate

10. The Special Rapporteur deeply regrets to report that he has been obstructed in his ability to fulfil his mandate by the lack of cooperation of Israel. The Special Rapporteur assumed the mandate as an impartial observer and has from the outset made great efforts to engage in dialogue with the Government of Palestine and the Government of Israel. He has

[1] Office for the Coordination of Humanitarian Affairs, "Casualties in the Occupied Palestinian Territory and Israel, 1 October to 30 November 2015", 14 December 2015.

repeatedly signaled that his only interest, as an independent expert, lies in the effective and even-handed implementation of the mandate.

11. The Government of Palestine has extended full cooperation with the mandate holder. The Special Rapporteur has met with several Palestinian officials, including during his two missions to the region, graciously facilitated by the Governments of Jordan and Egypt, in lieu of in situ missions, in September 2014 and June 2015.

12. In a letter dated 13 October 2015, the Special Rapporteur formally renewed his request to the Government of Israel to grant him access to the Occupied Palestinian Territory by the end of 2015. This followed similar letters dated 12 August 2014, 13 February 2015 and 13 May 2015. No formal response has been received from Israel to these requests.

13. The Government of Israel has repeatedly sought to justify its non-cooperation by referring to its reservations regarding the mandate. Consequently, despite assurances of access made upon his appointment, and the duty of Israel, as a Member State, to extend cooperation to a special procedure mandate holder, the Special Rapporteur has effectively been denied access to the Occupied Palestinian Territory.

14. The Special Rapporteur has consistently sought to be an effective voice for the victims of violations committed under the occupation, but regrets that the policy of Israel has hampered him in fulfilling this role to the full. As noted in his report to the General Assembly presented in October 2015 (A/70/392), without access, the Special Rapporteur has had to reconsider how he can best serve the mandate (ibid., para. 7). Critically, for the current incumbent, having access to the Occupied Palestinian Territory and meaningful dialogue with both sides was the premise upon which he accepted the mandate.

15. All previous holders of this mandate since its establishment in 1993, but for the Special Rapporteur's immediate predecessor, have been permitted by Israel to access Israel and the Occupied Palestinian Territory (see A/69/301 and Corr.1, sect. III).[2] It has always been the intent of the current Special Rapporteur to fulfil this mandate by gathering information during missions to the Occupied Palestinian Territory and through face-to-face meetings with victims and witnesses, civil society representatives, United Nations representatives and Palestinian and Israeli government officials.

16. The Special Rapporteur expresses his appreciation for the broad support for his access to the Occupied Palestinian Territory by Member States.[3] He considers it of the utmost importance that the international community, in particular the Human Rights Council, redouble political pressure to insist that Israel return to the level of cooperation extended when the mandate was first established and, at the very least, ceases to obstruct the mandate holder's access to the Occupied Palestinian Territory.

[2] Access does not imply formal cooperation with the mandate.

[3] See, e.g., statements made during the interactive dialogue following the presentation by the Special Rapporteur of his report to the Third Committee, 34th meeting, seventieth session of the General Assembly, 29 October 2015. Available from http://webtv.un.org/meetings-events/watch/third-committee-34th-meeting-–-70th-general-assembly/4587399067001#full-text.

III. Alleged human rights violations related to the rise in violence in 2015[4]

17. The Special Rapporteur has raised a number of concerns related to the rise in violence in the Occupied Palestinian Territory, especially of excessive use of force by Israeli security forces during clashes and in the context of attacks and alleged attacks by Palestinians. The situation escalated in October, following heightened tensions, and continued in November and December 2015.[5] The upsurge in violence[6] is a grim reminder of the unsustainable human rights situation in the Occupied Palestinian Territory and the volatile environment it engenders. On 22 October 2015, the Deputy Secretary-General in his briefing to the Security Council, while stressing that there is no justification for murder, stated that the current crisis would not have erupted "if Palestinians did not still live under a stifling and humiliating occupation that has lasted almost half a century".[7]

18. Against the backdrop of illegal settlements in the West Bank, including East Jerusalem, the blockade of Gaza, and a general lack of accountability, including for violations and crimes by Israeli security forces and settlers, tensions rose further in September and October 2015 following restrictions imposed by Israeli authorities on Palestinians' access to the Al-Aqsa compound and what Palestinians viewed as attempts to alter the status quo at the Al-Aqsa compound.

19. On 14 September 2015, in his opening address to the thirtieth session of the Human Rights Council, the High Commissioner for Human Rights noted concerns of excessive use of force in the context of a spike in killings of Palestinians over previous months in incidents involving Israeli security forces in the West Bank. The Special Rapporteur received submissions from two Hebron-based non-governmental organizations on the case of an 18-year-old woman, Hadeel al-Hashlamoun, who was killed on 22 September 2015 by Israeli forces at a checkpoint in Hebron. There have been allegations that it constituted an extrajudicial execution, amid questions of whether the woman possessed a knife as claimed by Israeli forces.[8] Even in the context of an alleged stabbing attack, there are serious questions as to whether lethal use of force was warranted by the threat level presented by one young woman with a knife confined to the area of a checkpoint controlled by several armed Israeli soldiers.[9] She was reportedly shot multiple times and it appears there was no medical assistance attempted by the Israeli authorities.[10] The investigation by one Israeli non-governmental organization found that the allegation that she had attempted to stab soldiers could not "be reconciled with the fact that there was a metal barrier between her and the soldiers". The organization further noted that she had been shot repeatedly,

[4] Data available at the time of drafting primarily covered the months of October and November 2015. At the time of finalizing the present report in December 2015, the situation was ongoing.

[5] Press releases, "'Extremely volatile situation across the Occupied Palestinian Territory' – UN expert expresses grave concern", 16 October 2015, and "UN rights experts express deep concern about ongoing bloodletting in the Occupied Palestinian Territory", 16 November 2015, issued together with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

[6] See also press release of the High Commissioner for Human Rights, "Zeid urges calm and restraint in West Bank amid deadly escalation", 8 October 2015.

[7] See www.un.org/sg/dsg/statements/index.asp?nid=674.

[8] Israel, Ministry of Foreign Affairs, "Palestinian woman attempts to stab soldier in Hebron", 24 September 2015 (communicated by the Spokesperson's Office of the Israel Defense Forces).

[9] Peter Beaumont, "Dispute arises over circumstances of death of woman at Israeli checkpoint" (including a filmed witness account and photo documentation), *The Guardian*, 23 September 2015.

[10] Amnesty International, "Evidence indicates West Bank killing was extrajudicial execution", 25 September 2015.

when she did not pose a threat, following initial shots to her legs, and called on the Israeli military to publish its video documentation from the checkpoint's security cameras.[11]

20. October and November 2015 also saw a wave of protests and violent clashes between Palestinians and Israeli security forces. Excessive use of force by Israeli security forces against Palestinians in the context of attacks and alleged attacks on Israelis, including soldiers, and during clashes, has been widely reported. Whereas much of the initial violence centred in East Jerusalem, Hebron, where Palestinians also live in close proximity to a large settler population and with a large presence of Israeli security forces, has become a hotspot. While most fatal incidents occurred in the West Bank, including East Jerusalem, Palestinians in Gaza have also been killed in incidents involving Israeli security forces. In reported incidents on 9 and 10 October 2015, 9 Palestinians were reported killed and more than 230 injured, by Israeli security forces during protests in Gaza linked to the situation in the West Bank.[12]

21. The high number of Palestinian casualties in individual incidents and during clashes with Israeli security forces, since the violence escalated, is extremely worrying. The Office for the Coordination of Humanitarian Affairs reported that, in October and November 2015, of some 11,300 Palestinians injured, injuries were mainly caused by exposure to tear gas (60 per cent), rubber bullets (23 per cent) and live ammunition (14 per cent).[13] Of fatalities in the same period, the Office for the Coordination of Humanitarian Affairs reported that 60 Palestinians, including children, were killed in the context of attacks and alleged attacks against Israelis, and 17 Israelis were killed in such attacks. In addition, 39 Palestinians were killed in the context of clashes with Israeli security forces. Three Palestinians were killed in other types of incidents.[14]

22. On 14 October 2015, nine human rights organizations in Israel issued a joint press release against statements made by politicians and senior police officers to the effect that attackers should be killed, and noted "it seems that too often, instead of acting in a manner consistent with the nature of each incident, police officers and soldiers are quick to shoot to kill".[15] On 26 October 2015, in response to a letter from a human rights organization, the Attorney General of Israel is reported to have clarified the circumstances in which Israeli forces may use firearms: "the use of a firearm to prevent an immediate life-threatening situation is permitted as long as there is concrete fear of such harm" and "to use a firearm after the threat to bodily integrity or human life has elapsed would constitute a deviation from the law".[16] He also, reportedly, noted that the use of fire must be proportional to the threat.

[11] B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, "B'Tselem investigation: No justification for multiple bullets that killed Hadil al-Hashlamun in Hebron", press release, 24 September 2015.

[12] Office for the Coordination of Humanitarian Affairs, "Protection of Civilians report: 6-12 October 2015", 15 October 2015, p. 1.

[13] Office for the Coordination of Humanitarian Affairs, "Casualties in the Occupied Palestinian Territory and Israel, 1 October to 30 November 2015", 14 December 2015 (figures exclude casualties within Israel except where Palestinians from the Occupied Palestinian Territory were involved in incidents). Three per cent of injuries were caused by other types of weapons.

[14] Ibid.

[15] Association for Civil Rights in Israel, Amnesty International – Israel branch, B'Tselem, Gisha, Public Committee Against Torture in Israel, HaMoked: Center for the Defense of the Individual, Yesh Din – Volunteers for Human Rights, Adalah: Legal Center for Arab Minority Rights in Israel, Physicians for Human Rights – Israel.

[16] *Times of Israel*, "A-G: It's illegal to fire on suspects who don't pose threat", 26 October 2015.

23. Among credible reports of alleged perpetrators shot dead by Israeli security forces when not posing an immediate threat to the life of Israeli soldiers or others, is the case of a 72-year-old woman killed on 6 November 2015. Israeli forces reportedly alleged that she intended to ram them with her car.[17] However, reported footage of the incident shows that soldiers continued firing after jumping out of the way of the car.[18] On 14 October 2015, a young Palestinian man from Hebron was shot dead by Israeli security forces in the context of an alleged attempted stabbing attack at the Damascus Gate entrance to the old city in East Jerusalem. A video of the incident showed the man running past police officers with what appeared to be a knife in his hand before being shot.[19] While the situation posed a level of threat, it is troubling that it appears from the footage available that there was no attempt by the Israeli security forces present to immobilize the suspect in order to apprehend him.[20] It has been claimed that a second video shows the man being shot again while lying almost motionless on the ground.[21]

24. The Special Rapporteur is deeply concerned at measures employed against the Palestinian population in the context of the escalation of violence. While Israeli authorities need to respond appropriately and proportionally to the deteriorating security situation, measures that are excessive violate international law and only add fuel to already inflamed tensions. In mid-October the Israeli Ministry of Foreign Affairs reported the approval by the Security Cabinet of a number of measures, authorizing Israeli security forces to "impose a closure on, or to surround, centers of friction and incitement in Jerusalem".[22] The measures also provided that where a punitive demolition has taken place no new construction would be permitted, that the [suspected] perpetrators' property would be confiscated and their East Jerusalem residency rights revoked. [23]

25. Punitive demolitions of the homes of perpetrators or alleged perpetrators of attacks against Israelis are in contravention of international humanitarian law and international human rights law. Israel, as the occupying Power is prohibited from destroying private property in the Occupied Palestinian Territory.[24] Such demolitions further constitute collective punishment, contrary to article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, affecting not only the perpetrator or suspected perpetrator, but also the family of the targeted person and often families in adjacent homes impacted by the blast of the demolitions. Punitive demolitions violate a number of human rights, including the right to housing. According to the Office for the Coordination of Humanitarian Affairs, from mid-October to the end of November 2015, 11 homes were demolished or sealed in such punitive actions. This caused the displacement of 80 Palestinians, including 42 children. Twenty-six persons living in adjacent buildings were

[17] *Times of Israel*, "Elderly Palestinian woman tries to run over soldiers near Hebron", 6 November 2015.

[18] Amnesty International, "Israel/OPT: Investigate apparent extrajudicial execution at Hebron hospital", press release, 12 November 2015, and B'Tselem, "Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings", press release, 16 December 2015.

[19] From interview with a police spokesperson, with footage of the shooting (MSNBC LIVE With José Díaz-Balart, "Police: 'No doubt' man posed imminent threat" 14 October 2015).

[20] B'Tselem, "Footage raises grave concern that Fadi 'Alun and Basel Sidr were shot while no longer posing danger", press release, 15 October 2015.

[21] Al Jazeera, "Mapping the dead in latest Israeli-Palestinian violence" (accessed 9 December 2015).

[22] Israel, Ministry of Foreign Affairs, "Security Cabinet approves anti-terror measures", 13 October 2015.

[23] Ibid.

[24] This prohibition (art. 53 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War) applies unless an absolute necessity for military operations exists.

also temporarily displaced in connection with the demolitions.[25] On 16 November 2015, the Humanitarian Coordinator in the Occupied Palestinian Territory expressed distress at reports of punitive demolitions targeting five family homes concluding that "punitive demolitions are inherently unjust, punishing innocent people for the acts of others".[26]

26. In East Jerusalem, extensive restrictions, affecting the right to freedom of movement, in the form of roadblocks and checkpoints were imposed following approval by the Israeli Security Cabinet in mid-October 2015. At the end of November, the Office for the Coordination of Humanitarian Affairs reported that around 76,000 people in six Palestinian neighbourhoods in East Jerusalem were still directly affected by additional checkpoints, roadblocks and an earth mound.[27] While such restrictions were gradually lifted in East Jerusalem, they were increasingly imposed in Hebron where several main access roads to the city were blocked by Israeli security forces and inspections and searches of Palestinians at the many checkpoints intensified. It is troubling that some international organizations providing a crucial protective presence are reported to have been denied access to the areas of Hebron city most affected and that their staff have allegedly been harassed by settlers and Israeli forces.[28] In this context, the Special Rapporteur is also seriously concerned at information received of Palestinian human rights defenders in Hebron being harassed and threatened by Israeli security forces and settlers.

27. With respect to the right to education during the period of increased tensions and clashes, the Special Rapporteur has received allegations of schoolchildren and teachers in Hebron being harassed by Israeli forces and settlers on their way to and from school in October 2015. Children attending school in the H2 area of Hebron, controlled by Israeli security forces, appear to have been particularly adversely affected. According to the organization Christian Peacemaker Teams, in the first 10 schooldays of October, more than 140 tear gas canisters were fired by Israeli forces from two military checkpoints in H2 as Palestinian children walked to and from school.[29]

28. At the time of the finalization of this report in early December 2015, the situation of heightened violence, within the context of the ongoing occupation, continued. The Special Rapporteur stresses the need to ensure respect for the human rights of Palestinians. Responding to the deteriorated security situation does not permit excessive measures or measures of collective punishment to be carried out by Israeli authorities. The Special Rapporteur reiterates that it is imperative that Israeli security forces abide by international standards on use of force, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. He renews the call on Israeli authorities to carry out independent, effective, thorough, prompt and impartial investigations into all suspected cases of extrajudicial, arbitrary and summary executions.

[25] Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin: occupied Palestinian territory - November 2015", p. 9.

[26] Office for the Coordination of Humanitarian Affairs, "Humanitarian Coordinator calls for end to punitive demolitions in the occupied West Bank", Jerusalem, 16 November 2015.

[27] Office for the Coordination of Humanitarian Affairs, " Humanitarian Bulletin - November 2015", p. 6.

[28] Ibid., p. 1.

[29] Christian Peacemaker Teams, "Al-Khalil (Hebron): Christian Peacemaker Palestine October Newsletter", 3 November 2015.

IV. Selected universal periodic review recommendations to Israel and broad continuing human rights concerns

29. In October 2013, Israel underwent its second universal periodic review (see A/HRC/25/15). While over 200 recommendations were made, the Special Rapporteur will, as is appropriate, limit his consideration to those regarding the situation in the Occupied Palestinian Territory.

30. In March 2014, Israel submitted its responses to the recommendations in an addendum (A/HRC/25/15/Add.1) containing the Government's official responses to the recommendations, and an annex in which Israel provided its responses to recommendations that it considered beyond the scope of the universal periodic review owing to their focus on international humanitarian law.[30] In the annex, the Government of Israel questioned "the relevance of examining matters which are governed by international humanitarian law in the context of a human rights review", stating that "the applicability of human rights conventions to the West Bank and the Gaza Strip has been subject of considerable debate over the past years".[31] The Special Rapporteur refers to the determination of the International Court of Justice that international humanitarian law and human rights law apply in the Occupied Palestinian Territory.[32]

31. The Special Rapporteur notes the stated support of Israel for the following broad recommendations pertaining to its respect for international law: comply with its legal obligations under international law alongside its obligations deriving from international human rights treaties to which Israel is a party; abide by its international legal obligations, including those under the Fourth Geneva Convention; and strengthen its cooperation with international human rights mechanisms, in particular with the Human Rights Council (see A/HRC/25/15, paras. 136.46, 136.47 and 136.37, and A/HRC/25/15/Add.1, para. 13). Regrettably, however, the Government of Israel rejected many recommendations on settlements, the blockade, Palestinian prisoners and detainees and accountability. These are critical areas to address in order to improve the situation of ongoing violations under the Israeli occupation of the West Bank, including East Jerusalem, and Gaza.

A. Settlements

32. Most of the human rights violations against Palestinians in the West Bank, including East Jerusalem, are linked to the existence and expansion of settlements. Such violations relate to home demolitions and the consequent displacement, discriminatory supply of water and provision of access to land, movement restrictions, settler violence and the discriminatory military court system which Israel applies to Palestinians. The Special Rapporteur deeply regrets that Israel rejected the following recommendations related to settlements: stop the transfer of its population to the occupied territory and put an end to all measures that encourage or perpetuate the settlements; guarantee the right to housing of the Palestinians in the occupied territories, including East Jerusalem, stopping the demolition of

[30] For the purposes of this discussion the Special Rapporteur recognizes the unofficial status of responses provided by Israel in the annex, but as they represent an expression by Israel on particular areas, he will consider the support of Israel for recommendations as noted in both the addendum and in the annex.

[31] The annex is available from the website of the Office of the United Nations High Commissioner for Human Rights, at www.ohchr.org/EN/HRBodies/UPR/Pages/ILSession15.aspx.

[32] *Legal Consequences of the construction of a wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

Palestinian houses and guaranteeing the property rights of the Palestinian population; and dismantle the separation wall and halt the expansion of illegal settlements (see A/HRC/25/15, paras. 136.173, 136.229 and 136.151, and A/HRC/25/15/Add.1, para. 53).[33]

33. The Special Rapporteur notes the partial support to the following recommendation on discrimination and access to natural resources: effectively protect the Palestinian population in the occupied West Bank, including East Jerusalem, against any form of discrimination which impairs the equitable access to basic services or natural resources, including water and land, or else the equal enjoyment of fundamental rights and freedoms, particularly the right to equal protection before the law (see A/HRC/25/15, para. 136.205).[34] However, as previously reported, Palestinians continue to face entrenched discrimination in access to land and water under the policies and practices of the Israeli occupation (see A/70/392, section III.A).

34. In view of continuing settlement activities, and the absence of a commitment by Israel to change its policy, the Special Rapporteur notes recent steps by some Member States regarding labelling of settlement produce. On 11 November 2015, in a move condemned by Israel,[35] the European Commission adopted an interpretative notice on the indication of origin of goods from the territories occupied by Israel since June 1967, in order to ensure that European Union legislation applies to Israel within its internationally recognized, i.e. pre-1967 borders.[36] Information published by the European Union External Action Service clarifies that that marking products, such as fruit and vegetables, from Israeli settlements "made in Israel" would mislead consumers and therefore be inconsistent with existing European Union legislation.

B. Blockade

35. In Gaza, the landscape and the people are scarred by multiple rounds of hostilities with Israel and kept in a state of de-development by the long-standing blockade, which constitutes collective punishment contrary to international humanitarian law (see A/70/392, sect. II.B). It has the effect of isolating Gaza, including from the rest of the Occupied Palestinian Territory, and affects a range of human rights, especially the right to freedom of movement and the right to an adequate standard of living. There is a dire lack of potable water and a severely limited electricity supply.[37] The United Nations Conference on Trade and Development has reported: "The over-abstraction and scarcity of drinking water have been exacerbated by crumbling sanitation infrastructure, while the blockade creates chronic shortages of electricity and fuel, which in turn aggravate contamination and the water crisis" (see TD/B/62/3, para. 46).

36. Many of the families hit hardest in terms of damage and destruction of their homes during the 2014 Israeli military operation, some 95,000 people, were still displaced as of

[33] See the annex provided by Israel (footnote 31 above).

[34] Ibid.

[35] Israel, Ministry of Foreign Affairs "PM Netanyahu's response to EU decision regarding product labelling", 11 November 2015.

[36] European Union External Action, Fact Sheet, Interpretive Notice, 11 November 2015. Available at http://eeas.europa.eu/delegations/israel/documents/news/20151111_indication_of_origin_fact_sheet_final_en.pdf.

[37] In the context of the blockade as a primary obstacle to the right to an adequate standard of living in Gaza, the Special Rapporteur recognizes that the Palestinian political situation also impacts on the ability of civil servants to provide basic services. See e.g. Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin - November 2015".

November 2015.[38] The Office for the Coordination of Humanitarian Affairs reported that in October 2015 the reconstruction of 10 per cent of homes that had been totally destroyed in 2014 was under way (over 1,100), while 12 per cent of repairs to severely damaged homes had been completed.[39] In the same month, the United Nations Relief and Works Agency for Palestine Refugees in the Near East reported that a refugee family in Gaza was the first to complete the reconstruction of their totally destroyed home, through the Gaza Reconstruction Mechanism.[40] While progress remains limited more than a year after the 26 August 2015 ceasefire, the Special Rapporteur welcomes the assistance reaching families affected by the destruction of and damage to homes. He joins again the many calls for donors to realize their pledges made in Cairo in October 2014. The Special Rapporteur recalls, however, that the need to facilitate the entry of building materials into Gaza has been created as a result of the maintaining of the blockade by Israel. Long-term viability requires that the economy of Gaza, and people's livelihoods, be freed from the stranglehold that the blockade's restrictions on movement of goods and people presents.

37. The Special Rapporteur is dismayed that there appears to be no indication from Israel that the blockade will be lifted. The Government of Israel rejected seven recommendations expressly on lifting the blockade or closure of Gaza. In the interactive dialogue of the universal periodic review, Israel sought to justify the continuation of the blockade referring to "the volatile security situation" (see A/HRC/25/15, para. 125). The people of Gaza have suffered greatly during three escalations of hostilities with Israel between 2008 and 2014, during which time the blockade was continually imposed. Even outside of active hostilities, the people of Gaza remain victims of violations of their human rights resulting from the effects of the blockade. The Special Rapporteur recalls the joint statement, issued by 30 international aid agencies six months after the ceasefire in Gaza, warning that, "a return to hostilities is inevitable if progress is not made and the root causes of conflict are not addressed" and stressing that Israel, as the occupying Power, must comply with its obligations under international law and "must fully lift the blockade".[41]

C. Prisoners and detainees

38. The Special Rapporteur has previously detailed his concerns regarding the treatment of Palestinian prisoners and detainees, including children, under the Israeli military court system (see A/HRC/28/78, sect. IV, and A/70/392, sect. IV). Figures reported by various non-governmental organizations show a sharp rise in the number of Palestinians detained in the month of October 2015, during the escalation of violence. According to figures published by an Israeli non-governmental organization, the number of Palestinians in the custody of the Israeli security forces reached some 5,680; a rise of more than 400 persons held compared to September 2015.[42]

39. With respect to the situation of child suspects and detainees, the Special Rapporteur is astounded at the openly discriminatory approach signalled by the rejection by Israel of

[38] Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin: occupied Palestinian territory - October 2015", p. 6.

[39] Ibid., pp. 5-6.

[40] "After 70 days, I held the new keys in my hands", 21 October 2015. Available from www.unrwa.org/newsroom/features/"after-70-days-i-held-new-keys-my-hands.

[41] "We must not fail in Gaza", joint statement by 30 international aid agencies issued on 26 February 2015.

[42] B'Tselem, "Statistics on Palestinians in the custody of the Israeli security forces" (accessed on 2 December 2015). This figure does not include Palestinians held in Israel Prison Service facilities for being in Israel illegally.

the following recommendation: take all steps necessary to ensure that Palestinian children in military custody receive the same level of care and have the same rights as provided by Israeli criminal law to youth offenders (see A/HRC/25/15, para. 136.114).[43] A rise in Palestinian minors held by Israel has also been recorded. Some 300 of those held by Israel at the end of October 2015 were minors, up from some 170 in September 2015.[44] In the light of the conclusion by United Nations Children's Fund (UNICEF) in February 2013 that "ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized",[45] the rise in children in detention is alarming. Statistics collected by a professional voluntary association indicate that practices of night arrests, threats, physical and verbal abuse against children detained continue.[46]

40. In November 2015, there have been several severe legislative moves.[47] On 2 November, the Ministry of Foreign Affairs of Israel reported that the Knesset had passed a temporary law, to be reviewed in three years' time, setting a minimum sentence of three years' imprisonment for those convicted of stone-throwing.[48] On 25 November 2015 the Knesset approved in a preliminary vote that children under the age of 14 can receive prison sentences, upon being convicted of terrorism, to be implemented when they turn 14.[49]

41. Israeli authorities have recommenced the practice of administrative detention of children for the first time since December 2011. The Special Rapporteur has received information in three cases concerning East Jerusalem teenagers[50] held under this practice without charge or trial. Statistics indicate another child was also under administrative detention in October 2015, although the Special Rapporteur has not received specific information on the case.[51]

42. The Government of Israel supported the following recommendation: ensure that administrative detention is carried out in accordance with international human rights standards. According to figures published by an Israeli non-governmental organization, 429 Palestinians were held under administrative detention at the end of October 2015.[52] The

[43] See the annex provided by Israel (footnote 31 above).

[44] B'Tselem, "Statistics on Palestinian minors in the custody of the Israeli security forces" (accessed on 2 December 2015).

[45] UNICEF, *Children in Israeli Military Detention: Observations and Recommendations* (Jerusalem, February 2013), executive summary.

[46] Military Court Watch, "Comparative graph - Issues of concern". Statistics based on testimonies collected (accessed on 9 December 2015).

[47] In addition to the previously reported amendment to the Penal Code adopted on 20 July 2015, providing for up to 20 years' imprisonment for those convicted of throwing stones or any other objects , with intent to cause harm, at moving vehicles (see A/70/392, para. 71). The Knesset, "Knesset approves harsher punishments for stone throwers", press release, 21 July 2015.

[48] The Knesset, "Knesset approves harsher punishment for rock-throwing", 2 November 2015. It is noted that the text mentions the maximum sentence to be 15 years, although up to 20 years imprisonment was reported previously for throwing stones, with intent to cause harm, at moving vehicles (ibid.). The Ministry of Foreign Affairs website links the press release to the "Security Cabinet statement on rock-throwing" dated 24 September 2015, concerning measures against rock-throwing in Jerusalem.

[49] The Knesset, "Approved in preliminary reading: Prison sentences for minors under 14 who were convicted of terrorism", 25 November 2015. The press release mentions keeping minors in "children's homes" until they can be sent to prison.

[50] Defense for Children International – Palestine, "Three East Jerusalem teens held in administrative detention", 27 October 2015.

[51] Military Court Watch, Newsletter, November 2015.

[52] B'Tselem, "Statistics on Palestinians in the custody of the Israeli security forces" (accessed on 2 December 2015).

Special Rapporteur stresses that administrative detention is only exceptionally permissible for the shortest possible periods of time. Hundreds of Palestinians being held, now including children, often under secret evidence, and for up to six-month terms that can be renewed indefinitely, is not consistent with international human rights standards. It is fundamental that those suspected of wrongdoing be able to defend themselves and to challenge the detention. The Government of Israel should promptly charge or release all administrative detainees.

D. Accountability

43. The Special Rapporteur notes that Israel supported the following recommendation: fight impunity by thorough and impartial investigations on all the allegations of human rights violations, including when these allegations involve members of security forces or settlers (see A/HRC/25/15, para. 136.66, and A/HRC/25/15/Add.1, para. 35). However, concerns remain about a persistent and general lack of accountability for violations and crimes against Palestinians (see A/70/392, sect. V).

44. The 31 July 2015 arson attack on a family home in the West Bank village of Duma is an emblematic case illustrating the lack of accountability for the killings of Palestinians, including in incidents which are strongly suspected to have been acts of settler violence (see A/70/392, para. 47).[53] On 2 December 2015, the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority expressed regret at the slow progress in bringing the perpetrators in this case to justice.[54] In another high-profile case, the Special Rapporteur notes reports in Israeli media of the conviction in November 2015 of two suspects in the murder in July 2014 of 16-year-old Mohammad Khdeir. The conviction of the third and main suspect is reportedly pending a psychiatric evaluation.[55]

45. According to the Office for the Coordination of Humanitarian Affairs, in 2015, settler-related violence continued at a weekly average rate of two Palestinian casualties and three incidents of damage to Palestinian-owned property. The Office highlighted a marked increase in settler violence reported in and around Hebron in October and November 2015, with 61 attacks causing injuries to Palestinians or property damage.[56]

46. Cases of Palestinian fatalities involving Israeli security forces and failures to appropriately investigate and prosecute have also contributed to the sense of impunity for crimes committed against Palestinians. According to information released in December 2015 by an Israeli non-governmental organization, even when the Israeli Military Police Criminal Investigations Division has launched criminal investigations into alleged offences by Israeli soldiers against Palestinians, indictment rates are low: reportedly, over the past five years, only 3 per cent of criminal investigations resulted in indictments.[57] Concerns of

[53] See also High Commissioner for Human Rights, press release, "Zeid urges calm and restraint in West Bank amid deadly escalation", 8 October 2015.

[54] Statement by the United Nations Special Coordinator for the Middle East Peace Process, Nickolay Mladenov, on the Dawabsha family case, Jerusalem, 2 December 2015.

[55] Nir Hasson, "Court finds two guilty in Abu Khdeir murder; conviction of main suspect suspended", *Haaretz*, 30 November 2015.

[56] Office for the Coordination of Humanitarian Affairs, "Protection of civilians report: 24-30 November 2015", 4 December 2015, and "Humanitarian Bulletin - November 2015", p. 3.

[57] Yesh-din, Data Sheet, "Law Enforcement on IDF Soldiers suspected of harming Palestinians: Figures for 2014", December 2015.

lack of accountability for alleged violations during the 2014 Israeli military operation in Gaza (A/70/392, sect. V), will be further illustrated in section V B.

47. The Special Rapporteur reiterates that settlements, the blockade, Palestinian prisoners and detainees and accountability are critical areas to address and urges Israel to take concrete steps towards addressing related ongoing violations in the Occupied Palestinian Territory.

V. Cases of alleged violations raised with Israel through communications from special procedures

48. Between June 2014 and the end November 2015, the Special Rapporteur transmitted 10 communications (joint letters of allegation or joint urgent appeals) to the Government of Israel, raising allegations of violations of international human rights law and international humanitarian law by Israeli authorities. Through communications, the Special Rapporteur seeks to intervene in individual cases but also to raise broader concerns regarding the legislation, policies and practices of the Government of Israel that give rise to human rights violations in the Occupied Palestinian Territory.

49. In 2014, the Government of Israel responded substantively to one out of three communications sent in the second half of the year. By the end of November 2015, out of seven communications sent, the Government of Israel had responded to two.

50. Of the 10 communications, 2 concerned the threatened forced eviction of a Palestinian family in East Jerusalem; 1 addressed the forced eviction and forcible transfer of Bedouin communities in the West Bank; 2 related to allegations of violations against Palestinian human rights defenders; 2 centred on allegations of excessive use of force by Israeli security forces; 1 concerned legislative developments affecting the human rights of Palestinians detainees and prisoners held by Israel; and 2 alleged violations of the principles of international humanitarian law in Israeli strikes during the Israeli military operation in Gaza in July and August 2014.

A. The West Bank, including East Jerusalem

51. The Special Rapporteur previously reported (A/70/392, paras. 61-68) on the pressure brought to bear on Palestinians in occupied East Jerusalem to leave. This is related to settlement activity and the apparent policy of the Government of Israel to establish a demographic composition in Jerusalem whereby the Jewish population outstrips the Palestinian population by a certain percentage. Combined with the declaration in Israeli law in 1980 that all of Jerusalem is the capital of Israel,[58] contrary to international law (Security Council resolutions 476 (1980) and 478 (1980)), this provides the backdrop against which the right of Palestinians to live in East Jerusalem is continually challenged.

52. On 20 November 2015, the Special Rapporteur and the Special Rapporteurs on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; on the independence of judges and lawyers; and on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent a follow-up urgent appeal to the Government of Israel against a forced eviction of a Palestinian family in East Jerusalem (see A/HRC/31/79, case No. ISR

[58] Basic law: Jerusalem, Capital of Israel (1980).

8/2015).[59] In September 2014, an eviction order was issued against the Ghaith Sub-Laban family from their home. According to information received, the main claim of the settler organization which sought to evict the family was that they had lost their protected tenancy status as a result of having abandoned the house. The case was decided against the family by a magistrate who was herself a settler. Following a failed appeal, whether the family of eight, including two children, will be able to remain in what has been their home since 1953 now depends on whether they will be granted the right to submit another appeal. Meanwhile, their social services, including health care, have reportedly been discontinued. This case is illustrative of the environment in which Palestinians in the occupied East Jerusalem live with pressure from powerful settler organizations, and the absence of proper legal protections for Palestinians. The Special Rapporteur regrets that no response to the original or the follow-up communication had been received as of 7 December 2015.

53. Another communication dated 14 October 2014 sent to the Government of Israel by the Special Rapporteur jointly with the Special Rapporteurs on adequate housing as a component of the right to an adequate standard of living; cultural rights; the right to food; and minority issues illustrates concerns related to moves by Israeli authorities to force Palestinians out of strategically significant locations (case previously reported, A/HRC/28/78, sect. V, and A/70/392, paras. 41-44). The communication, in which the Special Rapporteurs urged the Government of Israel to halt the plans to forcibly transfer Bedouin communities of thousands of people living in the Jordan Valley and East Jerusalem periphery, has not received a response. Demolitions occurred in some communities affected by the plans, most recently in September 2015 in the East Tayba Bedouin community.[60] Some of these communities are located in an area slated for the expansion of Israeli settlements, including in the area known as "E-1". In addition to violations of a range of human rights that the plans entail, including the right to housing, article 49 of the Fourth Geneva Convention prohibits the occupying Power from carrying out the individual or mass forcible transfers of protected persons and also prohibits Israel from transferring its civilians into occupied territory. It is feared that implementation of the plan would further isolate East Jerusalem from the rest of the West Bank and undermine the territorial contiguity of the Occupied Palestinian Territory.

54. Palestinian human rights defenders perform a critical role in documenting allegations of violations and peacefully protesting against occupation policies and practices. They are often vulnerable to acts aimed at obstructing their work, harassment, threats, reprisals and retaliatory acts, and violations of their rights including under articles 9, 19 and 21 of the International Covenant on Civil and Political Rights, which guarantee rights to liberty and security of the person, freedom of opinion and expression, and freedom of peaceful assembly. Since the beginning of the escalation in violence in 2015, the Special Rapporteur has received a higher than usual number of reports of harassment, threats and obstruction of the work of human rights defenders.

55. In a joint communication with the Working Group on Arbitrary Detention and the Special Rapporteurs on the situation of human rights defenders; on the independence of judges and lawyers; on the promotion and protection of the right to freedom of opinion and expression; and on the rights to freedom of peaceful assembly and of association, dated 27 January 2015 (case No. ISR 11/2014), the Special Rapporteur raised a case of alleged arbitrary arrest and risk of imminent arbitrary detention of a human rights defender, and

[59] A joint communication (case No. ISR 1/2015) with the Special Rapporteurs on adequate housing as a component of the right to an adequate standard of living and on the independence of judges and lawyers, was previously sent to the Government of Israel on this case A/70/392, para. 66.

[60] Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin - October 2015", p. 14.

expressed concerns about the use by Israel of the military court system to try Palestinians. The facts revolved around a peaceful protest in May 2012 in front of the Israeli "Ofer" prison, in the occupied West Bank. Abdallah abu Rahma was arrested after having stood in front of bulldozers in an attempt to prevent Israeli security forces from setting up roadblocks. However, he was only charged months later, following his peaceful involvement in the Bab al-Shams protest camp against planned settlements in the West Bank in January 2013. In October 2014, he was convicted for "disturbing a soldier on duty". In its response of 10 March 2015,[61] the Israeli authorities stated that the judicial process leading to Mr. Abu Rahma's conviction complied with human rights standards, including the right to fair trial and due process guarantees. They did not address the allegation that charges against him were only brought following his participation in another peaceful process and did not indicate what measures had been taken to ensure that Palestinian human rights defenders can operate in an enabling environment and carry out their legitimate work without fear of prosecution and criminalization. In November 2015, Amnesty International reported that in rejecting Mr. Abu Rahma's appeal against his four months' suspended prison sentence and fine, the military judge allegedly stated "that the appellant's enthusiasm should be 'cooled down' in the coming years".[62]

56. In a joint communication with the Special Rapporteur on the situation of human rights defenders dated 22 October 2015, concerns were raised on measures taken against Daoud al-Ghoul, a human rights defender, who worked for a Palestinian health and development non-governmental organization in East Jerusalem (see A/HRC/31/79, case No. ISR 7/2015). In November 2014, Israeli authorities allegedly banned him from Jerusalem, with no reasons or charges initially presented. Soon after relocating to the West Bank, he was also banned from there and had to move to Haifa, Israel. These sanctions imposed by Israeli military order were reportedly based on secret evidence, rendering it impossible to for him to defend himself, and were not subject to judicial review. Israeli authorities later claimed that he participated in the political party Popular Front for the Liberation of Palestine, which Israel has prohibited. Mr. Al-Ghoul was reportedly also made subject to a foreign travel ban. He was arrested in June 2015 and charged with "membership of an illegal association". The indictment against him listed activities including leading tours of Israeli settlements and participating in training courses. The Special Rapporteur regrets that no response has been received to the communication from the Government of Israel.

57. Excessive use of force by Israeli security forces is a continuing concern and is heightened during periods of increased tensions. The Special Rapporteur has previously reported (see A/HRC/28/78, para. 47) on the joint communication (case No. ISR 8/2014), with the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; on the rights to freedom of peaceful assembly and of association; on the situation of human rights defenders; and on extrajudicial, summary or arbitrary executions, and reflected the response of Israel of 12 November 2014.[63] The communication, dated 21 August 2014, concerned alleged excessive use of force in the case of the killings of three peaceful demonstrators in the West Bank by live ammunition fired by Israeli security forces.

58. In a joint communication with the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 22 October 2015, the Special Rapporteur raised concerns in the

[61] See https://spdb.ohchr.org/hrdb/29th/Israel_10.03.15_(11.2014).pdf.

[62] Amnesty International, Urgent Action, "Military Court Rejects Activist's Appeal", 19 November 2015.

[63] See https://spdb.ohchr.org/hrdb/28th/Israel_12.11.14_(8.2014).pdf.

context of the 2015 upsurge of violence, including attacks by Palestinians, regarding the many cases of injuries and killings of Palestinians involving Israeli security forces (see A/HRC/31/79, case No. ISR 6/2015). Concerns included extensive use of live ammunition and rubber-coated metal bullets against Palestinians demonstrating throughout the occupied West Bank, including East Jerusalem, and killings of Palestinian suspects of attacks on Israelis. In a joint press release of 16 November 2015, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions called for "an end to the violence by all and strict compliance with international law" and urged "the authorities to carry out independent, thorough, prompt and impartial investigations into all suspected cases of extrajudicial, arbitrary and summary executions".[64] No response had been received as at 7 December 2015 to the communication. However, the Permanent Mission of Israel has issued a press release in response to that of the Special Rapporteurs, in which it objected, among other points, to the reference to the violence taking place within the context of long-standing Israeli occupation policies and practices.[65]

59. In a joint communication with the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and on torture and other cruel, inhuman or degrading treatment or punishment dated 24 July 2015, the Special Rapporteur urged the Government of Israel to refrain from amending the Prison Act to allow the forced feeding of prisoners and detainees on hunger strike (see A/HRC/31/79, case No. ISR 3/2015). The communication made clear that such treatment would risk violating the absolute and non-derogable prohibition of torture and other ill-treatment, as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Israel responded on 14 August 2015,[66] stating that the law sought to balance the prisoner's autonomy over his/her body and right to protest with the responsibility of the State to safeguard their health care, and would only be used in cases of hunger strikes "driven by particular political purposes".

60. The amendment was resisted by the Israeli Medical Association, which noted that no prisoner or detainee in Israel had ever died during a hunger strike. It considered forced feeding equivalent to torture and concluded that it was "in conflict with accepted medical ethics in Israel and around the world".[67] As previously reported (see A/70/392, para. 70), the law was passed on 30 July 2015. However, in the high-profile case of the Palestinian hunger-striker Mohammad Allan, who was protesting against his administrative detention, it appeared that prison authorities experienced great difficulty in finding medical professionals willing to perform the treatment envisaged by the law.[68] The Special Rapporteur applauds the principled resistance of Israeli physicians to administering the forced treatment provided for in this law.

[64] Press release, "UN rights experts express deep concern about ongoing bloodletting in the Occupied Palestinian Territory", 16 November 2015.

[65] "Israel expresses shock and deep regret following UN Special Rapporteurs Press Release published November 16, 2015", press release, 17 November 2015.

[66] It is noted that the response received in that case omitted to acknowledge the mandate on the situation of human rights in the Palestinian territories occupied since 1967. See A/HRC/31/79.

[67] Israeli Medical Association, "The Physician's Guide to treating the detainee/prisoner on a hunger strike". Policy Paper, June 2014.

[68] Addameer on Mohammad Allaan, updated 16 August 2015; Amnesty International, urgent action, "Palestinian Lawyer Mohammed Allan Released", 6 November 2015.

B. Gaza

61. Two communications sent by the Special Rapporteur concerned cases of alleged violations of international humanitarian law during the Israeli military operation in Gaza in July and August 2014. These communications were part of an attempt to raise with the Government of Israel the long-standing general lack of accountability for Israeli violations of international humanitarian law and international human rights law. The Special Rapporteur regrets that Israel has not responded to these communications.

62. The first of these joint communications, with the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 20 August 2014 (case No. ISR 9/2014), raised four emblematic cases of alleged disproportionate or indiscriminate attacks that caused a number of Palestinian civilian fatalities, including children (previously reported, see A/HRC/28/78, para. 24). In an update of June 2015, the Israeli Military Advocate General ordered a criminal investigation into one of these cases noting that "the factual findings … indicated the existence of grounds for reasonable suspicion that the attack was not carried out in accordance with the rules and procedures applicable" to the Israel Defense Forces.[69] This was the case of the 9 July 2014 airstrike on a beach resort in Khan Younis which killed nine young men, including four teenagers, who had been watching a football World Cup match. There was reportedly no indication that the location had been used for military purposes. As of 7 December 2015, there was no further update available.

63. The second joint communication, with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health dated 11 June 2015, concerned alleged violations related to seven cases of attacks by the Israel Defense Forces, during the 2014 hostilities, on medical facilities and medical staff, leading to destructions of health care facilities, and civilian deaths and injuries (see A/HRC/31/79, case No. ISR 2/2015). In addition, the Special Rapporteur raised allegations of wilful delay and obstruction by the Israel Defense Forces of medical evacuations. Concerns were raised of alleged failures by Israel Defense Forces to comply with principles of international humanitarian law, including special protection afforded to hospitals and medical workers, as well as violations of the right to health.[70]

64. The Special Rapporteur takes the opportunity to provide more information on one such case, which he raised during his presentation to the Human Rights Council at its twenty-eighth session and which was also mentioned in the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (see A/HRC/29/CRP.4, para. 332). The case concerns a 7-year-old boy who was attempting to flee the area of Khuza'a in the morning of 24 July, when he was hit by shrapnel to the stomach during Israeli shelling. The boy's medical evacuation was reportedly delayed by the Israel Defense Forces, with no reason given, for more than three hours from the time he was injured, in order to achieve coordination for medical evacuation access and at checkpoints. At one point, the dying boy reportedly had to be removed from the ambulance at a checkpoint to allow the Israeli Defense Forces to inspect the ambulance with dogs. The boy passed away before reaching hospital. The Special Rapporteur is not aware of any investigation into this case.

[69] All references to Israeli examinations and investigations with respect to the Israeli Military Operation in Gaza in 2014 accessed via http://www.law.idf.il/163-7353-en/Patzar.aspx, "Decisions of the IDF MAG Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge'– Updates".

[70] Fourth Geneva Convention, arts. 17-20, and the International Covenant on Economic, Social and Cultural Rights, art. 12.

65. The communication also included alleged violations related to attacks by Israel Defense Forces on hospitals, ambulances and medical workers. There were three cases of attacks on hospitals: Al-Aqsa, Beit Hanoun, and Al-Wafa. With respect to the Al Wafa hospital, which was attacked several times between 11 and 23 July 2014, when it was destroyed, the case was examined by the Israeli Fact Finding Assessment Mechanism. However, based on claims that it had been used for military purposes, no investigation followed. Information received by the Special Rapporteur suggested only the possibility of a launching site more than 200 metres from the hospital, but no other military activity in the area of the hospital. The independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 reported that all relevant witnesses it interviewed, including medical staff, denied that it was used for military purposes prior to its evacuation (see A/HRC/29/CRP.4, para. 477). In two of the three cases of attacks on ambulance and medical workers, investigations appear to have been opened by the Military Advocate General following examination by the Fact-fining Assessment Mechanism. The third case, into which there seems to have been no investigation, concerned the killing of a three-person ambulance crew when the ambulance allegedly came under attack by the Israel Defense Forces while it was on its way to attend casualties at the site of a reported drone strike. As of 7 December 2015, there were no further updates available on these cases.[71]

66. These cases illustrate a variety of effects of the policies and practices of the occupation and the related conflict on individual Palestinian lives. The Special Rapporteur reiterates the need for increased realization of the protections afforded Palestinians in the Occupied Palestinian Territory under international human rights law and international humanitarian law. Communications addressed to the Government of Israel after November 2015 are not included in the present report, but will be included in the communications report of special procedures presented at the thirty-second session of the Council.

VI. Conclusions and recommendations

67. **The Special Rapporteur recalls the well-documented violations related to the Israeli occupation policies and practices in the Occupied Palestinian Territory and sees a critical need for the international community to increase its protection of the Palestinian population.**

68. **He appeals to the Government of Israel, as the occupying Power, to take practical steps to implement protections under international law as it pertains to the Palestinian population living under occupation. In particular, he urges Israel to review, with a view to implementing, recommendations made to it to improve the human rights situation in the Occupied Palestinian Territory, by the Secretary-General, the High Commissioner for Human Rights and independent mandates in reports presented to the General Assembly and the Human Rights Council.**

69. **The Special Rapporteur reiterates recommendations previously made (see A/HRC/28/78 and A/70/392) and presents and re-emphasizes the following recommendations to the Government of Israel:**

(a) **Lift the blockade on Gaza, which is a primary obstacle to reconstruction, entails violations of human rights and constitutes collective punishment;**

[71] A response from Israel to the communication was received following the finalization of the present report. It will be made available in the relevant communications report of Special Procedures.

(b) **Halt settlement expansion and refrain from carrying out demolitions of Palestinian property, forced evictions, and other acts causing the forced displacement of Palestinians in the West Bank, including East Jerusalem;**

(c) **Ensure compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and conduct full investigations into cases of excessive use of force by Israeli security forces and into allegations of settler violence;**

(d) **Ensure that domestic-level investigations provide accountability, including by widening the scope of investigations to include policy-level decisions guiding the Israel Defense Forces during the 2014 military operation in Gaza;**

(e) **End the practice of administrative detention and urgently charge or release Palestinian prisoners and detainees, especially children;**

(f) **Urgently redouble efforts to implement recommendations by UNICEF with respect to the detention of children, in particular, ensuring that children are detained only as a last resort;**

(g) **Desist from excessive measures affecting Palestinian freedom of movement and cease immediately the practice of punitive home demolitions;**

(h) **Cooperate with the mandate of the Special Rapporteur and any United Nations-mandated body, as required of a State Member of the United Nations, and facilitate access to the Occupied Palestinian Territory.**

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the role and challenges faced by human rights defenders.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

I. Introduction

1. The present report is the first submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, having assumed his mandate on 1 May 2016.[1] He is the seventh Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes that an open dialogue among all parties is essential for the protection and promotion of human rights. In addition, he emphasizes that access to the territory is an important component that helps in the development of a comprehensive understanding of the situation. While he notes that reliance on the exemplary work of a number of experienced and extremely competent civil society groups provides an excellent basis for his work, he laments being unable to meet many of those carrying out this work, due to his exclusion from the territory and the difficulties those individuals often face when seeking to obtain exit permits from the Israeli authorities, particularly from Gaza.

3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his first mission to the region, to Amman, from 10 to 15 July 2016. In addition, throughout December 2016 he held consultations with civil society by videoconference and received a number of written submissions, in particular related to the work of human rights defenders.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel.[2] As the occupying Power, Israel has the legal obligation to ensure respect for and protection of the rights of Palestinians within its control.[3] The mandate of the Special Rapporteur thus focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State party or non-State actors are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks once again to all those who travelled to Amman in July 2016 to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and efforts undertaken by such groups to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will support that work as much as possible.

6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing.

7. In the second part of the report, the Special Rapporteur examines the work of human rights defenders in the Occupied Palestinian Territory, both the growing challenges they

[1] In October 2016, he also submitted a report to the General Assembly (A/71/554).

[2] As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

[3] See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47.

face and the critical work they do in attempting to bring justice to an environment in which human rights are increasingly subverted by a prolonged occupation soon to reach half a century.

II. Current human rights situation

8. Reports of recurring, persistent human rights violations, including excessive use of force, collective punishment, forced displacement and restrictions on the freedom of movement, have been reported throughout 2016 (see A/71/554). The backdrop against which all of this has occurred is one of what appears to be increasingly extreme rhetoric from Israeli political and government leaders. Legislation related to the legalization of outposts suggests an ever-shrinking opportunity for Palestinians to realize their right to self-determination. The international community, while seeking to spur the peace process, continues to fail to place human rights at the centre of its efforts.

A. Settlements

9. On 23 December 2016 in resolution 2334 (2016), the Security Council reaffirmed that the establishment of settlements in the West Bank was a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace. Less than a month after the passage of that resolution, the Government of Israel announced plans for roughly 6,000 new settlement units in the West Bank, including East Jerusalem. It was proposed that several of those units would be built outside the current settlement blocs.[4] Approvals of settlement units in 2016 were limited in size to the hundreds, not thousands as in the most recent announcements. France noted in its condemnation of the announcement of the new units that the amount announced in the space of a week in 2017 was double the total number of units approved in 2016.[5] In addition, the second half of 2016 saw a year-end uptick in new construction over the previous two years.[6]

10. Along with the announcement of new settlement construction have come reports of increasing incidents of demolitions of Palestinian homes in the West Bank, including East Jerusalem. As of late January 2017, a total of 105 demolitions had been recorded in Area C and 14 in East Jerusalem since the start of the year.[7] Demolitions in 2016 in the entirety of the West Bank, including East Jerusalem, totalled 1,093,[8] which is the highest number recorded since the Office for the Coordination of Humanitarian Affairs began collecting the data in 2009.[9] The demolitions in 2016 displaced 1,593 Palestinians and negatively affected the livelihoods of 7,101 others.[10] Demolitions, threats of demolition and lack of protection from demolition all contribute to the creation of a coercive environment, in which people might feel that they have no choice but to leave their land and their homes (see A/HRC/31/43, para. 46). The risk of forcible transfer resulting from the coercive environment is particularly high among Bedouin communities in Area C (see A/71/355, para. 22).

11. February 2017 saw the passage of controversial legislation in the Knesset that legalized the confiscation of private Palestinian land. The so-called regularization bill legalizes roughly 3,000 housing units built on private Palestinian land in the West Bank,

[4] Gili Cohen, "Israel approves thousands of new settler homes ahead of West Bank outpost's evacuation," *Haaretz*, 21 March 2017; statement by the Special Rapporteur, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21141&LangID=E.

[5] Statement by the spokesperson for the Ministry of Foreign Affairs and International Development, available from http:// franceintheus.org/IMG/html/briefing/2017/DDB-2017-02-01.html.

[6] See: http://peacenow.org.il/en/40-increase-construction-starts-west-bank-settlements-2016.

[7] See www.ochaopt.org/content/protection-civilians-weekly-report-10-23-january-2017.

[8] Ibid.

[9] See www.ochaopt.org/content/record-number-demolitions-2016-casualty-toll-declines.

[10] Ibid.

which were previously considered illegal even under Israeli law. In 16 of the outposts affected, Palestinian landowners have successfully challenged the settlers' presence on the land in Israeli courts, which have issued demolition orders against the settlers' homes. However, those orders have yet to be implemented and under the new law implementation of the orders will be frozen for a year.[11]

12. The new legislation has triggered condemnation from the international community, with a spokesperson for the Federal Foreign Office in Germany stating that its confidence in the "Israeli Government's commitment to the two-state solution has been profoundly shaken" and the High Representative of the European Union noting that the law "would further entrench a one-state reality of unequal rights, perpetual occupation and conflict".[12] The spokesperson for the Secretary-General noted deep regret at the passage of the law, warning of far-reaching legal consequences for Israel and insisting on the need to avoid any actions that would derail the two-State solution.

East Jerusalem

13. Of the several thousand settlement homes announced in January 2017, 566 are to be built in East Jerusalem. At the same time that approval of the construction was announced, the Deputy Mayor of Jerusalem announced plans for the approval of 11,000 additional units, although it is not clear when these might move forward.[13] Of the home demolitions that took place in 2016, 88 occurred in East Jerusalem.[14]

14. Following the 1967 war, Israel unilaterally declared the annexation of East Jerusalem, in contravention of international law. The annexation has not been recognized by the international community and Palestinians, see East Jerusalem as the future capital of a Palestinian State. Palestinians living in the city in 1967 were given permanent resident status, which civil society has suggested is akin to treating them as persons who have voluntarily chosen to immigrate to Israel.[15] The permanent resident status can be revoked on a number of grounds[16] and since 1967 as many as 14,000 Palestinians have lost their status and been unable to continue living in, or return to, their homes in East Jerusalem.[17]

15. In addition to home demolitions, Palestinian residents of East Jerusalem are vulnerable to being forcibly evicted from their homes. According to the Office for the Coordination of Humanitarian Affairs, Israeli settler organizations seeking control of parts of East Jerusalem, particularly the Muslim and Christian areas of the old city, have launched eviction proceedings against Palestinian families. As of November 2016, that had affected 180 households (818 individuals, including 372 children).[18] At the same time, the

[11] Allison Kaplan Sommer, "Explained: Israel's new land-grab law and why it matters," *Haaretz*, 7 February 2017.

[12] See www.auswaertiges-amt.de/sid_C4BF59984EE3B4886B4BA626F47DA791/EN/Infoservice/Presse/Meldungen/2017/170207-ISR_Gesetz_Legalisierung_Aussenposten.html; and eeas.europa.eu/headquarters/headquarters-homepage_en/20104/Statement%20by%20High%20Representative/Vice-President%20Federica%20Mogherini%20on%20the%20%22Regularisation%20Law%22%20adopted%20by%20the%20Israeli%20Knesset.

[13] Bethan McKennan, "Israel announces plans for a further 11,000 settler homes in East Jerusalem", *Independent*, 27 January 2017; "Israel approves 566 new homes in east Jerusalem settlements", *Deutsche Welle*, 22 January 2017.

[14] B'Tselem, "Statistics on demolition of houses built without permits in East Jerusalem", 20 March 2017, available from www.btselem.org/planning_and_building/east_jerusalem_statistics.

[15] B'Tselem, "Background on East Jerusalem", 11 May 2015, available from www.btselem.org/jerusalem.

[16] Palestinians living in East Jerusalem must be able to prove the centre of their life is in East Jerusalem and may not live abroad for more than seven years if they wish to maintain their residency rights.

[17] See www.ochaopt.org/location/east-jerusalem.

[18] See www.btselem.org/planning_and_building/east_jerusalem_statistics and www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf.

majority of the individuals affected by demolitions in 2016 were children (160 out of 295).[19]

16. As noted in the previous report of the Special Rapporteur, Palestinian communities in the West Bank, including East Jerusalem, are often subject to closures of streets that effectively seal off entire neighbourhoods, checkpoints and a heightened police presence, often as a form of collective punishment (see A/71/554, paras. 25-32). Defense for Children International-Palestine has called 2016 the deadliest year in a decade for Palestinian children in the West Bank, including East Jerusalem, with 32 children killed by Israeli forces. Proximity to large numbers of police officers in a tense environment, the near daily need to pass through checkpoints and the risk of eviction and demolition not only put children at risk of arrest, detention and abuse, but they also significantly limit access to basic services, including education.

17. Education in Jerusalem has become a political tool for some members of the Government of Israel, with the Education Minister, Naftali Bennet, declaring the 2016 school year "United Jerusalem" year, noting that it marks the fiftieth year since Israel unilaterally annexed East Jerusalem. Schools in East Jerusalem already receive significantly less funding than those in West Jerusalem, despite the existence of laws and High Court rulings that aim to prevent such discriminatory practices.[20] A 2011 High Court ruling held that the shortage of classrooms in East Jerusalem in the official educational system constituted a violation of the students' right to education, and mandated the construction of thousands of additional classrooms.[21] As of 2016, the classroom shortage stood at 2,672, having only worsened since 2011.[22] Adalah, a legal centre for minority rights in Israel, noted that the High Court ruling made no mention of funding being conditional on the adoption of a particular curriculum and added that an unequal budgetary allocation that only had an impact on Arab schools would amount to discrimination.[23] The right to education is guaranteed by article 13 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party. It therefore has an obligation to respect, protect and fulfil, with the obligation to fulfil incorporating the obligation to both facilitate and provide. The Committee on Economic, Social and Cultural Rights has further noted that education is both a human right in itself and an indispensable means of realizing other human rights, and that it must be accessible to everyone, without discrimination.[24]

B. Gaza

18. In 2017, the Israeli blockade of Gaza enters its tenth year. As previously stated by the Special Rapporteur (A/71/554, para. 31) and the Secretary-General (A/HRC/24/30, paras. 21-23),[25] the closure of Gaza amounts to collective punishment, which is prohibited under international law.[26] Despite repeated calls to end the blockade from the international community, the situation on the ground is growing worse.[27] The movement of people in and

[19] See www.btselem.org/planning_and_building/east_jerusalem_statistics.

[20] See Adalah, "Conditioning budgets for repairing East Jerusalem schools on adoption of Israeli curriculum is illegal", 17 August 2016 and Nir Hasson, "Arab students in Jerusalem get less than half the funding of Jewish counterparts", *Haaretz*, 23 August 2016.

[21] Association for Civil Rights in Israel, "HCJ: authorities have 5 years to provide public education in East Jerusalem", 6 February 2011.

[22] Ir Amim, "Between the hammer and the anvil: persistent neglect and attempted coercion in the East Jerusalem education system" (September 2016).

[23] Adalah, "Conditioning budgets".

[24] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education.

[25] See also www.unrwa.org/newsroom/official-statements/remarks-un-secretary-general-ban-ki-moon-press-encounter-gaza.

[26] Fourth Geneva Convention, art. 33. The Human Rights Committee has further noted that the prohibition on collective punishment is non-derogable: see general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency.

[27] The previous report of the Special Rapporteur (A/71/554) addressed the economic and development impact of the blockade in depth.

out of Gaza has in the past year become increasingly difficult as the number of permits revoked or denied has steadily increased. In addition, the infrastructure is under increasing strain and while some import restrictions have been lifted, that has not been enough to allow for the adequate maintenance and development of the public utilities needed to serve a densely populated area of nearly 2 million.

Permit denials

19. Movement restrictions have been a permanent fixture of the blockade, with exit permits granted only to a small fraction of the population, usually patients seeking medical treatment, business people and the staff of humanitarian agencies. Even among those groups, permits have often been arbitrarily denied.

20. Indeed, a large majority of residents face the prospect of never being permitted to leave. Movement restrictions undermine the rights to health care, work, education and family life, and negatively affect the right of Palestinians to self-determination (see A/HRC/31/44, para. 11).

21. With the near-continuous closure of the Rafah crossing into Egypt since mid-2013, the Erez crossing has become the main entry and exit point for Palestinians in Gaza.[28] While travel out of Gaza through Erez has not been an impossibility since the imposition of the blockade and in fact the number of permits granted has seen a relative increase since 2013,[29] the second half of 2016 saw a high rate of permit denials and revocations for all classes of Gaza residents (merchants, patients and others).[30] According to figures provided to the Gisha Legal Center for Freedom of Movement by the Coordinator of Government Activities in the Territories (the Israeli agency that regulates movement of goods and people into and out of Gaza), in 2016 only 46 per cent of exit permit requests were granted, compared to 80 per cent in 2013.

22. The World Health Organization reported that as of October 2016, the approval rate for health permit applications had dropped to 44 per cent. In 2012 it had been as high as 92 per cent. Since then, there has been a steady decline in the approval rate, with the most dramatic drop seen between 2015 (77.5 per cent) and 2016 (44 per cent).[31] Physicians for Human Rights — Israel receives a steady stream of requests from patients seeking support in the event of their being denied a permit. In 2015, in 61.7 per cent of such cases the denials were successfully revoked.[32] In the first half of 2016, that rate was only 25 per cent.

23. Those seeking permits to accompany family members traveling for medical treatment have also been subject to greater rates of denial and increasing scrutiny. According to Physicians for Human Rights — Israel, after seeing an increase in denials of permit requests for medical escorts they inquired with the Israeli authorities as to whether the process had changed. At that time, the Coordinator of Government Activities in the Territories confirmed that it had implemented increased restrictions on those under the age of 55 seeking escort permits. In one case, a breastfeeding mother was prohibited from escorting her infant daughter for follow-up treatment to lifesaving surgery. The baby had to be escorted instead by her 74-year-old grandfather. This was a long and difficult journey for the grandfather, as well as for mother and daughter, owing to the age of the child and her dependence on breast milk.[33]

[28] Between October 2014 and the end of 2016, the Rafah crossing was open for a total of 83 days, see www.ochaopt.org/sites/default/files/crossing_december_2016.pdf.

[29] See www.gisha.org/UserFiles/File/publications/Inside_look_at_gaza/Gaza_in_no.en.pdf.

[30] See Gisha factsheet "Security blocks restricting travel through Erez Crossing", September 2016, available from www.gisha.org/publication/5551.

[31] WHO, "Right to health: crossing barriers to access health in the occupied Palestinian territory, 2014-2015" (2016).

[32] Physicians for Human Rights — Israel, submission to the Special Rapporteur, 7 November 2016. Note: these figures represent cases from both the West Bank and Gaza, with a majority of the cases coming from Gaza.

[33] Ibid.

24. In December 2016, the Office for the Coordination of Humanitarian Affairs noted a serious deterioration in the access to Gaza and the ability to leave it for humanitarian staff, having documented an increase in permit denials from 4 per cent in 2015 to 40 per cent in the third quarter of 2016.[34] In addition, at that time, the Office reported that 60 United Nations national staff had not only been denied exit permits, but were prohibited from reapplying for a period of 12 months.[35] An increase in the revocation of permits for national staff of international organizations at the Erez crossing was also documented in 2016 as compared to 2015.[36]

25. Preventing humanitarian staff from entering and leaving Gaza may amount to a violation of the duty of the occupying Power to facilitate and allow the delivery of humanitarian aid, as provided for in article 23 of the Fourth Geneva Convention.[37] Furthermore, two humanitarian workers in Gaza were arrested by the Israeli authorities in 2016, allegedly for connections to Hamas. Restrictions on humanitarian work and human rights work only serve to further isolate the already vulnerable residents of Gaza. These events echo the harassment and challenges faced by human rights defenders working in the West Bank and Gaza, which are discussed in more detail below.

26. In 2016, exit permits were also increasingly denied, allegedly on security grounds and often without any further information given for the reason, making it practically impossible for decisions to be challenged.[38] There is a constant tension in all nations between balancing individual rights and freedoms with the security of the State, but that balance must constantly be sought. Any derogation from human rights law must be undertaken without discrimination, must be prescribed by law, must be narrowly tailored to a specific, legitimate purpose and must be both necessary and proportional to any threat.[39]

Infrastructure

27. While the residents of Gaza face increasing challenges in their attempts to move freely to other parts of the world, or even to the West Bank, the infrastructure of the densely populated area continues to crumble. That was demonstrated most starkly during an electricity crisis at the beginning of 2017. During that crisis, residents had access to as little as three hours of electricity per day, in the midst of a cold winter.[40] Even when not in crisis, residents of Gaza have access to electricity only in eight-hour cycles. In January 2017, they took to the streets to protest against the electricity shortage, calling on the authorities to find a solution to the ongoing problem.

28. Electricity shortages have been a regular occurrence since 2007 and have a significant impact on the provision of basic services, including access to health care, while also undermining livelihoods in an already precarious economic climate.[41] Electricity in Gaza is provided by Israel, Egypt and a power plant opened in Gaza in 2002. Israel controls its own sale of electricity to Gaza and the import of fuel. In 2007, Israel decided to reduce the amount of fuel and electricity to Gaza to an amount that, according to Gisha, fell short of meeting essential needs.[42] Owing to damage to the power plant caused by Israeli airstrikes, it does not operate at full capacity. Comprehensive repairs have not been conducted, in large part due to restrictions on the import of items the Israeli authorities consider to be "dual use". Israel also controls the entry and exit of individuals with the

[34] See www.ochaopt.org/content/serious-deterioration-access-humanitarian-staff-and-gaza.
[35] Ibid.
[36] Gisha, "Security blocks restricting travel through Erez Crossing".
[37] See also customary international humanitarian law rule 55.
[38] Gisha, "Security blocks restricting travel through Erez Crossing".
[39] See, for example, Office of the United Nations High Commissioner for Human Rights (OHCHR) fact sheet No. 32, "Human rights, terrorism and counter-terrorism" (2008), p. 24.
[40] Jack Khoury, "With only 3 hours of electricity a day, Gaza is 'on verge of explosion'," *Haaretz*, 7 January 2017.
[41] See gaza.ochaopt.org/2015/07/the-humanitarian-impact-of-gazas-electricity-and-fuel-crisis/.
[42] Gisha, "Hand on the switch: who's responsible for Gaza's infrastructure crisis?" (January 2017), p. 6.

necessary expertise to repair, maintain and upgrade the plant, as well as the exit of Palestinians from Gaza, who might seek to obtain the training they need.[43]

29. While the Israeli authorities claim that Hamas was to blame for the crisis, that ignores the fact that the crumbling infrastructure is in large part a result of the 10-year-long blockade of Gaza. While the political divide between Gaza and the West Bank plays a role in the difficulties faced by the residents of Gaza,[44] the biggest challenge comes from the illegal blockade and the fact that people and goods cannot move freely into and out of the territory.

III. Human rights defenders

30. Human rights defenders in Palestine and Israel who investigate the grave human rights situation in the Occupied Palestinian Territory are facing a steadily shrinking space for their indispensable work. In recent years, human rights organizations and individuals have engaged in highly effective local, regional and international advocacy and litigation, and have acted as witnesses and ambassadors of conscience in reminding the world that the occupation is becoming ever more immutable. As a result of their effectiveness, human rights defenders have been subjected to a range of physical attacks, incarceration and threats to their lives and safety. They have experienced sophisticated interference and toxic denunciations aimed at silencing their voices and discouraging their supporters, and engendering an increasingly hostile public atmosphere in Israel and in particular among the settlement movement, stoked by the political leadership and the media of the occupying Power and obstructive legislation enacted or being considered by the Knesset.

31. Human rights defenders have faced repeated violations of their fundamental freedoms of assembly, expression, movement and association. That disquieting trend has accompanied the deepening entrenchment of the occupation, as the political forces in favour of permanent rule by Israel over some or all of the Occupied Palestinian Territory have targeted Palestinian and Israeli human rights defenders as among the primary obstacles to the achievement of that goal.[45]

A. Protection of human rights defenders in international law

32. Through the instruments of international law and formal declarations, the international community has created a legal framework to protect the vital work of human rights defenders in advancing the cause of human rights globally and locally. Those legal protections are essential for a number of reasons. First, the work of human rights defenders is often the best, and sometimes the only, protection available to vulnerable and marginalized peoples. Second, the activities of human rights defenders are critical to ensuring that Governments and private actors can be held accountable for their behaviour, both to the citizenry and to the conscience of the world. Third, the actions of human rights defenders often place them in situations of danger and vulnerability with respect to their own rights and safety. And fourth, the condition of human rights in any country or conflict situation can often be effectively measured by the respect accorded in practice to human rights defenders.

33. While the commitment of public authorities to enacting effective human rights legislation, to creating an independent and impartial judiciary, to maintaining the rule of law, to ensuring that its military and police uphold human rights norms and to encouraging a positive public climate for human rights is vital to the promotion of those fundamental rights, the civil society work of human rights defenders is equally indispensable. They are the canaries in the social mineshaft, offering early warning alerts about rights that are in

[43] Ibid.

[44] See www.ochaopt.org/content/impact-internal-divide-municipal-services-gaza-strip and Gisha, "Hand on the switch".

[45] For a comprehensive review of the situation of human rights defenders in the Occupied Palestinian Territory and Israel from 2006, see E/CN.4/2006/95/Add.3.

danger. They provide invaluable advocacy, independent and reliable analysis, effective protection, the courage to protest and oppose and both a progressive interpretation of existing rights and a vision of new rights in embryo. The work of human rights defenders animates and enlarges the enjoyment of human rights for the rest of us. They are commonly our first voices for human rights and, too often, our last line of defence. If their work is in jeopardy anywhere, we are all more precarious and less secure.

34. The rights and responsibilities that protect the work of human rights defenders are well-entrenched in international law. Among other primary human rights instruments, the Universal Declaration of Human Rights[46] and the International Covenant on Civil and Political Rights[47] both proclaim the inalienable freedoms of opinion and expression, movement and peaceful assembly and association. These fundamental instruments champion not only the human rights of all peoples, but also the activities of human rights defenders.

35. By its resolution 53/144, the General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). The purpose of the Declaration is to secure and entrench the right of groups and individuals to defend human rights without fear or interference.[48] While not a binding legal instrument itself, the Declaration enshrines many of the principles and rights that have been already grounded in international law through other conventions and covenants. In its preamble, the Declaration provides for, among other things, the following:

(a) The effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to foreign domination or occupation;

(b) That the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State;

(c) The right and responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.

36. The Declaration sets out a broad range of rights and protections for human rights defenders, including primarily to seek the protection and realization of human rights and fundamental freedoms at the national and international levels (art. 1). It reaffirms essential human rights in the context of this critical work, such as freedom of association and assembly and freedom of opinion and expression. It highlights particularly important rights and protections for human rights defenders, including the freedom to raise issues with and criticize governmental bodies (art. 8), the right to an effective remedy (art. 9) and the right to solicit, receive and utilize resources for the express purpose of peacefully promoting and protecting human rights (art. 13), among others.

37. The Declaration further imposes specific responsibilities and duties on States, including primarily the promotion, protection, and implementation of all human rights (art. 2). Specifically, States are called upon to provide effective remedy to those whose rights have been violated, to promptly and impartially investigate alleged violations (art. 9) and to promote public understanding of all human rights (art. 14). It need not be re-emphasized that these protections and obligations apply equally to human rights defenders, even if they

[46] While the Universal Declaration of Human Rights is not a legally binding instrument per se, virtually all of the rights therein are embedded in international law through subsequent legally binding treaties and conventions.

[47] Israel is a party to the Covenant, having ratified it on 3 October 1991.

[48] For a valuable overview of the Declaration, see Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (July 2011) and OHCHR fact sheet No. 29.

are openly critical of government entities, policies or actions in the name of promoting and protecting human rights (art. 12).

B. Shrinking space for human rights defenders

38. In compiling the evidence for the present report, the Special Rapporteur has been in direct communication with human rights organizations in Palestine and Israel. Their common observation was that the protections and respect accorded to them, which were already precarious by the end of 2008, had declined precipitously after operation Cast Lead in Gaza in December 2008 and January 2009. This hostile atmosphere for human rights defenders has since become even more overtly toxic and harsh since 2015, in the aftermath of operation Protective Edge in Gaza in 2014 and the subsequent initiation by the International Criminal Court of a preliminary investigation, with the cooperation of a number of Palestinian human rights defenders, into possible war crimes and crimes against humanity committed during the most recent Gaza conflict and by the Israeli settlement project. In the words of one leading human rights group: "We are seeing a general assault by the government and right-wing groups on those parts of Israeli society that are still standing up for democratic values. The aim is to silence us."[49]

Threats and assaults

39. Palestinian human rights organizations report that they have endured a repressive working environment in recent years, with their day-to-day operations stymied by concerted efforts from the Government of Israel, the Israeli military, private Israeli organizations and unknown individuals or groups to discredit and sabotage their work.[50] The escalation in threats and physical assaults, cyberattacks, arrests and incarceration under military and administrative orders and bans and restrictions on movement is exacerbated by the absence of any effective means for remedies or protection. A report by the Human Rights Defenders Fund in 2015 found that the Israeli military and the occupation authorities had employed a promiscuous range of criminal, security and legal tools to harass and constrain the entirely legitimate and peaceful activities of human rights defenders in the Occupied Palestinian Territory. As the author observed: "In addition to draconian legislative attempts and ongoing efforts to depict them as public enemies, many human rights defenders, particularly activists, are the target of systematic criminalization efforts. Protesters are arrested and detained even when they do not break the law, they are subjected to strict conditions of release and are often indicted simply for their efforts to promote human rights."[51]

40. Al-Haq, a leading Palestinian non-governmental human rights organization, has endured a grievous pattern of threats and cyberattacks and a campaign of attempted interference with its work by persons unknown. Beginning in the autumn of 2015 and continuing into 2016, a series of detailed letters from either anonymous individuals or individuals impersonating someone else were sent to donors and partners of Al-Haq, purporting to raise serious concerns about fraud, corruption, financial disarray, lack of transparency and organizational disunity at the organization. Al-Haq was obliged to expend considerable resources refuting the unfounded allegations, including having its auditors, Ernst and Young, assure the partners and donors that there had been no financial or

[49] Sarit Michaeli, spokeswoman for B'Tselem, quoted in David Shulman, "Israel: the broken silence", *The New York Review of Books*, 7 April 2016.

[50] The Special Rapporteur's mandate, as defined in resolution 1993/2, is focused on violations of the law committed by Israel as the occupying Power and thus the present analysis is limited to that discussion. There are undoubtedly other groups, such as the Government of the State of Palestine, who similarly have an obligation to respect and protect human rights, including those of human rights defenders.

[51] See www.alhaq.org/publications/papers/PHROC.Submission.to.UN.SR.on.the.OPT.Re.HRDs.Nov2016.pdf; Human Rights Defenders Fund, "Disturbing the peace: the use of criminal law to limit the actions of human rights defenders in Israel and the Occupied Palestinian Territories" (2015), p. 63.

institutional malfeasance. Other messages contained explicit threats to the lives or well-being of various Al-Haq employees, including its General Director, Shawan Jabarin.

41. The Al-Mezan Center for Human Rights, based in Gaza, received a series of anonymous e-mail messages, Facebook posts and calls in 2015 and 2016, sent to staff, donors and partners in which institutional corruption and mismanagement were alleged and explicit threats to the lives and safety of its employees were made. Like Al-Haq, Al-Mezan has been active since 2015 in advocating accountability before the International Criminal Court for possible war crimes.

42. Youth against Settlements, a Hebron-based human rights organization, has had its centre raided several times by Israeli soldiers and it has been effectively closed on occasions after the Israeli military declared the neighbourhood surrounding it to be a closed military zone.[52] In November 2016, the Israeli military conducted a night raid on the Health Development Information and Policy Institute, a Palestinian health advocacy organization based in Ramallah. They seized computers, servers and security camera footage, and left the offices in a shambles. In accordance with the Oslo Accords, the Palestinian Authority is supposed to have complete political and security control in Ramallah and other parts of Area A of the West Bank, but the Israeli military routinely tramples over this nominal Palestinian sovereignty.[53]

43. A number of individual Palestinian human rights defenders have encountered death threats, arrest and imprisonment, property damage and substantive interference with their right to peacefully protest. A short list of some of them, who all engage in non-violent activity, includes:

- Abdallah Abu Rahma, who was active in protests against the separation wall through the village of Bil'in, was arrested several times in 2016 and 2017 for his participation in non-violent events protesting against the occupation. In May 2016, he was arrested by Israeli soldiers for his involvement in the Alwada cycling marathon and held for 10 days. Most recently, he was arrested at an Israeli military court hearing, which he was attending to support six Palestinians who had been arrested for participating in a peaceful protest against the proposed annexation of occupied Palestinian lands in late January 2017. Additionally, Israeli soldiers have conducted night raids on his home and confiscated his laptop.[54]
- Imad Abu Shamsiyeh filmed the extrajudicial execution of a gravely wounded Palestinian by an Israeli soldier, Elor Azaria, in March 2016 in Hebron. The film was subsequently released publicly by the Israeli human rights organization B'Tselem and the soldier was later convicted of manslaughter by an Israeli military court. Mr. Abu Shamsiyeh has since received multiple death threats from Israeli settlers living in the vicinity, anonymous death threats delivered by e-mail or posted on Facebook, travel restrictions, the stoning of his home by settlers, harassment of his family and a raid on his home by Israeli soldiers, with no accountability for these attacks and threats.[55]
- Farid al-Atrash, a Palestinian lawyer with the Independent Commission for Human Rights in Bethlehem, was arrested by Israeli soldiers during a peaceful demonstration in Hebron in February 2016. He was charged with participating in an illegal demonstration and attacking soldiers, and remained in prison for four days before being released on bail. Video evidence appears to support his version that he

[52] Submissions from human rights organizations to the Special Rapporteur.

[53] Marsad, "Israeli forces invade Ramallah offices of healthwork NGO", 16 November 2016, available from www.marsad.ps/en/2016/11/16/israeli-forces-invade-ramallah-offices-healthwork-ngo/.

[54] Communication to a group of Special Rapporteurs from Scales of Justice and others, 27 January 2017; Human Rights Defenders Fund, communiqué, 5 December 2016.

[55] See https://www.frontlinedefenders.org/en/case/ongoing-threats-and-harassment-against-imad-abu-shamsiyya and Amnesty International, "Israeli government must cease intimidation of human rights defenders, protect them from attacks", 12 April 2016.

was peacefully holding a poster during the demonstration in front of Israeli soldiers when he was aggressively arrested.[56]

- Issa Amro, founder of the Hebron-based Youth Against Settlements, a community organization advocating non-violent action, has recently been charged by the Israeli military on 18 counts, including insulting an Israeli officer and incitement in connection with his work organizing peaceful protests calling for the re-opening of Shuhada Street in Hebron. Some of the charges are stale, dating back to 2010. During two of his recent arrests, he states that he was beaten by Israeli police while in custody. Amnesty International has called the charges against Mr. Amro baseless and an attempt to silence him.[57]

- Salah Khawaja, a member of the secretariat of the Boycott, Divestment, Sanctions national committee, was arrested during a night raid by the Israeli military on 26 October 2016 at his home in Ramallah (within Area A). His computer and phone were confiscated during the raid. He was subsequently detained and interrogated at the Israeli military facilities in Petah Tikvah. Reports suggest that he has been subject to harsh conditions during his incarceration, including strenuous interrogations, sleep deprivation and physical violence, with no charges laid against him and little or no access to a lawyer.[58]

- Hasan Safadi, the media coordinator for Addameer, a Palestinian prisoner support and human rights organization, was arrested by Israeli forces on 1 May 2016 at the al-Karameh bridge crossing with Jordan when returning home from a conference on Arab youth in Tunisia. He has been held in administrative detention since then at Ktziot prison in Israel, with the administrative detention order extended for an additional six months from 8 December 2016.[59] The Special Rapporteur notes that Israel's administrative detention system probably violates the exceptional nature of the measure permitted under international law, as does the incarceration of protected persons outside the occupied territory or country, in line with articles 76 and 78 of the Fourth Geneva Convention.

44. One highly illustrative and disturbing example of the current climate is the series of sophisticated death threats and menacing accusations issued to Nada Kiswanson, a human rights lawyer in The Hague, where she represents Al-Haq and other human rights defenders in Europe and before the International Criminal Court. Beginning in February 2016 and intensifying over the following months, Ms. Kiswanson received multiple phone and e-mail messages to private numbers and encrypted message services — some of them anonymous, others from individuals impersonating governmental, intergovernmental and international organizations — stating variously that she would be "eliminated", that she was "not safe at all and hopefully this would remain" and "Honey, you are in grave danger. You have to stop what you are doing". Thousands of fabricated leaflets with the Al-Haq logo were distributed to homes in the neighbourhood where she lives, describing Al-Haq as an organization "working to strengthen the Islamic base in the country", and asking for financial donations to be delivered to her home address. Funeral flowers were also left in front of her house. Amnesty International stated that it had to temporarily close its office in The Hague, after one of its employee's e-mail accounts had been hacked as a means of sending threats to Ms. Kiswanson. The Observatory for the Protection of Human Rights Defenders noted that these attacks demonstrated a high level of technological sophistication and financial backing. To date, police in the Netherlands have investigated the threats and have provided protection for Ms. Kiswanson, but they have been unable to locate their

[56] Amnesty International, "Israeli government must cease intimidation".
[57] Ibid.
[58] See European External Action Service, letter from the Managing Director for Middle East and North Africa concerning the arrest of Salah al Khawaja, 28 November 2016, and joint submission by 13 human rights defenders to the Special Rapporteur, 7 November 2016.
[59] See www.frontlinedefenders.org/en/case/detention-hasan-safadi.

source. This is the first known attack on Dutch soil against a human rights defender working on issues relating to the International Criminal Court.[60]

45. In June 2016, the Israeli military arrested Mohammed El-Halabi, the director of operations in Gaza for World Vision, on charges that he had diverted large amounts of aid money to the military wing of Hamas. World Vision is an international Christian humanitarian charity with global operations working on behalf of children and communities, and it has worked in Gaza for several decades. Mr. El-Halabi has been incarcerated by Israel since his arrest, with little access to legal counsel. World Vision stated in early February 2017 that it had not seen any credible evidence supporting the charges against Mr. El-Halabi and in fact the amount he was accused of diverting is much larger than the World Vision annual budget for Gaza. After conducting a thorough audit of its Gaza operations, World Vision stated that its review, to date, had not generated any concerns about the purported diversion of its resources. It has supported Mr. El-Halabi's presumption of innocence and his right to a fair trial. Mr. El-Halabi pleaded not guilty to the charges in early February 2017. His trial is continuing.[61]

46. Human rights organizations working in Gaza face a unique array of obstacles to the conduct of their work. Among the biggest is their non-existent freedom of movement, as described in detail above. For human rights defenders in Gaza this means that they are rarely allowed to journey to Israel, the West Bank or abroad. They cannot travel to regional or international human rights meetings and forums; they cannot attend external training programmes; their ability to participate by videoconferencing is restricted by the sporadic electricity supply in Gaza and the limitations of the medium; and their ability to interact, inform and work with the rest of the world is likewise diminished. This enforced isolation substantially impairs the protection and advancement of human rights in Gaza.[62]

47. Israeli human rights defenders who work on the many issues related to the Occupied Palestinian Territory are also experiencing an increasingly virulent environment. A moment that exemplifies this turning of the screw was in October 2016, when Hagai El-Ad, the Director-General of B'Tselem, together with Lara Friedman, the Director for Policy and Government Relations at Americans for Peace Now, delivered a presentation to the Security Council in New York. He warned of the expanding settlement enterprise and the deteriorating human rights situation for the Palestinians in the Occupied Palestinian Territory, and cited the need for effective international intervention to bring the Israeli occupation to an end.[63] In response, many in the Israeli political leadership stridently denounced B'Tselem, casting it as unpatriotic, traitorous and a political outcast. Prime Minister Benjamin Netanyahu condemned Mr. El-Ad for joining the "chorus of slander" against Israel, stating: "What these organizations cannot achieve through democratic elections in Israel, they try to achieve by international coercion."[64] The Likud Member of the Knesset and whip for the governing coalition, David Bitan, demanded that Mr. El-Ad be stripped of his Israeli citizenship.[65] Danny Danon, Permanent Representative of Israel to the United Nations, said: "It is a shame that Israeli groups have been drafted into the diplomatic terror war that the Palestinians are waging against us."[66]

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[60] Peter Cluskey, "No boundaries in threats to International Criminal Court", *Irish Times*, 16 August 2016, and Observatory for the Protection of Human Rights Defenders, "Attacks against Al-Haq's representative in Europe, Ms. Nada Kiswanson", 11 August 2016, and Amjad Iraqi, "Who's sending death threats to Palestinian advocates in The Hague", *+972*, 17 August 2016.

[61] See also Gili Cohen, "Top official in Christian aid group charged with funnelling funds to Hamas", *Haaretz*, 4 August 2016.

[62] Communications with leaders of the Palestine Center for Human Rights and the Al-Mezan Center for Human Rights; and Gisha, "Split apart. Palestinian civil society in its own words on the impact of the separation policy and the potential should the policy be reversed", March 2016.

[63] See www.btselem.org/settlements/20161014_security_council_address and peacenow.org/page.php?name=lara-addresses-the-unsc#.WNJ9UG_ytpg.

[64] See www.haaretz.com/israel-news/1.748737.

[65] See www.haaretz.com/israel-news/1.748609.

[66] See hamodia.com/2016/10/16/netanyahu-leftist-groups-that-testified-at-u-n-security-council-beyond-the-pale/.

48. Notwithstanding these toxic attacks and the failure of the Government to provide the protections and space for civil society to operate, several prominent Israeli intellectuals and advocates publicly defended B'Tselem and American Friends of Peace Now for their presentations at the Security Council. Zeev Sternhell stated that: "The one who forced the civil society groups to turn to international public opinion and international institutions is the government of Israel itself", while Michael Sfard, a human rights lawyer, wrote that "the occupation is not an internal Israeli matter. And even if it were, human rights are always a matter for the entire international community".[67]

49. Earlier, in December 2015, Im Tirtzu, an ultranationalist Israeli organization hostile to the country's human rights movement, released a short inflammatory video accusing four notable Israeli human rights leaders of abetting murder and terrorism and acting as hostile foreign agents and moles (*shtulim* in Hebrew).[68] The video, which has been viewed several hundred thousand times since its release, opens with a young Arab in a staged urban setting raising his arm to attack the viewer of the video with a knife. The frame freezes, and the narrator then intones:

> Before the next terrorist stabs you, he already knows that Yishai Menuhin, a planted agent belonging to Holland, will make sure to protect him from a Shin Bet interrogation. The terrorist also knows that Avner Gvaryahu, a planted agent belonging to Germany, will call the soldier who tries to prevent the attack a "war criminal". He also knows that Sigi Ben-Ari, a planted agent belonging to Norway, will protect him in court. Before the next terrorist stabs you, he already knows that Hagai El-Ad, a planted agent belonging to the European Union, will call Israel a "war criminal". Hagai, Yishai, Avner and Sigi are Israelis. They live here with us, and are implants. While we fight terror, they fight us.

50. Dr. Yishai Menuhin is the Executive Director of the Public Committee against Torture, which campaigns against the harsh treatment by Israeli security organizations. Avner Gvaryahu is outreach director with Breaking the Silence, an organization of Israeli military veterans who publicize testimonies by Israeli soldiers in the Occupied Palestinian Territory, including accounts of human rights violations. Sigi Ben-Ari is a lawyer who works with Hamoked — Centre for the Defence of the Individual, which focuses on Israeli human rights violations in the Occupied Palestinian Territory through legal advocacy. And Hagai El-Ad is the Executive Director of B'Tselem. The video displays pictures of the four individuals. Im Tirtzu, while a private organization, has close ties to current and recent Israeli cabinet ministers and has a history of vehemently attacking Israeli civil liberties organizations and successfully lobbying the current Government to enact restrictive legislation against human rights defenders. Following the release of the video (along with an accompanying report by Im Tirtzu denouncing a wider number of Israeli human rights groups),[69] a number of staff in the targeted groups received death threats and the names, addresses and pictures of some of their staff were published on the Internet.[70] Among the commentaries in the Israeli press denouncing the Im Tirtzu video, Mira Sucharov wrote that it equated human rights and civil liberties with treason. She added that only a distinctly anti-democratic element of society would consider the upholding of basic democratic norms

[67] Zeev Sternhell, "Yes, Israelis, we must air our dirty laundry in public", *Haaretz*, 21 October 2016; Michael Sfard, "It's every Israeli's right, and duty, to speak up — including at the UN", *Haaretz*, 24 October 2016. Because of his human rights advocacy, Michael Sfard became the target of political espionage by Regavim, an ultranationalist and partly State-funded organization with close ties to the Israeli settlement movement: see Uri Blau, "Did Israeli settler group use government funds to spy on human rights NGOs?" *Haaretz*, 19 January 2016.

[68] See www.youtube.com/watch?v=02u_J2C-Lso.

[69] See www.docdroid.net/9vaiR15/foreign-agents-report.pdf.html.

[70] Ofra Edelman, "Left-wing Israeli activists facing violence, death threats", *Haaretz*, 29 July 2016; Human Rights Defenders Fund, communiqué to the Special Rapporteur; Chemi Shalev, "Im Tirtzu and the proto-fascist plot to destroy Israeli democracy", *Haaretz*, 16 December 2015; and Robert Mackey, "Group calls Israelis 'foreign agents' for work on behalf of Palestinians" *New York Times*, 15 December 2015.

and practices, including adhering to the rule of law and upholding the rights of the individual, as cause for inciting against the citizens engaged in those democratic practices.[71]

51. Breaking the Silence has faced an exceptionally harsh campaign of vilification by Israeli political leaders in recent months. Described by its Executive Director, Yuli Novak, as a "liberal and moderate" organization of Israeli combat soldiers who oppose the occupation "because to rule over millions of people without rights is immoral and bad for Israel", Breaking the Silence has been the target of repeated denunciations by the Ministers of Defence and Education, who have instructed the Israeli army and schools not to invite its members to speak at military and school events. When a non-profit art gallery in Jerusalem planned to host an event for Breaking the Silence in February 2017, the Jerusalem Municipality, following a directive from the Minister of Culture, ordered the gallery to be shut down.

52. In 2016, the President of Ben-Gurion University in Beersheva cancelled a decision by the heads of the Middle East Department to bestow an award on Breaking the Silence for Jewish-Arab understanding. In explaining her decision, the President stated that the organization was outside the national consensus. Lecturers at the university subsequently awarded an alternative prize to the organization as recompense. In February 2017, Prime Minister Netanyahu ordered the Ministry of Foreign Affairs to reprimand the Belgian ambassador to Israel after Belgian Prime Minister Charles Michel met with leaders from Breaking the Silence and B'Tselem during a State visit. Prime Minister Netanyahu had earlier called upon the Belgian and British Prime Ministers to stop any funding of Breaking the Silence by their Governments. In response to these attacks, *Haaretz*, in a recent editorial, criticized the political denunciations of Israeli human rights defenders, stating that "B'Tselem and Breaking the Silence are not only legitimate organizations, they should be a source of pride for Israel".[72]

53. This intensifying chill has been extended to international human rights organizations that investigate human rights concerns in the Occupied Palestinian Territory. In late February 2017, the Government of Israel rejected a work permit application submitted by Human Rights Watch for its recently appointed Director for Israel and Palestine. In its letter of rejection dated 20 February 2017, the Israeli Population and Immigration Authority stated that Human Rights Watch "public activities and reports have engaged in politics in the service of Palestinian propaganda, while falsely raising the banner of 'human rights'". The organization, which has worked in Israel for almost three decades, has assiduously advocated for human rights in the Occupied Palestinian Territory. Over the years, it has issued a number of reports critical of Israel, but has also cited the Palestinian Authority and Hamas for human rights violations. Its research and advocacy for global human rights are well respected internationally.[73]

Restrictive legislation

54. Accompanying the mounting climate of threats and assaults on Palestinian and Israeli human rights defenders has been an assertive campaign by the Government of Israel to enact a series of restrictive statutes designed to circumscribe and publicly shame the work of human rights organizations in Israel who advocate for an end to the occupation. The most prominent of these statutes is the law requiring disclosure of support by foreign governmental entities (known as the NGO Disclosure Law), which was adopted by the Knesset in July 2016. The law requires that any Israeli non-governmental organization (NGO) that receives the majority of its funding from foreign State sources must declare that information in all communications with Israeli public officials, as well as in any media and

[71] "Im Tirtzu's pernicious video equates human rights with treason", *Haaretz*, 16 December 2015.

[72] "Why Breaking the Silence?", *Haaretz*; "Way to go, silence-breakers", *Haaretz*; "Open season of regime opponents", *Haaretz*; "Netanyahu summons ambassador for rebuke over Belgium PM's meeting with left-wing NGOs", *Haaretz*; "Education Minister: Breaking the Silence poisons our children", *Arutz Sheva*; "Protesters chant in anger as 'Breaking the Silence' wins alternative university prize", *Haaretz*; "Court to decide if Israel can force Breaking the Silence to reveal its sources", *Haaretz*.

[73] See www.hrw.org/news/2017/02/24/israel-human-rights-watch-denied-work-permit.

Internet communications and any advocacy literature and research reports. A breach of the law could trigger fines of NIS 29,000 (approximately $7,500). News reports have estimated that of the 27 Israeli NGOs believed to be affected by the law, 25 are human rights groups, such as B'Tselem, the Association for Civil Rights in Israel, Breaking the Silence and Ir Amin. The law was crafted so that it does not apply to Israeli NGOs that receive funding from foreign private sources, a number of which have a nationalist orientation and support many of the features of the occupation. Besides being opposed by many Israeli human rights defenders, the legislation was criticized by the United States of America Department of State, four major party coalitions in the European Parliament, United Nations human rights experts and the Office of the United Nations High Commissioner for Human Rights. The European Union stated that the NGO disclosure law undermined the values of democracy and freedom of speech in Israel and went beyond the legitimate need for transparency.[74]

55. The Knesset has recently been considering several proposed bills, described below, that aim to further restrict the social and political space for Israeli human rights organizations working on issues dealing with the occupation.

56. One bill, proposed by members of the governing coalition, would eliminate the tax benefits for those Israeli residents who donate to any Israeli NGO that releases statements accusing the State of Israel of committing war crimes and any institution that takes part in calls for a boycott of the State of Israel. The Israel Democracy Institute has criticized the proposed legislation, stating that it contains a vague definition with a clear political element and that the question remains whether a non-profit that exposes war crimes carried out by Israel is harming the State or safeguarding its moral character.[75]

57. The Knesset is also deliberating on a bill that would impose fees on Israeli NGOs that receive more than 50 per cent of their funding from foreign government sources, when such organizations apply for State documents under the Freedom of Information Act. Currently, all NGOs are exempt from paying fees for information obtained under the Act. The proposed statute would not only require the targeted NGOs, a large number of whom are human rights defenders working on human rights issues related to the occupation, to pay the application fee, but would require them to pay double the normal fee.[76]

58. In January, the Knesset approved the preliminary reading of a bill that would empower the Minister of Education to forbid individuals or organizations from entering schools if their human rights or political activities outside school could, in the opinion of the Minister, "lead to Israeli soldiers' prosecution in international courts or foreign countries for actions carried out as part of their military duty". The bill would criminalize any individual or organization disobeying the Minister's direction and appears to be specifically aimed at Breaking the Silence. In speaking on behalf of the bill, the Minister stated: "Breaking the Silence doesn't only want to poison the world against us, but to poison our children with their lying reports."[77]

59. In December 2016, a bill that would ban national service volunteers from working on a temporary basis with Israeli organizations that receive the majority of their funding from abroad passed its preliminary reading in the Knesset. The national service volunteer programme enables young Israelis to work at designated institutions and organizations as

[74] "After contentious debate, Knesset passes NGO law", *The Times of Israel*, 12 July 2016; Barak Ravid, "European Union: 'NGO Law' risks undermining Israeli democratic values", *Haaretz*, 12 July 2016; "US voices concern for free speech over Israeli NGO bill", *Times of Israel*, 12 July 2016.See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E; and a letter to the President of Israel from 22 human rights organizations, 19 June 2016, available from www.acri.org.il/en/2016/06/19/dear-mr-president-from-22-human-rights-organizations/.

[75] Jonathan Lis, "Ministers okay bill revoking tax exemptions for NGOs that accuse Israel of war crimes," *Haaretz*, 1 March 2017.

[76] Jonathan Lis, "New Israeli bill would have left-wing NGOs pay for info from State", *Haaretz*, 26 February 2017.

[77] Raoul Wootliff, "Bill banning Breaking the Silence from schools clears initial hurdle", *Times of Israel*, 11 January 2017.

an alternative to mandatory military service. Prime Minister Netanyahu promised to remove such organizations from the eligibility list following the criticism by B'Tselem of the country's settlement policy at the United Nations in October. Gisha, which would be adversely impacted by the proposed legislation, stated that the bill "is about labelling and excluding — as a first step towards delegitimizing — civil society organizations. To put it more bluntly — this is political persecution".[78]

60. In early March 2017, the Knesset enacted legislation that would deny an entry visa or residency permit to any non-citizen if that person had worked for an organization that had issued a public call to boycott the State of Israel or had agreed to participate in such a boycott. That would include anyone who focused their call for a boycott only on the Israeli settlements in the Occupied Palestinian Territory. The legislation appears to be the formalization of an earlier policy announced in August 2016 by the Minister of Public Security to deport international human rights defenders who support the Boycott, Divestment, Sanctions movement and to prevent others from entering the country. In December 2016, Isabel Apawo Phiri, a Malawian citizen who serves as Associate General Secretary of the World Council of Churches, was denied entry and then deported after arriving at Ben Gurion International Airport. The Israeli authorities asserted that the denial of entry was due to the alleged support of her organization for and involvement with the Boycott, Divestment, Sanctions movement.[79] Adalah, an Israeli human rights organization, criticized the legislation, stating: "Freedom of expression is not just the right to express oneself, but also the right to be exposed to perspectives … considered outrageous and infuriating by the majority of [Jewish] Israelis."[80]

61. Palestinian human rights organizations have stated that the Knesset statutes and proposed bills adversely affect them as well. Palestinian human rights defenders working in occupied East Jerusalem invariably possess an Israeli residency permit, which they fear may be revoked by the Ministry of the Interior on the grounds that they have breached their loyalty to the State of Israel by advocating human rights issues, supporting boycotts or encouraging the acknowledgment of the Palestinian exodus between 1947 and 1949 (the *Nakba*). Palestinian human rights organizations also state that these legislative offences intensify the atmosphere of fear and repression for human rights defenders. The impact is also being felt by Palestinian human rights defenders living in Israel on residency permits, such as Omar Barghouti, a co-founder of the Boycott, Divestment, Sanctions movement. Restrictions on his international travel were temporarily imposed in April 2016, just after the Intelligence and Transportation Minister had called for the "targeted civil elimination" of the leaders of the movement with the help of Israeli intelligence.[81]

C. Conclusions

62. **The 50-year occupation of the Palestinian territories, which becomes more pervasive by the day with no end even remotely in sight, has been profoundly corrosive of human rights and democratic values. How could it be otherwise? To perpetuate an alien rule over almost 5 million people, against their fervent wishes, inevitably requires the repression of rights, erosion of the rule of law, the abrogation of international commitments, the imposition of deeply discriminatory practices, the hollowing-out of well-accepted standards of military behaviour, subjugation of the humanity of the "other", denial of trends that are plainly evident, the embrace of illiberal politics and — the focus of the present report — the scorning of those civil**

[78] Gisha, "The battle is not for national service spots, it is for the very foundation of democracy in Israel", 10 November 2016.

[79] Ilan Lior, "In first, Israel denies entry to religious official citing support of BDS movement", *Haaretz*, 6 December 2016.

[80] See www.adalah.org/en/content/view/9043.

[81] See communication sent to Special Rapporteurs by 12 Palestinian human rights organizations, "Urgent appeal concerning human rights defenders working on OPT and Israel," 13 June 2016, available from alhaq.org/images/stories/PDF/2012/Letter_on_HRDs_pdf.pdf; and Amnesty International, "Israeli government must cease intimidation".

society organizations that raise uncomfortable truths about the disfigured state of human rights under occupation.

63. **A Government that honours human rights and democratic values, and takes seriously its obligations under the Declaration on Human Rights Defenders would protect and encourage the work of human rights defenders, not ostracize and isolate them. It would publicly denounce any incitement against human rights defenders and would certainly not engage in inflaming the public against them. It would recognize the fundamental status in law of the freedoms of association, assembly, expression and opinion, and of movement, and would do all that it could to enable human rights defenders to enjoy them. Such a Government would respect the critical scrutiny of their work, even if their reports and allegations excoriated the conduct of that Government. It would treat all NGOs equitably. It would enact legislation to enlarge the freedoms of human rights defenders and it would never impose discriminatory statutes or programmes that impaired their work. If it was to criticize human rights defenders, its comments would be measured and constructive. If and when threats or acts of violence were directed towards human rights defenders, its military and police services would act promptly to impartially investigate and prosecute. It would strive to build collaborative relationships with human rights defenders and take advantage of their experience and expertise to deepen the respect of the public for human rights and their defenders. And such a Government — even one conducting a long-term occupation — would accept that human rights can be infringed only as a last measure and then only in a minimally impairing manner that is subject to meaningful judicial review.**

64. **In all these respects, the Government of Israel has been significantly deficient in honouring its obligations under the Declaration on Human Rights Defenders. On the evidence gathered for the present report, its treatment of human rights defenders, be they Palestinian, Israeli or international, who work on the vital issues arising from the occupation has been contrary to the basic guarantees of international human rights law. Nor is the situation improving. As the occupation becomes further entrenched[82] and as human rights defenders persist with their intrepid activism to investigate and oppose the regime of human rights violations that is integral to the occupation, all indications are that they will continue to be among the prime targets of those who are intolerant of their criticisms, yet alarmed by their effectiveness.**

IV. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Repeal its recent legislation confiscating private Palestinian lands;**

(b) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

(c) **End the practice of demolition of Palestinian homes and enable the creation of a fair and transparent building permit system that would comply with the right to housing;**

(d) **Ensure the equitable funding of Palestinian education in East Jerusalem;**

(e) **End the blockade of Gaza, lift all restrictions on imports and exports, and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**

[82] See Ian Fisher, "Israel passes provocative law to retroactively legalize settlements", *New York Times*, 6 February 2017, and Isabel Kershner, "Emboldened by Trump, Israel approves a wave of West Bank settlement expansion", *New York Times*, 24 January 2017.

(f) **Ensure freedom of movement and the establishment of an equitable permit system for the residents of the Occupied Palestinian Territory.**

66. **With respect to human rights defenders, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

(a) **Fully honour and implement the rights and obligations contained in the Declaration on Human Rights Defenders;**

(b) **End the use of criminal, legal and security tools to obstruct the legitimate work of human rights defenders, including the use of arbitrary arrests and detentions, and ensure fair and speedy trials for any human rights defenders charged with an offence;**

(c) **Fully respect the fundamental freedoms of assembly, association, expression and movement in the Occupied Palestinian Territory;**

(d) **Actively combat incitement against the work of human rights defenders;**

(e) **Repeal all restrictive legislation targeting human rights defenders;**

(f) **Take all reasonable steps to demonstrate respect for the work of human rights defenders in the Occupied Palestinian Territory until the end of the occupation.**

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Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1. In it, the Special Rapporteur examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the right to health.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

I. Introduction

1. The present report is submitted by the current Special Rapporteur to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.

2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is an essential element of his work in support of the protection and promotion of human rights. He further notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. While he does wish to recognize the exemplary work of experienced and competent civil society organizations, which provide an excellent basis for his work, he laments the lack of opportunity to meet with many of those groups due both to his exclusion from the Territory and to the barriers many individuals face should they seek exit permits from the Israeli authorities, particularly from Gaza.

3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his second annual mission to the region, to Amman, from 15 to 19 May 2017. In addition, throughout January 2018 he held several consultations with civil society by videoconference and received a number of written submissions, in particular related to the right to health.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, in accordance with his mandate.[1] As the occupying Power, Israel has the legal obligation to ensure respect for and protection of the rights of Palestinians within its control.[2] The mandate of the Special Rapporteur therefore focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State party or non-State actor are deplorable and only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks once again to all those who travelled to Amman in May 2017 to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work being done and the efforts undertaken by civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will continue to support that work as much as possible.

6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing, with a focus on the human rights situation of children in the West Bank and in Gaza. In the second part of the report, the Special Rapporteur examines the right to health, with a particular focus on the increasingly dire humanitarian crisis in Gaza. It must be emphasized that the conditions in Gaza have been described as

[1] As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

[2] See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47.

unliveable for many years now, and the people of Gaza have no choice but to persevere. The impact of the blockade on their right to health is explored in detail in the present report.

II. Current human rights situation

7. Since the Special Rapporteur's previous report to the Human Rights Council, the human rights situation in the Occupied Palestinian Territory has continued to deteriorate. Palestinians in Gaza and the West Bank, including East Jerusalem, have faced demolitions of homes and schools, arrest and arbitrary detention and restrictions on freedom of movement. As the Rapporteur has noted in previous reports, the occupation by Israel affects all aspects of life for Palestinians, from access to medical care to building a home to seeking to travel abroad.

8. On 6 December 2017, the President of the United States of America, Donald Trump, announced that the United States recognized Jerusalem as the capital of Israel. The announcement specified that the United States was not taking any position on final status issues, including the specific boundaries of Israeli sovereignty in Jerusalem or the resolution of contested borders. The announcement resulted in significant political backlash from the international community and the Palestinian authorities, and widespread protests broke out across the West Bank and Gaza. The feeling of hopelessness among Palestinians resulting from the announcement cannot be overstated, and it is against the background of 50 years of occupation that the announcement by the United States, and current concerns with respect to human rights, must be viewed.

A. The West Bank, including East Jerusalem

9. Over the course of 2017, the settlement enterprise steadily advanced after the start of the year saw a sharp rise in the number of new settlement units announced by the Government of Israel.[3] In June, the Prime Minister of Israel, Benjamin Netanyahu, announced that ground had been broken in the first new settlement established in 25 years, Amihai. The settlement was established for the families who were evacuated from the Amona outpost after the Israeli High Court of Justice declared the outpost to be illegal. The settlement is expected to include 102 housing units, although only 41 families were evicted from the Amona outpost (see A/72/564, para. 6). According to a report published by the European External Action Service of the European Union at the end of 2017, the first half of the year saw the development of settlement plans that would potentially enable more than 30,000 new settlers to move to the West Bank, including East Jerusalem.[4]

10. Settlements have been found to be at the centre of many recurrent human rights violations in the West Bank. Palestinians living in close proximity to settlements must regularly pass through checkpoints on their way to school or work, towns or villages are subject to closure by the Israeli military and night raids and arrests are frequent. According to data collected by Palestinian civil society organizations, night raids of Palestinian homes by the Israeli military predominately occur within 2 kilometres of settlements.[5] Night raids often result in the arrest and detention of Palestinians, including, in many cases, Palestinian

[3] See A/72/556, paras. 11–13, and A/72/564.

[4] European External Action Service, "Six-month report on Israeli settlements in the occupied West Bank, including East Jerusalem (January–June 2017)", 15 December 2016. Available at https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/37466/six-month-report-israeli-settlements-occupied-west-bank-including-east-jerusalem-january-june_en.

[5] Women's Centre for Legal Aid and Counselling, "Israel military night-raids on Palestinian residences in the West Bank and East Jerusalem", June 2016. Available at: www.wclac.org/english/userfiles/NIGHT%20RAIDS.pdf.

children. Data collected indicate that 98 per cent of Palestinian children arrested live within 1.02 kilometres of a settlement.[6]

Children

11. At the end of November 2017, figures released by the Israel Prison Service indicated that 313 Palestinian minors were being held in Israeli prisons, 2 of whom were being held on administrative detention orders, and 181 of whom were being held for ongoing legal proceedings.[7] It should also be noted that many Palestinian children are arrested and released during the course of a year. In 2017, the United Nations Children's Fund (UNICEF) reported that 729 children had been detained or arrested in East Jerusalem alone.[8] According to the Convention on the Rights of the Child, the deprivation of the liberty of a child should be used only as a last resort and for the shortest appropriate period of time.[9]

12. A 2013 UNICEF report noted that ill-treatment of Palestinian children in the Israeli military detention system appeared to be widespread, systematic and institutionalized, based on the volume of data the agency had collected in the 10 years preceding the publication of its report.[10] Concerns highlighted in that report, and which continue to be raised today by civil society based on numerous allegations, include reports of physical and verbal abuse, the regular use of hand ties and painful restraints, coerced confessions, a lack of access to lawyers and family members and the consistent use of night arrests.[11] The practices described by organizations working to protect and assist children in detention not only fail to take into account the particularly vulnerable position of children, but also deny children their fundamental rights. The negative impact of those practices on the next generation of Palestinians is one of the greatest tragedies of the ongoing occupation.

13. This issue was brought to light once again at the start of 2018 by the arrest and detention of 17-year-old Ahed Tamimi. She was arrested after video footage showing her physically confronting two Israeli soldiers near her family's home in the West Bank was circulated in the media. The Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory has called for Ms. Tamimi's best interests to be the primary consideration in her ongoing detention and trial. The Special Rapporteur, together with the Working Group on Arbitrary Detention, have raised concerns about her pretrial detention and detention on remand.[12] Ms. Tamimi's case is emblematic of the issues arising from the practice of arrest and detention of children in the Occupied Palestinian Territory, and more broadly of the fact that children are bearing the brunt of the impact of

[6] Military Court Watch, "Briefing note: February 2018". Available at www.militarycourtwatch.org/files/server/BRIEFING%20PAPER%20-%20FEB%202018.pdf.

[7] B'Tselem, Statistics on Palestinian minors in the custody of the Israeli security forces. Available at www.btselem.org/statistics/minors_in_custody.

[8] United Nations Children's Fund (UNICEF), "State of Palestine: humanitarian situation report", January–December 2017. Available at: www.unicef.org/appeals/files/UNICEF_State_of_Palestine_Humanitarian_Situation_Report__Year_End_2017.pdf.

[9] See Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice, para. 79.

[10] See A/71/554, paras. 25–32; UNICEF, "Children in Israeli military detention: observations and recommendations", February 2013, p. 13, available at www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf.

[11] Military Court Watch, "Briefing note: February 2018"; UNICEF, "Children in Israeli military detention", p. 14; Human Rights Watch, *World Report 2018: Events of 2017* (New York, 2017), available at www.hrw.org/world-report/2018/country-chapters/israel/palestine; Defense for Children International-Palestine, "Year-in-review: worst abuses against Palestinian children in 2017", 18 January 2018, available at: www.dci-palestine.org/year_in_review_worst_abuses_against_ palestinian_children_in_2017.

[12] Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations rights experts alarmed by detention of Palestinian girl for slapping Israeli soldier", 13 February 2018. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22654&LangID=E.

the occupation and associated human rights violations. The importance of ensuring that the rights of children are respected and protected cannot be overstated.

14. Daily life in the West Bank is continually affected by the often heavy presence of Israeli security forces, for example at checkpoints and in relation to closures of roads and neighbourhoods — measures which in many cases may amount to collective punishment. Children continue to be affected by the restrictions on movement in the West Bank, which is particularly concerning when they are seeking to access hospitals and schools in East Jerusalem. To address the issue, UNICEF supports the provision of a protective presence to teachers and students going to and from school in the West Bank. In 2017, such support was provided to 8,123 children and 414 teachers.[13]

15. In addition to the difficulty children experience in accessing schools, the demolition of schools is also a concern, particularly in communities at risk of forcible transfer in the Jerusalem periphery. In 2017, the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) reported on the situation of Khan al-Ahmar, a Bedouin community at risk of forcible transfer in the West Bank. The Israeli Civil Administration issued demolition orders for 44 structures, including the school, in Khan al-Ahmar in early 2017. The community received a temporary injunction in March 2017, but representatives of the nearby settlement of Kefar Adummim submitted a petition seeking to compel the Israeli Civil Administration to demolish the school, as it was built without required permits, which are nearly impossible for Palestinians to obtain (see A/71/554, para. 35). According to information submitted by UNRWA, the State response to the petition confirms that the community is expected to relocate to a site identified by the Government of Israel and that the State intends to demolish the school and structures in early 2018, proposing to build an alternative school at the relocation site. As of the start of 2018, the High Court of Justice had upheld those orders, although the demolitions had not yet been carried out.

16. In the West Bank, UNRWA has raised concerns regarding Israeli forces' repeated use of large amounts of tear gas, particularly in crowded areas and confined spaces, including refugee camps and homes within camps. The practice has a particularly detrimental effect on vulnerable populations such as children and the elderly, as the tear gas does not dissipate in densely populated or confined areas. UNRWA reported at least 48 incidents in 2016 in which tear-gas canisters, stun grenades, plastic-coated metal bullets or live ammunition used by Israeli forces landed in UNRWA compounds or damaged UNRWA installations. Those incidents resulted in one injury as well as lost school and work days for students and staff suffering from tear-gas inhalation. It should be noted that tear gas may only be used where strictly necessary in a law enforcement context, must be carefully controlled to minimize the risk to children and uninvolved persons[14] and must be used in proportion to the seriousness of the offence and the legitimate objective to be achieved.[15]

Legal developments

17. The continued advancement of the settlement enterprise described above has been accompanied by a worrying number of legislative and legal policy developments, which, if continued, would have the effect of making the expropriation of private Palestinian land merely an administrative matter, occurring, in a sense, out of the public eye.

18. Legislative measures aimed at extending Israeli jurisdiction to the West Bank have proliferated recently, with a notable example being the recent passage of a bill which gives authority over institutions of higher education in the West Bank to an Israeli governmental body. The Knesset member who initiated the legislation reportedly said when discussing the new legislation: "Alongside the academic importance of the law, there is a clear element

[13] UNICEF, "State of Palestine: humanitarian situation report".

[14] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, gen. provs. 3, 5 (c) and 14.

[15] Ibid., gen. prov. 5 (a).

here of applying sovereignty and I'm proud of both of these things."[16] The legislation comes after the passage last year of the Law for the Regularization of Settlement in Judea and Samaria, 5777-2017, referred to as the "regularization" law, which allowed for the retroactive legalization, under domestic law, of outposts built illegally on private Palestinian land. It should be noted that settlements of all kinds are considered illegal under international law (see A/72/564, para. 14). In addition to allowing for the confiscation of private Palestinian land, the passage of the law was the first time Israel extended its jurisdiction to matters involving private Palestinian land in the Occupied Palestinian Territory.

19. In addition to legislative moves seeking to extend Israeli control over the occupied West Bank, there are further policy shifts that have been described as attempts to "normalize" Israeli settlements in the West Bank. For example, in December 2017 the Attorney General of Israel issued a directive mandating that all Government-sponsored bills include a clause specifying whether or not the bill would also apply to the Occupied Palestinian Territory.[17]

20. The new laws and policy shifts, accompanied by the continued proposal of various legislative measures seeking to annex specific settlements and municipalities in the West Bank, represent what has been called a paradigm shift in the way the Israeli Government conducts the occupation. The legal framework of occupation, and the protections it provides, are being steadily eroded by the legislation, which seeks to regulate the West Bank as if it is a part of Israel.

B. Gaza

21. Despite widespread recognition that the situation in Gaza is unsustainable, unliveable and in many ways horrific, little progress has been made in improving the humanitarian situation of the people there. Many in Israel recognize the building crisis, and the Palestinian Authority is also well aware of the deteriorating conditions in which the residents of Gaza live. After 10 years of blockade, the population of Gaza is in a particularly vulnerable position, with as much as 70 per cent of the population dependent upon some form of humanitarian assistance. The electricity crisis, which intensified significantly in May 2017, although it has improved slightly in recent months, continues to have a negative impact on the situation of the residents of Gaza as of January 2018. The reconciliation process initiated in November 2017 between the authorities in Gaza and Fatah in the West Bank seems to have all but stopped, and punitive measures imposed on the authorities in Gaza by the Palestinian Authority continue to negatively impact the human rights and humanitarian situations of Gaza's residents. That, combined with 10 years of the Israeli blockade and continued restrictions on the movement of people and goods, have contributed to growing feelings of hopelessness and desperation for the people of Gaza.

Children

22. It must be noted that the impact of the occupation on children is not limited to the situation in the West Bank. In Gaza, restrictions on freedom of movement and the difficulty of importing goods critical for service delivery undermine economic prospects and the availability of essential services. The restrictions imposed by Israel continue to impede the realization of a broad range of human rights, including economic, social and cultural rights such as the rights to health and education and ultimately to an adequate standard of living. Children growing up in this environment face innumerable challenges.

[16] Yarden Zur, "Israel's creeping annexation: Knesset votes to extend Israeli law to academic institutions in the West Bank", *Haaretz*, 12 February 2018. Available at www.haaretz.com/israel-news/israel-votes-to-expand-israeli-law-to-academic-institutions-in-w-bank-1.5810994.

[17] Revital Hovel, "New laws should also consider settlers in West Bank, says Israeli Attorney General", *Haaretz*, 31 December 2017. Available at www.haaretz.com/israel-news/.premium-new-draft-laws-must-also-consider-settlers-in-west-bank-says-israeli-ag-1.5630121.

23. Excessive use of force against Palestinians by Israeli forces is a concern in the area along the border fence, and often has an impact on children. In mid-February 2018, two Palestinian teenagers aged 14 and 16 were killed and two others were injured by Israeli forces, who fired what were reportedly artillery shells and live fire towards the boys as they approached the fence, although they were reportedly between 30 to 50 metres away when shot.[18] The incident raises concerns about the decision to use lethal force against young, unarmed boys as, according to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, lethal force should be used only if other means are ineffective, and should be used with restraint and in proportion to the seriousness of the offence and the legitimate objective to be achieved. Not only in Gaza, but also in the West Bank, the use of force by Israeli forces has consistently been flagged as an issue of concern by the Special Rapporteur, the High Commissioner for Human Rights and the Secretary-General. That concern is necessarily heightened when children are the victims.

24. In addition to actions that negatively affect the rights to life and to security of person, the conditions in Gaza have an untold effect on economic, social and cultural rights (for a detailed discussion of the right to development in Gaza, see A/71/554, paras. 45–48). Growing up in Gaza means growing up with limited access to health care. Schools and education suffer due to a lack of resources, travel restrictions, electricity cuts and crumbling infrastructure. UNICEF, Save the Children International and the Deputy Special Coordinator for the Middle East Peace Process and United Nations Coordinator for Humanitarian and Development Activities in the Occupied Palestinian Territory issued a joint statement in September 2017 highlighting the fact that Palestinian children continue to struggle to realize their right to education. In Gaza in particular, schools are overcrowded after the significant damage to infrastructure owing to escalations of hostilities, and reconstruction remains difficult given Israel's tight restrictions on the import of materials, in addition to the failing economy of Gaza and budget shortages. Two thirds of the schools in Gaza operate in double shifts, welcoming different groups of students in the morning and in the afternoon, and students who study at night often do so by candlelight as a result of the ongoing electricity crisis.[19] Education in Gaza is heavily dependent upon UNRWA, which operates more than 250 schools in the area. Due to travel restrictions and the near impossibility of obtaining a permit to exit Gaza, teachers, professors and students are unable to travel for needed training, and cannot access educational opportunities abroad.

25. The right to education is enshrined in article 13 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party. Despite its position to the contrary, according to the Human Rights Committee and other United Nations treaty bodies, as well as the Advisory Opinion of the International Court of Justice in 2004,[20] Israel's human rights obligations extend to the Occupied Palestinian Territory and apply concurrently to its obligations under international humanitarian law (see A/HRC/34/38, paras. 6–9).

26. The Committee on Economic, Social and Cultural Rights, in its general comment No. 13, noted that education was both a human right in itself and an indispensable means of realizing other rights. The Committee also noted that, with education, marginalized children and adults could gain the tools needed to lift themselves out of poverty and participate fully in their communities. Efforts to stymie that right are in turn efforts to ensure that a population remains trapped in a situation of poverty and desperation. For children growing up under the blockade and closure of Gaza, the importance of access to education is clear. A path by which to learn and grow and seek constructive ways to change their situation is an essential with which they must be provided.

[18] Defense for Children International–Palestine, "Israeli forces kill two teenagers on Gaza Strip border, 23 February 2018. Available at www.dci-palestine.org/israeli_forces_kill_two_teenagers_on_gaza_strip_border.

[19] Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, "Right of education for 1 million Palestinian children at risk", 11 September 2017. Available at: www.ochaopt.org/content/right-education-1-million-palestinian-children-risk.

[20] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

III. Right to health

27. A 4-year-old girl in Gaza suffering from heart failure dies after Israeli authorities deny her permission to return to East Jerusalem for pediatric cardiology treatment that is unavailable in Gaza.[21] Access to safe and sufficient drinking water in the Occupied Palestinian Territory is severely compromised by the discriminatory access to sources of water in the West Bank, and by the depleted and contaminated water aquifers in Gaza.[22] The principal Palestinian hospital in East Jerusalem is raided repeatedly by heavily armed Israeli soldiers and police who fire stun and sponge grenades, resulting in mayhem and fear among patients and staff.[23] Significant stocks of essential drugs are exhausted in Gaza hospitals and are unable to be replaced, even as emergency services in local hospitals are reduced because of political decisions to cut electricity supplies to the territory.[24] Health workers in the West Bank are frequently impeded in their ability to reach patients and hospitals because of interference by Israeli security forces, including delays at checkpoints and the requirement to transfer patients from Palestinian ambulances to Israeli-registered ambulances before entering East Jerusalem.[25]

28. Those recent examples, among many others, raise serious concerns about the fulfilment of the right to health in the Occupied Palestinian Territory. In recent years, civil society organizations and international agencies have extensively documented the significant and chronic challenges to health care and well-being related to the occupation of the Palestinian territory. Relying upon the World Health Organization's (WHO) definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"[26] and understanding health within the context of human security and the enlargement of dignity and human choices,[27] this portion of the Special Rapporteur's report examines the impediments to the realization of the right to health in the Occupied Palestinian Territory.

A. Right to health under international law

29. The right to health is one of the most fundamental and widely recognized human rights. The right touches on everything that we do as humans, and its robust promotion is one of the most effective tools available to reduce the scourges of social and economic inequalities, gender disparities, discrimination and poverty. Reflecting the indivisibility and interdependence of all human rights, the right to health is inextricably linked to the realization of other recognized rights, including the rights to water, housing, food, work, education, life and human dignity. As WHO has stated: "Without health, other rights have little meaning."[28]

[21] Amira Hass, "For some Gazans in need of medical treatment, the wait for an exit permit ends in death", *Haaretz*, 4 December 2017. Available at: www.haaretz.com/middle-east-news/palestinians/.premium-for-some-sick-gazans-the-wait-for-an-exit-permit-ends-in-death-1.5627529.

[22] Amnesty International, "The occupation of water", 30 November 2017. Available at www.amnesty.ca/blog/occupation-water.

[23] B'Tselem, "Israeli security forces endangered patients' lives at al-Makassed hospital, East Jerusalem", 10 August 2017.

[24] World Health Organization (WHO), "WHO special situation report: Occupied Palestinian Territory, Gaza–December 2017 to January 2018", 31 December 2017.

[25] Medical Aid for Palestinians, "Health under occupation", September 2017. Available at www.map.org.uk/downloads/health-under-occupation---map-report-2017.pdf.

[26] Constitution of the World Health Organization. Available at: www.who.int/governance/eb/who_constitution_en.pdf.

[27] Rajaie Batniji and others, "Health as human security in the Occupied Palestinian Territory", *The Lancet*, vol. 373, No. 9669 (March 2009).

[28] See Steven D. Jamar, "The international human right to health", *Southern University Law Review*, vol. 22, No. 1 (August 1994).

30. The right to health is well anchored within international law.[29] Article 25 of the Universal Declaration of Human Rights states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family." Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights establishes the broad nature of States' obligations to ensure the availability of, access to, and acceptability and quality of health services in its proclamation of "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". In its general comment No. 14, the Committee on Economic, Social and Cultural Rights linked the right to health not only to the availability of quality health-care services but to a wide range of socioeconomic determinants that together promote the conditions by which people can lead a healthy life. The right to health is also expressly found in core international human rights instruments, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities, as well as in important regional human rights instruments in Europe, the Americas and Africa.

31. The right to health creates a range of specific obligations upon States,[30] including:

(a) The progressive realization of the principle of enjoying the highest attainable standard of physical and mental health;

(b) Ensuring equality of access to health care and health services for all, without discrimination;

(c) The obligations to respect (to refrain from interfering with a right), protect (to prevent third parties from interfering with a right) and fulfill (to take steps to ensure the fullest possible realization of a right) the right to health;

(d) The protection of vulnerable and marginalized groups, including women, children, older persons, persons with disabilities, minorities and indigenous peoples;

(e) The provision and enhancement of the underlying social determinants of health, including food, housing, sanitation, safe water and physical security.

32. For protected peoples living under occupation, their right to health is also guaranteed by international humanitarian law and the laws of occupation. In particular, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (the Fourth Geneva Convention), together with the Additional Protocols and customary international law, places the overall responsibility for civilian access to health care in an occupied territory upon the occupying Power.[31] Among the extensive responsibilities assumed by the occupying Power for the civilian population are: the protection and respect for the wounded, sick and infirm;[32] the protection of civilian hospitals and their personnel;[33] the assurance that the medical supplies for the population are adequate;[34] the maintenance of the medical and hospital establishment and services, public health and hygiene of the territory;[35] and the facilitation of medical personnel of all categories to fulfil their duties.[36] In addition, the Security Council has stated that all parties to a conflict must ensure that medical and humanitarian staff and health facilities are not attacked.[37]

[29] John Tobin, *The Right to Health in International Law* (Oxford, Oxford University Press, 2012).

[30] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

[31] See generally, Andrew Clapham, Paola Gaeta and Marco Sassòli, eds., *The 1949 Geneva Conventions: A Commentary* (Oxford, Oxford University Press, 2015), especially chaps. 37, 39 and 40.

[32] Fourth Geneva Convention, arts. 15 and 16.

[33] Ibid., arts. 18 and 20.

[34] Ibid., art. 55.

[35] Ibid., art. 56.

[36] Ibid., arts. 23 and 56.

[37] Security Council resolution 2286 (2016).

33. Israel, as the occupying Power, has specific and significant obligations under international law to ensure the health and welfare of the Palestinian population under its control. As a State party to the International Covenant on Economic, Social and Cultural Rights and as an occupying Power, Israel is required to observe international human rights law throughout the Occupied Palestinian Territory.[38] And as a State party to the Geneva Conventions of 1949 and as the occupying Power, Israel is bound under international treaty and customary law to scrupulously apply the Fourth Geneva Convention and the other obligations of international humanitarian law.[39]

B. Situation of health in the Occupied Palestinian Territory

34. The unprecedented length and character of Israel's 50-year acquisitive occupation, driven by the logic of demographic engineering and territorial annexation, both de jure and de facto, has badly fragmented the Palestinian territory.[40] The consequence has been the political separation and geographic isolation of the West Bank, East Jerusalem and Gaza from one another, significantly impinging upon the Palestinians' internal freedom of movement. That fragmentation likewise splinters the delivery of Palestinian health services and deforms the social determinants of health throughout the Occupied Palestinian Territory.[41] Because the Occupied Palestinian Territory lacks any reliable frontier with a neighbouring country, Israel completely controls the Palestinians' external freedom of movement as well.[42]

35. In the West Bank, health care is primarily delivered by the Palestinian Authority and UNRWA, while in Gaza, the governing authority and UNRWA are the principal providers of health services. Palestinian private health providers and Palestinian and international non-governmental organizations also play an important role in health delivery. Nonetheless, the extensive control exercised by the Israeli occupation over the daily lives and movements of the Palestinian population decisively and adversely affects the health services and health outcomes in those areas. In East Jerusalem, where the Israeli health-care system is available to the resident Palestinians, their standard of living and their access to health services is considerably inferior to that enjoyed by Jewish Israeli residents.[43]

1. Gaza

36. As noted above, the health and humanitarian crisis in Gaza has become acute, bordering on a human calamity. Gaza has suffered grievously through three destructive wars in 2008–2009, 2012 and 2014. Israel has imposed a comprehensive blockade on Gaza's land, sea and air frontiers since 2007, which amounts to a form of collective punishment prohibited by international law.[44] The blockade comprehensively controls and

[38] International human rights law applies to a territory under occupation: see *Legal Consequences of the Construction of a Wall, Advisory Opinion*, paras. 111–113. See also CCPR/C/ISR/CO/4, para. 5.

[39] Security Council resolution 2334 (2016). See also Aeyal Gross, "Litigating the right to strike under occupation: between bureaucracy and humanitarianism", *Minnesota Journal of International Law*, vol. 27 (forthcoming).

[40] The report of the Special Rapporteur of October 2017 (A/72/556) submitted that Israel, as the occupying Power, had reached the status of an illegal occupier because of its violation of the fundamental principles of international law governing a belligerent occupation, including the principles of non-annexation, temporariness, good faith and compliance with international law and the directions of the international community.

[41] Physicians for Human Rights–Israel, "Divide and conquer: inequality in health", January 2015.

[42] The only direct frontier between the Occupied Palestinian Territory and a State other than Israel is the Rafah crossing between Gaza and Egypt. The exit crossing is only open intermittently: in 2015, it was open for 24 days; in 2016, for 38 days; and in 2017, for only 21 days, see WHO, "Health access for referral patients from the Gaza Strip", monthly report, December 2017.

[43] United Nations Conference on Trade and Development, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration", document UNCTAD/GDS/APP/2012/1.

[44] See A/HRC/34/36, para. 36, with references. Collective punishment is expressly prohibited by article 33 of the Fourth Geneva Convention as well as by customary international law. See Shane Darcy,

restricts the movement of people and goods in and out of Gaza, resulting in economic suffocation, faltering reconstruction efforts, social and familial isolation from the outside world and a dire impact upon the territory's already anaemic living and health standards. The 12-year-old political schism between the Palestinian Authority and the authority governing Gaza has further compounded this misery. Given the critical state of health care in Gaza, the Special Rapporteur is devoting an outsized portion of the present report to the topic.

37. The 2 million people living in Gaza rely upon a health-care system that United Nations health officials have said is on the edge of collapse.[45] According to WHO, an estimated 206 (40 per cent) of the 516 listed essential medicines in its basic health basket were completely out of stock by the end of January 2018, and another 43 per cent of essential drugs had less than a month's supply remaining.[46] That included drugs required for treating cancer and autoimmune diseases and for performing dialysis and conducting cardiac angiographies.[47] The Office for the Coordination of Humanitarian Affairs of the Secretariat has noted that the funding, purchase and delivery of medicines is the responsibility of the Palestinian Authority and has observed a decline in the supply of essential drugs associated with internal Palestinian divisions, though it did note a slight improvement by the start of 2018.[48] Nonetheless, shortages of vital laboratory supplies has meant that hematology, culture and blood chemistry services can no longer be conducted at out-patient clinics, but only for patients who are hospitalized.[49] In addition, serious shortages of essential medical disposables such as syringes, line tubes, filters for dialysis and dressing materials have also been reported.[50]

38. The crippling electricity shortages in Gaza have forced many hospitals to shut down areas such as operating theatres, emergency departments and general medical wards, and ration essential services such as diagnostic services, instrument sterilization and the treatment of chronic illnesses.[51] At the beginning of 2018, 3 hospitals and 13 primary health-care clinics were temporarily closed, affecting health-care delivery to more than 300,000 people.[52] Neonatal intensive care units have become overcrowded in the face of maternal malnutrition and rising rates of premature and low-weight babies.[53] For the hospitals that remain open, bed occupancy rates are reported to be above 90 per cent. By December 2017, the waiting time for elective surgery stood at 52 weeks, well beyond the operative threshold of 24 weeks.[54] Compounding the problem of treatment services has been the inability of Gaza hospitals to obtain permission from Israel to import replacement parts for vital diagnostic imaging equipment, putting the equipment out of service for months and even years.[55] Serious funding shortages have affected the ability of hospitals to purchase fuel to power, maintain and repair their electrical generators during the endemic electricity cuts.

39. The dilapidated and failing Gaza health-care sector is overwhelmingly a human-made crisis. Notwithstanding the best efforts of the medical and health staff working in the

"The prohibition of collective punishment", in Clapham, Gaeta and Sassòli, eds., *The 1949 Geneva Conventions*.

45 Amira Hass, "Gaza health system collapsing: 40 per cent of medicine runs out", *Haaretz*, 8 February 2018.

46 WHO, "WHO special situation report".

47 Physicians for Human Rights–Israel, "Overview of the Gaza health system: despite the reconciliation the situation keeps deteriorating", January 2018.

48 Office for the Coordination of Humanitarian Affairs, "Only marginal improvement in humanitarian situation in the Gaza Strip in wake of the intra-Palestinian reconciliation agreement", "Humanitarian bulletin: Occupied Palestinian Territory", January 2018. Available at www.ochaopt.org/content/only-marginal-improvement-humanitarian-situation-gaza-strip-wake-intra-palestinian.

49 Physicians for Human Rights–Israel, "Overview of the Gaza health system".

50 Ibid.

51 WHO, "WHO special situation report".

52 Ibid.

53 Ratcliffe, "Gaza's health system close to collapse as electricity crisis threatens total blackout".

54 WHO, "WHO special situation report".

55 Physicians for Human Rights–Israel, "Overview of the Gaza health system".

territory, they have been unable to service Gaza's residents at anywhere near the health system's potential. One consequence of the acute crisis has been the compelling need to refer larger numbers of patients with serious or chronic health conditions to medical facilities outside Gaza for treatment that they should be able to, but cannot, receive in the territory. At that stage, another significant impediment to the fulfilment of the right to health in Gaza is encountered.

40. Israel administers a byzantine and opaque exit permit system imposed upon those patients who require specialized treatment in East Jerusalem (the location of the most advanced medical facilities within the Occupied Palestinian Territory), the rest of the West Bank or abroad.[56] Patients with complex disorders who are unable to be adequately treated in Gaza include: cancer patients requiring surgery, chemotherapy and/or radiotherapy; pediatric patients with metabolic disorders or congenital defects; heart patients requiring open-heart surgery or with post-operative complications; eye patients in need of specialized surgery or cornea transplants; bone-disease patients requiring hip or knee surgery; neurosurgical patients; patients requiring MRI scans; and patients with blood diseases.[57] For virtually all of those patients, time is of the essence, either because of the deteriorating nature of their serious or life-threatening disorders, or because life is at an absolute standstill as long as their chronic and debilitating health conditions remain unresolved.

41. Beyond the question of urgency, the non-governmental organization Physicians for Human Rights–Israel has criticized the Israeli authority's criteria for exit permit applications, which distinguishes between applications on the basis of whether the applicants require life-saving or disability-preventing medical treatments or whether their medical needs are less urgent, stating that this distinction is "at odds with the rules of medical ethics, according to which every patient must be allowed access to the best possible treatment available to him/her, regardless of its urgency or the severity of his/her medical condition".[58]

42. A patient with a complex disorder is first assessed by medical professionals in Gaza as to whether her or his condition can be adequately treated by the resources available within the local health system.[59] If the assessment determines that care must be sought outside of Gaza, the Palestinian Ministry of Health has the responsibility to approve the referral request. The patient's application is then forwarded to the Israeli authorities for permission for the patient and his or her travelling companion to exit the territory through the Erez crossing and travel to a hospital outside Gaza.

43. An application comes with no guarantee of success, and approval rates for travel outside Gaza have been steadily declining. Since WHO began collecting statistics for medical permit approvals in 2008, 2017 has marked the lowest annual approval rate. In 2012, the approval rate was 92 per cent; it declined to 82 per cent in 2014; and declined further to 62 per cent in 2016. According to WHO, the approval rate by Israeli authorities for the 25,812 health travel permit applications filed in Gaza in 2017 had tumbled to 52.4 per cent. While only 2.6 per cent of the applications were formally rejected by Israeli authorities (invariably with no clear reasons provided) in 2017, a large number — 45 per cent — were delayed, and no response was provided.[60] An estimated 11,000 medical

[56] Anita Vitullo and others, "Barriers to the access to health services in the Occupied Palestinian Territory: a cohort study", *The Lancet*, vol. 380, Nos. S18–S19 (October 2012).

[57] Al Mezan Center for Human Rights, "Medical care under siege: Israel's systematic violation of Gaza's patient rights", February 2018.

[58] Physicians for Human Rights–Israel, "Denied 2: harassment of Palestinian patients applying for exit permits", August 2016.

[59] Al Mezan Center for Human Rights, "Medical care under siege"; WHO, "Timeline for Gaza patient referrals", available at https://unispal.un.org/DPA/DPR/unispal.nsf/0/604F89F84BAAA88085258169004FA797.

[60] WHO, "WHO special situation report"; Al Mezan Center for Human Rights, "Medical care under siege".

appointments were missed in 2017 by patients from Gaza whose travel permit applications were either denied or delayed.[61]

44. WHO has documented that 54 patients who had applied for a medical travel permit and who had either been denied permission or who had not received an answer to their application died in Gaza in 2017.[62] Three of those deaths are illustrative of that broader tragedy.[63]

45. Abeer Abu-Jayyad, 46, suffered from breast cancer, and required a treatment course of Herceptin. The drug was unavailable in Gaza, and she had applied for a health travel permit for treatment at Augusta Victoria Hospital in East Jerusalem. Her travel applications were denied on security grounds by the Israeli authorities, and she missed her scheduled appointments. Abeer died in Gaza on 8 June 2017 after the cancer metastasized. Abeer's case exemplifies a distressing trend: 46 of the 54 deaths in 2017 were cancer patients who were unable to receive adequate health treatment in Gaza. Ahmed Hasan Shbeir, 17, was born with a congenital heart defect. Because of the limited capacity to treat his condition in Gaza, Ahmed travelled regularly to hospitals in East Jerusalem and Israel for specialized treatment. However, beginning in September 2016, applications for a health travel permit filed by Ahmed's family were first not answered, and then formally refused, by Israeli authorities. His condition deteriorated, and he subsequently died in Gaza on 14 January 2017. Aya Khalil Abu Mutlaq, 5, was born with cerebral palsy and was initially treated in Gaza. In early February 2017, after obtaining a medical referral from the Palestinian Ministry of Health, Aya's family sought a medical travel permit from the Israeli authorities so that she could receive treatment at Al Makassed Hospital in East Jerusalem. She secured, but missed, three appointments at Al Makassed after her family received no responses to their repeated applications. While waiting for an answer to the third permit request, Aya died on 17 April 2017. It is not known whether any of the 54 patients would have either recovered or stabilized had permission to travel been granted, but the chances of their health improving were negligible without the opportunity to obtain the care they required outside Gaza.

46. The difficulties faced by cancer patients in Gaza in the face of the blockade has been recently reviewed by Physicians for Human Rights–Israel and by the Al Mezan Center for Human Rights.[64] In Gaza, only some chemotherapy treatments and auxiliary drugs are available. Operations to remove tumours are difficult in the face of electricity and fuel shortages. Radiation therapy and medical diagnostics requiring radioisotopes are non-existent because of the lack or non-functioning of necessary instruments such as linear accelerators or PET-CT scanners, and the prohibition on the import of medical radioisotopes into Gaza. Cancer diagnosis in Gaza is frequently made at the end stage of the disease, and cancer patients report a low quality of life, reflecting the lack of adequate resources for detection and treatment.[65] Cancer patients are regularly referred for treatment outside Gaza, but a growing number are denied exit permits or face delays in receiving their exit permits from the Israeli authorities.

47. Physicians for Human Rights–Israel has observed that the Israeli authority which grants travel permission, the Coordinator of Government Activities in the Territories, has increasingly exceeded its own time limits for providing responses to health travel applications, sometimes by months. Referring specifically to the plight of female cancer patients from Gaza, the organization has stated that the decision-making delays by the Coordinator amount to "a policy of disparaging the suffering of those patients and shirking Israel's responsibility for the consequences of the restrictions it deliberately imposes".[66]

[61] Human Rights Watch, "Israel: record-low in Gaza medical permits", 13 February 2018.

[62] WHO, "WHO special situation report".

[63] These profiles were collected by Al Mezan Center for Human Rights, see "Medical care under siege".

[64] Physicians for Human Rights–Israel, "Overview of the Gaza health system"; Al Mezan Center for Human Rights, "Medical care under siege".

[65] Ahmed Nimer Shamallakh and Asma M. Imam, "Quality of life in patients with cancer in the Gaza Strip: a cross-sectional study", *The Lancet*, vol. 390, No. S21 (August 2017).

[66] Physicians for Human Rights–Israel, "Rapid response to applications by women cancer patients from Gaza" (November 2017). Available at www.phr.org.il/wp-content/uploads/2017/11/cogat-letter.pdf.

Physicians for Human Rights–Israel has reported that a large number of exiting patients, many of whom are cancer patients, have been closely interrogated for intelligence information, which the organization deems to be unethical and immoral.[67]

48. Medical professionals and health delivery staff in Gaza, already underpaid, have been receiving only half to a quarter of their salaries, and in some cases no salary at all, in recent months.[68] Staff strikes protesting the salary suspensions have further impaired the delivery of health care.[69] The severe restrictions in movement imposed by the Israeli blockade have meant that doctors and nurses in Gaza face significant hurdles in receiving permission from the Coordinator to leave the territory to receive specialized professional training elsewhere in the Occupied Palestinian Territory or abroad: only 40 per cent of exit applications by health professionals were approved in 2017.[70] During the 2014 war, 23 health professionals in Gaza were killed and another 78 were injured. An estimated 45 ambulances were damaged or destroyed and 73 hospitals and clinics were struck.[71]

49. Geographically, Gaza and Israel are cheek by jowl with each other. Gaza City is only 75 kilometres from Tel Aviv. However, there is an extraordinary gap in health outcomes between Gaza and Israel, according to some common international measuring sticks. The following statistics are provided by WHO:

- Life expectancy: 73.1 (Gaza) versus 82.1 (Israel)
- Infant mortality rate: 20 per 1,000 live births (Gaza) versus 3 (Israel)
- Maternal mortality rate: 31 per 100,000 births (Gaza) versus 2 (Israel)
- Breast cancer 5-year survival: 65 per cent (Gaza) versus 86 per cent (Israel)

50. The right to health is thus severely restricted for the residents of Gaza. Despite the fact that this is occurring in full view of the international community, the Palestinian authorities, and the Government of Israel, little has been done to alleviate the suffering of Gaza's people. The reconciliation agreement between Hamas in Gaza and Fatah in the West Bank signed in 2017 has all but ground to a halt.[72] Israel's obligations, as occupying Power, to the residents of Gaza remain far from fulfilled, and the international community takes note of the dire situation of Gaza's residents, yet fails to act.

2. Mental health

51. Recent health studies in the Occupied Palestinian Territory have found that the cumulative threats to human security for its residents have had a significant and adverse impact upon psychological well-being among the population.[73] The cumulative threats include traumatic and anxiety-inducing experiences of warfare, home demolitions, imprisonment and beatings, land confiscation and violence arising from demonstrations and settler attacks, as well as the diminished character of life caused by the lack of freedom of movement, food insecurity, the lack of control over water resources, discrimination and

[67] Physicians for Human Rights–Israel, "Denied 2"; Women's Centre for Legal Aid and Counselling, Communication with Special Rapporteur (February 2018).

[68] Office for the Coordination of Humanitarian Affairs, "Only marginal improvement in humanitarian situation in the Gaza Strip in wake of the intra-Palestinian reconciliation agreement".

[69] Physicians for Human Rights–Israel, "Denied 2".

[70] WHO, "WHO special situation report".

[71] Medical Aid for Palestinians, "Health under occupation".

[72] Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, "Briefing to the Security Council on the situation in the Middle East", 25 January 2018. Available at https://reliefweb.int/report/occupied-palestinian-territory/nickolay-mladenov-special-coordinator-middle-east-peace-6.

[73] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A69/44, para. 15: "An increase in the burden of mental and psychosocial disorders can be expected in a population experiencing prolonged occupation, lack of personal security, severe restrictions on movement and violations of human rights, including displacement in a post-conflict situation". Available at http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_44-en.pdf.

statelessness, precarious work and the tottering economy and the mounting poverty rates, all of which serve to erode the social fabric of society in the Occupied Palestinian Territory.[74] Above all, Palestinians lack any collective control over the occupying authority that not only makes virtually all of the decisive political, economic and social decisions which govern their lives, but makes them in a fashion that thwarts their interests and disregards their well-being.

52. According to a 2013 regional study on mental health, the Occupied Palestinian Territory bore the largest burden of mental disorders among the examined countries in the Eastern Mediterranean region.[75] Mental health professionals in the Occupied Palestinian Territory have encountered a steady increase in visits to mental health clinics over the past several years, a rise in personality disorders and an increase in impulsive behaviours among the population.[76] A third of patients attending primary health clinics in the West Bank and Gaza were reported to be suffering from mental health issues, a rate that is higher than more politically stable countries.[77]

53. A recent WHO report has stated that mental health workers in the Occupied Palestinian Territory have found that the most common mental health issues are affective disorders, anxiety, depression, epilepsy, aggression, insomnia, neurosis, schizophrenia, total exhaustion, drug-induced conditions and post-traumatic stress disorder (PTSD).[78] Another health study estimated that the expected population prevalence of post-conflict PTSD and major depression would be close to 30 per cent among Palestinians in the West Bank and Gaza.[79] A noteworthy recent study found that residents of two Palestinian refugee camps in the West Bank reported very high levels of profound psychological distress linked to regular raids by Israeli security forces and their frequent use of tear gas in close quarters against the residents.[80]

54. One significant feature is the relative lack of psychiatric, psychological and counselling services available. The West Bank, with 2.6 million Palestinians, has only one mental hospital, in Bethlehem, with 180 beds. Gaza, with 2 million people, has only a 40-bed hospital. There is only one psychiatric training programme in the Occupied Palestinian Territory and, as of May 2016, there was only 1 psychiatrist, along with approximately 30 psychologists.[81] A national mental health strategy has been developed by the Palestinian Ministry of Health, and among its goals are the enhancement of resources for the treatment of mental health, improvements in the measurement of mental illness and an increased

[74] Clea McNeely and others, "Human insecurity, chronic economic constraints and health in the Occupied Palestinian Territory", *Global Public Health*, vol. 9, No. 5 (2014); Stevan E. Hobfoll and others, "The limits of resilience: distress following chronic violence among Palestinians", *Social Science and Medicine*, vol. 72, No. 8 (April 2011); Batniji and others, "Health as human security in the Occupied Palestinian Territory".

[75] Raghid Charara and others, "The burden of mental disorders in the Eastern Mediterranean region, 1990-2013", *PLoS One*, vol. 12, No. 1 (January 2017). The authors expressed caution about the full reliability of measurements on mental health in the Occupied Palestinian Territory, given the difficulties in data collection.

[76] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A70/39. Available at http://apps.who.int/gb/ebwha/pdf_files/WHA70/A70_39-en.pdf.

[77] Ambrogio Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory", February 2016. Available at http://apps.who.int/gb/Statements/Report_Palestinian_territory/Report_Palestinian_territory-en.pdf.

[78] Ibid.

[79] Daphna Canetti and others, "Improving mental health is key to reduce violence in Israeli and Gaza", *The Lancet*, vol. 384, No. 9942 (August 2014). This study also noted that the promotion of the mental health of both Palestinians and Israelis is essential to laying the groundwork for peace.

[80] Rohini Haar and Jess Ghannam, "No safe space: health consequences of tear gas exposure among Palestinian refugees, January 2018", Human Rights Center, University of California Berkeley School of Law. Available at www.law.berkeley.edu/wp-content/uploads/2017/12/NoSafeSpace_full_report22Dec2017.pdf.

[81] WHO, "Health conditions in the Occupied Palestinian Territory, including East Jerusalem and in the occupied Syrian Golan", document A69/INF.6. Available at http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_INF6-en.pdf.

focus on public education to challenge the social stigmatization related to mental health issues.[82]

3. Children

55. The health and social well-being of children are an apt barometer of the larger well-being of a society. Recent studies have reported that food insecurity in the Occupied Palestinian Territory has resulted in worrisome levels of child malnutrition. A 2013 study found disturbing levels of anaemia (26.5 per cent across the Occupied Palestinian Territory, and 30.8 per cent in Gaza), vitamin A deficiency (73 per cent across the Occupied Palestinian Territory) and vitamin D deficiency (60.1 per cent across the Occupied Palestinian Territory, and 64.4 per cent in Gaza) among children aged 6 months to 5 years. Those micronutrient deficiencies are strongly linked to poverty and poor nutrition. The study also found troubling levels of childhood stunting in the same age cohort: 10.3 per cent across the Occupied Palestinian Territory, and 11 per cent in Gaza. Stunting among young children is a consequence of chronic malnutrition, is irreversible and has adverse lifelong effects.[83]

56. A more recent study, conducted in 2014 and 2015, focused on levels of malnutrition among children and their mothers in the Jordan Valley. The study found that 16 per cent of children under 5 years of age surveyed were stunted. Half of all children surveyed (49.3 per cent) were anaemic. The study also observed that 87 per cent of the land in the Jordan Valley is under full Israeli military or settler jurisdiction, and Palestinian use of those lands is prohibited; it noted that the structural barriers associated with the occupation significantly affect the overall health status of the surveyed population.[84] While those levels of childhood stunting are highly concerning and are far too prevalent, other studies have indicated that there has been a general decline in the rates of wasting, stunting and underweight.[85] A recent study on water supplies and childhood development has drawn robust links between inadequate access to quality water, poverty and physical underdevelopment among Palestinian children living in 52 communities in the Occupied Palestinian Territory.[86]

57. Recent medical literature has focused on the mental well-being of children in the Occupied Palestinian Territory. A 2007 study that examined 3,415 adolescents living in the Ramallah District of the West Bank found a strong correlation between the humiliation induced by conflict conditions and a high number of subjective health complaints.[87] Chronic exposure to humiliation (defined as the subjective experiences felt by an individual who has been unjustly treated and debased) among Palestinians in the West Bank has been linked to higher levels of insecurity and depression, feelings of diminished personal freedom, poor health, higher levels of stress and feelings of being broken or destroyed.[88] The aftermath of intense warfare fought among dense civilian neighbourhoods has resulted

[82] State of Palestine, Ministry of Health, "National mental health strategy: Palestine, 2015–2019", June 2015. Available at www.mindbank.info/item/6103.

[83] State of Palestine, Ministry of Health, UNICEF and University of Vienna, "Palestine Micronutrient Survey", 2013.

[84] Palestinian National Institute of Public Health, "Prevalence and detriments of malnutrition and intestinal infections among children and their mothers in the Jordan Valley", 2016. Available at http://pniph.org/site/article/16.

[85] Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory".

[86] Ghassan N. Shakhshir, "Association between water supply and early childhood development in Palestine: a descriptive analysis of demographic and health survey data", *The Lancet*, vol. 390, No. S25 (August 2017).

[87] Rita Giacaman and others, "Humiliation: the invisible trauma of war for Palestinian youth", *Public Health*, vol. 121, No. 8 (August 2007).

[88] Brian K. Barber and others, "Effect of chronic exposure to humiliation on well-being in the Occupied Palestinian Territory: an event-history analysis", *The Lancet*, vol. 382, No. S7 (December 2017).

in a high rate of PTSD among children in Gaza,[89] with one study estimating that the prevalence of PTSD among children in Gaza even before the destructive wars of the past decade ranged from 23 to 70 per cent.[90] After the 2012 war in Gaza, a study found exceptionally high numbers of children (aged 11 to 17) had experienced personal trauma (88 per cent), and had witnessed trauma experienced by others (84 per cent), all of which raised the potential for depression and PTSD.[91] In a related study, Palestinian mothers in the West Bank have reported that they feel a sense of helplessness, grief and strain on their mental well-being in the face of the anxiety and stress experienced by their children in an atmosphere of political violence, economic insecurity and frequent threats to their personal safety.[92]

4. Persons with disabilities

58. Persons with disabilities in the Occupied Palestinian Territory include those who acquired their disability at birth or in childhood, through life activities or during war and conflict. A 2011 survey estimated that approximately 7 per cent of the population in the Occupied Palestinian Territory has a disability, as measured by the international definition of impairment and disability.[93]

59. One particular feature of the challenges of living with a disability in Palestine is the plight of those amputees in Gaza who lost a limb during the 2014 war. The war resulted in approximately 100 new amputees, adding to the 300 amputees in Gaza already wounded by conflict between 2009 and June 2014, according to one study.[94] The same study observed the diminished ability of the Gaza health-care system to provide quality care for the new amputees, including: (a) the lack of surgeons to adequately conduct proper limb amputations; (b) the lack of resources to provide quality prostheses for the amputees; (c) the destruction of the Al-Wafa rehabilitation hospital by Israeli munitions during the war and the subsequent diminishment of rehabilitation services; (d) the serious shortfall in rehabilitation beds; (e) the inadequate and insecure funding for rehabilitation services; and (f) the challenges in obtaining a health exit permit from the Israeli authorities to seek rehabilitation services outside Gaza.

60. In addition, amputees and others who rely upon wheelchairs or crutches for mobility face the challenges of navigating the ruined and crumbling infrastructure of Gaza. Those issues are further compounded by the recent worsening of the electricity crisis. As much of Gaza is densely populated, and has buildings with multiple floors, people with disabilities often rely on the use of elevators. Since electricity operates only a few hours a day in some cases, simply leaving one's home can be nearly impossible. Electricity is similarly essential for those who depend on motorized wheelchairs. The ability to participate in public life is seriously affected for those individuals.

[89] A. Thabet, Omar El-Buhaisi and Panos Vostanis, "Trauma, PTSD, anxiety and coping strategies among Palestinian adolescents exposed to war on Gaza", *The Arab Journal of Psychiatry*, vol. 25, No. 1 (2014).

[90] A. Thabet and others, "Exposure to war trauma and PTSD among parents and children in the Gaza strip", *European Child and Adolescent Psychiatry*, vol. 17, No. 4 (2008).

[91] Basel El-Khodary and Muthanna Samara, "The effect of exposure to war-traumatic events, stressful life events, and other variables on mental health of Palestinian children and adolescents in the 2012 Gaza war", *The Lancet*, vol. 391, No. S6 (February 2018).

[92] Cindy Sousa and Mona El-Zuhairi, "Mothering within the context of political violence: an exploratory qualitative study of mental health risks and resilience", *The Lancet*, vol. 390, No. S36 (August 2017).

[93] Palestinian Central Bureau of Statistics, "Press conference report: disability survey, 2011", June 2011.

[94] Physicians for Human Rights–Israel, "Amputees: the challenges faced by Gaza-strip amputees in seeking medical treatment", May 2016.

5. Palestinian prisoners in Israeli detention

61. As of November 2017, nearly 6,000 Palestinians were being held in Israeli prisons for security-related offences, including 425 prisoners held under administrative detention.[95] The Special Rapporteur has previously expressed concern about Israel's use of administrative detention in contravention of international legal obligations, as well as the arrest and detention of children (see A/71/554, paras. 18–24).

62. Credible reports of ill-treatment and torture of Palestinian detainees have been made in recent years, including incidents in which detainees have been subjected to sleep deprivation, stress positions and physical beatings (see A/HRC/34/38, para. 49). A 2012 health study of a small cohort of prisoners released after long-term incarceration found that all of them had developed significant physical and psychological issues arising from their imprisonment. The former prisoners described overcrowding, poor nutrition, humidity, pest infestation, the denial of family visits and a general lack of hygiene at the prisons.[96] A 2016 study, which interviewed a large cohort of released prisoners, reported that they suffered long-term effects to their mental health, with depression, anxiety and psychological distress as the most commonly reported disorders.[97]

IV. Conclusions

63. An occupying Power has the duty, under international law, to ensure that the right to health — the enjoyment by the protected population of the highest attainable standard of physical and mental health — is fulfilled during the temporary period of occupation, consistent with its reasonable security needs. While fully respecting its legal obligation not to act covetously towards the territory and resources of the occupied territory, it would actively work to restore and enhance the health-care system for the people under its effective control. It would not obstruct access by patients and medical staff to hospitals and health clinics, either physically or bureaucratically. It would strive to create conditions of stability and security, so that the social determinants of health can advance, rather than retard, the flourishing of physical and mental well-being. It would promote equality of access to health care for all, with particular attention paid to the vulnerable and marginalized. The occupying Power would actively work with the health institutions of the protected population to chart a progressive health-care strategy for the future that also respected the coming restoration of full sovereignty. It would not discriminate. It would not torture or mistreat prisoners and detainees. It would not impose collective punishments of any sort. As a priority, it would provide all the necessary health services and supplies that the medical institutions of the protected population were unable to deliver themselves. Ultimately, the occupying Power would understand that leaving behind a thriving health-care system, aligned with robust social determinants, at the end of the occupation provides the best opportunity for peace and prosperity to endure.

64. Measured against those obligations, Israel has been in profound breach of the right to health with respect to the Occupied Palestinian Territory. Its avaricious occupation — measured by the expanding settlement enterprise, the annexation of territory, the confiscation of private and public lands, the pillaging of resources, the publicly stated ambitions for permanent control over all or part of the Territory and the fragmentation of the lands left for the Palestinians — has had a highly disruptive impact upon health care and the broader social determinants for health for the Palestinians. While the Palestinian Authority (which governs in parts of the West Bank) and the authority in Gaza have some agency over the state of health care in the Occupied Palestinian Territory, Israel's conduct of the occupation bears the ultimate responsibility. At the heart of this chasm between the

[95] B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces. Available at www.btselem.org/statistics/detainees_and_prisoners.

[96] Randa May Wahbe, "Physical and mental health of long-term Palestinian political prisoners: a qualitative study", *The Lancet*, vol. 380, No. S23 (October 2012).

[97] Manenti and others, "Report of a field assessment of health conditions in the Occupied Palestinian Territory".

right to health and the harrowing conditions on the ground is what Dr. Paul Farmer has called the "pathologies of power": the enormous gap in situations of structured inequality between those who control the power to decide and those without power who must bear the consequences of these rapacious decisions, until some combination of a vision for justice, an organized opposition and the display of an international conscience can bring these disparate relationships to an end.[98] Palestinian, Israeli and international human rights organizations have persuasively demonstrated both the inequities in the health and social conditions in the Occupied Palestinian Territory and their substantive relationship to Israel's occupation. That leaves to the rest of us the obligation to act decisively and effectively.

V. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring a complete end to its 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

(b) **Ensure that Palestinian children are treated in accordance with the standards set forth in the Convention on the Rights of the Child, in particular with respect to arrest and detention;**

(c) **End the blockade of Gaza, lift all restrictions on imports and exports and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations.**

66. **With respect to the right to health, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

(a) **Ensure regular and reliable access, at all times, for all Palestinian patients who require specialized health care outside of their jurisdictions, consistent with genuine Israeli security concerns;**

(b) **End the conditions which obstruct the free passage of Palestinian ambulances to access and transport patients to health-care facilities in an expeditious fashion;**

(c) **Ensure the respect and protection of medical personnel and medical facilities as required by international humanitarian law;**

(d) **Substantially improve prison conditions and the provision of adequate health care for Palestinian prisoners and detainees;**

(e) **Remove the unnecessary barriers that prevent Palestinian health-care staff from acquiring professional training and specialization elsewhere in the Occupied Palestinian Territory and abroad, and allow them to receive training at their home institutions from international health professionals;**

(f) **Ensure that no one is subjected to torture or degrading treatment;**

(g) **Take meaningful steps to improve the many social determinants that influence health outcomes in the Occupied Palestinian Territory;**

(h) **Comply fully with its obligations under international human rights and humanitarian law with respect to fulfilling the health needs of the protected population.**

[98] Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press, 2004).

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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his third report to the Human Rights Council. In his report, the Special Rapporteur addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, with a particular emphasis on access to water and environmental degradation. In particular, he focuses on the responsibilities of Israel as the occupying Power to act strictly as trustee in the best interests of the protected people throughout the occupation and to ensure the right of the Palestinian people to self-determination, including their ability to develop, manage, conserve and dispose of their own resources and natural wealth.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.

2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is essential for the protection and promotion of human rights. In addition, he notes that access to the territory is key to the development of a comprehensive understanding of the human rights situation on the ground. While he recognizes the exemplary work of experienced and competent civil society organizations, which provides an excellent basis for his work, he laments being unable to meet many of those carrying out this work, owing to his exclusion from the territory and the barriers faced by many individuals when seeking to obtain exit permits from the Israeli authorities, in particular from Gaza.

3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his annual mission to the region, to Amman, from 25 to 29 June 2018.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel.[1] The mandate of the Special Rapporteur focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State or non-State actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur acknowledges the essential work being done by civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing. In the second part of the report, the Special Rapporteur examines access to natural resources and environmental degradation in the territory.

II. Current human rights situation

7. Palestinians living under occupation are increasingly without hope as the occupation continues into its second half-century and the human rights situation steadily deteriorates. Although it is not possible to provide a comprehensive review of all human rights concerns in the period since the previous report of the Special Rapporteur to the Human Rights Council (A/HRC/37/75), the Special Rapporteur would like to highlight several situations that merit particular attention, namely, the demonstrations in Gaza and the ongoing humanitarian and human rights crisis for Gaza residents; the continued advancement of settlements in the West Bank, including East Jerusalem, together with decisions that appear to pave the way for mass evictions of Palestinians in East Jerusalem; and the situation of human rights defenders, an issue on which the Special Rapporteur focused in his first report to the Human Rights Council (A/HRC/34/70).

[1] As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

A. Gaza

8. The humanitarian and human rights crisis in Gaza, as well as the security of its population, deteriorated significantly in 2018, as reflected in the high number of deaths and injuries suffered by Palestinians. The majority of the casualties occurred in the context of large-scale demonstrations that began on 30 March 2018 along the perimeter fence between Israel and Gaza, known as the Great March of Return.[2] Demonstrators called for the right of return for Palestinian refugees and an end to the blockade of Gaza. Although the demonstrations were largely peaceful, some demonstrators reportedly burned tires, threw stones and Molotov cocktails and flew kites bearing incendiary devices over the fence into Israel. While acts of violence must be condemned, the excessive use of force by Israel against the demonstrators is of grave concern (see A/73/447, para. 12).[3] Between 30 March and 31 December 2018, 180 Palestinians, including more than 30 children,[4] were killed by Israeli security forces in the context of demonstrations, while a further 24,000 were injured. The World Health Organization estimated that, of those injured, 1,200 would require long-term limb reconstruction and extensive rehabilitation.[5] In the same period, one Israeli was killed and three injured. In total, 260 Palestinians in Gaza were killed by Israeli forces in 2018,[6] the highest death toll since the Gaza conflict in 2014.

Access to health care

9. In response to the demonstrations, Israel tightened the blockade on Gaza. These additional punitive measures have had a detrimental impact on an already untenable situation for Palestinian livelihoods and well-being. Permits for travel outside Gaza have been severely restricted, as have the import and export of goods, including the passage of essential fuel supplies into Gaza. Medical patients have been particularly affected, either by the denial of exit permits or because of the deteriorating conditions in hospitals within Gaza and the lack of needed supplies and electricity. As at October 2018, almost half of essential medicines were completely depleted in Gaza.[7] Israel continued to prevent patients from leaving Gaza for medical treatment, including life-saving care, if they had a family connection with Hamas.[8] Such a sweeping travel ban, which aims to assert political pressure on Hamas, represents a form of collective punishment prohibited under article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). In a positive development, the Israeli High Court annulled the practice in its ruling of August 2018.[9]

Realization of economic and social rights

10. As the blockade on Gaza enters its twelfth year, the economy has all but collapsed,[10] compounding the daily suffering of the population. The enjoyment of the most basic

[2] The demonstrations were ongoing at the time of reporting.

[3] According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials must see an imminent threat to life or of serious injury for the use of lethal force to be permissible.

[4] See www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-31-0.

[5] See www.emro.who.int/images/stories/palestine/documents/WHO_Health_Cluster_SitRep_23_Sep_-6_Oct_2018.pdf?ua=1.

[6] See www.ochaopt.org/data/casualties?tab=palestinianfatalities&tab=palestinianfatalities.

[7] 44 per cent according to the Central Drug Store in Gaza, as reported by Human Rights Watch (see www.hrw.org/world-report/2019/country-chapters/israel/palestine).

[8] See www.timesofisrael.com/government-to-ban-all-humanitarian-visits-to-israel-by-hamas-members/. Access to treatment has also been restricted when patients have family members living in the West Bank without a permit (see www.haaretz.com/israel-news/.premium-gazan-patients-face-new-limitation-on-travel-for-medical-treatment-1.6573119).

[9] See www.i24news.tv/en/news/international/middle-east/182789-180827-israel-s-high-court-allows-vital-medical-treatment-to-hamas-relatives.

[10] See www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk.

socioeconomic rights – employment, health care, housing, food, water and sanitation – is a luxury in scarce supply, if at all. The statistics reveal the dire reality of life in Gaza. Ninety-five per cent of the population does not have access to clean water,[11] while the sewage crisis has prompted an imminent threat of an endemic disease outbreak.[12] The unemployment rate across the Occupied Palestinian Territory is the world's highest according to the International Labour Organization.[13] In Gaza specifically, more than half the workforce is unemployed and 78 per cent of women are without work.[14] The situation for young people in Gaza, who make up almost 30 per cent of the population,[15] is particularly dire, with 70 per cent unemployed according to the World Bank.[16] The bleak economic prospects, coupled with the constant climate of fear and insecurity caused by the hostilities, have had a severe impact on the mental health of the population. According to the humanitarian country team, 210,000 residents of Gaza already suffer from severe or moderate mental health disorders, while a further 52,098 people, including 26,049 children, are in need of mental health and psychosocial support responses in the wake of the violence surrounding the Great March of Return.[17]

11. Poverty in Gaza is pervasive, with 53 per cent of the population surviving on less than $4.60 per day and two thirds subsisting on less than $3.60 per day.[18] Access to food is one of the most fundamental challenges facing the population in Gaza, where 68 per cent of households are severely or moderately food insecure.[19] Although residents of Gaza have rich farmland and 40 km of coastline, the Israeli blockade has severely restricted their ability to properly exploit domestic food sources available through agriculture and fishing. The strict limitations on fishable waters, which have been reduced at certain points to as little as 3 nautical miles,[20] have severely hampered the livelihood of Gaza fishers, 95 per cent of whom already live below the poverty line.[21] Fishers are routinely pursued by Israeli security forces for having allegedly transgressed the permitted fishing zone, resulting in arrests, the confiscation of vessels and, in extreme cases, the use of lethal force by Israeli security forces. In the past two years, Israeli security forces have killed two fishers and injured dozens with rubber-coated metal bullets.[22] Although the maritime restrictions were extended to 12 nautical miles in January 2019,[23] they remain subject to frequent change, causing uncertainty among fishers, and still fall far short of the 20 nautical miles established under article XIV of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 1995.

12. The agricultural potential of the Gaza Strip has been equally undermined by the blockade, with some 35 per cent of farmland falling within an Israeli-enforced "buffer zone".[24] Farmers wishing to use this arable land do so in constant threat of being targeted

[11] See www.unrwa.org/where-we-work/gaza-strip.

[12] See www.ochaopt.org/content/study-warns-water-sanitation-crisis-gaza-may-cause-disease-outbreak-and-possible-epidemic.

[13] See www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_630876/lang--en/index.htm.

[14] World Bank, "Economic monitoring report to the ad hoc liaison committee", 27 September 2018, p. 9. Available at http://documents.worldbank.org/curated/en/413851537281565349/pdf/129986-REVISED-World-Bank-Sept-2018-AHLC-Report-final.pdf.

[15] Data from the Palestinian Central Bureau of Statistics, 2017. Available at www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3215. "Young people" covers individuals between the ages of 15 and 29 years.

[16] See www.worldbank.org/en/country/westbankandgaza/overview.

[17] Humanitarian country team in the Occupied Palestinian Territory, "2019 humanitarian needs overview", December 2018, p. 17. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2019-%281%29.pdf.

[18] Ibid., p. 24.

[19] Ibid.

[20] Ibid, p. 25.

[21] See www.btselem.org/gaza_strip/20190211_gaza_fishermen_plight_due_to_israeli_restrictions.

[22] Ibid.

[23] See www.timesofisrael.com/israel-to-reopen-gaza-crossing-extend-fishing-zone-if-quiet-remains/.

[24] Palestinian Centre for Human Rights, "Gaza Strip: attacks in the border areas and their consequences". Available at https://reliefweb.int/sites/reliefweb.int/files/resources/ReliefWeb%20

by Israeli security forces, including with live fire. Meanwhile, Israel has damaged Palestinian farmland in Gaza by aerially spraying the land with herbicides. In one such operation by Israel in January 2018, 550 acres of agricultural lands belonging to 212 farmers were affected, with an estimated loss of $1.3 million.[25]

13. While the blockade by Israel on air, sea and land is a predominant cause of the economic crisis within Gaza, the situation has been exacerbated by other internal and external factors. A significant reduction in international aid, in particular the loss of critical funding from the United States of America to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), has had crippling effects.[26] In addition, as the Palestinian Authority continues to withhold salaries of civil servants in Gaza as part of an ongoing political divide, the livelihoods of thousands of employees hang in the balance.[27] In such a political climate, the economic crisis is set to continue its rapid decline, at the expense of the most fundamental human rights and the basic human dignity of the population of Gaza.

B. West Bank, including East Jerusalem

Settler violence

14. Tensions between Israeli settlers and Palestinians in the West Bank have reached a boiling point. Israeli settler violence increased significantly throughout 2018, resulting in the killing of three Palestinians and the injury of 83 others, including 20 children, and numerous cases of vandalism, stone-throwing and intimidation.[28] More than 200 instances of violence by Israeli settlers were recorded in 2018, representing the highest monthly average of incidents since 2014.[29] Meanwhile, 144 attacks by Palestinians against Israeli settlers and other Israeli civilians in the West Bank were reported between January and October 2018, including seven fatalities.[30] As of early 2019, the tension has shown no signs of abating, in particular in the governorates of Nablus, Hebron and Ramallah.

15. Specific concerns have arisen since the removal of the Temporary International Presence in Hebron, an international observatory task force assigned to monitor the situation in the divided city.[31] The Palestinian population in the H2 zone of the city, an area under the security control of Israel,[32] has been subject to attacks of increasing frequency and severity. Reports of aggression by settlers have been particularly prominent on Al-Shuhada Street and in the Tall al-Rumeyda neighbourhood,[33] where Palestinian residents live in constant fear of attack on their person and property. The few international protective actors who have remained in Hebron have also been subject to harassment, intimidation and

Mail%20-%20%5BPchrgaza-e%5D%20Fact%20Sheets_%20Gaza%20Strip_%20Attacks%20in%20the%20border%20areas%20and%20their%20consequences.pdf.

[25] Office for the Coordination of Humanitarian Affairs, “The humanitarian impact of restrictions on access to land near the perimeter fence in the Gaza Strip”, 3 August 2018. Available at www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip.

[26] See www.independent.co.uk/news/world/middle-east/palestine-us-cuts-un-refugee-agency-united-nations-speak-out-a8521396.html.

[27] Amira Hass, “Abbas suspends salaries, allowances to over 5,000 Gazans”, *Haaretz*, 15 February 2019.

[28] See www.ochaopt.org/content/high-level-violence-israeli-settlers-rise-israeli-fatalities.

[29] Ibid. The Office for the Coordination of Humanitarian Affairs has recorded 217 incidents, including assault and damage to Palestinian property, attributed to Israeli settlers.

[30] Ibid.

[31] See www.haaretz.com/israel-news/.premium-israel-to-expel-international-monitoring-force-in-hebron-after-20-year-presence-1.6883412.

[32] See www.ochaopt.org/sites/default/files/h2_fs_2018_v5_english11.pdf.

[33] See www.maannews.com/Content.aspx?id=782539.

threats from settlers. Such incidents have prompted several organizations to pull out of the city, owing to safety concerns for their staff.[34]

16. Settler violence continues to go largely unchecked by Israeli security forces.[35] Widespread impunity emboldens settlers in their campaign of harassment against Palestinian residents. With the withdrawal of the Temporary International Presence in Hebron, as well as the decreasing presence of international monitors, Palestinians in the H2 zone are left in a grave and precarious situation with little recourse or protection from settler violence.

17. Settler violence is one factor that contributes to the existence of a coercive environment in many parts of the West Bank, including East Jerusalem. In such an environment, Palestinians may feel that there is no choice but to leave their homes, which could amount to forcible transfer – a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court (see A/71/554, para. 34).

Forced evictions in East Jerusalem

18. Across the occupied West Bank, home demolitions and forced evictions continue, resulting in the displacement of Palestinians and raising serious concerns of forcible transfer.[36] At the same time that Israel is supporting the expansion of settlements, including those built on private Palestinian land,[37] it continues to order the demolition of Palestinian homes, ostensibly for the lack of planning permission, although Palestinians are systematically denied building permits. These double standards are manifestly discriminatory, while the settlements themselves are illegal under international law.[38]

19. Occupied East Jerusalem is home to 3,500 Israelis living in settlements in the heart of Palestinian communities.[39] The East Jerusalem neighbourhood of Shaykh Jarrah has been particularly affected by settler activity owing to its location near the Old City, as well as competing historical legal claims to land rights. In 1956, under an agreement between UNRWA and the Government of Jordan, which at the time controlled the West Bank, 28 Palestinian refugee families were resettled in Shaykh Jarrah.[40] The families initially rented the homes, on the understanding that they would eventually receive legal title to the property.[41] After the Six-Day War and subsequent occupation by Israel of East Jerusalem in 1967, land administration matters came under the control of Israeli authorities. In this context, two Jewish committees claimed ownership of the land in Shaykh Jarrah on the basis of historical and religious affiliation. Legal disputes to the land have been ongoing for decades,[42] and more than 200 Palestinians are currently at risk of eviction in Shaykh Jarrah.[43]

20. The Sabbagh family is among those facing imminent forced eviction and a heightened risk of forcible transfer. The Sabbaghs are Palestinian refugees originally from Jaffa who were settled in Shaykh Jarrah under the 1956 agreement between UNRWA and the Government of Jordan. Although their original home still stands in Jaffa, they are

[34] See www.oikoumene.org/en/press-centre/news/wcc-pulls-accompaniers-from-hebron-due-to-security-concerns.

[35] See www.timesofisrael.com/leftists-on-tour-of-hebron-confirmed-in-view-that-settlers-already-won/.

[36] See www.ochaopt.org/theme/displacement.

[37] See www.haaretz.com/israel-news/.premium-israel-says-will-legalize-west-bank-homes-built-on-private-palestinian-land-1.6919910.

[38] Security Council resolution 2334 (2016).

[39] See www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah.

[40] See www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/Sheikh_Jarrah_Report-Final.pdf.

[41] Ibid. In accordance with certain conditions, including surrendering their refugee ration card and paying nominal rent.

[42] Ibid.

[43] See www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah.

precluded from reclaiming it under Israeli law.[44] After a protracted legal battle against an Israeli settler organization over the disputed landownership, including a failed appeal to the Israeli High Court of Justice,[45] the family was given an eviction notice by the Law Enforcement and Collection Authority of Israel on 3 January 2019.[46] Thirty-two members of the Sabbagh family, including six children, face forced eviction from their home in East Jerusalem, while an additional 19 members will be directly affected by the loss of the family property in the event of the eviction.[47] There are serious concerns that the decision of the High Court not to rehear the case will pave the way for similar evictions across East Jerusalem.

21. This situation of forced eviction in Shaykh Jarrah is mirrored in other Palestinian neighbourhoods across East Jerusalem, including Bayt Hanina, Bayt Safafa, the Old City, Ra's al-Amud and Silwan. The Office for the Coordination of Humanitarian Affairs estimates that 199 Palestinian households are subject to eviction cases, placing 877 people, almost half of whom are children, at risk of displacement.[48] The eviction cases, the majority of which have been brought by settler organizations, exist within the context of the unilateral annexation by Israel of occupied East Jerusalem. The Security Council, in its resolutions, affirms that all legislative and administrative measures taken by Israel to alter the character and status of Jerusalem are null and void.[49]

22. Forced evictions constitute gross violations of human rights, including civil, cultural, economic, political and social rights.[50] Forced evictions have devastating impacts in particular on the enjoyment of the rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment and freedom of movement.[51] In addition, forcible transfer, which may result from forced eviction, is a grave breach of the Fourth Geneva Convention (art. 147) and a war crime.[52]

C. Human rights defenders

23. Since the report of the Special Rapporteur to the Human Rights Council at its thirty-fourth session (A/HRC/34/70), there has been a rise in intimidation and threats against civil society actors who advocate the protection of international human rights and humanitarian law in the Occupied Palestinian Territory. Israeli authorities have continued to use a number of measures to obstruct the work of human rights defenders and narrow the space for advocacy and litigation. Such measures include movement restrictions in the form of travel bans and visa denials, public stigmatization, arbitrary arrests and prosecutions and ill-treatment.

24. Of particular concern are the harmful practices employed by the political leadership and State authorities in Israel to silence the criticism by human rights defenders of certain government policies. Such measures include verbal attacks, disinformation campaigns and delegitimization efforts, as well as the targeting of civil society funding sources. For example, in the Money Trail reports, published in May 2018 and January 2019, the Ministry of Strategic Affairs of Israel accused the European Union of granting financial aid to organizations that allegedly promote boycotts against Israel. Those accused included respected European and Palestinian organizations such as Al-Haq, the Palestinian Centre for Human Rights and the Al Mezan Center for Human Rights. The Ministry also alleged

[44] See http://peacenow.org.il/en/sabagh-family-sheikh-jarrah.

[45] See www.haaretz.com/middle-east-news/palestinians/.premium-israel-s-top-court-won-t-rehear-case-on-eviction-of-palestinians-in-east-jerusalem-1.6830318.

[46] See www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem.

[47] Ibid.

[48] Ibid.

[49] Inter alia, Security Council resolutions 252 (1968), 267 (1969), 471 (1980), 476 (1980) and 478 (1980).

[50] See www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf.

[51] See www.ohchr.org/en/issues/housing/pages/forcedevictions.aspx.

[52] Rome Statute of the International Criminal Court, art. 8.

that several of the non-governmental organizations have ties to terrorism. In the report, a list of statements or actions allegedly supporting boycotts of Israel purportedly made by each organization is provided, followed by a screenshot showing the funding provided to each organization by the European Union. The European Union strongly rejected the allegations as unsubstantiated.

25. Further legitimization of the harm inflicted on human rights defenders is reflected in recent legal developments. In the words of the Human Rights Defenders Fund in Israel, "the damage to human rights organizations in Israel is being formally imposed and institutionalized by parliamentary activity".[53] The organization provides legal counselling and representation to human rights defenders in an attempt to mitigate the curtailment of the rights to freedom of association, expression and assembly. It cites as examples the anti-boycott law of 2011 (which allows the State to withdraw benefits to organizations calling for boycotts and does not distinguish between boycotts of goods produced in illegal Israeli settlements in the Occupied Palestinian Territory and boycotts of goods produced by Israel), the non-governmental organization transparency law of 2016 (which requires Israeli organizations that receive more than half of their public funding from abroad to disclose this in all publications, a rule that predominately affects human rights organizations and has the effect of singling them out, while organizations receiving private funding are not affected) and the amendments of 2017 to the Entry into Israel Law (which restrict the entry into Israel of individuals calling for boycotts of Israel and its settlements). These initiatives have seriously curtailed the ability of human rights defenders to carry out their legitimate work, provide protection and call for an end to violations of human rights in the Occupied Palestinian Territory.

III. Right to water, natural resources and the environment

26. A cluster of Palestinian villages in the south Hebron hills have had their newly laid water pipes, which had finally brought them clean running water, destroyed by the Israeli Civil Administration, forcing them to buy expensive trucked-in water for their homes and animals.[54] In Gaza, the collapse of the coastal aquifer, the only natural source of drinking water in the Strip and the water from which is now almost entirely unfit for human consumption, is contributing to a significant health crisis among the 2 million Palestinians living there.[55] Throughout the West Bank, Israeli quarry companies extract approximately 17 million tons of stone annually, almost all of which is destined for the Israeli local market, notwithstanding strict prohibitions in international law against a military power economically exploiting an occupied territory.[56] The Dead Sea and its plentiful natural resources, part of which lie within the Occupied Palestinian Territory, are off-limits to any Palestinian development, while Israeli companies are permitted to harvest the minerals in an apparent act of pillage.[57] Groves of West Bank olive trees, which are both an economic wellspring for thousands of Palestinian farmers and a symbol of Palestinian identity, are routinely destroyed by Israeli settlers with virtual impunity.[58] The transfer of Israeli industrial waste to treatment plants in the West Bank, through the creation of so-called "sacrifice zones" that are less rigorously regulated, contributes to the environmental scarring of the occupied territory, without the involvement or consent of the Palestinians.[59]

[53] See http://hrdf.org.il/legislative-initiatives/.

[54] See www.haaretz.com/israel-news/.premium-why-doesn-t-israel-want-palestinians-to-have-running-water-1.6959524.

[55] Shira Efron and others, *The Public Health Impacts of Gaza's Water Crisis: Analysis and Policy Options* (Santa Monica, RAND Corporation, 2018).

[56] Yesh Din, "The great drain: Israeli quarries in the West Bank", 14 September 2017.

[57] Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory* (Ramallah, Al-Haq, 2012).

[58] See www.timesofisrael.com/olive-tree-sabotage-plagues-palestinian-farmers/.

[59] Adam Aloni, *Made in Israel: Exploiting Palestinian Land for Treatment of Israeli Waste* (B'Tselem, 2017).

27. For the almost 5 million Palestinians living under occupation, the degradation and alienation of their water supply, the exploitation of their natural resources and the defacing of their environment are symptomatic of their lack of any meaningful control over their daily lives, as Israel, the occupying Power, exercises its military administrative powers in a sovereign-like fashion, with vastly discriminatory consequences. All peoples, including peoples under occupation, enjoy the sovereign right to control their natural wealth,[60] and what an occupying power may do with the resources of an occupied territory is strictly regulated in international law. Nevertheless, the Israeli occupation, with its appetite for territory and settlement implantation and its sequestration of natural resources, has become virtually indistinguishable from annexation (see A/73/447).

28. Accordingly, in the present section, the Special Rapporteur focuses on whether Israel has fulfilled its solemn duty under international law to protect the right of the Palestinian people to their water, their natural resources and their environment in the context of its five-decade-long occupation.

A. Sovereignty, occupation and the right to natural wealth under international law

International humanitarian law

29. The relevant body of international humanitarian law, including the law of occupation, applies in toto to the Palestinian territory: the West Bank, including East Jerusalem, and Gaza.[61] As the occupying Power, Israel is restricted by law to acting only as the temporary administrator of the Palestinian territory until it returns the territory in full, in as short and as reasonable a time as possible, to the inherent sovereign and protected population: the Palestinian people.[62] An occupying power acquires no sovereign right over any of the occupied territory and is prohibited from taking any steps towards annexation.[63] It must govern the occupied territory in good faith and act as trustee in the best interests of the protected people throughout the occupation, subject only to its own legitimate security and administrative requirements (see A/72/556). In previous reports, the Special Rapporteur has determined that Israel is in breach of these foundational principles of international humanitarian law, and it is now presumed to be the unlawful occupant of the Palestinian territory (ibid.; and A/73/447).

30. While Israel is acting as the temporary occupant, among its most important legal duties is to respect and preserve the fundamental rights of the protected population under international law.[64] With regard to the natural wealth of an occupied territory, which includes its water, its soil and lands, its environment and its finite and renewable natural resources, the occupying power assumes a number of specific legal responsibilities.

31. First, the occupying power is entitled only to a limited use of the public natural resources of the occupied territory. Article 55 of the Regulations respecting the Laws and Customs of War on Land (The Hague Regulations) of 1907 stipulates that the occupying power acts "only as administrator and usufructuary" of the public immovable property of the occupied territory. It must therefore safeguard the capital of these resources according to the principle of conservation.[65] Accordingly, the occupying power has no legal authority to exploit any of the resources or property of the territory for the benefit of its own

[60] General Assembly resolution 73/255, third preambular para.

[61] Security Council resolution 2334 (2016), third preambular para.

[62] Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, Cambridge University Press, 2017).

[63] Orna Ben-Naflati and others, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, Cambridge University Press. 2018).

[64] P. Spoerri, "Law of occupation", in *The Oxford Handbook of International Law in Armed Conflict*, Andrew Clapham and Paola Gaeta, eds. (Oxford, Oxford University Press, 2014).

[65] Michael Bothe, "The administration of occupied territory", in *The 1949 Geneva Conventions: A Commentary*, Andrew Clapham, Paola Gaeta and Marco Sassòli, eds., (Oxford, Oxford University Press, 2015).

economy.[66] The purpose of this rule is to remove any incentive for the occupying power to act in a predatory or avaricious manner towards the occupied territory and its wealth, thereby discouraging war and prolonged alien rule.

32. The occupying power may use the natural wealth of the territory to furbish its armed forces during the occupation only as strictly required by security, military and administrative necessity and without exceeding normal use.[67] It is required to take steps to restore the economy by enabling the extraction of the territory's natural wealth for the benefit of the protected people, as long as these assets are not wasted, neglected or abused, or usurped for the benefit of the occupier's economy.[68] Any use of such wealth beyond these allowances would likely amount to looting and pillage, which are forbidden under the laws of occupation.[69] Furthermore, the occupying power is prohibited from destroying or appropriating moveable private property, except for requisitions in kind for the occupying army and in proportion to the resources of the territory.[70]

33. Second, the occupying power is absolutely forbidden under the Fourth Geneva Convention (art. 49 (6)) to transfer any of its civilian population into the occupied territory, and such transfer is considered a war crime under the Rome Statute (art. 8 (2) (b) (viii)). This rule is meant to eliminate the temptation of annexation and colonialism. One of the inevitable consequences of transferring the civilian population is the occupying power's requisition of the territory's natural wealth to sustain this colonizing population. In such circumstances, this wealth is invariably appropriated in a deeply discriminatory fashion to the detriment of the protected population (see A/HRC/22/63).

34. Third, the occupying power's duty to act as trustee towards the protected population includes the obligation of good governance.[71] This obligation requires the occupying power, among other things, to safeguard, to the extent possible, the ability of the protected population to enjoy at least an adequate standard of living, including all the necessities for personal and economic life, environmental conservation and the sustainable use of natural resources.[72] These principles of trusteeship and good governance incorporate the duty to preserve and protect the territory's natural wealth in preparation for the expeditious end of the occupation and the full restoration of sovereignty.[73] They also include the strict prohibition of discrimination.[74]

International human rights law

35. International human rights law applies at all times to all peoples during all occasions, including during armed conflict and military occupation.[75] Notwithstanding the distinct purposes of international human rights law and international humanitarian law, international human rights law is to be read as being complementary to international

[66] Iain Scobbie, "Natural resources and belligerent occupation: perspectives from international humanitarian and human rights law", in *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace*, Susan Akram and others, eds., (London, Routledge, 2011).

[67] Regulations respecting the Laws and Customs of War on Land (The Hague Regulations), art. 52.

[68] Ben Saul, "The status of Western Sahara as occupied territory under international humanitarian law and the exploitation of natural resources", *Global Change, Peace & Security*, vol. 27, No. 3 (2015).

[69] International Court of Justice, *Democratic Republic of the Congo v. Uganda*, Judgment of 19 December 2005, paras. 222–250.

[70] The Hague Regulations, art. 52.

[71] The Security Council, in its resolution 1483 (2003), directed the military coalition occupying Iraq to promote the welfare of the Iraqi people through the effective administration of the territory.

[72] Michael Bothe, "The administration of occupied territory".

[73] The Security Council, in its resolution 1483 (2003), recognized, with respect to the occupation of Iraq, "the right of the Iraqi people freely to … control their own natural resources, welcoming the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and expressing resolve that the day when Iraqis govern themselves must come quickly".

[74] Fourth Geneva Convention, art. 27.

[75] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, para. 112.

humanitarian law in situations of occupation, thereby satisfying the purpose of both of these bodies of law to provide a broad protection of rights to everyone, including protected peoples under occupation (see E/C.12/1/Add.90, para. 31).

36. As such, the full panoply of social, economic, cultural, political and civil rights enshrined in international human rights law is available to peoples living under occupation to protect their sovereignty over their natural wealth. Most importantly, the right to self-determination is expressly affirmed in the opening paragraph of common article 1 (1) of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.[76] The right of the Palestinian people to self-determination has been widely and repeatedly recognized by the international community.[77] A fundamental right guaranteed to all peoples in the exercise of their right to self-determination is the ability to, "for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".[78]

37. The unwarranted exploitation of the natural resources of a country or territory by an alien authority, including an occupying power, would be a breach of the fundamental human right of the people under alien rule to be able to develop, manage, conserve and dispose of their own resources in accordance with their right to self-determination.

38. Furthermore, the international guarantee of human rights is to be enjoyed by people without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[79] This right includes the right to enjoy the natural wealth and resources of the occupied territory without discrimination, including during occupation.

39. The right of everyone to an adequate standard of living and to the continuous improvement of living conditions is recognized in the International Covenant on Economic, Social and Cultural Rights. In the case of an occupation, the occupying power is required to take the appropriate steps to ensure the realization of this right,[80] including the facilitation of the necessary access of the protected people to their natural wealth and resources of the territory to enable an adequate standard of living and the continuous improvement of living conditions to be achieved.

40. An emerging human right is the right to development, first proclaimed by the General Assembly in 1986.[81] The Declaration on the Right to Development contains a number of recognized human rights which are binding under international law that are applicable to access to and the protection of the natural wealth in the Occupied Palestinian Territory, including the following:

(a) Full sovereignty over one's natural resources (art. 1);

(b) The elimination of foreign domination and occupation (art. 5);

(c) The prohibition of discrimination and the flagrant abuse of human rights (art. 6);

(d) The full enjoyment of all human rights and fundamental freedoms, including socioeconomic rights (arts. 6 and 8).

[76] See also International Court of Justice, *Portugal v. Australia*, Judgment of 30 June 1995, para. 29; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 88.

[77] General Assembly resolution 73/158.

[78] International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, common art. 1 (2).

[79] International Covenant on Economic, Social and Cultural Rights, art. 2 (2).

[80] Ibid., art. 11.

[81] General Assembly resolution 41/128. The Special Rapporteur devoted his first report (A/71/554) to the application of the right to development to occupied Palestine.

B. Right to water in the Occupied Palestinian Territory

41. Water is an indispensable precondition for life, a vital public good, an economic cornerstone, a finite resource and a necessary crucible for ensuring human dignity. It distinguishes Earth from the barren planets around it. The United Nations has recognized access to water as both a fundamental human right in itself and an integral component for the realization of all other human rights, including the right to a healthy environment and the right to development.[82] As Richard Jolly, formerly of the United Nations Development Programme, wrote:

> To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations of States parties to ensure access, and it identifies the obligations of States parties to provide support internationally as well as nationally.[83]

42. The right to water requires that water supplies are sufficient, safe, acceptable for consumption, physically accessible and affordable.[84] It also commands that access to safe and clean drinking water and sanitation must be equitable and non-discriminatory, both within societies and among States.[85] Furthermore, States are required to refrain from interfering with the enjoyment of the right to water, including by refraining from any practice that would limit access to or destroy water services and infrastructure as a punitive measure or for the purpose of driving out the protected population.[86] Under the laws of occupation, groundwater is considered immovable public property, and its appropriation by the occupying power is restricted to normal use for military and administrative needs.[87]

43. Water, and its effective control and management, is an essential component for the exercise of sovereignty in the modern world. As the 51-year-old occupation by Israel has become more entrenched, however, the deeply inequitable distribution of water imposed by Israel illustrates the utter lack of any substantive control of Palestinians over their daily lives. With the collapse of the natural sources of drinking water in Gaza and the inability of Palestinians to gain access to most of their water sources in the West Bank, water has become a potent symbol of the systematic violations of human rights occurring in the Occupied Palestinian Territory. While Israelis, including those living in illegal settlements, enjoy unlimited running water year-round, several million Palestinians endure water shortages caused by either contamination or lack of access.[88] The irony is manifest: while Israel has created world-class hydro technology for the creation and export of desalination plants, advanced irrigation systems and the recovery and productive recycling of wastewater, the Palestinian territory it occupies is water insecure. Indeed, the World Bank stated in 2009 that the Palestinians in the occupied territory have the lowest access to fresh water resources in the region, notwithstanding the fact that the Palestinian territory has ample water resources.[89]

[82] The General Assembly, in its resolution 64/292, recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

[83] Richard Jolly, "Water and human rights: challenges for the 21st century", address at the conference of the Royal Academy for Overseas Sciences of Belgium, Brussels, 23 March 1998.

[84] See www.un.org/waterforlifedecade/human_right_to_water.shtml.

[85] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

[86] Ibid.; and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, art. 54 (2).

[87] The Hague Regulations, art. 55; and Iain Scobbie, "Natural resources and belligerent occupation".

[88] Elena Lazarou, "Water in the Israeli-Palestinian conflict", European Parliamentary Research Service, briefing, January 2016.

[89] World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, Report No. 47657-GZ (Washington, D.C., 2009). Indeed, Ramallah has a higher average annual rainfall than London.

C. Water in the context of the Israeli occupation

44. There are three primary sources of natural fresh water in the Occupied Palestinian Territory: (a) the Jordan River; (b) the coastal aquifer; and (c) the mountain aquifer, which is divided into the western aquifer basin, the north-eastern aquifer basin and the eastern aquifer basin. Although the Jordan River forms the eastern boundary of the Occupied Palestinian Territory, Israel has prohibited the Palestinians from drawing any of its waters since the occupation began in 1967 by declaring its riverbanks a closed military zone and by destroying Palestinian pumps and irrigation ditches.[90] The coastal aquifer lies beneath Gaza and the coastal plain of Israel, but its availability as a source of drinking water for Gazans has been severely compromised by overpumping and the infiltration of seawater and sewage.[91] The mountain aquifer is located primarily in the West Bank but also crosses the Armistice Line of 1949. It is the largest water source in the region. Israel annually extracts far above its population share of the waters from this aquifer.[92]

45. Following the beginning of its belligerent occupation in 1967, Israel placed all Palestinian water usage and development under its military control. In accordance with military order No. 92 of August 1967, authority over all water resources in the occupied territory was transferred to the Israeli military, while Palestinians were prohibited from constructing new water installations or maintaining existing installations without a military permit under military order No. 157 of November 1967. These orders remain in force and apply only to Palestinians and not to Israeli settlers, who are governed by Israeli law. In 1982, ownership of all West Bank water supply systems was assumed by Mekorot, the Israeli national water company, which is 50 per cent owned by the Government of Israel.[93]

West Bank

46. Although some governance powers were devolved to the Palestinian Authority in accordance with the Oslo Accords (the Declaration of Principles on Interim Self-Government Arrangements and the Interim Agreement on the West Bank and the Gaza Strip) signed by Israel and the Palestine Liberation Organization in the early and mid-1990s, Israel did not relinquish its primary domination over the waters of the West Bank. For the purposes of the present report, the Oslo Accords signified three significant developments.

47. First, the accords created three separate areas of control in the West Bank, with Israel exercising overall security control over the entire territory and the Palestinian Authority exercising civil control over 40 per cent of the territory of the West Bank and, within that, nominal security control over only 18 per cent. In Area C, comprising 60 per cent of the West Bank, Israel has exclusive civil and security control. All West Bank settlements of Israel are in Area C, which also contains the majority of the agricultural lands, water sources and underground reservoirs of the Occupied Palestinian Territory, to which the Palestinian Authority has no access.

48. Second, in article 40 of the Interim Agreement on the West Bank and the Gaza Strip of 1995, it was provided that Israel would recognize "Palestinian water rights" in the West Bank; however, these rights were not defined. The allocation of the waters from the mountain aquifer under the 1995 agreement was overwhelmingly in favour of Israel – Israel was to receive 80 per cent of the waters and the Palestinians only 20 per cent.[94] Under the agreement, the Palestinian Authority acquired some powers to manage water, but only within Areas A and B; most of the infrastructure for water acquisition and development happens to lie in Israeli-controlled Area C.[95] Although the Oslo Accords were designed to

[90] Elisabeth Koek, *Water for One People Only: Discriminatory Access and "Water-Apartheid" in the OPT* (Ramallah, Al-Haq, 2013).

[91] United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later", July 2017.

[92] Al-Haq, 2019 water report (forthcoming).

[93] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (London, 2010).

[94] B'Tselem, "Water crisis", 11 November 2017.

[95] Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water*, p. 17: "[The Palestinian Authority] acquired only the responsibility for managing the supply of the insufficient

last only until 1999, they remain in place, and their inequitable water arrangements have in fact widened. In 2014, it was estimated that the share of the mountain aquifer waters was 87 per cent for Israel and 13 per cent for the Palestinians.[96]

49. Third, under the 1995 agreement, the Israeli-Palestinian Joint Water Committee was established, comprising an equal number of designated water officials from Israel and the Palestinian Authority. The Committee is authorized to regulate water and sanitation in the West Bank, including granting permits, drilling wells and extracting water. As the World Bank noted, however, the Committee created an effective Israeli veto over any management measures and infrastructure projects proposed by the Palestinian Authority. Furthermore, the World Bank observed that "Israeli territorial jurisdiction in Area C … consolidates this control, which makes integrated planning and management of water resources virtually impossible for the Palestinian Authority".[97] In 2012, the Committee stopped meeting because the Palestinian members were no longer willing to accept the Israeli insistence on a quid pro quo arrangement, which entailed the approval of Israeli water projects to service the Israeli settlements in exchange for the approval of some Palestinian water projects.[98] The Committee resumed its work in 2017, with modified approval procedures: Palestinians can now lay water pipes and networks without Committee approval, but Israel can also develop its separate water system for the Israeli settlements without Committee approval.[99] According to water expert Jan Selby, the widening water inequalities have remained constant as "the West Bank has become progressively more dependent on Israel for its water supplies" and "though Palestinians will now have autonomy to lay pipelines, what they won't have is any additional water to go in them – except with Israeli consent".[100]

50. Among the many features of the inequitable arrangements for water use and management in the West Bank, two in particular can be identified for the purposes of the present report.

51. First, there is a significant disparity between Israelis and West Bank Palestinians in their access to and consumption of water. A recent estimate found that residents of Israel and Israeli settlers consume approximately three times more water per person per day (250 litres) than West Bank Palestinians (84 litres).[101] According to B'Tselem, the Palestinians are currently extracting only about 75 per cent of their share of water as specified in the Oslo Accords (20 per cent of the total aquifer), notwithstanding the fact that the Palestinian population in the West Bank has nearly doubled since 1995.[102] There are several reasons for this, including the technical failure of new drilling and the administrative obstacles erected by Israel with regard to permission for replacing older pipelines and drilling wells in Area C. As a result, the Palestinian Authority has to purchase significant quantities of water from Mekorot, much of which has been extracted from the mountain aquifer within the West Bank. When summer droughts occur, Palestinian communities that are connected to the Mekorot network often suffer lengthy water outages, while neighbouring settlements are largely spared any significant water reduction.[103]

52. Second, the Israeli settlements have played a significant role in perpetuating the discriminatory extraction and use of water in the West Bank. All Israeli settlements are linked to the Mekorot national water system and receive developed-world levels of water

quantity of water allocated for use by the Palestinian population and for maintaining and repairing a long-neglected water infrastructure that was already in dire need of major repairs."

96 Al-Haq, 2019 water report (forthcoming).

97 World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, p. vii.

98 Jan Selby, "Cooperation, domination and colonisation: the Israeli-Palestinian Joint Water Committee", *Water Alternatives*, vol. 6, No. 1 (2013).

99 See https://al-shabaka.org/briefs/apolitical-approach-palestines-water-crisis/.

100 See www.opendemocracy.net/en/north-africa-west-asia/what-hope-for-two-state-solution/.

101 Elena Lazarou, "Water in the Israeli-Palestinian conflict". The World Health Organization recommends a minimum of 100 litres of water per person per day for household use.

102 B'Tselem, "Water crisis".

103 See www.haaretz.com/israel-news/.premium-palestinian-city-parched-after-israel-cuts-water-supply-1.5401178.

for drinking, sanitation and commercial use. By contrast, approximately 180 Palestinian communities in Area C have no connection to a water network, leaving them either to rely on shallow wells or to purchase water from tankers at a considerable price.[104] The disparities are most acute in the Jordan Valley: figures from 2013 reveal that the 10,000 Israeli settlers in the Valley were provided with the lion's share of the 32 million m^3 of water drilled that year from the mountain aquifer by Mekorot for their domestic and agricultural use. In comparison, the 2.7 million Palestinians across the West Bank were allocated only 103 million m^3 from the western aquifer.[105] In addition, some Israeli settlements have taken control of Palestinian water springs in the West Bank with the assistance of the Israeli military. The Palestinians who have lost access to their springs often have no connection to water networks and had relied upon the springs as their main or only source of drinking water and for agricultural requirements.[106] Demonstrations by Palestinian villagers against the seizures have led to violence and deaths.[107]

Gaza

53. The water situation in Gaza is a crisis verging on a humanitarian catastrophe. The United Nations estimated in 2017 that more than 96 per cent of the coastal aquifer groundwater – the sole source of natural water in Gaza – had become unfit for human consumption and the aquifer would be irreversibly damaged as a drinking source by 2020 without a radical intervention.[108] Gaza has been brought to the brink by multiple factors, including the following: its increasing population; the resulting overextraction of the source aquifer; the substantial contamination of the aquifer by sewage and seawater; a feeble and steeply shrinking economy coupled with extreme poverty; the repeated destruction afflicted on its water, sanitation and energy supply systems by Israel through its various military campaigns since 2006; the suffocating blockade by Israel, including the restrictions it imposes on the import of dual-use items (including water pumps, spare parts, pipes and purification chemicals); a serious intra-Palestinian political split; and declining funding from international donors.[109] About 86 per cent of water supplies in Gaza are pumped from the aquifer. In 2000, the public water network provided more than 98 per cent of Gazans with safe drinking water; by 2014, that figure had plunged to 10.5 per cent. Most Gazans – more than 60 per cent of whom are food insecure and more than 55 per cent of whom are unemployed – now rely on low- and medium-quality trucked water that is from 10 to 30 times more expensive. While the average cost of water in the West is 0.7 per cent of monthly wages, a third of the monthly wages of Gazans goes towards the purchase of water, for those who can afford it. Given the high levels of poverty, many residents of Gaza must rely on tainted water from the public taps that are operational only a few times a week.[110]

54. The water crisis in Gaza is creating a serious public health danger for its inhabitants. The lack of a secure power supply – because of a war-damaged power plant, a chronic lack of fuel to operate what remains of the plant and insecure external sources – has meant that the waste treatment system in Gaza functions poorly, when it functions at all. This results in the discharge of 110,000 m^3 of partially or entirely untreated waste daily into the Mediterranean Sea. More raw sewage is collected in unstable lagoons and waste pools, which often leaches into the subsoil and the aquifer. All this has resulted in very high levels of nitrates, chemicals and chlorine in Gazan waters, which contributes to the threat of

[104] B'Tselem, "Water crisis".

[105] See www.haaretz.com/israel-news/.premium-no-shortage-of-discrimination-when-it-comes-to-water-in-the-west-bank-1.5404471.

[106] Office for the Coordination of Humanitarian Affairs, "How dispossession happens: the humanitarian impact of the takeover of Palestinian springs by Israeli settlers", March 2012.

[107] Ben Ehrenreich, *The Way to the Spring: Life and Death in Palestine* (New York, Penguin Books, 2017).

[108] United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later".

[109] Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

[110] Office for the Coordination of Humanitarian Affairs, "Gaza energy crisis: limited improvement in water and sanitation indicators; concerns over waterborne diseases remain", 10 November 2017; and United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later".

waterborne diseases. According to a RAND Corporation report of 2018, more than a quarter of all reported diseases in Gaza are the result of poor water quality and limited access to water supplies. It also noted that water-related diseases are the primary cause of child morbidity.[111] In a 2011 study cited by RAND, the United Nations Children's Fund found that 12 per cent of deaths among young children and infants in Gaza were caused by diarrhoea, an entirely preventable illness.[112] At hospitals in Gaza, the lack of safe water has meant serious problems for the sterilization of equipment and the hands of health workers, elevating the risk of infections.[113] In its report, the RAND Corporation raised the epidemiological fear that, with the growing water emergency and the recent loss of international funding for immunization programmes, it will be only a matter of time before a serious epidemic occurs.

55. Solutions for the water crisis in Gaza are both technological and political. A large desalination plant is planned for central Gaza, but substantial international funding is still required for construction and the plant would be able to meet only a small portion of the water needs of Gaza. Rehabilitating the power network in Gaza to produce reliable and affordable electricity to enable the construction and operation of the desalination plant, to build, repair and operate sewage treatment plants, to revitalize the Gazan economy and to provide steady power and water to homes and workplaces is essential. Major investments in solar panel farms would be economically beneficial, environmentally sustainable and supportive of efforts to restore the water sources in Gaza.[114] As observed in a recent medical study, however, "occupation and siege are the primary impediments to the successful promotion of public health in the Gaza Strip".[115] Until Israel completely lifts its blockade of Gaza, and until Palestinians in Gaza can exercise their freedom of movement and their right to development free from occupation, even the most imaginative technological solutions to the water crisis in Gaza will always be susceptible to the vagaries of a lopsided power relationship and an asymmetrical war.

D. Natural resources and the occupation

56. The approach of Israel towards the natural resources of the Occupied Palestinian Territory has been to use them as a sovereign country would use its own assets. Rather than obey the repeated entreaties of the international community to respect and apply international law during its occupation, Israel has repeatedly relied on disfigured and fringe interpretations of the law and on raw economic entitlement to justify its exploitation of the natural wealth of the occupied territory.

Quarrying

57. Israel has granted mining concessions to 10 Israeli-operated quarries in Area C of the West Bank. According to Yesh Din, the volume of quarrying has increased substantially in recent years, with production reaching 17 million tons in 2015. Approximately 94 per cent of the production – which yields stone, gravel and gypsum – is shipped to Israel for construction and infrastructure purposes. These West Bank operations make up between 20 and 30 per cent of the annual quarrying requirements of Israel, with royalties paid to the Government of Israel.[116] In 2011, Yesh Din challenged the legality of Israeli quarrying operations before the Israeli High Court of Justice.[117] In a ruling that reflects the custom of

[111] Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

[112] United Nations Children's Fund, "Protecting children from unsafe water in Gaza: strategy, action plan and project resources", March 2011.

[113] Office for the Coordination of Humanitarian Affairs, "Study warns water sanitation crisis in Gaza may cause disease outbreak and possible epidemic", 16 November 2018.

[114] Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

[115] Ron J. Smith, "The effects of the Israeli siege on health provision in the Gaza Strip: a qualitative and theoretical analysis", *The Lancet*, vol. 391, No. S37 (February 2018).

[116] Yesh Din, "The great drain: Israeli quarries in the West Bank".

[117] High Court of Justice of Israel, *Yesh Din – Volunteers for Human Rights v. Commander of the IDF Forces in the West Bank and others*, Judgment No. 2164/09 of 26 December 2011.

the Court to provide judicial approval for many aspects of the occupation,[118] it dismissed the petition. The Court held that The Hague Regulations of 1907 provide for economic development and normal life under occupation, but it did so without distinguishing between the interests of the protected population and the legal prohibitions against economic exploitation by the occupying power. According to Michael Sfard, an Israeli human rights lawyer, the High Court ruling in the quarry case "transforms limitations on the powers of the occupant to exploit the natural resources of an occupied territory into an authorization to advance the very colonial enterprise they were set to eliminate".[119]

Dead Sea

58. Part of the Dead Sea lies within the Occupied Palestinian Territory. It contains substantial natural and mineral wealth, including groundwater, salt, sand, potash and mud (which is used for the cosmetics industry). The sea lies within Area C of the West Bank, and significant portions of the land surrounding it have been declared by Israel as closed military zones and off-limits to Palestinians. According to a study conducted by Al-Haq in 2012, approximately 50 Israeli cosmetic factories were operating in the Dead Sea area (of which some were operating in occupied Palestine and others in Israel), extracting the mud and other related raw materials to create finished products for both the domestic and the export markets.[120]

Oil and gas development

59. The State of Palestine is almost completely dependent upon Israel for its energy and power supplies. This not only results in large revenue losses because of duties and surcharges imposed by Israel for the import of gas, oil and petroleum through Israel into the Occupied Palestinian Territory, but also contributes to a distorted economy that cannot manage a vital feature of its own development. Nevertheless, there is potential, as substantial oil, gas and shale oil deposits lie in the Mediterranean Sea off the coast of Gaza and Israel. However, Israel has maintained a tight naval blockade of Gaza since 2006 and closed the Occupied Palestinian Territory waters to any resource exploration.[121] Since 2016, Israel has been auctioning marine blocks off its coast for resource exploration by international oil and gas corporations. At least four of the marine blocks apparently lie in waters off the coast of Gaza, and human rights organizations, including Al-Haq, have warned potential bidders about the potential jeopardy associated with these blocks.[122] Other oil deposits have been verified near the Armistice Line between the West Bank and Israel, and similar concerns have been expressed about sovereignty over these natural resources.[123]

E. Environmental protection and the occupation

60. States are obligated to ensure that the enjoyment of human rights is not affected by environmental harm and to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights (see A/HRC/25/53, paras. 79–84). Environmental justice is an integral part of international environmental law. This concept is grounded in the principles of care and prevention, which oblige both States and non-State actors to protect and nurture the environment and to reduce, limit and control

[118] David Kretzmer, *The Occupation of Justice* (Albany, State University of New York Press, 2002).

[119] Orna Ben-Naflati and others, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory*, chap. U.

[120] Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea*.

[121] Susan Power, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Ramallah, Al-Haq, 2015).

[122] See www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/1322-al-haq-warns-third-states-and-gas-companies-against-bidding-for-gas-licenses-in-disputed-waters-off-the-israeli-and-palestinian-coast.

[123] Susan Power, *Annexing Energy*.

activities that would cause harm to it.[124] Public consultation and transparency are key to upholding these principles. In the Occupied Palestinian Territory, the occupying Power exercises substantial control over the fate of the environment, and, in some cases, its actions have negative human rights consequences, in particular as a result of the environmental impact of these actions. Furthermore, the environmental impact of Israeli practices may be felt by not only Palestinians but also Israelis and others in the region.

Waste disposal

61. At least 15 Israeli waste treatment facilities have been created in the West Bank – an area beyond the domestic environmental regulatory regime of Israel – to treat hazardous pollutants such as sewage sludge, used oils, solvents, electronic waste, batteries and infectious medical waste. In a recent report, B'Tselem argued that Israel has sought to transfer the high costs of complying with rigorous domestic environmental regulations by creating so-called "sacrifice zones" in the West Bank.[125] Israel views the West Bank as a separate legal entity where its environmental laws do not apply, yet it treats the territory as its own insofar as it does not seek the consent of the Palestinian Authority in order to dispose of waste. The actions of Israel would appear to violate its trustee obligations as an occupying Power and breach its human rights duties to ensure the provision of high-quality public health and hygiene services for the protected population.[126] In addition, the impact of these "sacrifice zones" on the local water supply and the health of people living in surrounding communities is unknown.

Red Sea-Dead Sea project

62. Since 2013, Israel, Jordan and Palestine have been negotiating a water project that would carry water from the Red Sea to the southern part of the Dead Sea, where it would be desalinated. As part of the project, an estimated 32 million m^3 of water would be sold annually to the Palestinians and transported to the West Bank (22 million m^3) and Gaza (10 million m^3). Some have heralded the project as a harbinger of prosperity and political cooperation.[127] Others, in particular human rights experts, have raised concerns about the serious environmental damage already done to the Dead Sea through the significant overexploitation of its resources and waters.[128] An important litmus test for assessing the worth of the project would be whether it will enable the State of Palestine to gain any more authority over its waters. If control over the project remains primarily in the hands of the occupying Power, with no genuine ability for Palestinians to gain jurisdiction over the parts of the Dead Sea within the occupied territory, the project may result simply in the consolidation of more power in the hands of Israel on its road to annexation.

IV. Conclusions

63. An occupying power that takes its responsibilities under international law seriously would rule in the best interests of the population under occupation and aim to end its alien rule as soon as reasonably possible. It would recognize that the territory's natural wealth, environment and resources belongs to the protected people. As such, it would encourage them to assume increasing authority and management over this wealth as a necessary precondition for a short and successful occupation and a peaceful and cooperative future. An occupying power governed by these principles would not pillage. It would respect both public and private property. Any development or use of the natural resources of the

[124] Philippe Sands, *Principles of International Environmental Law*, 2nd ed. (Cambridge, Cambridge University Press, 2003).

[125] "Sacrifice zones" is the term used to describe the phenomenon of the waste industry seeking out communities or countries in which the regulation of hazardous waste is less stringently regulated and enforced. Sacrifice zones are often located near poor and disempowered populations, who, as a result, suffer a disproportionate exposure to environmental harm.

[126] Adam Aloni, *Made in Israel: Exploiting Palestinian Land for Treatment of Israeli Waste*.

[127] See www.nytimes.com/2017/07/13/opinion/israelis-and-palestinians-water-deal.html.

[128] Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea*.

occupied territory would be conducted strictly within the limits of usufruct. It would seek to conserve and to preserve. Above all, it would not appropriate the occupied territory's natural resources for its own gain or exploitation.

64. Israel has strayed extremely far from these legal responsibilities. Indeed, its temporary-permanent occupation of the Palestinian territory has been the exact opposite of what is required of a faithful occupying power. During its five decades as the occupant, it has appropriated private and public property without lawful authority. It has regarded the Palestinian territory as its own for acquisitive purposes and as someone else's territory with respect to the protection of the people under occupation. Its expropriation of Palestinian hydro resources breaches international humanitarian law and international human rights law and scorns the principles that underlie the right to water. Its usurpation of the territory's natural resources and its disregard for its environment robs the Palestinians of vital assets that they require should they ever achieve their freedom. The right to development in Palestine has become a dead letter. These realities belie any visible path to Palestinian self-determination and instead lead to a darker future that portends dangers to both peoples.

V. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring an end to its 51 years of occupation of the Palestinian territory. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**

(b) **End the blockade of Gaza, lift all restrictions on imports and exports and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**

(c) **Ensure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association and to freedom of expression, including human rights defenders;**

(d) **End forced evictions and home demolitions, which contribute to the existence of a coercive environment and may lead to forcible transfer, a grave breach of the Fourth Geneva Convention;**

(e) **Create an international Marshall Plan for Gaza and the West Bank, including East Jerusalem, that would, hand in hand with the defined end of the occupation, encourage investment in and the modernization of the infrastructure of the Palestinian territory, increase its educational and training capacity, improve its legal culture of human rights and incentivize its economic and social sectors to meet the challenges of self-determination.**

66. **With respect to natural resources and the environment, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

(a) **End practices that infringe upon the access of Palestinians to their natural resources, in violation of the duties of Israel as an occupying Power, and that have a negative impact on the realization of human rights for the protected Palestinian population;**

(b) **Ensure equitable access to clean water, which is a fundamental human right in itself and an integral component for the realization of a range of other human rights;**

(c) **End the extraction of natural resources undertaken not for the benefit of the protected population but instead for the benefit of the occupying Power, a practice that is prohibited by international humanitarian law;**

(d) **Ensure that hazardous waste is disposed of in compliance with international standards and that waste disposal does not infringe upon the human**

rights of the protected population, and recognize that the disposal of hazardous material is an issue that has an impact on all surrounding areas given the interconnectedness of the local environment;

(e) **Ensure that, during its remaining time as the occupying Power, all prior agreements on water between Israel and the Palestinian Authority are renegotiated in order to establish true equity and cooperation in the ownership, exploration, distribution and use of water sources in the region.**

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Human rights situation in Palestine and other occupied Arab territories

Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on collective punishment

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 examines the current human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a particular focus on different forms of collective punishment.

Other aspects covered in the report include the latest developments with regard to Israeli settlements, the situation of human rights defenders, arbitrary detention, the annexation plan announced by Israel, the decision of the International Criminal Court to investigate the situation in Palestine, and human rights violations by the Hamas authorities in Gaza and by the Palestinian Authority.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Commission on Human Rights resolution 1993/2 A and Council resolution 5/1.

2. The Special Rapporteur would like to note that he has not been granted access to the Occupied Palestinian Territory, and nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. The Special Rapporteur regrets the lack of opportunity to meet with many of the human rights groups there, due both to his exclusion from the territory and to the barriers that many individuals face should they seek exit permits from the Israeli authorities, particularly to leave Gaza.

3. The present report is based primarily on written submissions from various entities and on consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur, due to the coronavirus disease (COVID-19) pandemic, was unable to travel to the region for further consultations.

4. In the present report, the Special Rapporteur focuses on the human rights and international humanitarian law violations committed by Israel, in accordance with his mandate.[1] The mandate of the Special Rapporteur is focused on the responsibilities of the occupying Power, although the Special Rapporteur notes that human rights violations by any State or non-State actor are deplorable and only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation extended to his mandate by the Government of the State of Palestine. The Special Rapporteur further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

II. Current human rights situation

6. The human rights situation of Palestinians in the West Bank, East Jerusalem and Gaza continues to be grim. Although it is not possible to provide a comprehensive review of all human rights concerns since his last report, submitted to the Human Rights Council at its fortieth session,[2] the Special Rapporteur would like to highlight several issues of concern at this time. While the report will primarily focus on the issue of collective punishment, it will also address a number of other issues, including the continued expansion of Israeli settlements, the increase in settlers' violence, the detention of Palestinians, use of settlement products, the planned annexation by Israel of parts of the West Bank and its potential impact, the situation of human rights defenders and the impact of the coronavirus disease (COVID-19) pandemic.

A. Settlements

7. The Government of Israel continued to approve plans for the expansion of new settlement outposts and projects and the consolidation of existing settlements, in flagrant violation of international law. In July 2019, the Government approved some 2,400 housing units and public infrastructures in 21 settlements and outposts, bringing the total number of approved settlement units for 2019 to approximately 6,100. During 2019, the Government of

[1] As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2 A.

[2] A/HRC/40/73.

Israel announced its approval of only 715 housing units for Palestinians living in Area C.[3] The move was denounced by the European Union, the United Kingdom of Great Britain and Northern Ireland and the United Nations Special Coordinator for the Middle East Peace Process, as such actions would further impede the possibility of a two-State solution. In February 2020, Israeli authorities advanced or announced plans and tenders to build more than 10,500[4] housing units in settlements, including 3,500 units in the E1 area east of Jerusalem,[5] which would link the city to the Israeli settlement of Ma'ale Adummim. Building settlements in the E1 area would effectively divide the West Bank into two disconnected areas. These troubling trends on the ground would worsen existing violations against Palestinians and would further fragment Palestinian territory in the West Bank.

8. In Hebron, the planning and expansion of Israeli settlements continued at a rapid pace. On 1 December 2019, the then Minister of Defense, Naftali Bennett, announced his approval for the planning of a new Jewish settlement in the city of Hebron. This announcement was followed by a demand that the Palestinian municipal government of Hebron consent to a plan to demolish the city's wholesale market, and replace it with additional housing units to accommodate Jewish settlers.[6] In practice, the move would create a new Jewish settlement in the city. The municipality, which enjoys the status of a "protected tenant" in the area of the market,[7] was threatened in a letter by Bennett that if it failed to comply within 30 days, legal proceedings would be filed to lift its protected status. Since the last report, the number of incidents of and severity of settler attacks has increased significantly in Hebron and continued to cause injury to Palestinians.[8] For example, on 22 and 23 November 2019, settlers carried out at least six attacks resulting in injury to the Palestinian population in H2, Hebron. On many of these occasions, Israeli security forces appeared to take no action to prevent the attacks or to protect the population. At least 16 attacks were carried out by Israeli settlers between 17 and 30 March 2020, representing a 78 per cent increase compared to the biweekly average of incidents reported by the Office for the Coordination of Humanitarian Affairs since the start of 2020.[9] Israel has the obligation to ensure the safety and well-being of the Palestinian population, and to protect them from settlers' attacks. Where attacks do occur, Israel is obliged to pursue accountability by ensuring that those responsible are prosecuted and punished.[10]

B. Human rights defenders

9. Since the last report of the Special Rapporteur, submitted to the Human Rights Council at its fortieth session, intimidation, harassment and threats against human rights and civil society actors have continued in the Occupied Palestinian Territory. Palestinian human rights defenders and civil society organizations are the main victims of these measures, which further contribute to the shrinking of civic space. Activists and human rights defenders continue to be targeted by the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. These measures include arbitrary detention, physical threats,

[3] See www.haaretz.com/israel-news/.premium-israel-approves-plans-for-2-000-w-bank-settlements-sparking-international-outcry-1.7648415.

[4] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf.

[5] See https://peacenow.org.il/en/netanyahu-promotes-the-construction-in-e1.

[6] See www.haaretz.com/israel-news/israel-threatens-hebron-gov-t-agree-to-jewish-neighborhood-or-lose-property-rights-1.8225822.

[7] The Hebron wholesale market site was under Jewish ownership before the establishment of Israel in 1948, although most Jews left Hebron in 1929 after an attack on the Jewish population killed 67 people. After 1948, Jordan leased the land to Hebron Municipality through a protected tenancy. Following the Six-Day War in 1967, the buildings on the site were transferred to the custodian for abandoned property, but the Municipality remained a protected tenant. See www.haaretz.com/israel-news/israel-threatens-hebron-gov-t-agree-to-jewish-neighborhood-or-lose-property-rights-1.8225822.

[8] A/74/357, para. 19.

[9] See www.ochaopt.org/poc/17-30-march-2020.

[10] Office of the United Nations High Commissioner for Human Rights in the occupied Palestinian territory, press statement, 27 November 2019, available at www.facebook.com/UNHumanRightsOPT/.

harassment, intensive defamation campaigns, restrictions on freedom of movement and on free expression and peaceful assembly, and restrictive regulatory frameworks.[11]

10. Israeli authorities persisted in their use of measures to obstruct human rights defenders' work and to narrow the space for advocacy and litigation. On 19 September 2019, Israeli security forces raided the offices of Addameer, a human rights organization dedicated to defending and representing Palestinian prisoners, in Ramallah, and confiscated laptops and memory cards as well as files and publications. Israel continued to impose movement restrictions in the form of travel bans and visa denials, and continued its campaign of public stigmatization of human rights organizations. In November 2019, a field researcher for B'Tselem, an Israeli human rights organization, was arrested for videotaping a protest against an Israeli West Bank settlement outpost,[12] and the field researcher for Amnesty International received a punitive travel ban when he attempted to leave the West Bank for Jordan by the Allenby Bridge.[13]

11. On 25 November 2019, the Israel and Palestine director of Human Rights Watch, Omar Shakir, was expelled from Israel after the Israeli Supreme Court upheld the legality of the Government's decision to not renew his visa. Mr. Shakir was expelled following a 2017 amendment to the Entry into Israel Law, which allows denial of entry to Israel and the Occupied Palestinian Territory to anyone who calls for a boycott of Israel as defined in the Law for Prevention of Damage to the State of Israel through Boycott, of 2011. Israel annulled Mr. Shakir's visa on the grounds that he had supported the Boycott, Divestment and Sanctions movement in the past, and over allegations that he continued to do so through his work with Human Rights Watch.

C. Products from Israeli settlements

12. Several important developments with regard to labelling or banning products produced by Israeli settlements in the Occupied Palestinian Territory were noted since the last report. On 12 November 2019, the European Court of Justice ruled[14] that products from Israeli settlements must indicate they were a product originating from a settlement and not be labelled as a "product of Israel". The ruling noted that the information on the products must enable consumers to make an informed choice that also included social and ethical considerations. The Court underlined that the European Union had committed itself to the strict observance of international law, including the Charter of the United Nations. The ruling by the European Court of Justice follows a similar judgment[15] of 29 July 2019 in *Kattenburg v. Canada* by the Federal Court of Canada, in which the Court noted that labels of wines produced in West Bank settlements that state that the wines are "products of Israel" are "false, misleading and deceptive".[16] The Government of Canada is appealing the decision.

13. The Irish Control of Economic Activity (Occupied Territories) Bill, No. 6 of 2018, is a proposed law that would make it an offence for a person "to import or sell goods or services originating in an occupied territory or to extract resources from an occupied territory in certain circumstances".[17] In October 2019, the municipality of Oslo adopted a decision to ban products from Israeli settlements and thus became the sixth municipality in Norway to effectively ban products and services linked to Israeli settlements from public contracts.[18]

14. The Special Rapporteur also welcomes the release of a database on business enterprises involved in certain activities relating to Israeli settlements in East Jerusalem and

[11] 11.11.11, "Occupation and shrinking space".

[12] See www.haaretz.com/israel-news/.premium-idf-soldiers-arrest-b-tselem-researcher-who-filmed-protest-against-w-bank-outpost-1.8069542.

[13] See www.amnesty.org/en/latest/news/2019/10/israel-opt-amnesty-staff-member-faces-punitive-travel-ban-for-human-rights-work.

[14] See http://curia.europa.eu/juris/celex.jsf?celex=62018CJ0363&lang1=en&type=TXT&ancre=.

[15] See https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do.

[16] Ibid.

[17] See https://data.oireachtas.ie/ie/oireachtas/bill/2018/6/eng/initiated/b0618s.pdf.

[18] See www.middleeastmonitor.com/20191029-norways-capital-oslo-bans-israel-settlement-goods-services/.

the West Bank, as an important initial step towards accountability and an end to impunity. The Special Rapporteur calls for the database to become a living tool, with sufficient resources to be updated annually.

D. Arbitrary detention

15. Israel has continued its use of arbitrary detention, including administrative detention without charge. At the end of March 2020, there were around 5,000 Palestinian political prisoners in Israeli prisons, including 432 administrative detainees and 43 women prisoners.[19] In addition, 183 of the prisoners were children, 20 of whom were under the age of 16. With regard to children, the Secretary-General, in his most recent report on children and armed conflict, reiterated his call upon Israel to uphold international juvenile justice standards and cease the use of administrative detention for children, end all forms of ill-treatment in detention, and cease any attempted recruitment of detained children as informants.[20]

16. As is also highlighted in a previous report of the Special Rapporteur,[21] the use by Israel of administrative detention in contravention of international legal obligations continues to be a serious concern. This issue has been raised previously by the Human Rights Committee and the Committee against Torture, which have noted concerns in relation to the use of administrative detention,[22] especially in cases involving children.[23]

17. Recurrent reports of practices that may amount to ill-treatment and torture, including with regards to children continued to be of serious concern. In its list of issues prior to submission of the sixth periodic report of Israel, the Committee against Torture referred to "recurrent allegations of torture and ill-treatment of Palestinian minors in interrogation and detention centres, settlements and temporary military headquarters in the State party". According to information from Addameer, from 1967 to the end of 2019, 222 prisoners died while in Israeli custody; and 4 Palestinian prisoners have died in Israeli custody since the beginning of 2018, the last of whom was Bassam al-Sayeh, who died in a Petah Tikva interrogation centre on 9 September 2019. Mr. Al-Sayeh was reportedly suffering from bone and blood cancer as well as other medical conditions and was not provided with adequate medical care or treatment, leading to a deterioration in his condition.

E. Annexation plan

18. On 17 May 2020, the newly formed coalition Government of Israel agreed to initiate plans to implement the annexation of parts of the West Bank and the Jordan Valley. This annexation, which is based on the Peace to Prosperity plan announced by the United States of America, would, if implemented, affect approximately a third of the territory in the West Bank, including the Jordan Valley. On 16 June, 67 United Nations human rights experts noted that any annexation of Palestinian territory would be a serious breach of international law and the Charter of the United Nations. The experts further called upon the international community to take concerted measures to counter the planned annexation move by Israel, including through the use of a "broad menu of accountability measures".[24] The Special Rapporteur warned against accommodating any degree of annexation, even if it were partial and consisted of several settlements blocs, as it would still constitute a serious violation of international law and still require a concerted reaction by the international community. Opposition to the planned annexation has grown steadily since the announcement. On 23 June, more than 1,080 parliamentarians from 25 European countries wrote to European governments and leaders against the planned Israeli annexation.[25] On 26 June in Belgium,

[19] Addameer statistics.
[20] A/73/907-S/2019/509, para. 95.
[21] A/71/554, paras. 18–24.
[22] CCPR/C/ISR/CO/4, para. 10 (b); CAT/C/ISR/CO/4, para. 17; and CAT/C/ISR/CO/5, paras. 22–23.
[23] CCPR/C/ISR/CO/3, para. 7 (b).
[24] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960&LangID=E.
[25] See www.scribd.com/document/466688615/Letter-by-European-Parliamentarians-Against-Israeli-Annexation.

the Chamber of Representatives called, in a sweeping vote, for the creation of a list of potential "countermeasures", should the planned annexation take place.

19. Israeli occupation has for decades continued to impose conditions on the ground that entail serious human rights violations against Palestinians. The planned annexation will further aggravate and intensify these violations and will affect millions of Palestinians living in the occupied West Bank and the Jordan Valley. It may well lead to forcible displacement of various communities living in the area which include hundreds of thousands of Palestinians; expulsion and confiscation of their property; and control of their natural resources; and would possibly complicate their status further, leading to the statelessness of many. The outcome of such an annexation would further entrench a two-tier system in which two peoples are ruled by the same power, but with profoundly unequal rights. Communities living in areas threatened by annexation, particularly in the Jordan Valley, already suffer discrimination and neglect, while their properties have been demolished or have received demolition orders by Israeli military authorities. Those communities are in dire need of protection, as their situation would become much more fragile with the prospect of the annexation.

F. International Criminal Court

20. The Special Rapporteur welcomes the statement that the Prosecutor of the International Criminal Court, Fatou Bensouda, released on 20 December 2019, in which she determined that there was a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53 (1) of the Rome Statute of the International Criminal Court. While the Prosecutor deferred the final determination on the scope of the territorial jurisdiction to the Pre-Trial Chamber, it is the Prosecutor's view that the Court has jurisdiction over the situation in Palestine, extending to the Occupied Palestinian Territory, namely the West Bank, including East Jerusalem, and Gaza.[26] On 30 April 2020, the Prosecutor reiterated her position on the scope of the Court's territorial jurisdiction.[27]

G. Human rights violations by the Hamas authorities in Gaza and the Palestinian Authority

21. Cases of arbitrary arrest and detention by the de facto authorities in Gaza continued to be reported, particularly of journalists and human rights and political activists. On 9 April 2020, a number of Palestinian activists were arrested and detained by the de facto authorities after being accused of engaging in "normalization activities with Israel". A small group of activists had organized a Zoom call with young Israeli activists to discuss living conditions in Gaza.[28] Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place, particularly in the context of reporting on the socioeconomic impact of the COVID-19 pandemic.[29] In June, a number of persons were arrested by the de facto authorities in Gaza, as they expressed opposing political views and attempted to organize events that were banned by security forces.

22. A number of arrests by Palestinian security forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or expressing opposing political views.[30] Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

[26] See www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine.

[27] See www.icc-cpi.int/CourtRecords/CR2020_01746.PDF.

[28] See www.nytimes.com/2020/04/10/world/middleeast/rami-aman-palestinian-activist-arrested.html.

[29] See www.amnesty.org.uk/press-releases/palestine-critics-hamas-and-palestinian-authority-arrested-during-covid-19-pandemic.

[30] See www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza.

H. Impact of the COVID-19 pandemic

23. As of 8 July 2020, the total number of confirmed cases of COVID-19 was 5,567 in the West Bank, including East Jerusalem, and 72 in Gaza,[31] while the figure stood at 33,556 cases in Israel with a reported average of 3,690 cases per day. At the time of writing of the present report, the rate of increase in cases remains alarming, despite the implementation of considerable measures by all duty bearers to contain the pandemic. Accordingly, vulnerable groups, particularly Palestinian prisoners, including children, older persons and those with chronic conditions, remain very exposed to infection by the virus. Israel, as the occupying Power, remains primarily responsible for ensuring the right to health of Palestinians and ensuring that all preventive measures are utilized to combat the spread of the pandemic.[32] In this context, Israeli authorities have continued to impede efforts to combat the spread of COVID-19 in occupied East Jerusalem. In one reported incident in April, Israeli security forces raided a clinic in the Palestinian neighbourhood of Silwan and arrested a number of doctors under the pretext that it was run by the Palestinian Authority.[33] The clinic provided testing kits to Palestinian inhabitants due to the lack of coverage and treatment in the area. Despite measures imposed to combat the spread of the virus, including restrictions on movement, levels of violence, particularly settler violence, and demolition of Palestinian homes have increased in the past few months. Besides exposing Palestinians to further violence, settler attacks have increased the risk of their exposure to and infection with COVID-19.

III. Collective punishment and the Israeli occupation

24. Collective punishment is an inflamed scar that runs across the entire 53-year-old Israeli occupation of the Palestinian territory. In this time, two million Palestinians in Gaza have endured a comprehensive air, sea and land blockade since 2007, several thousand Palestinian homes have been punitively demolished, extended curfews have paralysed entire towns and regions, the bodies of dead Palestinians have been withheld from their families, and critical civilian supplies – including food, water and utilities – have been denied at various times. Notwithstanding numerous resolutions, reports and reminders critical of its use, Israel continues to rely upon collective punishment as a prominent instrument in its coercive toolbox of population control.

25. A fundamental tenet of any legal system – domestic and international – that respects the rule of law is the principle that the innocent cannot be punished for the crimes of others. Punishment without crime is abhorrent. A corollary of this tenet is that collective punishment of communities or groups of people for offences committed by individuals is absolutely prohibited under modern law. Individual responsibility is the cornerstone of any rights-based legal order, as explained by Hugo Grotius, the seventeenth century Dutch legal philosopher: "No one who is innocent of wrong may be punished for the wrong done by another."[34]

26. Throughout history and in contemporary times, belligerent armies, colonial authorities and occupying powers have commonly employed a spectrum of collective punishment methods against civilian populations hostile to their alien rule.[35] The methods used have included executions of civilians, sustained curfews and closures of towns, food confiscation and starvation, punitive property destruction, the capture of hostages, economic closures on

[31] See https://app.powerbi.com/view?r=eyJrIjoiODJlYWM1YTEtNDAxZS00OTFlLThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGI3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIsImMiOjh9.

[32] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25728&LangID=E.

[33] See www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem.

[34] Stephen C. Neff (ed.), *Hugo Grotius on the Law of War and Peace: Student Edition* (Cambridge University Press, 2012), p. 298.

[35] In response, art. 1, para. 4, of Protocol I Additional to the Geneva Conventions of 1949 has expressly extended the protection of international humanitarian law to armed conflicts involving colonial domination, alien occupation and racist regimes, in relation to people's exercise of their right of self-determination.

civilian populations, the cutting off of power and water supplies, the withholding of medical supplies, collective fines and mass detentions.[36] These punishments are, in the words of the International Committee of the Red Cross (ICRC), "in defiance of the most elementary principles of humanity".[37]

27. The logic of collective punishment has been to project domination in order to subdue a subjugated population by inflicting a steep price for its resistance to alien rule. Punishment has been imposed on civilian populations for practices ranging from having knowledge of fighters and refugees in the vicinity, to offering passive opposition and non-cooperation, to merely being related to, or neighbours of, resistance fighters. Yet, not only are these punitive acts profoundly unjust, they invariably backfire on the military authority, as ICRC stated in its 1958 commentary on the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention):

> Far from achieving the desired effect … such practices, by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance. They strike at guilty and innocent alike. They are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons.[38]

A. International law

28. To protect these principles of humanity and justice, international humanitarian law has expressly forbidden the use of collective punishment against civilian populations under occupation. The Regulations respecting the Laws and Customs of War on Land (the Hague Regulations), of 1907, prohibited the imposition of general penalties on the occupied population.[39] Expanding on this protection, article 33 of the Fourth Geneva Convention provides that:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.[40]

29. This prohibition has been further entrenched by Protocol I Additional to the Geneva Conventions of 1949. Article 75 thereof establishes "fundamental guarantees" in respect of the treatment of protected people under occupation. Among these fundamental guarantees is prohibition of collective punishment, which is "prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents".[41]

30. Some States – such as Israel – have adopted the Fourth Geneva Convention, but have not ratified Protocol I Additional to the Geneva Conventions of 1949. Notwithstanding this, ICRC has stated that the prohibition on collective punishment has become an accepted norm of customary international humanitarian law and, as such, it would be applicable to all States and combatants, and in all situations. Breaching this customary prohibition, according to ICRC, would be a "serious violation" of international humanitarian law.[42]

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[36] See, generally, Cornelia Klocker, *Collective Punishment and Human Rights Law: Addressing Gaps in International Law* (Routledge, 2020); and Shane Darcy, *Collective Responsibility and Accountability Under International Law* (Martinus Nijhoff, 2007).

[37] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/36bd41f14e2b3809c12563cd0042bca9.

[38] Ibid.

[39] Available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6; see art. 50.

[40] See www.refworld.org/docid/3ae6b36d2.html.

[41] See www.refworld.org/docid/3ae6b36b4.html.

[42] Jean-Marie Henckaerts et al., *Customary International Humanitarian Law* (Cambridge University Press, 2005), vol. 1, pp. 372–375, 586–587 and 602–603.

31. The ICRC commentary on the prohibition on collective punishment found in Protocol I Additional to the Geneva Conventions of 1949 establishes that its protection is to be given a large and liberal application. This is consistent with the purpose of international humanitarian law to provide wide protection to civilian populations in a range of vulnerable circumstances occasioned by conflict and alien rule:

> The concept of collective punishment must be understood in the broadest sense: it covers not only legal sanctions but sanctions and harassment of any sort, administrative, by police action or otherwise.[43]

32. The Fourth Geneva Convention does not provide a definition of collective punishment. However, the ICRC commentary of 1958 states that collective punishment is punishment that has been rendered without regard to due process of law and is imposed on persons who themselves have not committed the acts for which they are punished.[44]

33. More recently, the Appeals Chamber of the Special Court for Sierra Leone usefully established the elements of the crime of collective punishment, in 2008, as:

(a) Indiscriminate punishment imposed collectively on persons for omissions or acts for which some or none of them may or may not have been responsible;

(b) The specific intent of the perpetrator to punish collectively.[45]

34. With respect to international criminal law, collective punishment does not appear as part of the definition of "war crimes" set out in the Rome Statute of the International Criminal Court, of 1998. However, both the Statute of the International Criminal Tribunal for Rwanda[46] and the Statute of the Special Court for Sierra Leone[47] included collective punishment as part of their definitions of war crimes. Earlier, in 1991, the International Law Commission had stated that collective punishment should be designated as an "exceptionally serious war crime".[48] Legal scholars have argued that collective punishment has already been established as a war crime in customary international law, and should be formally recognized as such in the Rome Statute.[49]

35. International human rights law does not expressly prohibit collective punishment in any of its treaties or conventions. However, collective punishment likely breaches universally accepted human rights such as equality before and under the law, and the rights to life, dignity, a fair trial, freedom of movement, health, property, liberty and security of person, adequate shelter, and an adequate standard of living.

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[43] Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross, 1987), para. 3055; also available at https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=E46340B132AC1B86C12563CD004367BF.

[44] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/36bd41f14e2b3809c12563cd0042bca9.

[45] *Prosecutor v. Fofana and Kondewa*, Case No. SCSL-04-14-A, Appeals Chamber judgment, Special Court for Sierra Leone, 28 May 2008, para. 224, quoted in Shane Darcy, "The prohibition of collective punishment", Andrew Clapham et al. (eds.), *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, 2018), p. 1168.

[46] See https://legal.un.org/avl/pdf/ha/ictr_EF.pdf, art. 4 (b).

[47] See www.rscsl.org/Documents/scsl-statute.pdf, art. 3 (b).

[48] *Yearbook of the International Law Commission, 1991*, vol. II, Part Two (United Nations publication, Sales No. E.93.V.9 (Part 2)), art. 22, pp. 104–105.

[49] Shane Darcy, *Collective Responsibility and Accountability Under International Law*; and Elvina Pothelet, "The ICC and Israel: prosecuting the punitive demolition of Palestinian homes", *Opinio Juris*, 22 March 2018.

B. Collective punishment in the Occupied Palestinian Territory

36. Over the past 25 years, the Security Council,[50] the General Assembly,[51] ICRC[52] and Palestinian,[53] Israeli[54] and international human rights organizations[55] have criticized Israel, the occupying Power, for its recurrent use of collective punishment against the protected Palestinian people. Former Secretaries-General of the United Nations Kofi Annan[56] and Ban Ki-moon[57] both deplored the practice by Israel of collective punishment, while in office.

37. Subsequently, important United Nations reports on the human rights situation in the Occupied Palestinian Territory have drawn attention to the ongoing use by Israel of collective punishment. In 2009, the United Nations Fact-Finding Mission on the Gaza Conflict held that the conditions of life in Gaza, resulting from the "deliberate actions" of the Israeli armed forces during the 2008–2009 conflict and the "declared policies" of the Government of Israel towards Gaza "cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip".[58] In 2016, the Committee against Torture stated that punitive home demolitions constituted a breach of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and requested Israel to cease the practice.[59]

C. Punitive home demolitions

38. Since the occupation began in 1967, Israel has punitively demolished or sealed approximately 2,000 Palestinian homes in the occupied territories.[60] These targeted homes have included not only dwellings owned by a purported perpetrator of a crime, but also homes where he or she lived with his or her immediate family or other relatives and/or where the family home concerned was rented from a landlord. These demolitions proceeded even though the families or owners were not proved to have played a role in the alleged offence, having never been charged, let alone convicted. In the vast majority of cases, the home was not involved in the commission of the purported act.

39. The deliberate destruction of a home for punitive purposes has a shattering impact upon the families living there. The home represents their shelter, the sanctuary for their private lives, their most intimate memories, their communal lives together and their multi-generational traditions. Lost is the primary foundation of family wealth, as well as many essential belongings ranging from beds and kitchenware to heirlooms and photographs. Abruptly, they must now live in tents or be lodged by relatives. In the aftermath, the family is invariably humiliated, destitute, uprooted, embittered, and in some cases, vengeful. Often, the perpetrator of the offence does not directly suffer, either because he or she is dead, or has escaped or has been sentenced to a long term in prison.[61]

40. Israeli law invests extensive authority in the Military Commander of the Israel Defense Forces to order the destruction of any homes or properties in the occupied territory where Palestinian individuals who have committed acts of resistance or terror live or have

[50] See resolution 1544 (2004).
[51] See resolution 58/99.
[52] See www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm.
[53] See www.alhaq.org/publications/8083.html.
[54] See www.btselem.org/razing/collective_punishment.
[55] See www.hrw.org/report/1996/07/01/israels-closure-west-bank-and-gaza-strip.
[56] See https://reliefweb.int/report/israel/israeli-destruction-buildings-gaza-illegal-annan-and-un-envoy-say.
[57] See https://nhrc-qa.org/en/un-says-israel-collective-punishment-against-palestinians-in-gaza-un-acceptable/.
[58] A/64/490, para. 1331.
[59] CAT/C/ISR/CO/5, para. 41.
[60] See www.btselem.org/punitive_demolitions/statistics; Shane Darcy, "Israel's punitive house demolition policy" (Al-Haq, 2003); and Dan Simon, "The demolition of homes in the Israeli occupied territories", *Yale Journal of International Law*, vol. 19, issue 1 (1994).
[61] Society of St. Yves, *Everyone Pays the Price: Case Study of Jerusalem* (2017); and Mordechai Kremnitzer and Lina Saba-Habesch, "House demolitions", *Laws*, vol. 4 (2015), pp. 216–228.

lived, or where their families live. The legal authority of the Military Commander is found in article 119 of the Defense (Emergency) Regulations 1945,[62] which permits the confiscation and destruction of houses where a security offence had taken place or where a person who has committed a security offence resides. The Military Commander's orders are subject to judicial review by the Supreme Court of Israel, but on a rather lenient standard which only infrequently forestalls the demolition order.

41. In addition to the absolute prohibition against collective punishment in article 33 of the Fourth Geneva Convention, article 53 of the same Convention forbids:

> Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons … except where such destruction is rendered absolutely necessary by military operations.
>
> According to ICRC, this protection is to be given a "very wide" meaning.[63]

42. In 1979, the Supreme Court of Israel, sitting as the High Court of Justice, issued its first judicial review ruling of the Israel Defense Forces Military Commander's authority to punitively demolish or seal a house.[64] In this and subsequent rulings in the 1980s, the Court adopted three principles that would shape much of its subsequent case law on this issue. First, it dismissed the arguments that article 119 violated the Fourth Geneva Convention, on the basis that "local law" preceded, and therefore trumped, the laws of occupation. Second, it ruled that punitive home demolition did not constitute collective punishment. And third, it uncritically endorsed the military's reasoning that the demolitions were a "punitive measure" which created an effective "deterrence against the commission of similar acts".[65]

43. In the ensuing four decades, the High Court has issued more than 100 rulings in which it has given its full backing to the practice. According to Michael Sfard, an Israeli human rights lawyer, the Court's subsequent case law "greatly expanded the power to demolish". Throughout this time, the Court has never squarely addressed, on the merits, the argument that article 119 violates the Fourth Geneva Convention's unconditional prohibition of collective punishment.[66]

44. In 2005, the Israel Defense Forces ended the use of punitive home demolitions, following a commissioned internal report which found that the deterrence policy was ineffectual. According to *Ha'aretz*, the Shani report concluded:

> That no effective deterrence was proven, except in a few cases, and that the damage to Israel caused by the demolitions was greater than the benefits because the deterrence, limited if at all, paled in comparison to the hatred and hostility towards Israel that the demolitions provoked among the Palestinians.[67]

45. However, in 2008, following further attacks on Israeli soldiers and civilians, the Israel Defense Forces resumed its policy of punitive home demolitions. Shortly afterwards, the Israeli High Court ruled that, with a change of circumstances, this resumption was justified, because "there is a need to strengthen the deterrence measures, including demolitions of terrorists' houses and intensifying the sanctions against the terrorists' families".[68]

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[62] Palestine Gazette, No. 1442, Supplement No. 2, p. 1089 (27 September 1945), as amended.

[63] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6.

[64] High Court of Justice, *Sakhwil et al. v. Commander of the Judea and Samaria Region*, Case No. 434/79, 34 (1) Piksei Din 464.

[65] HaMoked, "The punitive demolition of homes: timeline", available at www.hamoked.org/files/2019/1663820_eng.pdf.

[66] Michael Sfard, in Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT* (Cambridge University Press, 2018), chap. H.

[67] See www.haaretz.com/1.4749075.

[68] High Court of Justice, *Abu Dheim et al v. GOC Home Front Commander*, Case No. 9353/08 (2009), quoted in Cornelia Klocker, *Collective Punishment and Human Rights Law: Addressing Gaps in International Law*.

46. In April 2014, an Israeli police commander was killed in a premeditated shooting while driving the family car in the West Bank.[69] His wife was wounded. Four children were in the car, but were apparently not harmed in the attack. In May, Israeli security forces arrested Ziad ‘Awwad and his son and alleged that they had committed the attack. In June, the Military Commander of the West Bank notified the ‘Awwad family that he intended to demolish the family home, pursuant to article 119. The ‘Awwad family rented their home from a relative, Muhammad ‘Awawdeh. Mr. ‘Awawdeh lived with his wife and five children in one apartment, and Mr. ‘Awwad lived with his wife, Hanan, and their five children, in the second apartment, all on the same floor. Hanan ‘Awwad and Mr. ‘Awawdeh sought a judicial review of the Military Commander’s order before the High Court, arguing that they had been involved neither in the attack, nor in any terror activity. Three Israeli human rights organizations intervened to join their petition against the demolition order.

47. The Israeli High Court in *‘Awawdeh* dismissed the petition. In allowing the demolition of the ‘Awwad family’s apartment to proceed, the High Court endorsed its prevailing legal approach towards collective punishment. It reaffirmed its long-standing precedent that the purpose of home demolitions was not to punish, but rather to deter. It also would not question the core position of the Israel Defense Forces regarding deterrence; in its eyes, this was a military judgement, not a judicial consideration. The High Court ruled that the demolition could proceed, even though the purported perpetrators had not yet been found criminally liable; the low standard of administrative evidence employed by the Military Commander was sufficient to satisfy the Court. The argument that the alleged assailant only rented the dwelling, and the destruction of his apartment would adversely affect the value of the landlord’s property, was dismissed. Similarly, the Court stated that the detrimental impact upon the remaining members of the ‘Awwad family – Hanan and her four other children would be left homeless – was an unpersuasive side issue.[70]

48. Following *‘Awawdeh*, HaMoked – an Israeli human rights organization – initiated a legal petition to the High Court, challenging the underlying legal basis of punitive home demolitions. The organization argued that the policy was incompatible with international humanitarian law and international human rights law, that it may constitute a war crime, and that it also breached the primary rule under Israeli law that individuals should not be punished for acts that they did not commit.

49. The High Court disagreed. In its December 2014 ruling in *Hamoked*,[71] it reaffirmed its 35 years of judicial precedents. In doing so, it distinguished between proportionate and disproportionate home demolitions, thereby ignoring the unconditional prohibition against collective punishment. Regarding international law, the Court offered an impoverished and selective reading of its application to the Occupied Palestinian Territory, holding that article 119 remained a valid measure in the deterrence toolbox of the Israel Defense Forces and was actually consistent with the occupying Power’s duty to maintain public order and safety, in accordance with the Hague Regulations. In its view, the Geneva Conventions of 1949 were outdated and unable to address the challenges posed by contemporary terrorism.[72] Throughout, its reasoning was heavy on security and light on fundamental rights. Mr. Sfard has criticized the Court’s position that, because article 119 predates the Geneva Conventions, it has primacy:

> From a legal standpoint, this argument is extremely weak: first, international law trumps local law, certainly in a regime of occupation that draws its power from international law; second, the laws of occupation confirm that local laws need not be obeyed if they contradict international law.[73]

50. In recent years, the High Court has on occasion ruled against the Military Commander’s order for a punitive home demolition, but always on technical or

[69] High Court of Justice, *‘Awawdeh v. Military Commander of the West Bank*, Case No. 4597/14 (2014), available at www.hamoked.org/images/1158437_eng.pdf.

[70] Ibid.; see paras. 19–28 for the High Court’s legal reasoning.

[71] High Court of Justice, *HaMoked v. Minister of Defense*, Case No. 8091/14 (2014), available at www.hamoked.org/files/2014/1159007_eng(1).pdf.

[72] Ibid., paras. 22–25.

[73] Michael Sfard, *The Wall and the Gate* (New York, Metropolitan Books, 2018), p. 399.

proportionality grounds. It has revoked orders where the assailant had lived in a dwelling only for a short period, where the Military Commander sought to destroy a home 11 months after the issuance of the order, where the perpetrator had not lived with his family for three years, where several youths had played only a small role in rock throwing, and, most recently, where the harm to innocent families outweighed the deterrence factor.[74] Nonetheless, between July 2014 and May 2020, at least 68 homes were demolished or sealed (many with the approval of the High Court), while only eight orders were revoked by the Court.[75]

51. Punitive demolitions have never been used against the homes of Israeli Jewish civilians who have committed "nationalist" crimes similar to those for which Palestinian homes have been destroyed.[76] This distinction has been called "outrageously racist" by Ami Ayalon, a former director of the Israeli Security Agency (Shin Bet), who added that no homes – Palestinian or Israeli – should be punitively destroyed.[77]

52. The High Court's endorsement of the core belief of the Israel Defense Forces in deterrence has been widely criticized. Mr. Ayalon has stated that punitive home demolitions are not only "patently immoral", but also "the likelihood that a policy of demolishing their families' homes actually serves as a deterrent is quite low".[78] Professors Amichai Cohen and Yuval Shany have pointed out that "there is very little empirical proof that the house demolitions actually deter terrorists; to the contrary … such practice is likely to create an atmosphere of hate that would breed the next generation of terrorists".[79]

D. Closure of Gaza

53. In June 2007, Israel initiated a comprehensive air, sea and land closure of Gaza, which it maintains to this day. This followed victory by Hamas in the 2006 Palestinian elections, the imposition of international sanctions against the Hamas-led Palestinian Authority and the subsequent political split between Fatah and Hamas, each with nominal control over a fragmented segment of the Palestinian territory.[80] Subsequently, Gaza has suffered through three devastating rounds of conflict – in 2008–2009, 2012 and 2014, as well as sustained protests at the Gaza frontier in 2018–2019, all of which resulted in significant numbers of civilian deaths and injuries and in widespread property destruction.

54. The impact of the 13-year closure by Israel has been to turn Gaza from a low-income society with modest but growing export ties to the regional and international economy to an impoverished ghetto with a decimated economy and a collapsing social service system. In 2012, the United Nations wondered whether Gaza, given its trajectory, would still be liveable by 2020.[81] In a follow-up report in 2017, the United Nations found that life in Gaza was deteriorating even faster than anticipated.[82] In 2020, the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority observed that "the immense suffering of the population" in Gaza had continued.[83]

55. The reason stated by Israel for imposing the closure on Gaza, and for designating the Strip as a "hostile territory" and an "enemy entity", was Hamas's history of deliberating or

[74] HaMoked, "The punitive demolition of homes: timeline".

[75] Ibid.

[76] See www.timesofisrael.com/defense-ministry-no-need-to-demolish-homes-of-abu-khdeir-killers/.

[77] See www.haaretz.com/opinion/.premium-no-one-s-house-should-be-demolished-1.5422912.

[78] Ibid.

[79] See www.lawfareblog.com/house-demolition-israeli-supreme-court-recent-developments. See also Guy Harpaz, "Being unfaithful to one's own principles", *Israeli Law Review*, vol. 47, No. 3 (2014), p. 401.

[80] Tareq Baconi, *Hamas Contained: The Rise and Pacification of Palestinian Resistance* (Stanford University Press, 2018); and Sara Roy, *The Gaza Strip*, 3rd ed. (Institute for Palestine Studies, 2016).

[81] See www.un.org/unispal/document/auto-insert-195081/.

[82] Available from www.un.org/unispal/document/gaza-ten-years-later-un-country-team-in-the-occupied-palestinian-territory-report/.

[83] See https://reliefweb.int/sites/reliefweb.int/files/resources/UNSCO%20AHLC%20Paper%20-%20June%202020.pdf.

indiscriminately launching rockets towards civilian centres in Israel and initiating suicide bombings aimed at Israeli civilians. Human rights organizations have verified these acts and condemned their illegality.[84] The Special Rapporteur observes that such practices violate a fundamental rule of international humanitarian law prohibiting the targeting of civilians and, as such, they would constitute a war crime.[85]

56. However, in seeking to contain Hamas, Israel has chosen to target the population of Gaza through harsh economic and social measures as its available target to weaken support for Hamas's rule. Among other things, this strategic calculus is reflected in an internal report of the Government of Israel released through court litigation in 2012 which detailed how many calories Palestinians in Gaza would need to eat to avoid malnutrition.[86] The United Nations Fact-Finding Mission on the Gaza Conflict concluded that the declared policies of the Government of Israel with regard to the Gaza Strip "before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip".[87]

57. An important additional purpose behind the closure by Israel of Gaza is to accelerate the separation of Gaza from the West Bank, just as Israel actively separates the West Bank from East Jerusalem. Creating and entrenching the fragmentation of these territories – beyond sinking the chances for creating a viable Palestinian economy as well as blocking Palestinians from building the larger collective and political bonds with each other that nourish a functioning society – is designed to prevent the independence of the State of Palestine.[88] As the Prime Minister of Israel, Benjamin Netanyahu, stated in 2019, in response to criticisms about his decision to allow Qatar to fund construction and utility projects in Gaza: "Whoever is against a Palestinian State should be for transferring the funds to Gaza, because maintaining a separation between the Palestinian Authority in the West Bank and Hamas in Gaza helps prevent the establishment of a Palestinian State."[89]

58. In 2005, Israel evacuated its military and settlers from Gaza. In the process, it declared that it would no longer owe any obligations to the Palestinians of Gaza.[90] The Special Rapporteur agrees with the overwhelming consensus in the international community that Gaza remains occupied, the Fourth Geneva Convention applies, and Israel retains its obligations towards Gaza as the occupying Power commensurate with its degree of control.[91] Israel exercises comprehensive control over Gaza's land crossings (except for the Rafah crossing with Egypt) and over its waters and airspace, it controls the Palestinian population registry (which allows it to determine who is a resident of Gaza), it controls taxes and customs duties, it supplies much of Gaza's electricity and fuel, its military re-enters at will, it has created substantial no-go zones on the Gaza side of the frontier, and it controls who and what enters and leaves Gaza. In the Special Rapporteur's view, this meets the "effective control" test under international humanitarian law, establishing that Israel remains the occupying Power.[92]

59. In 2009, the Security Council emphasized "the need to ensure sustained and regular flow of goods and people through the Gaza crossings".[93] In 2010, ICRC stated that the closure by Israel of Gaza constituted a collective punishment imposed in clear violation of the

[84] See www.hrw.org/report/2002/10/15/erased-moment/suicide-bombing-attacks-against-israeli-civilians and www.amnesty.org/download/Documents/100000/mde150872004en.pdf.

[85] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD0051E1A0, art. 85.

[86] See www.gisha.org/UserFiles/File/HiddenMessages/DefenseMinistryDocumentsRevealedFOIAPetition.pdf.

[87] A/HRC/12/48, para. 1934.

[88] See https://gisha.org/publication/11312.

[89] See www.jpost.com/arab-israeli-conflict/netanyahu-money-to-hamas-part-of-strategy-to-keep-palestinians-divided-583082.

[90] See https://mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/revised%20disengagement%20plan%206-june-2004.aspx.

[91] Security Council resolution 1860 (2009); General Assembly resolution 74/11; and A/HRC/12/48, paras. 273–279.

[92] See https://ihl-databases.icrc.org/ihl/WebART/195-200052?OpenDocument.

[93] Security Council resolution 1860 (2009).

obligations of Israel under international humanitarian law. It called for the immediate lifting of the closure.[94] In 2016, during his last visit to Gaza, the Secretary-General, Ban Ki-moon, said: "The closure of Gaza suffocates its people, stifles its economy and impedes reconstruction efforts. It is a collective punishment for which there must be accountability."[95] In its 2019 report, the United Nations commission of inquiry stated that "the blockade has had a devastating impact on Gaza's socioeconomic situation and on the human rights of people living there", and recommended the immediate lifting of the blockade.[96] Ending the closure has also been a demand of the European Union[97] and the European Parliament.[98]

60. The Special Rapporteur finds that the actions of Israel towards the protected population of Gaza amount to collective punishment under international law. The two million Palestinians of Gaza are not responsible for the deeds of Hamas and other militant groups, yet they have endured a substantial share of the punishment, intentionally so. Israel appears content to allow for the delivery of basic humanitarian requirements to Gaza (provided largely through international aid), but to then turn the spigot of any additional modest assistance or economy activity off and on, depending upon the circumstances. Israel is reminded that it is required under the Fourth Geneva Convention to ensure, "to the fullest extent of the means available to it", that food and medical supplies are provided to the population.[99]

61. The extreme hardships imposed on the Palestinians in Gaza by the closure can be measured in three areas. Firstly, economically, Gaza continues to steadily de-develop. Its gross domestic product per capita has declined by 30 per cent from $1,880 in 2012 to $1,410 in 2019–2020. Its unemployment rate increased from 30.8 per cent in 2012 to 46 per cent in 2019, among the highest in the world. The percentage of energy demand met has tumbled from 60 per cent in 2012 to 41.7 per cent in 2019–2020.[100] Virtually the only economic pulse that Gaza still has is the result of external aid and remittance transfers, which made up close to 100 per cent of its economy in 2014, and have been declining in volume since 2017.

62. Israel unilaterally imposed restrictions on the import of dual-use goods into the Palestinian territory since 1976 for stated security reasons. In recent years, it has significantly broadened its application of this policy. In 2018, there were 56 restricted items – including fertilizers, pesticides and chemicals – applied to both Gaza and the West Bank, but an additional 62 items – such as reinforced steel, cement, aggregates, insulating panels and timber for furniture manufacturing – applied to Gaza only.[101] The World Bank has deemed the dual-use approval system of Israel to be opaque and cumbersome, noting that "the fact that the items are added to and deleted from the lists in response to Palestinian political and security changes makes these lists function more as economic sanctions than as a necessary security process".[102] Gaza's economy, the World Bank has said, will never revive without a significant easing of the restrictions on the movement of goods and people.[103]

63. Fisheries and agriculture in Gaza – both of which were once thriving labour-intensive industries – are prime examples of the severity of the Israeli closure regime. The Oslo Accords entitled Palestinians to fish within 20 nautical miles of the shore, but the reality over much of the past 10 years has been a constricted fishing zone of 3 to 6 nautical miles. The

94 See www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm.

95 See www.un.org/sg/en/content/sg/press-encounter/2016-06-28/secretary-generals-remarks-press-encounter.

96 A/HRC/40/CRP.2, paras. 193 and 797.

97 See https://eeas.europa.eu/headquarters/headquarters-homepage/42323/statement-hrvp-federica-mogherini-following-yesterdays-events-gaza_en.

98 See https://www.europarl.europa.eu/doceo/document/TA-8-2018-0176_EN.html?redirect.

99 Fourth Geneva Convention, arts. 55–56.

100 See https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united, table 1. The GDP per capita figures are in constant 2015 dollars.

101 See http://documents1.worldbank.org/curated/en/942481555340123420/pdf/Economic-Monitoring-Report-to-the-Ad-Hoc-Liaison-Committee.pdf.

102 World Bank Group, "Unlocking the trade potential of the Palestinian economy", Policy Notes (January 2017), p. 29, available from https://elibrary.worldbank.org/doi/abs/10.1596/29057.

103 See http://documents1.worldbank.org/curated/en/413851537281565349/pdf/129986-REVISED-World-Bank-Sept-2018-AHLC-Report-final.pdf.

extent of the allowable fishing zone off the coast of Gaza depends entirely on the reaction by Israel to perceived security threats from Hamas and other militant groups, with no apparent relationship to the commercial activities of Palestinian fishers. In 2019, Israel reduced the size of the fishing zone nine times; this included closing it completely four times. Since 2010, there have been more than 1,300 incidents of the Israeli navy using live ammunition, which have involved more than 100 injuries, 5 deaths, and 250 confiscations of fishing boats and other equipment. In 2020 to date alone, there have been at least 105 incidents of naval fire at Gazan fishing boats.[104]

64. With regard to agriculture, Israel has imposed a high-risk restricted zone that extends 300 to 500 metres from the perimeter fence surrounding Gaza. Much of this restricted zone is high-value fertile soil, which deprives Gaza of approximately 35 per cent of its agricultural lands. As a result, farmers and investors are reluctant to invest in greenhouses, livestock production, irrigation systems and high-value crops in areas less than 500 metres from the perimeter fence.[105]

65. Gaza's social sector is the second prominent area to be adversely affected by the Israeli closure policy. Gaza's population has increased by 25 per cent since 2012, to two million people, but its living standards have sharply declined. The Special Coordinator for the Middle East Peace Process has stated that "Gaza in 2020 does not provide living conditions that meet international standards of human rights, including the right to development."[106] The number of Gazans living below the poverty line, as of 2017, stood at 53 per cent (up from 39 per cent in 2011), and the World Bank predicts that this will rise to 64 per cent.[107] The food insecurity rate increased from 44 per cent of the population in 2012 to 62 per cent in 2018.[108]

66. With very limited exceptions, Palestinians in Gaza are not permitted to exit the Gaza Strip through Israel. The only exceptions are business traders, patients requiring medical treatment outside Gaza, staff of international organizations and special humanitarian cases. (Indeed, since the arrival of COVID-19 in March 2020, travel to and from Gaza has been virtually non-existent.) Gaza's airport and commercial seaport were destroyed by Israel and have not been permitted to be restored. In 2004, a monthly average of 43,500 Palestinians exited the Israeli-controlled Erez crossing; by 2018, the monthly average had dropped to 9,200.[109] Israel regularly closes the Erez crossing in response to actions by Hamas or other militant groups, which often have no relationship to the needs of the Palestinian population in Gaza to travel.

67. Gaza imports approximately 85 per cent of its electricity from Israel. Throughout most of the period from 2017 to 2019, the supply of power to Gaza was cut to 4–5 hours a day per household. This resulted in significant challenges for the refrigeration and cooking of food, the use of technology and managing home life. With the recent increase in funds from Qatar, energy supplies in Gaza have increased to around 11–13 hours daily.[110] Punitive fuel cuts made by Israel in response to security challenges periodically interrupt medical care, the provision of clean water and electricity to homes, and sewage treatment, for the entire population, with no valid security rationale.[111]

[104] Information provided by Gisha and Al-Mezan.

[105] See www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip.

[106] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[107] See http://documents1.worldbank.org/curated/en/844141590600764047/pdf/Economic-Monitoring-Report-to-the-Ad-Hoc-Liaison-Committee.pdf.

[108] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[109] See www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid.

[110] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[111] See https://gisha.org/updates/10159.

68. The supply of drinkable water in Gaza has reached a desperate stage: only 10 per cent of Palestinians in Gaza have access to safe drinking water through the public network (down from 98.3 per cent in 2000), and more than 96 per cent of the Gaza aquifer – the only natural source of drinking water in the Strip – is deemed unfit for human consumption because of seawater and sewage contamination.[112] This requires much of the population to buy trucked water, which is of varied quality and can cost 15 to 20 times as much as water from the public network.[113] The inability to treat waste water – due in large part to the prolonged power cuts as well as to long delays by Israel in allowing necessary construction parts to enter Gaza to either repair existing or build new waste treatment plants – has resulted in the prolonged dumping of more than 105 million cubic litres of untreated sewage per day into the Mediterranean Sea. All of these trends are vectors for disease and poor living standards.

69. And thirdly, Gaza's health-care system is severely depleted and has been brought close to collapse by the closure and escalating conflicts, notwithstanding the dedication of its professionals. In June 2020, there was less than a one-month supply of 232 items (45 per cent of items) on the essential drugs list at Gaza's Central Drugs Store, and 219 items (42 per cent) were totally depleted.[114] Some essential medical equipment – including X-ray scanners, carbon fiber components and epoxy resins used to treat damaged limbs – are classified as dual-use items by Israel, which either prevents or restricts their import.[115] The intermittent and unreliable supply of electricity has posed significant challenges to the delivery of critical care in intensive care units, neonatal units, dialysis units and trauma and emergency departments.[116] The extraordinary volume of injuries, many of them traumatic, arising from the Israeli military's shootings during the 2018–2019 Great March of Return – with more than 19,000 hospitalizations, almost 8,000 gunshot injuries (many causing severe permanent injuries requiring long-term therapy and care), and widespread mental health consequences – have overwhelmed the health-care system.[117]

70. All patients in Gaza are required to obtain travel permits from the Government of Israel to access care in Palestinian hospitals in East Jerusalem and the West Bank, or elsewhere, because of the diminished capacity of the Gaza health sector, including shortages or a lack of specialist services, equipment, medicines and expertise. There are usually more than 2,000 applications for health exit permits from Gaza made each month to Israeli authorities for approval, a third of which are for cancer patients. Between January and May 2020, a third of the applications were unsuccessful.[118]

71. Wages for health professionals have been detrimentally affected by the ongoing closure, the intra-Palestinian political division, and limitations on revenue-raising for public authorities. Ministry of Health staff have been receiving less than half of their contracted salaries, which has contributed to many of them seeking new postings outside of Gaza. More than 200 doctors left in 2018 alone.[119] On a per capita basis, the number of doctors, nurses and hospital beds per capita has deteriorated since 2012.[120]

[112] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

[113] See http://healthclusteropt.org/admin/file_manager/uploads/files/shares/Documents/humanitarian_needs_overview_2019.pdf.

[114] World Health Organization, Occupied Palestinian Territory Health Cluster Bulletin, 1 May–30 June 2020.

[115] Information provided by Medical Aid for Palestinians.

[116] TD/B/EX(68)/4, para. 40.

[117] See http://healthclusteropt.org/admin/file_manager/uploads/files/shares/Documents/humanitarian_needs_overview_2019.pdf.

[118] See www.emro.who.int/images/stories/palestine/documents/WHO-PatientVoices_2_Final.pdf?ua=1&ua=1.

[119] See TD/B/EX(68)/4.

[120] Available from https://reliefweb.int/report/occupied-palestinian-territory/paper-ad-hoc-liaison-committee-2-june-2020-office-united.

E. Withholding of bodies

72. Israel has regularly refused to release the bodies of Palestinian militants and civilians back to their families for burial and farewell. Instead, it has retained the bodies and either stored them or buried them in undisclosed cemeteries. B'Tselem has stated that, at the end of October 2019, Israel was withholding the bodies of 52 Palestinians.[121] Israel retains the bodies to use as bargaining chips for the release of bodies of Israelis held by Palestinian militant groups, primarily Hamas. The then Israeli Minister of Defense issued an order in 2016, following a gun attack in Tel Aviv, that the bodies of attackers were not to be returned "to deter potential attackers and their families".[122] A former Israeli Minister of Justice has recently criticized the policy, stating that "refusing to hand over bodies motivates similar conduct by the other side".[123]

73. International law stipulates that the remains of dead combatants should be treated with respect and dignity. The Geneva Conventions provide that the military has an obligation to facilitate the repatriation of the bodies and the remains of the dead.[124] In particular, rule 114 of the Rules of Customary International Humanitarian Law, developed by ICRC, states:

> Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon request of their next of kin.[125]

74. In 2016, the Secretary-General of the United Nations, Ban Ki-moon, observed that the withholding of bodies amounted to collective punishment and was also inconsistent with the obligations of Israel as an occupying Power under the Fourth Geneva Convention.[126]

75. The legal basis for withholding the bodies is in article 133 of the Defense (Emergency) Regulations,[127] which authorizes the Military Commander to retain bodies of dead combatants. In December 2017, the High Court of Justice held, in a 2 to 1 vote, that the bargaining-chips policy was unlawful, as article 133 did not specifically authorize the Commander to withhold bodies.[128] The Court noted that, besides Israel, only the Russian Federation withheld the bodies of dead combatants, and that this practice had been deemed illegal by the European Court of Human Rights.[129]

76. However, the High Court subsequently decided to review the policy, sitting as a seven-judge panel. In September 2019, in *Alayan*, the Court reversed the 2017 precedent and endorsed the practice of withholding bodies, by a 4-3 majority. The Chief Justice, Esther Hayut, wrote that the objective purpose of the Defense (Emergency) Regulations was to offer the State of Israel effective tools to fight terror and to protect State security. While the withholding of bodies violated fundamental rights such as human dignity and family life, she found that this was outweighed by the public interest to reclaim the bodies of dead Israeli soldiers.[130] According to B'Tselem, the Court's ruling "defies the basic tenet of judicial interpretation, which requires choosing the option that is least injurious to human rights and to the rule of law". B'Tselem added that the circumstances of occupation "warrant enhanced

[121] See https://www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips.

[122] See www.haaretz.com/israel-news/lieberman-seeks-to-fast-track-demolition-of-terrorists-homes-1.5393808.

[123] See www.al-monitor.com/pulse/originals/2019/11/israel-palestinians-hamas-islamic-jihad-bodies-exchange-deal.html.

[124] First Geneva Convention, art. 17; Third Geneva Convention, art. 120; Fourth Geneva Convention, art. 130; and Protocol I Additional to the Geneva Conventions of 1949, art. 34.

[125] See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule114.

[126] A/71/364, para. 25. The Secretary-General referred to arts. 27 and 30 of the Fourth Geneva Convention.

[127] Palestine Gazette, No. 1442, Supplement No. 2, p. 1093 (27 September 1945), as amended.

[128] See www.jlac.ps/details.php?id=nwjkfoa1502y4xxtgq2tv.

[129] *Sabanchiyeva v. Russia* (application No. 38450/05), judgment of 6 June 2013, available at http://hudoc.echr.coe.int/eng?i=001-120070.

[130] See www.jlac.ps/details.php?id=nwjkfoa1502y4xxtgq2tv.

protection for the population, yet the Court uses its powers of judicial review to enhance the power of the State, including its use of draconian measures".[131]

F. Curfews and restrictions on freedom of movement

77. Freedom of movement is a fundamental human right, enshrined in article 13 of the Universal Declaration of Human Rights. It is a basic component of liberty, and is intrinsically attached to the rights to equality and human dignity. Article 27 of the Fourth Geneva Convention guarantees that protected persons under occupation are to have their individual rights protected, subject to the occupying Power's duty to ensure public order and safety under article 43 of the Hague Regulations. As with all human rights, this right is to be applied broadly and generously, and exceptions are to be interpreted narrowly.

78. Throughout the occupation, Israel has controlled and restricted movement through the imposition of both short- and long-term curfews on Palestinian communities, through an increasingly sophisticated system of physical barriers, checkpoints and by-passes, and through comprehensive administrative permit requirements. Israel justifies these measures as necessary to maintain security, both in order to protect its 250 illegal settlements in the West Bank and to control a restive and defiant population. Within the West Bank, it presently employs more than 590 fixed permanent obstacles (such as checkpoints, earth mounds and road gates) to manage or obstruct movement by Palestinians, as well as making frequent use of flying or temporary checkpoints. While Israel has recently enhanced its system of movement control to lessen the degree of disruption in some areas of the West Bank, its current restrictions remain in breach of international law and they remain particularly obtrusive in Hebron and in regions affected by the Wall.[132]

79. The principal obstacle to movement within the West Bank, including East Jerusalem, is the Wall, 85 per cent of which is located within the occupied territory, and which has been deemed to be illegal by the International Court of Justice.[133] The Wall weaves through and divides Palestinian communities and cities, farmlands and properties. It presents a particular challenge to Palestinian farmers who live on one side of the Wall and whose productive lands are on the other side. They, their families and their agricultural workers must obtain special permits from Israel to pass through the gates and checkpoints to farm. The United Nations has reported that recent years have witnessed three disturbing trends: a significant decline in the issuance of these permits, a reduction in the period of time that a farmer can tend the land, and fewer occasions when the gates and checkpoints at the Wall are open for agricultural access.[134]

IV. Conclusions

80. Collective punishment is a tool of control and domination that is antithetical to the modern rule of law. It defies the foundational legal principle that only the guilty should incur penalties for their actions, after having been found responsible through a fair process. Prohibitions of collective punishment are found in virtually all legal systems across the globe. The deeds of a few cannot, under any circumstances, justify the punishment of the innocent, even in a conflict zone, even under occupation, even during times of popular discontent and security challenges. As is the case with torture, there are no permissible exceptions in law to the use of collective punishment. And, as is the case with torture, the use of collective punishment flouts law and morality, dignity and justice, and stains all those who practise it.

[131] See www.btselem.org/routine_founded_on_violence/20191022_hcj_greenlights_holding_palestinian_bodies_as_bargaining_chips.

[132] See www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank-palestinians.

[133] See www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

[134] See www.ochaopt.org/content/longstanding-access-restrictions-continue-undermine-living-conditions-west-bank-palestinians.

81. An occupying Power has a duty to maintain order and public safety, and is entitled to punish individuals who breach enforceable laws. But these practices, these laws and these procedures must be consistent with the elevated standards of international human rights law and international humanitarian law. Accordingly, an occupation must be administered through a rights-based approach, subject only to actual and genuine security requirements. And behind these rights-centred responsibilities is an indelible lesson from history: an occupying Power that ignores its solemn obligations towards the protected population or disregards its binding duty to end the occupation as soon as reasonably possible only fertilizes popular resistance and rebellion. And the more that it employs unjust and illegal measures – such as collective punishment – to sustain its alien rule, the greater the defiance that it sows.

V. Recommendations

82. **The Special Rapporteur recommends that the Government of Israel comply with international law and the international consensus by bringing a full and speedy end to its 53-year-old occupation of the Palestinian territory. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

(a) **Renounce the annexation of East Jerusalem and the plans to annex further parts of the West Bank;**

(b) **End the settlement enterprise, in full compliance with United Nations resolutions and international law including Security Council resolution 2334 (2016);**

(c) **Negotiate in good faith with the State of Palestine to realize Palestinian self-determination in accordance with international law;**

(d) **Ensure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association and to freedom of expression, including human rights defenders;**

(e) **Ensure full accountability among its military and security forces for all violations of human rights and humanitarian obligations;**

(f) **Ensure that the use of force by its military and security forces when encountering demonstrations and protests strictly observes the requirements of international law, including limiting the use of lethal weapons to circumstances involving an imminent threat of serious injury or death**;

(g) **End all measures amounting to collective punishment, including putting an end to: the closure of Gaza, all restrictions on freedom of movement across the Occupied Palestinian Territory, the punitive demolitions of homes, punitive residency revocations, the cutting of benefits, the punitive closures of towns, and all delays in returning bodies for burial.**

83. **The Special Rapporteur recommends that the international community adopt the recommendation of the former United Nations High Commissioner for Human Rights, issued in June 2017, in which the General Assembly was asked to make use of its powers under Article 96 (a) of the Charter of the United Nations to seek an advisory opinion from the International Court of Justice on the legal obligation of Israel to end the occupation and the international community's legal obligations and powers to ensure accountability and bring an end to impunity.**

84. **In line with the international legal obligations respecting State responsibility, the international community should take all measures, including countermeasures and sanctions, necessary to ensure the respect by Israel of its duty under international law to end the occupation.**

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Human rights situation in Palestine and other occupied Arab territories

Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on the legal status of the settlements

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 examines the current human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a particular focus on the legal status of the settlements according to the Rome Statute of the International Criminal Court.

Other aspects covered in the report include the recent escalation of violence in Gaza and the West Bank, including East Jerusalem, the situation in Sheikh Jarrah and forced displacement, the impact of forced displacement and demolitions on children and the accountability of third States.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, pursuant to Commission on Human Rights resolution 1993/2 A and Council resolution 5/1.

2. The Special Rapporteur would like to note that he has yet to be granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur notes again that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground. He regrets the lack of opportunity to meet with many human rights groups, owing both to his exclusion from the territory, to difficulties with travel, the barriers put in place by the coronavirus disease (COVID-19) pandemic and the barriers that many individuals face should they seek exit permits from the Israeli authorities, particularly from Gaza.

3. The present report is based primarily on written submissions. The Special Rapporteur was unable to travel to the region for further consultations owing to COVID-19.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, in accordance with his mandate.[1] The mandate of the Special Rapporteur is focused on the responsibilities of the occupying power, although he notes that human rights violations by any State or non-State actor are deplorable and only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation extended to his mandate by the Government of the State of Palestine. He further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

II. Current human rights situation

6. The human rights situation of Palestinians in the West Bank, East Jerusalem and Gaza was marked by a significant deterioration towards the end of the period under review, owing to an escalation of violence in May 2021. Although it is not possible to provide a comprehensive review of all human rights concerns since his previous report, submitted to the Human Rights Council at its forty-fourth session,[2] the Special Rapporteur would like to highlight several issues of concern, including the recent escalation of violence, the situation in Sheikh Jarrah and forced displacement, the impact of forced displacement and demolitions on children and the accountability of third States.

A. Recent escalation and impact on civilians

7. Over a period of two weeks in May 2021, the human rights situation in the Occupied Palestinian Territory deteriorated significantly and the worst levels of violence and civilian casualties in years were seen in Gaza and across the West Bank, including East Jerusalem. Tensions had escalated against the backdrop of the impending forced displacement of Palestinian families from their homes in the East Jerusalem neighbourhoods of Sheikh Jarrah and Silwan. In parallel and during the last days of Ramadan, Israeli Security Forces further restricted the access of Palestinian worshippers to the Aqsa Mosque compound and limited their movement, while using excessive force within the mosque itself, thus further aggravating tensions. On 10 May, the situation escalated militarily between armed groups in Gaza and Israel. At the same time, Palestinian demonstrations spread from East Jerusalem

[1] As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2 A.

[2] A/HRC/44/60.

and the West Bank to various parts of Israel, particularly in mixed cities, leading to violence primarily perpetrated by right-wing Israeli extremist groups against Palestinians.[3]

8. From 10 to 20 May and in the aftermath of rocket fire from armed groups, Israel, with its vastly superior firepower, launched intensive airstrikes against targets in Gaza from the land and sea, which resulted in the deaths of 256 Palestinians including 66 children and 40 women. Thousands of others have been injured and over 74,000 Palestinians have been displaced.[4] In the West Bank, including East Jerusalem, 28 Palestinians, including 5 children, had been killed as of 24 May. Ten Israeli citizens and residents were killed as a result of rockets fired from Gaza and damage to civilian infrastructure and houses was reported in many areas. A ceasefire was reached on 21 May, however tensions remain high in the occupied Palestinian territory and in Israel.[5]

9. Israeli attacks on Gaza resulted in civilian deaths and injuries, as well as large-scale destruction and damage to civilian objects. They included government buildings, residential homes and apartment buildings, the offices of international humanitarian organizations, medical facilities, media offices and roads connecting civilians to essential services, such as hospitals. Indiscriminate and disproportionate attacks on civilians and civilian objects may constitute war crimes.[6]

10. This escalation is the fourth of its kind since 2008, with more yet to come if the root causes of such violence are not addressed. These latest events have made it abundantly clear that the persistent discrimination against Palestinians throughout the West Bank and East Jerusalem, threats of forced displacement, forced displacement, demolitions, settlement expansion and settler violence and the 14-year blockade of Gaza, to name but a few, have all contributed to and will continue to contribute to cycles of violence.

11. On 27 May, the Human Rights Council adopted resolution S-30/1 on ensuring respect for international humanitarian law and international human rights law, in which the Council requested the High Commissioner to update the Council at its forty-eighth session on progress made on the resolution and report to the Council and the General Assembly on an annual basis. The resolution mandates the Human Rights Council to urgently establish an ongoing, independent, international commission of inquiry to investigate in the Occupied Palestinian Territory and in Israel all alleged violations and abuses of international human rights law leading up to and since 13 April 2021 and all the underlying root causes of recurrent tensions, instability and protraction of conflict. The Special Rapporteur welcomes the creation of the commission of inquiry.

12. Human rights organizations have estimated that the recent escalation will have considerable long-term effects on the infrastructure in Gaza and in particular on water, sanitation and electricity, all of which were already in a dire state. The Office for the Coordination of Humanitarian Affairs has estimated that as a result of the escalation, 400,000 people have no regular access to safe piped water, 58 education facilities have been damaged, 1,165 housing and commercial units have been destroyed, 9 hospitals have been partially damaged and 19 clinics have been damaged.[7] The 10-day Israeli bombardment resulted in damage to numerous elements of civilian infrastructure, including 18 sewage water pumps, and 18,734 meters of the sewage networks. Four central sewage treatment stations were inoperable during the attacks as staff could not travel to their workplace.[8]

13. COVID-19 prevention measures, as well as testing and vaccination, have been severely disrupted as a result of the escalation, with the Office for the Coordination of Humanitarian Affairs reporting that as of June 2021, testing has been limited to symptomatic people reporting to hospitals. In addition, people requiring urgent medical care outside Gaza were reportedly not allowed to leave in the period between 11 May and 3 June due to the

[3] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27095&LangID=E.

[4] See Office for the Coordination of Humanitarian Affairs, "Protection of civilians report, 24–31 May".

[5] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27116&LangID=E.

[6] Ibid.

[7] See www.ochaopt.org/content/gaza-strip-escalation-hostilities-3-june-2021.

[8] Al-Mezan Center for Human Rights, "In focus: the effects of Israel's military offensive on Gaza's wash facilities, 10–21 May 2021".

closing of the Erez and Kerem Shalom crossings, well beyond the date of the ceasefire agreement.[9] Non-governmental organizations (NGOs) have repeatedly warned that this policy is extremely unreasonable and puts lives at risk.[10]

B. Gaza

14. The Israeli-imposed land, sea and air blockade of Gaza is now 14 years old and continues to trap 2 million people with little hope for the future or option of leaving. The situation in Gaza had continued to be dire, even prior to the recent escalation of violence, as a result of the blockade and the impact of COVID-19.

15. A spike in COVID-19 cases in early May 2021 led the Palestinian Ministry of Health to declare almost all of the Gaza Strip a "red zone", noting that the increase in cases was having an impact on all aspects of life in Gaza.[11] Following the suspension of coordination between the Government of the State of Palestine and Israel in May 2020 and the introduction of new criteria for the submission of exit permits requiring only urgent medical referrals to be processed, fewer Palestinians have been able to benefit from access to life-saving treatment outside Gaza.[12] This resulted in a dramatic drop in exits from Gaza, down from approximately 21,032 recorded at the Erez crossing in February 2020 to 5,533 in March 2020. In April and May 2020, respectively, only 222 and 213 exits were recorded.[13]

16. The power supply in Gaza continues to be dangerously low, impacting all aspects of life, including health care, water, water treatment and sewage. In August 2020, Israel closed the crossings with Gaza for three weeks and stopped the fuel supply following the launch of incendiary balloons by Hamas.[14] Following the re-opening of the crossings on 1 September, power supply went back to eight-hour rotations.[15] In June 2021, the Israeli authorities continued the ban on fuel shipments into Gaza, thereby making the ongoing electricity crisis worse, despite a recent increase in supply by the Gaza Electricity Distribution Company. The deficit in power is estimated at 69 per cent of demand as of June 2021, resulting in approximately 6–12 hours of electricity available each day.[16] Approximately 902,600 citizens in Gaza were left without any power at all during the 10 days of the escalation in violence.

17. Gaza humanitarian aid worker, Mohammad el-Halabi, continues to be detained by the Israeli authorities, as reports suggest that closing arguments in his case are being presented by his lawyer. He was arrested in June 2016 on allegations that he had diverted millions of dollars in development to armed groups in Gaza. He denies the charges and a financial audit by his employer, World Vision, uncovered no evidence of misappropriation of funds. Mr. el-Halabi has attended more than 150 court hearings so far. The Special Rapporteur has raised serious concerns that Mr. el-Halabi is not being granted a fair trial, given that the prosecution has relied on secret evidence and did not initially allow him access to a lawyer.[17] The Special Rapporteur reiterates his call for Israel to grant him a fair trial or immediately release him.

[9] See https://gisha.org/en/israel-continues-to-ban-exit-of-goods-from-gaza-cancer-patients-exit-in-first-since-may-11/.

[10] See https://gisha.org/UserFiles/File/letters/Gisha_PHRI_HaMoked_Adalah_letter_May_26_2021.pdf (in Hebrew only).

[11] Sharmila Devi, "COVID-19 surge threatens health in the Gaza Strip", *The Lancet*, vol. 397, No. 10286 (May 2021).

[12] A/HRC/46/63, para. 43.

[13] Gisha, "Gaza up close" (September 2020).

[14] Btselem, "Summer 2020: Gaza's electricity crisis deepens again, with 4 hours of daily supply", 20 October 2020.

[15] Ibid.

[16] Al-Mezan Center for Human Rights, "In focus: the effects of Israel's military offensive on Gaza's wash facilities, 10–21 May 2021", p. 3.

[17] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26496&LangID=E.

C. Emblematic cases of Sheikh Jarrah and Silwan

18. The situation in East Jerusalem continues to be extremely tense, as many Palestinian families face the risk of imminent forced displacement by the Israeli authorities. The case of the neighbourhood of Sheikh Jarrah, where eight families face forced displacement, four of them imminent, has become emblematic of the threats of forced displacement facing many Palestinian families in East Jerusalem with the aim of establishing a Jewish majority in the city and creating irreversible demographic facts on the ground.[18] It also underlines Israeli attempts to permanently change the Palestinian character of East Jerusalem and pave the way for further settler expansion, thus further cementing the Israeli annexation. Israeli settler organizations have particularly intensified their applications for evictions, significantly increasing the number of lawsuits facing the Palestinian families and the pressure by settler groups who, with the protection of the Israeli police, continue to provoke and attack Palestinian inhabitants. The Special Rapporteur stresses that eviction orders, if carried out, would amount to a violation by Israel, the occupying power, of the prohibition against the forcible transfer of the protected population under article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).[19] Israel cannot apply its own laws in territory that is considered occupied under international law.

19. In May and June 2021, with the support of activists, Palestinian families residing in Sheikh Jarrah mobilized to prevent the forced displacements from taking place, including through peaceful demonstrations, sit-ins and the use of social media campaigns.[20]The Israeli police responded to the demonstrations by fortifying the neighbourhood through the establishment of multiple road blocks, thus severely limiting the movement of its inhabitants. The Israeli Security Forces have also arrested a number of activists and journalists covering events around the neighbourhood and have used excessive force against demonstrators.[21] Other East Jerusalem neighbourhoods face the same threats of forced displacement including Batn el Hawa in Silwan. In total, more than 970 people, including 424 children, are facing the risk of displacement according to the Office for the Coordination of Humanitarian Affairs.[22] The latest escalation in May 2021, for which the events at Sheikh Jarrah were one of the main triggers, demonstrates that the status of East Jerusalem neighbourhoods and the possible outcome of current eviction lawsuits will have a determinant impact on the overall situation in the Occupied Palestinian Territory and on future escalation. On 10 May, the Israeli Supreme Court postponed its ruling on the possible forced displacement of four of the families in Sheikh Jarrah.

D. Violations of the rights of Palestinian university academic staff and students

20. Patterns of arrest and harassment of Palestinian university students and professors have recently intensified. Birzeit University in Ramallah has been particularly targeted by the Israeli Security Forces, with more than 74 arrests of students reported there between September 2019 and January 2020 alone.[23] On 21 October 2020 in a serious escalation of tension, the Israeli military officially labelled the student bloc at Birzeit University a "prohibited terrorist organization" thus criminalizing its work on campus and justifying further arrests of students.[24] Many of those arrested have reportedly been tortured physically

[18] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27067&LangID=E.

[19] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26648&LangID=E.

[20] See Yara Hawari, "Why Israel is so desperate to silence #SaveSheikhJarrah", Aljazeera, 10 June 2021.

[21] See Aljazeera "Israeli police attack Palestinian protesters in Sheikh Jarrah", 22 June 2021.

[22] Office for the Coordination of Humanitarian Affairs, "Palestinian family evicted from its home in East Jerusalem", 10 December 2020.

[23] See A/HRC/WGAD/2021/8.

[24] See https://mesana.org/advocacy/committee-on-academic-freedom/2021/04/13/protesting-ongoing-policy-of-arrests-and-detention-of-students-in-palestinian-universities.

and mentally.[25] The Special Rapporteur expresses serious concerns about the patterns of targeting the staff and students of Palestinian universities. He stresses that these violent arrests by the occupying power, Israel, violate the right of students to the freedoms of speech and association, particularly in universities which should be beacons for such freedoms. He further emphasizes that it is the responsibility of the occupying power to ensure the right to education is respected.

E. Impact of Israeli policies on children: home demolitions and detention

21. Since the beginning of 2021, the Israeli authorities have demolished or seized 387 Palestinian structures, resulting in the displacement of 309 children during a global pandemic.[26] The experience of demolitions severely impacts the livelihood and the mental state of children and their families. According to a study conducted by Save the Children, many families have lost their access to services, such as health care, water and electricity, in addition to the loss of food security.[27]

22. Children living in areas under full Israeli security control have been the most affected, given that demolitions and confiscations have markedly increased there. Consequent displacement and relocation negatively affect their education, their relationship with their parents and their connection to the community.[28] The traumatic experience of being expelled also changes their behaviour overall. The Special Rapporteur is extremely concerned about the impact of home demolitions on children, which may affect generations to come. It also revives the trauma that their parents have already undergone with their own experience of dispossession and displacement. He calls for an immediate halt to all demolitions, which constitute a serious violation of international humanitarian law.

23. According to the Palestinian NGO Addameer, 4,809 Palestinians were detained by the Israeli authorities between January and May 2021, 582 of whom were children. The Israeli Security Forces detain and persecute on average 500–700 Palestinian children each year.[29] According to military orders 1711 and 1726, Palestinian children may be held in military courts, where their detention could be extended for up to 10 days before they are referred to other courts. In addition, military order 1651 defines children in the Occupied Territories as persons under the age of 16, contradicting the first article of the Convention on the Rights of the Child. On the other hand, Israeli children are prosecuted in civil juvenile courts, where children are defined as persons below the age of 18. In contrast, Palestinian children are treated as adults in prisons and courts. The Special Rapporteur is alarmed by the number of children in detention and also the conditions of their arrest and calls on Israel to immediately stop this practice, which is in clear contravention of international law and should be used only as a last resort.

F. Accountability measures by third States

24. Third States, which have their own set of responsibilities in relation to the situation in Israel and the Occupied Palestinian Territory, have failed thus far to ensure that Israel complies with international humanitarian law. Although many States have recognized the illegality of settlements under international law and have issued condemnations, few have taken any significant action. In an important development, however, on 26 May 2021 the Irish parliament passed a notion condemning the “de facto annexation” of Palestinian land by Israeli authorities. The notion passed in the parliament after receiving cross-party support.

[25] Ibid.

[26] Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank”.

[27] See Save the Children, “Hope under the rubble: the impact of Israel’s home demolition policy on Palestinian children and their families” (2021).

[28] Ibid.

[29] See www.addameer.org/statistics.

Ireland was the first country to take such a position and recognize that Israel has de facto already annexed large areas of the West Bank.[30]

25. The database on the activities of business enterprises in the settlements, published in February 2020, which the Special Rapporteur welcomed in his report to the Human Rights Council in July 2020, may be seen as another step towards accountability.[31] The purpose of the database is, among other things, to assist States in ensuring that companies domiciled in their territory and/or under their jurisdiction respect human rights. The report submitted by Office of the United Nations High Commissioner for Human Rights to the Human Rights Council at its forty-third session was an important step in the direction of accountability and outlines 112 business enterprises that have been involved in business activities related to the settlements.[32] Despite the report clearly recognizing that the Human Rights Council mandated the work on the database and its continuous nature, the High Commissioner for Human Rights stated in her speech to the forty-sixth session of the Council that: "Any further work in this area can only be discharged consistent with the Organization's budgetary process applicable to funding mandates of the Council."[33] Given the temporal limitations of the report (the period between January 2018 and August 2019) and the fact that it only included a fraction of the business enterprises with activities in the settlements, a lack of continuity of the work on the database may result in a devastating setback to any progress made by States or companies to ensure that companies respect human rights by ending their activities in the settlements.

III. Legal status of Israeli settlements under the Rome Statute[34]

26. In July 1998, delegates from 120 States voted in favour of the negotiated text of the Rome Statute of the International Criminal Court. The Rome Statute created, for the first time, a permanent international court to try alleged perpetrators of war crimes, crimes against humanity and other serious international crimes. It built upon the legacy of the Nuremberg and Tokyo military tribunals established after the Second World War, as well as the war crimes tribunals for Rwanda, the former Yugoslavia, Cambodia and Sierra Leone set up in the 1990s and 2000s. The International Criminal Court came into being in July 2002.

27. In its preamble, the Rome Statute proclaims the purpose of the international community in creating the International Criminal Court. Citing universal values and the Charter of the United Nations, the Statute recognizes that the most serious of international crimes threaten the peace, security and well-being of the world, that these crimes must not go unpunished and that international cooperation is essential to combating those crimes. The final goal is to guarantee "lasting respect for and the enforcement of international justice". In his speech to the delegates in Rome on the adoption of the Statute, the Secretary-General remarked that this accomplishment would repudiate the bleak observation by Marcus Tullius Cicero from 2,000 years ago that "in the midst of arms, law stands mute".

28. Among the war crimes expressly listed in the Rome Statute is the transfer, directly or indirectly, by an occupying power of parts of its own population into the territory it occupies.[35] Its inclusion was deliberate, appropriate and linear. The prohibition against settler implantation by an occupying power was first entrenched in international law through the Fourth Geneva Convention of 1949. It was subsequently characterized as a "grave breach"

[30] See Aljazeera, "Ireland condemns Israel's 'de facto annexation' of Palestine", 26 May 2021.

[31] A/HRC/44/60, para. 14.

[32] A/HRC/43/71.

[33] See www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26913&LangID=S.

[34] The Special Rapporteur is extremely grateful for the high-quality contributions to the present report submitted by academic institutions in Brazil, Colombia and Italy, by human rights defenders in Israel, the State of Palestine and the United Kingdom of Great Britain and Northern Ireland, and by the United Nations Relief and Works Agency for Palestine Refugees in the Near East. He is also appreciative of the pro bono research conducted by law students at Western University, Ontario. These contributions have substantially enhanced the present report.

[35] Article 8 (2) (b) (viii).

and a "war crime" in the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts.

29. The phenomenon of settler implantation has historically involved the transfer by an empire or expansionary State of some of its own citizens or subjects into lands that it has acquired through conquest or occupation. These lands may have been already swept clean of their inhabitants, but more commonly they are still populated by some or all of the indigenous peoples. The objectives of the conquering power in implanting settlers have been to solidify its political and military control, augment its economic penetration, and ultimately bolster its legal claim to permanent sovereignty over the subjugated lands. The transferred settlers are almost always willing citizens or subjects of the dominant power, motivated by government inducements, enhanced economic prospects, special legal and political privileges in the subjugated lands and, on occasion, by nationalist, religious or civilizing missions.[36]

30. The flip side of the coin of settler implantation is the rupture of the established relationship between the indigenous population and its traditional territory and lands through demographic engineering. The common bond of any original society is the link between community and territory. Accordingly, the exercise of the right to self-determination is substantially abrogated if that link is disrupted through territorial alienation, the deliberate loss of majority status or the inability of an occupied or subjugated people to control its political destiny. Indeed, the rupture of this link is not only the frequent consequence of settler implantation, but invariably its very purpose. Needless to say, settler implantation projects throughout history have invariably occurred regardless of, and almost always against, the wishes of the indigenous population.[37]

31. A significant United Nations report in 1993 on population transfers determined that the consequences of settler implantation projects were usually multifold, calamitous and long-term, including military subjugation, indigenous civilian misery, environmental degradation, separate and unequal social structures, entrenched legal discrimination, segregated labour markets, the denial of political rights and a cycle of repression, resistance and instability.[38] Once the process of settler implantation has gained momentum, the authors of the report observed that the occupying power would often assert that: "humanitarian concerns compel it to remain in the territory to extend its protection to the implanted population. This argument may be combined with other ideological claims concerning the occupier's 'right' to possess the territory for putative security and humanitarian reasons, or even on the basis of rights, such as 'historical rights', which have no legal basis".[39]

32. As Patrick Wolfe has explained, settler colonialism, which encompasses settler implantation, is not an event but an enduring structure. It is not simply a historical moment of conquest but rather becomes an unfolding process of subjugation over time, entrenched through the political, social, economic, military and legal institutions of the conquering or occupying power.[40] Examples from history include the European conquest of the Americas, the British settlement of Scottish and English Protestants in Catholic Ireland; the French in Algeria; the Dutch and the British in South Africa; the British in Kenya; and the infusion of Russians into the Baltic republics carried out by the Soviet Union.

33. In this section of the report, the Special Rapporteur will explore the question of whether the Israeli settlements in the Occupied Palestinian Territory constitute a war crime under the Rome Statute. As such, he will first review the place of the prohibition against population transfer and settler implantation in international humanitarian, human rights and criminal law. He will then examine the history and character of the Israeli settlements and the role of the Government of Israel in developing and expanding the settlements before assessing their legal status under the Rome Statute.

[36] See Claire Palley, "Population transfers" in *Broadening the Frontiers of Human Rights: Essays in Honour of Asbjorn Eide*, Donna Gomien, ed. (Oslo, Scandinavian University Press, 1993).

[37] E/CN.4/Sub.2/1994/18, para. 131.

[38] See E/CN.4/Sub.2/1993/17 and Corr. 1.

[39] Ibid., para. 35.

[40] See Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research*, vol. 8, No. 4 (2006).

A. International law and settler implantation

Fourth Geneva Convention of 1949

34. Prior to the creation of the Fourth Geneva Convention, the Hague Regulations of 1907 set out many of the laws and customs of war as they stood at the beginning of the twentieth century. The Regulations do not expressly prohibit the transfer of settlers from the occupying power into the occupied territory. However, the provisions in the Regulations restrict the actions of the occupying power to such an extent that any attempt to demographically transform the subjugated territory would be effectively prohibited. Article 43 compels the occupying power to respect the laws in force in the occupied territory. Article 46 provides that private property must be respected and not confiscated and article 55 designates the occupying power as the administrator and usufructuary – in effect the trustee – of public property during the period of actual control. All these provisions emphasize the inherent temporariness of the occupation.

35. The purpose of the Fourth Geneva Convention is to protect civilians during situations of armed conflict. Among its many protections, the Convention expressly prohibits an occupying power from implanting civilian settlers of its own population into the occupied territory in article 49 (6): "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

36. The objective of article 49 is to preserve the demographic and social structure of the occupied territory and to forbid attempts by an occupying power to treat the territory as a fruit of conquest.[41] Article 147 of the Convention establishes the gravity of the prohibition.

37. Three principles in particular are important to stress:

(a) First, the limitation on the role of the occupying power is explicitly cited: "The Occupying Power shall not …". This provides that the occupier and any State or private institutions that may come under its control or direction, cannot take any steps to alter the population character of the territory that it occupies.[42] Accordingly, paragraph 6 of article 49 of the Convention is breached when the occupying power, whether through active recruitment, wilful passivity or benign neglect, permits civilians from its own population to resettle in the occupied lands with the intent of altering its demographic character. This is a significant interdiction, since settler implantation enterprises in an occupied territory have rarely been successful without direct State involvement or at least some significant State compliance;

(b) Second, the prohibition in article 49 (6) extends to the voluntary and consensual transfer of civilians from the occupying power to the occupied lands and is not limited merely to an involuntary resettlement ("deportation") by the occupier of some of its civilian population. Notably, the term "forcible" does not appear in the paragraph, connoting a broader meaning than the prohibition against "forcible transfers" in article 49 (1) of the Convention. It is also apparent that the terms "deport" and "transfer" in article 49 (6) have a distinct meaning, arising from their use elsewhere in the article.[43] The International Court of Justice has stated that article 49 (6) should be understood in a broad fashion, as it "prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any transfers taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory";[44]

(c) The third principle is that article 49 (6) permits no exceptions. The broad wording of the prohibition is not circumscribed by subsequent limitations, as with article 49 (1). In addition, the history of the negotiations on the Convention does not contain any

[41] At a conference of the High Contracting Parties to the Fourth Geneva Convention in December 2001, the international Committee of the Red Cross issued a statement, in which it stated (para. 3): "Being only a temporary administrator of occupied territory, the Occupying Power must not interfere with its original economic and social structures, organization, legal system or demography."

[42] See E/CN.4/Sub.2/1993/17, para. 15.

[43] Ibid.

[44] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 120.

expressions of caution or restrictions recommended by the delegates and the votes approving the provision in both committee and plenary meetings were unanimous.[45] The occupying power is permitted to send military forces and civil servants into the territory in order to administer the occupation, but the transferring of any part of a civilian population as settlers is categorically forbidden.

38. The temporary nature of an occupation and the full preservation of national rights and the territorial integrity of the ousted sovereign – the protected population – lie at the very core of international humanitarian law. In his 1958 commentary on the Fourth Geneva Convention, Jean Pictet stated that "the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied power of neither its statehood nor its sovereignty".[46] As for annexation, the Security Council has affirmed on at least 11 occasions since 1967, consistent with Article 2 (4) of the Charter of the United Nations, that the acquisition of territory by war or force is inadmissible.[47] Neither conquest nor occupation confer title.[48] The occupying power must administer the occupation in good faith, consistent with international law, and it must seek to fully terminate the occupation as soon as reasonably possible.[49] The very raison d'être of settler implantation – the creation of demographic facts on the ground to solidify a permanent presence, a consolidation of alien political control and a claim of sovereignty – tramples upon the fundamental precepts of humanitarian law.

International human rights law

39. The logic and the dynamic of settler implantation – rupturing the relationship between an indigenous people and its territory – is the denial of the right to self-determination. Self-determination is both a *jus cogens* right (a fundamental principle of international law),[50] and a right *erga omnes* (a right owed to all).[51] This right has been placed in the opening articles of the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights precisely to underscore the fact that the realization of all other individual and collective human rights depends upon the ability to exercise this cornerstone right.[52] Flowing from this cardinal principle, the international community has prohibited the demographic manipulation of a territory through settler implantation because it is incompatible with the fundamental rights of a people to retain its distinct identity and to freely determine its destiny on its own territory.[53]

40. In addition to self-determination, settler implantation projects frequently violate a range of protected individual and collective rights in international human rights law to which the indigenous population is entitled. As the Special Rapporteur on the human rights dimensions of population transfer, including the implantation of settlers and settlements, for the Commission on Human Rights (and later a judge on the International Court of Justice), Awn Al-Khasawneh, concluded in a 1997 report: "The range of rights violated by population

[45] See *Final Record of the Diplomatic Conference of Geneva of 1949*, 6th ed. (Buffalo, New York, William S. Hein & Co., 2005).

[46] See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A.

[47] Most recently in resolution 2334 (2016).

[48] See Christian Tomuschat, "Prohibition of settlements", in *The 1949 Geneva Conventions: a Commentary,* Andrew Clapham, Paola Gaeta and Marco Sassoli, eds., (Oxford, Oxford University Press, 2015).

[49] A/72/556, paras. 32–38.

[50] See James Crawford, *The International Law Commission's Articles on State Responsibility* (Cambridge, Cambridge University Press, 2002), pp. 246–7.

[51] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, para.155.

[52] Both Covenants state in article 1 (1) that: "All peoples have the right of self-determination."

[53] See Eric Kolodner, "Population transfer: the effects of settler infusion policies on a host population's right to self-determination", *New York University Journal of International Law and Politics*, vol. 27, No. 1 (1994).

transfer and the implantation of settlers places this phenomenon in the category of mass violations of human rights."[54]

41. These rights, as set out in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights include the freedom of movement, the ability to work, the rights to housing and to own and enjoy property, the inherent right to life, the right to engage in political activity, the right to liberty and security of the person, the right to an adequate standard of living, and the right to be free from arbitrary interference with one's privacy, family and home.

42. Collectively, the practice of infusing citizens from the dominant power into the homeland of others commonly infringes the rights of the inhabitants to control their natural resources, the right to their own culture, religious practices and heritage, and their right to economic and social development.[55] A regime of special legal and political entitlements reserved only for the settler population creates a colonial or apartheid-like governing structure, infringing the right of the indigenous population to equality and the right to be free from racial and ethnic discrimination and apartheid.[56]

Protocol I Additional to the Geneva Conventions of 1949

43. The designation of settler implantation as a "grave breach" under international humanitarian law was affirmed in 1977 by the adoption of the Protocols Additional to the Geneva Conventions of 1949. Article 85 of Protocol I Additional to the Geneva Conventions of 1949 lists the acts of armed conflict which would be considered as "grave breaches", including, as set out in article 85 (4) (a): "The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention."

44. Importantly, Protocol I Additional to the Geneva Conventions of 1949 elevated the prohibition of settler implantation to a "war crime". Article 85 (5) states that "grave breaches of these instruments shall be regarded as war crimes". According to the International Committee of the Red Cross (ICRC) commentary on the Protocol of 1987, the elevation of the gravity of the prohibition is because of the "possible consequences for the population of the territory concerned from a humanitarian point of view".[57]

Customary international humanitarian law

45. Customary international law is the "general practice accepted as law".[58] It is among the primary sources of international law. A general practice becomes part of customary international law when the consistent conduct of States over a period of time is accepted by the international community as having established an obligatory rule of behaviour.[59] In addition, a critical component in the creation of customary international law is the belief by States (*opinio juris*) that following a particular action has become a legal obligation. Once a general practice has been accepted as part of customary international law, it becomes binding even upon those States who have not accepted the particular practice as a legal obligation.

46. ICRC, in its comprehensive 2005 study on customary international humanitarian law, stated under rule 130 that the prohibition against population transfers and settler implantation has become a part of customary international law.[60] The ICRC study noted the widespread

[54] E/CN.4/Sub.2/1997/23, para. 16.

[55] International Covenant on Civil and Political Rights, arts. 1 and 27, and International Covenant on Economic, Social and Cultural Rights, art. 1.

[56] International Covenant on Civil and Political Rights, arts. 2 and 26.

[57] Available from https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=7BBCFC2D471A1EAAC12563CD00437805.

[58] Article 38 (1) (b) of the Statute of the International Court of Justice.

[59] See Gerhard von Glahn and James L. Taulbee, *Law Among Nations. An Introduction to Public International Law*, 11th ed. (Abingdon, Oxfordshire, Routledge, 2017), chap. 3.

[60] Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law* (Cambridge, Cambridge University Press, 2005), chap. 38.

adoption of that prohibition through State practice and legislation, in military manuals, through resolutions of various deliberative bodies of the United Nations, through universal ratification and by statements from international organizations.

B. Rome Statute and settler implantation

47. Article 8 of the Rome Statute provides the International Criminal Court with jurisdiction over an extensive list of codified war crimes "in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes" during international armed conflict. The list includes all the grave breaches expressly prohibited by the Fourth Geneva Convention and Protocol I Additional to the Geneva Conventions of 1949. Among the proscribed war crimes, as detailed in article 8 (2) (b) (viii) of the Rome Statute is: "The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory."

48. The language of article 8 (2) (b) (viii) is very similar to the language found in article 49 (6) of the Fourth Geneva Convention, with one notable addition. In article 8 (2) (b) (viii), the term "directly or indirectly" is added, which aims to clarify the express scope of the provision to include any active or passive support by the occupying power of a settler implantation project, such as settlement protection measures and economic incentives, subsidies, tax exemptions and discriminatory permits.[61] Legal commentators have taken the view that the addition of the term "directly or indirectly" in article 8 (2) (b) (viii) confirms, and does not add any substantive change to, the already extensive scope of its Geneva antecedents.[62] Israel voted against the 1998 Statute precisely because of the inclusion of article 8 (2) (b) (viii).

49. Following the adoption of the Rome Statute, the Assembly of States Parties directed a preparatory commission to create an interpretative guide to the crimes enumerated in the Statute. The purpose of the text was to aid the International Criminal Court in the interpretation and application of articles 6 (genocide), 7 (crimes against humanity) and 8 (war crimes) by establishing the material and mental elements necessary to constitute these crimes. The final text of the elements of crime was subsequently adopted in 2000, and the language agreed upon for article 8 (2) (b) (viii) sets out three elements of the crime of settler implantation that must be satisfied in order to establish a breach:

> "1. The perpetrator:
>
> (a) Transferred, directly or indirectly, parts of its own population into the territory it occupies; or
>
> (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.
>
> 2. The conduct took place in the context of and was associated with an international armed conflict.
>
> 3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict."[63]

50. The Assembly of States Parties agreed to leave the interpretation of the term "transfer" to a future court, to be decided in accordance with the relevant provisions of international humanitarian law. That should not be a difficult task. The clarity of the language in the Rome Statute, together with its extensive antecedents in the development of twentieth century international humanitarian law, would invite a liberal and purposive reading. Such a reading would prohibit voluntary as well as involuntary settler implantation enterprises. It would also forbid passive, as well as active, government support by the occupying power for a settlement

[61] See Ghislain Poissonnier and Eric David, "Israeli settlements in the West Bank, a war crime?", La *Revue des Droits de l'Homme*, No. 17 (2020).

[62] See Michael G. Kearney, "On the situation in Palestine and the war crime of transfer of civilians into occupied territory", *Criminal Law Forum*, vol. 28, No. 1 (March 2017).

[63] PCNICC/2000/1/Add.2, p. 28.

project, while requiring as a threshold some critical mass of civilian settlers from the occupying power, although not necessarily a particularly large number.

51. The purposive application of the Rome Statute extends individual criminal liability throughout the senior governmental, administrative and military levels of command of the occupying power for those who knowingly instigated, planned, directed, facilitated, approved, participated in or carried out the settlement project. It would also include those who intentionally or negligently failed to act within the responsibilities of their position to prevent the implementation of the project.[64]

C. Israel, the occupation and the settlements

52. The creation and expansion of Israeli settlements in the Occupied Palestinian Territory is the State's largest and most ambitious national project since its founding in 1948.[65] Starting with the very first Israeli settlements that were erected in the months following the war of June 1967, the full apparatus of the State – political, military, judicial and administrative – has provided the leadership, financing, planning, diplomatic cover, legal rationale, security protection and infrastructure that has been indispensable to the incessant growth of the enterprise.[66]

53. In an article in the *New York Review of Books*, Nathan Thrall succinctly described the indispensable role of the Government of Israel in fostering the settlements:

> "… the entire map of West Bank settlements has been meticulously planned by the Israeli government. An executive branch ministerial committee approves the settlements. A legislative branch subcommittee is devoted to advancing their connections to Israel's water, electrical, sewage, communications, and road infrastructure. The legislature passes certain bills that apply solely to the West Bank. The state comptroller supervises government policy in the West Bank, overseeing everything from wastewater pollution to road safety. The attorney general enforces guidelines that direct the Knesset to explain how every new bill passing through the legislature will apply to the settlements. The High Court of Justice – which exercises judicial review over all government bodies and agents, and is the court of last instance for every Israeli and Palestinian, whether citizen or occupied subject – issues rulings that entrench the segregated legal system in the West Bank, where, in the same territory, there is one set of laws and rights for Israeli settlers and another, inferior set for Palestinians. The Justice Ministry oversees local courts in the West Bank that apply Israeli laws to settlers but not to Palestinians. The Israel Prison Service extends its reach across the entire territory, holding both Palestinian subjects and Israeli settlers in jails within the Green Line."[67]

54. To incentivize Israeli and diaspora Jews to live in its settlements in the occupied territory, the Government of Israel actively offers a range of financial benefits, including advantageous grants and subsidies for individuals and favourable fiscal arrangements for settlements. These include subsidized housing benefits and premium mortgage rates, venture

[64] Article 25 (3) of the Rome Statute lays out the broad circumstances in which a person shall be criminally responsibility for a crime. This includes: (a) the actual commission of the crime, (b) the ordering, soliciting or inducing of the crime, (c) the facilitating, aiding, abetting or otherwise assisting in the crime, and (d) otherwise intentionally contributing to the crime. Article 28 establishes a broad liability for the superior command. Article 33 limits, but does not entirely remove, the defence by a subordinate that he or she was obeying orders issued by a superior.

[65] See Mordecai Klein, Haaretz (15 June 2019). "Israel's territorial expansion project and control over the Palestinian population is the largest state/national project the country has ever carried out … Almost the entire state is invested in this project. This does not refer only to the ideological investment and the transfer of settlers into the Palestinian territories. It's also about jobs for hundreds of thousands or millions of Israelis, as well as profits from exporting technological know-how and security products that maintain Israel's control over the Palestinian population and territory."

[66] See Idith Zertal and Akiva Eldar, *Lords of the Land: The War Over Israel's Settlements in the Occupied Territories* (Nation Books, 2007).

[67] Nathan Thrall, "A day in the life of Abed Salama", *New York Review of Books* (19 March 2021).

benefits for agricultural development, education and welfare benefits and the designation as a national priority area. It also makes available attractive business incentives for industrial zones in the settlements, such as discounted land fees, employment subsidies and reduced corporate taxes.[68] Beyond this, the settlements are treated as an integral part of the municipal and regional governance system of Israel, with budgetary funding for education, utilities, infrastructure, housing, water, transportation and other services.

55. The spatial placement of the Israeli settlements badly fragments Palestinian contiguity in East Jerusalem and the West Bank. In East Jerusalem, the 12 Jewish settlements are located primarily around the northern, eastern and southern perimeters of the city, blocking any Palestinian territorial continuity with the West Bank. In the West Bank, the settlements are organized into two main settlement blocs. South of Jerusalem is the Gush Etzoin bloc, stretching from Bethlehem to Hebron. The northern bloc is spread out from the Ramallah area to Nablus. There are also smaller settlement blocs just east of Jerusalem and in the Jordan Valley. In order to provide efficient transportation between the settlements and to Israeli urban areas, and to encourage new settlers and settlement expansion, the Government of Israel has invested heavily in building a dense network of highways through the West Bank and East Jerusalem, which is built on confiscated Palestinian lands and services only the settler population.[69]

56. Aside from 150 officially recognized settlements in East Jerusalem and the West Bank, there are another 150 so-called settlement outposts built without formal State authorization and which Israel does not officially recognize.[70] However, it has granted retroactive authorization to dozens of these outposts and it actively supports virtually all of the other remaining outposts. The 2005 Sasson report, commissioned by the Government, determined that Israeli State bodies had been discreetly funnelling significant public funds for decades to these outposts for housing, roads, education, utilities and security. Although the author of the report observed that this amounted to a "bold violation of laws" and recommended that criminal charges be brought against State officials, no charges were ever initiated and virtually all of the outposts remain thriving settlements today.[71]

57. Beyond the expansive support for the settlements provided by the Government of Israel, several significant international private organizations play a seminal role in supporting settler implantation. The Settlement Division of the World Zionist Organization, which is substantially funded by the Government, acts as a government agent in assigning land to Jewish settlers in the West Bank, including settlement outposts.[72] The Jewish National Fund has actively sought to purchase Palestinian lands in the West Bank and support infrastructure development, tourism and roads in the Israeli settlements.[73]

58. While the Israeli settlements have flourished and provide an attractive standard of living for the settlers, they have created a humanitarian desert for the Palestinians, reaching every facet of their lives under occupation.[74] Human rights violations against Palestinians arising from the Israeli settlements are widespread and acute.[75] and settler violence has created a coercive environment.[76] There is an apartheid-like two-tier legal system granting full citizenship rights for the Israeli settlers while subjecting the Palestinians to military rule.[77]

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[68] See B'tselem, "This is ours – and this, too: Israel's settlement policy in the West Bank" (March 2021), available from www.btselem.org/publications/202103_this_is_ours_and_this_too.

[69] See Israeli Centre for Public Affairs and Breaking the Silence, "Highway to annexation. Israeli road and transportation infrastructure development in the West Bank" (December 2020).

[70] See B'tselem, "This is ours – and this, too: Israel's settlement policy in the West Bank".

[71] Daniel Kurtzer, "Sleight of hand: Israel, settlements and unauthorized outposts" (October 2016), available from www.mei.edu/sites/default/files/publications/PF24_Kurtzer_Israelisettlements_web_0.pdf.

[72] See Yotam Berger, "World Zionist Organization Settlement Division finances illegal West Bank outposts", Haaretz, 7 December 2018.

[73] See Peace Now, "KKL-JNF and its role in settlement expansion" (April 2020).

[74] See A/HRC/22/63.

[75] See A/HRC/40/42.

[76] See Yesh Din, "Settler crime and violence inside Palestinian communities, 2017–2020" (May 2021).

[77] See Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (October 2014).

Access to the natural resources of the occupied territory, especially to water, is disproportionately allocated to the settlements[78] and the fragmented territory left to the Palestinians has resulted in a highly dependent and strangled economy, mounting impoverishment, daily impositions and indignities, and receding hope for a reversal of fortune in the foreseeable future.[79]

59. In the immediate aftermath of the 1967 war, the Israeli political leadership engaged in an intense debate over the future of the Palestinian territories that it now occupied. Two distinct but overlapping plans emerged. In the Allon Plan (named after Yigal Allon, the Israeli Labour Minister), the proposal was to settle and eventually annex specific sectors of the West Bank and Gaza, with the heavily-populated Palestinian towns and cities consigned to some future Israeli-Jordanian governance condominium. In the more ambitious but more ambiguous Dayan Plan (named after Moshe Dayan, the Israeli Defence Minister) the proposal was to retain de facto Israeli control indefinitely over the entire Palestinian territories, with a declaration of permanent de jure status to await some opportune moment in the future.[80]

60. What these arguments shared was the desire for Israel to permanently retain significant portions of the Palestinian territories, with intensive Jewish civilian settlement as the prime method for securing its sovereignty claim. As Allon stated in 1969: "Here, we create a Greater Eretz Yisrael from a strategic point of view, and establish a Jewish state from a demographic point of view."[81] Both plans recognized the constraints of international opinion and sought to establish the facts on the ground discreetly. Neither plan included the intention to offer Israeli citizenship or even a modicum of civil and political rights to the new Palestinian subjects. The authors of both plans disregarded explicit advice from the legal counsel of the Israeli Foreign Ministry in 1967 that civilian settlements in the occupied territories would contravene the Fourth Geneva Convention.[82] Where the plans diverged was primarily on pragmatism: whether the political and demographic cost of absorbing 1 million unwilling Palestinians was worth the acquisition of all the newly conquered territories. These two plans, with ongoing modifications in response to the progress and challenges of the occupation, have dominated the Israeli political debate on the Palestinian territories and the Israeli settlement project ever since.[83]

61. In 1978, Matityahu Drobles, a senior official with the Settlement Division of the World Zionist Organization rearticulated the strategy for Israeli settlement development as first proposed by Allon and Dayan, namely to thicken the Jewish settlements through the West Bank in order to forestall the possibility of a Palestinian State and ensure Israeli permanence:

> "To minimize the danger of the development of an additional Arab state in this territory. Since it would be cut off by Jewish settlements, it will be hard for the minority population to create territorial contiguity and political unity. There mustn't be even the shadow of a doubt about our intention to keep the territories of Judea and Samaria [the West Bank] for good … The best and most effective way of removing every shadow of a doubt about our intention to hold on to Judea and Samaria forever is by speeding up the settlement momentum in these territories."[84]

62. That strategy has been immensely successful. Three examples will suffice. First is its demographic achievement. At the end of 2019, there were approximately 300 settlements and 665,000 Jewish settlers in occupied East Jerusalem and the West Bank. The settler population

[78] See A/HRC/40/73.

[79] See TD/B/67/5.

[80] See Geoffrey Aronson, *Israel, Palestinians and the Intifada* (London, New York, Washington, Kegan Paul International, 1990).

[81] See Robert I. Friedman, *Zealots for Zion. Inside Israel's West Bank Settlement Movement* (New York, Random House, 1992).

[82] See Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements, 1967–1977* (New York, Henry Holt and Co., 2006).

[83] Shaul Arieli and others, "Historical political and economic impact of Jewish settlements in the occupied territories" (Israeli European Policy Network, June 2009).

[84] See Nathan Thrall, "A day in the life of Abed Salama", citing the Drobles plan.

increase in the West Bank in 2019 was 3.2 per cent, substantially higher than the overall 1.9 per cent growth rate for Israeli citizens and residents.[85] In 1980, two years after the Drobles plan was first announced, at a time when the Security Council stated in resolution 476 (1980) that there was an "overriding necessity to end the prolonged occupation", that the settlements were a "flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War", that Israel was in defiance of previous United Nations resolutions and that it would undertake accountability measures against Israel should it fail to comply with the resolution, there were 12,500 settlers in the West Bank. In 2019, there were 441,600 settlers, 35 times as many.

63. Second is the political achievement of the strategy. In an article for the *Financial Times* in June 2021, former Secretary-General, Ban Ki-Moon, stated that: "Israel has pursued a policy of incremental de facto annexation … to the point where the prospect of a two-State solution has all but vanished." In addition, Mordecai Klein, an Israeli political scientist, has observed that: "The settlements do not only create de facto annexation of the territory, they also constitute a form of control over the Palestinians."[86] In order to ensure maximum security a land base for the settlements and the utmost freedom of movement for the settlers, the Government of Israel has confined the 2.7 million Palestinians in the West Bank within a fragmented archipelago of 165 disparate patches of land (areas A and B), completely surrounded by an area under full Israeli control (area C) and hemmed in by hundreds of roadblocks, walls, checkpoints and forbidden zones.[87] The West Bank and East Jerusalem are increasingly demarcated from each other by intense settlement construction and both areas are separated from Gaza by severe travel restrictions.

64. Third is the diplomatic achievement of the strategy. Among senior diplomats who have worked on the Israel-Palestine file, there has been no serious effort in recent decades to demand that Israel comply with international law and United Nations resolutions by fully dismantling its settlements. Aaron David Miller, a senior American foreign policymaker, wrote in *Newsweek* magazine in January 2009: "In 25 years of working on the issue for six Secretaries of State, I can't recall one meeting where we had a serious discussion with an Israeli Prime Minister about the damage that settlement activity – including land confiscation, bypass roads and housing demolitions – does to the peacemaking process." Indeed, all of the international peace process initiatives over the past three decades, beginning with Madrid-Oslo in 1991, have accommodated the facts on the ground established by the Israeli settlements. Relying on realpolitik rather than international law, every peace proposal submitted by an American President, beginning with Bill Clinton in 2000, has assumed that Israel will retain most, if not all, of its settlement blocks in any final peace agreement.

D. Israeli settlements in international law

65. The illegality of the Israeli settlements is one of the most settled issues in modern international law. Among the international community, there is a virtual wall-to-wall consensus that the settlements violate the prohibition on settler implantation in the Fourth Geneva Convention. The illegality of the settlements has been affirmed by the International Court of Justice in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestine Territory, by the General Assembly, the High Commissioner for Human Rights and the Human Rights Council in resolutions and reports, by the European Union, by Amnesty International, by ICRC, by the High Contracting Parties to the Fourth Geneva Convention, by the International Commission of Jurists, by Human Rights Watch, by Al-Haq and by B'tselem.

66. In December 2016, the Security Council, building upon a number of previous resolutions confirming the illegality of the Israeli settlements and the transfer of population, reaffirmed in resolution 2334 (2016) that the establishment by Israel of settlements in the

[85] See B'tselem, "This is ours – and this, too: Israel's settlement policy in the West Bank".

[86] Mordecai Klein, Haaretz.

[87] See B'tselem, "This is ours – and this, too: Israel's settlement policy in the West Bank". See also Badil Resource Centre for Palestinian Residency and Refugee Rights, *Israeli Annexation: the Case of Etzion Colonial Bloc* (July 2019).

Palestinian territory occupied since 1967, including East Jerusalem, had no legal validity, constituted a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace.

67. Yet, while the Israeli settlements are prohibited by an authoritative and well-articulated body of international law, the international community has been remarkably reluctant to enforce those laws. In resolution 2334 (2016), the Security Council reiterated its previous demands that Israel must immediately and completely cease all settlement activities. Since early 2017, the Special Coordinator for the Middle East Peace Process has reported to the Council on 18 quarterly occasions that Israel has taken no steps to comply with its obligations under the resolution.[88]

E. Do the Israeli settlements violate the Rome Statute?

68. The Rome Statute requires three elements of the war crime of transfer of a civilian population in an occupied territory to be satisfied (see paragraph 49 above). The first two elements constitute the material element of the crime:

(a) The transfer by the perpetrator of parts of its own population into the occupied territory;

(b) The conduct took place arising from an international armed conflict.

69. In the case of the Israeli settlements, both the material elements are met. Israel captured the West Bank, including East Jerusalem, and Gaza in June 1967 as part of an international armed conflict. Virtually the entire international community accepts the designation of the Israeli control of the Palestinian territory as an occupation, to which the full scope of international humanitarian law and international human rights law continues to apply.[89]

70. In addition, the historical and contemporary evidence is abundantly clear that the senior political, military and administrative officials of the Government of Israel, as well as important international private organizations, have actively developed and implemented a practice of transferring hundreds of thousands of Israeli citizens into the occupied Palestinian territory through enabling large-scale housing, commercial and infrastructure construction, providing advantageous State funding and ensuring military security, in order to establish an immovable demographic presence.[90]

71. The third element of the crime is the mental element that the perpetrator was aware of the factual circumstances of the crime of transfer that established the existence of an armed conflict. In other words, the perpetrator has both the intent and the knowledge of the crime.[91]

72. In this case, the mental element is satisfied. The political, military and administrative leadership of Israel has directly and knowingly supported the decades-long State policy of encouraging and sustaining the growth of the settlements. Throughout those decades, the leadership has been fully aware of the clear direction from the international community that such activities violate fundamental prohibitions in international law.

73. It is the finding of the Special Rapporteur that the policy of settler implantation meets the definition of "war crime" under international humanitarian law and the Rome Statute. The Special Rapporteur also endorses the view that the Israeli settlements constitute a

[88] Special Coordinator for the Middle East Peace Process, Security Council briefing on the situation in the Middle East, reporting on Security Council resolution 2334 (24 June 2021).

[89] See, for example, Security Council resolution 2334 (2016) and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, paras. 101 and 111–114.

[90] See Ghislain Poissonnier and Eric David, "Israeli settlements in the West Bank, a war crime?", paras. 72–102.

[91] See Diakonia International Humanitarian Law Resource Centre, "Litigating settlements. The impact of Palestine's accession to the Rome Statute on the settlement enterprise" (December 2015).

continuing crime and therefore fall within the temporal jurisdiction of the International Criminal Court.[92]

IV. Conclusions and recommendations

74. **In conclusion, the Israeli settlements are the engine of this forever occupation, and amount to a war crime. An occupying power that initiates and expands civilian settlements in defiance of international law and the Rome Statute cannot be serious about peace. Equally, an international community that does not impose accountability measures on a defiant occupying power contrary to international law cannot be serious about its own laws.**

75. **The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely dismantle its civilian settlements in the occupied Palestinian territory.**

76. **The Special Rapporteur recommends to the international community that it:**

(a) **Fully support the work of the Office of the Prosecutor of the International Criminal Court as it investigates the allegation that the Israeli settlements are in breach of the Rome Statute;**

(b) **Reiterate its long-standing demand upon Israel to fully dismantle the settlements in compliance with international law;**

(c) **Develop a comprehensive menu of accountability measures to be applied to Israel should it continue to defy international direction with respect to its settlements;**

(d) **Ensure the full accountability of Israeli political, administrative and military officials who are responsible for grave breaches of international law in the Occupied Palestinian Territory;**

(e) **Call upon all United Nations Member States to implement the injunction of the Security Council in resolution 465 (1980) not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories.**

77. **The Special Rapporteur recommends that the High Commissioner for Human Rights regularly update the database of businesses involved in settlements, in accordance with Human Rights Council resolution 31/36.**

[92] See Uzay Aysev, "Continuing or settled? Prosecution of Israeli settlements under article 8 (2) (b) (viii) of the Rome Statute", *Palestine Yearbook of International Law*, vol. 20, No. 1 (2019).

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Human Rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk*

Summary

In the present report, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, examines the current human rights situation in the Occupied Palestinian Territory, with a particular emphasis on the question of whether Israeli rule over the Occupied Palestinian Territory can now be called apartheid.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, pursuant to Commission on Human Rights resolution 1993/2 A and Council resolution 5/1.

2. The Special Rapporteur would like to note that he has yet to be granted access to the Occupied Palestinian Territory, and his requests to meet with the Permanent Representative of Israel to the United Nations have not been accepted. The Special Rapporteur notes again that access to the Occupied Palestinian Territory is a key element in the development of a comprehensive understanding of the human rights situation on the ground.

3. The present report is based primarily on written submissions. The Special Rapporteur was unable to travel to the region for further consultations owing to the coronavirus disease (COVID-19) pandemic.

4. The Special Rapporteur wishes to express his appreciation for the full cooperation extended by the Government of the State of Palestine. He further acknowledges the essential work of civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.

II. Current human rights situation

Civil society

5. Israeli authorities continued to take actions against Palestinian civil society organizations, which contributed to undermining the work of organizations promoting and supporting the human rights of Palestinians. These actions included the use of counter-terrorism legislation and military orders to restrict and criminalize human rights and humanitarian work, the denial of visas for staff with the United Nations and international non-governmental organizations, the use of Pegasus spyware, which was developed by the Israeli company NSO Group, on mobile telephones of Palestinian human rights workers,[1] and arbitrary arrests and criminal prosecution of human rights defenders.

6. On 19 October 2021, the Minister of Defence of Israel announced the designation of six Palestinian human rights and humanitarian organizations[2] as "terrorist organizations" under the Counter-Terrorism Law of 2016. The designation decisions were based on unsubstantiated links between these organizations and the Popular Front for the Liberation of Palestine, including the alleged diversion of funds. At the time of the drafting of the present report, no evidence proving these allegations had been presented by Israeli authorities despite several requests by the international community and concerned organizations.

7. The potential impact of these designations and subsequent declarations by the Israeli military commander for the West Bank is substantial.[3] Both the Counter-Terrorism Law and the Defence (Emergency) Regulations of 1945 foresee prison terms for membership in or any

[1] Amnesty International, "Devices of Palestinian human rights defenders hacked with NSO Group's Pegasus spyware", 8 November 2021.

[2] Addameer Prisoner Support and Human Rights Association, Al-Haq, Bison Center for Research and Development, Defence for Children International – Palestine, Union of Agricultural Work Committees and Union of Palestinian Women's Committees.

[3] On 3 November 2021, the Israeli military commander for the West Bank declared five of the Palestinian organizations as unlawful associations through military orders. According to Israeli law, the declarations of unlawful associations through military orders are applied in the West Bank and Gaza, while the terrorist designations under the Counter-Terrorism Law are applied in occupied East Jerusalem and Israel.

type of support or cooperation with such organizations, prohibition of activities, confiscation of property and closure of offices.[4]

III. From occupation to apartheid

A. Introduction

8. When the facts change, so must our minds.

9. In the Palestinian territory that Israel has occupied since 1967, there are now 5 million stateless Palestinians living without rights, in an acute state of subjugation and with no path to self-determination or a viable independent State, which the international community has repeatedly promised is their right.[5] Over the past five decades, Israel has created 300 Jewish-only civilian settlements, all of them illegal,[6] with 700,000 Israeli Jewish settlers now living in East Jerusalem and the West Bank in the midst of, but apart from, 3 million Palestinians. In Gaza, Israel has barricaded the 2 million Palestinians into what former British Prime Minister David Cameron called "an open-air prison",[7] a method of population control unique in the modern world. In recent years, prime ministers of Israel have regularly and openly proclaimed that the country's rule over the Palestinians and their land is permanent and that no Palestinian State will emerge.[8]

10. The international community has declared time and again that the Israeli rule over the Palestinian territory is an occupation, strictly governed by international humanitarian law,[9] as well as by international human rights law.[10] By their very nature, occupations are required to be built with wood, not concrete. Accordingly, the occupation by Israel must be temporary, it must be short-term; Israel is prohibited from annexing even a millimetre of occupied territory and any changes to the occupied territory must be as minimal as possible. It must comply fully with international law and United Nations resolutions and cooperate in good faith with the Palestinian leadership to completely end the occupation and realize a genuine two-State solution.[11]

11. None of this has happened, nor, based on the available cogent evidence, is any of this likely to happen, absent concerted international intervention. The occupation by Israel has been conducted in profound defiance of international law and hundreds of United Nations resolutions, with scant pushback from the international community.[12] Its 55-year-old occupation burst through the restraints of temporariness long ago. Israel has progressively engaged in the de jure and de facto annexation of occupied territory. It insists that the laws of occupation and human rights do not apply to its regime, and its proliferating facts on the ground have virtually extinguished what lingering prospects remain for a genuine Palestinian State. A legal oxymoron has emerged: an occupation in perpetuity.

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[4] Counter-Terrorism Law No. 5766 of 2016, sects. 20–24, 56 and 69–70; Defence (Emergency) Regulations of 1945, sects. 84–85; Military Order No. 1651 and Military Order No. 101.

[5] See General Assembly resolution 76/150.

[6] In its resolution 2334 (2016), the Security Council declared that the Israeli settlements are a flagrant violation under international law.

[7] BBC, "David Cameron describes blockaded Gaza as a 'prison'", 27 July 2010.

[8] Prime Minister Benjamin Netanyahu stated in 2018 that the Palestinians could have a "State-minus", where Israel would maintain security control over all of the Palestinian territory. See Ben Sales, "Netanyahu says he supports a Palestinian 'state-minus' controlled by Israeli security", Jewish Telegraphic Agency, 24 October 2018. In 2022, Prime Minister Naftali Bennett said: "I oppose a Palestinian State, and I am making it impossible to conduct diplomatic negotiations that might lead to a Palestinian State." See Mazal Mualem, "Bennet, in interview blitz, reacts to Netanyahu criticisms", Al-Monitor, 31 January 2022.

[9] See Security Council resolutions 237 (1967) and 2334 (2016), as well as 20 other Security Council resolutions.

[10] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 149.

[11] See A/72/556.

[12] See A/74/507 and A/75/532.

12. The inescapable question becomes: has the Israeli occupation curdled into something darker and more ominous? While the laws of occupation continue to apply in full force to the Palestinian territory, they have become an increasingly inadequate legal and political framework by which to accurately understand, let alone effectively regulate and end, the transformative reality that Israel has been imposing on the ground. Even as the protracted Israeli occupation has crossed the bright red line into illegality,[13] this does not appear to sufficiently capture the full extent of the qualitative changes occurring in the Palestinian territory.

13. Distinguished voices have concluded in recent years that these inexorable facts amount to, or closely resemble, apartheid. Ban Ki-moon, the former Secretary-General of the United Nations, wrote in 2021 that the intent of Israel to maintain "structural domination and oppression of the Palestinian people through indefinite occupation … arguably constitutes apartheid".[14] Nobel Laureate Desmond Tutu stated in 2014: "I know firsthand that Israel has created an apartheid reality within its borders and through its occupation."[15] The Minister for Foreign Affairs of South Africa, Naledi Pandor, spoke in 2022 about her country's "significant dismay at the continued apartheid practices of Israel against the long-suffering people of Palestine".[16] Michael Ben-Yair, a former Attorney General of Israel, said in 2022 that Israel had become "an apartheid regime … a one state reality, with two different peoples living with unequal rights".[17] Ami Ayalon, the former Director of Shin Bet, wrote in his memoir: "We've already created an apartheid situation in Judea and Samaria, where we control the Palestinians by force, denying them self-determination."[18] Furthermore, two former Israeli ambassadors to South Africa – Ilan Baruch and Alon Liel – stated in 2021 that the systematic discrimination of Israel "on the basis of nationality and ethnicity" now constituted apartheid.[19]

14. If these responsible figures have determined that this reality is apartheid, then it is incumbent upon the rest of us to test, through the tools of international law and human rights, whether these observations accurately reflect what is happening in the Palestinian territory.

15. Palestinians have urged the international community to understand their predicament as apartheid. Palestinian Ambassador Riyad Mansour stated to the Security Council in February 2022 that apartheid was now entrenched in the Occupied Palestinian Territory.[20] Two premier Palestinian human rights organizations – Al-Haq and the Addameer Prisoner Support and Human Rights Association – have concluded that Israel was maintaining an apartheid regime over the Palestinian people as a whole.[21] The Al Mezan Center for Human Rights, another leading Palestinian human rights group, recently reported that the enclosure of Gaza had become an integral part of the apartheid regime of Israel.[22]

16. International and Israeli human rights organizations have likewise issued substantive reports that have determined that Israel has created an apartheid rule, either in the West Bank or throughout Israel and the Occupied Palestinian Territory. Human Rights Watch stated in 2021: "The Israeli government has demonstrated an intent to maintain the domination of

[13] See A/72/556.

[14] "Ban Ki-moon: US should back a new approach to the Israeli-Palestinian conflict", *Financial Times*, 29 June 2021.

[15] Desmond Tutu, "Presbyterian General Assembly Biennial Meeting: my message on Israel and Palestine", 16 August 2014.

[16] Tovah Lazaroff, "Israeli apartheid charge: a matter of law, antisemitism or occupation?", *Jerusalem Post*, 18 February 2022.

[17] Michael Ben-Yair, "Former AG of Israel: with great sadness I conclude that my country is now an apartheid regime", *thejournal.ie*, 10 February 2022.

[18] Ami Ayalon, *Friendly Fire* (Steerforth Press, 2021), p. 260.

[19] Ilan Baruch and Alon Liel, "It's apartheid, says Israeli ambassadors to South Africa", *GroundUp*, 8 June 2021.

[20] See the statement made by the Permanent Observer Mission of the State of Palestine to the United Nations on 23 February 2022 (see S/PV.8973).

[21] Addameer Prisoner Support and Human Rights Association, Al-Haq, and Housing and Land Rights Network, "Entrenching and maintaining an apartheid regime over the Palestinian people as a whole", submission to the Special Rapporteur, January 2022.

[22] Al Mezan Center for Human Rights, *The Gaza Bantustan* (2021).

Jewish Israelis over Palestinians across Israel and the OPT."[23] Amnesty International concluded in 2022: "Israel has perpetrated the international wrong of apartheid, as a human rights violation and a violation of public international law wherever it imposes this system."[24] B'Tselem found in 2021 that Israel had created a "regime of Jewish supremacy from the Jordan River to the Mediterranean Sea" that constituted apartheid.[25] Furthermore, Yesh Din issued a comprehensive legal opinion in June 2020 by human rights lawyer Michael Sfard that determined that the crime of apartheid was being committed by Israel in the West Bank.[26]

17. Israel and its supporters have strongly resisted the labelling of the policies and practices of Israel as amounting to apartheid. In January 2022, the Minister for Foreign Affairs, Yair Lapid, responded to the Amnesty International report by stating that its finding of apartheid was "false, biased and antisemitic".[27] The chief executive officer of the American Jewish Committee, David Harris, said that the shortcomings of Israel could not be compared with apartheid in South Africa.[28] In a more reflective comment, Michael Koplow of the Israel Policy Forum criticized the use of "apartheid" as conceptually wrong in the context of Israel and Palestine, because it would lead decision makers away from solving the true problem on the ground.[29]

18. In the following section of the report, the Special Rapporteur examines whether Israeli rule over the Occupied Palestinian Territory can now be called apartheid. The Special Rapporteur acknowledges that a number of human rights groups (Al-Haq, Addameer Prisoner Support and Human Rights Association, Human Rights Watch, Amnesty International and B'Tselem) have analysed the issue of apartheid in the context of Israel and the Occupied Palestinian Territory together, taking the view that it was impossible to have democracy here and apartheid there.[30] However, consistent with the mandate of the Special Rapporteur, the focus is on the practices of Israel in the West Bank, including East Jerusalem, and Gaza.

B. International law and prohibition of the crime of apartheid

19. The concept of apartheid – the term means "apartness" in Afrikaans – as an oppressive system of rule and a cornerstone legal prohibition of international law arose from the legal, political and social practices developed in southern Africa between the 1940s and the 1990s. It originated in South Africa as a declared State policy in 1948,[31] and was also implemented in other settler colonies in southern Africa. Today, apartheid has acquired a universal meaning that transcends the specific practices in southern Africa and is applicable wherever it may exist.

20. The legal prohibition against apartheid has become well-established through both customary and conventional international law. It is regarded today as a *jus cogens* norm, a peremptory norm of international law from which no derogation is allowed.[32] Elevating apartheid to the most serious of crimes in international law places it in the same category as war crimes, wars of aggression, territorial annexation, genocide, slavery, torture and crimes

[23] Human Rights Watch, *A Threshold Crossed* (2021).
[24] Amnesty International, *Israel's Apartheid against Palestinians* (London, 2022).
[25] B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea", 12 January 2021.
[26] Michael Sfard, "The Israeli occupation of the West Bank and the crime of apartheid", position paper (Yesh Din, June 2020).
[27] Lazar Berman, "Israel blasts Amnesty UK for 'antisemitic' report accusing it of apartheid", *Times of Israel*, 31 January 2022.
[28] Laurenz Gehrke, "Amnesty International report alleging 'apartheid' in Israel draws fierce criticism", *Politico*, 1 February 2022.
[29] "The strange case of erasing nationalism from a national conflict", In Koplow Column, Israel Policy Forum, 3 February 2022.
[30] See also N. Thrall, "The separate regimes delusion", *London Review of Books* (7 January 2021).
[31] N. Clark and W. Worger, *South Africa: the Rise and Fall of Apartheid*, 3rd ed. (Routledge, 2016).
[32] United Nations, "Draft articles on responsibility of States for internationally wrongful acts, with commentaries", commentary on art. 40 (2001).

against humanity. Furthermore, as a *jus cogens* norm, this gives rise to obligations *erga omnes*, creating a legal duty for all States to cooperate in order to end the violation.[33]

Customary international law

21. The General Assembly first approved a resolution critical of apartheid in South Africa in 1950,[34] and subsequently adopted a volume of resolutions condemning the practice over the following 40 years. In 1968, the General Assembly declared that the policies of apartheid practised by the Government of South Africa were a crime against humanity, stating that it was part of the policy of South Africa to deny the majority population its right to self-determination.[35] In its Advisory Opinion on Namibia in 1971, the International Court of Justice ruled that the application of apartheid in Namibia by South Africa was a "flagrant violation of the purposes and principles of the Charter [of the United Nations]".[36] In its resolution 473 (1980), the Security Council stated that the policy of apartheid was a crime against the conscience and dignity of mankind and was incompatible with the rights and dignity of man, the Charter of the United Nations and the Universal Declaration of Human Rights. Legal scholars have accepted that the prohibition against apartheid has acquired the status of a rule of customary international law,[37] meaning that it applies universally, regardless of whether a State has ratified a convention or international instrument outlawing apartheid.

Conventional international law

22. In conventional international law, the prohibition against the crime of apartheid is firmly anchored in the instruments of international human rights law, international humanitarian law and international criminal law.

23. In international human rights law, the International Convention on the Elimination of All Forms of Racial Discrimination[38] was adopted by the General Assembly to combat the scourge of racial supremacy, segregation and separation through the prohibition of discrimination on the basis of race, colour or ethnic origin.[39] Article 3 states that States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.[40]

24. In international humanitarian law, apartheid has been designated by the high contracting parties to the Geneva Conventions of 12 August 1949 as a grave breach under the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) if committed during circumstances regulated by the Conventions, such as an armed conflict or an occupation.[41] Article 85 (4) defines a series of acts "committed wilfully" as "grave breaches" of the Protocol. Among the specifically listed acts are "practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based upon racial

[33] See A/CN.4/727.

[34] Resolution 395 (V).

[35] Resolution 2396 (XXIII) and A/CN.4/727.

[36] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, para. 131.

[37] See A/CN.4/727; and A. Cassese, *International Criminal Law*, 2nd ed. (Oxford University Press, 2008), p. 25.

[38] Entered into force on 4 January 1969. As at 1 February 2022, 182 States had ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

[39] The International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Israel in 1979 and by the State of Palestine in 2014.

[40] In its general recommendation No. 19 (1995), the Committee on the Elimination of Racial Discrimination stated that article 3 had universal application and the prohibition applied to all countries.

[41] Protocol I Additional to the Geneva Conventions of 1949 entered into force on 7 December 1979. As at 1 February 2020, 174 States had ratified the Protocol. Israel ratified the Geneva Conventions of 1949 in 1951, but has not ratified the Protocol.

discrimination". Additionally, article 85 (5) declares that "grave breaches" are to be regarded as "war crimes" under international humanitarian law.

25. The International Committee of the Red Cross, the guardian of the Geneva Conventions of 1949, considers that the prohibition against apartheid in international humanitarian law has achieved the status of customary international law.[42] In international criminal law, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid[43] in 1973. Article 1 of the Convention declares that apartheid is a crime against humanity. Article 2 defines the crime against humanity of apartheid as including similar policies and practices of racial segregation and discrimination as practised in southern Africa, and states that the term "crime of apartheid" is to apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to the members of a racial group of the right to life and liberty of person, through such means as murder, serious bodily or mental harm or arbitrary arrest and imprisonment;

(b) The deliberate imposition on a racial group of living conditions calculated to cause their physical destruction, in whole or in part;

(c) Legislative actions calculated to prevent a racial group from full participation in all features of a society's economic, social, political and cultural life;

(d) Any measures designed to divide the population along racial lines by the creation of separate reserves or ghettos, the prohibition of mixed marriages or the expropriation of land;

(e) Exploitation of the labour of a racial group;

(f) Persecution of organizations, by depriving them of their fundamental rights and freedoms because they oppose apartheid.

26. In 1998, the international community further developed the criminality of apartheid with the adoption of the Rome Statute of the International Criminal Court.[44] Article 7 (2) (h) of the Rome Statute defines the crime of apartheid as inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over another racial group or groups and committed with the intention of maintaining that regime. Paragraph 1 of article 7 lists a number of inhumane acts, including:

(a) Deportation or forcible transfer of population;

(b) Imprisonment or other severe deprivation of liberty;

(c) Torture;

(d) Persecution against any identifiable group on political, racial, ethnic, cultural, religious, gender or other grounds;

(e) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

[42] "Rule 88: non-discrimination", Customary International Humanitarian Law database. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule88#:~:text=Apartheid-,Rule%2088.,other%20similar%20criteria%20is%20prohibited.

[43] Entered into force on 18 July 1976. As at 1 February 2022, 110 States had ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid. The State of Palestine ratified the Convention in 2014. Israel has not ratified it.

[44] Entered into force on 1 July 2002. As at 1 February 2022, 123 States had ratified the Rome Statute. It was ratified by the State of Palestine in 2015. Israel has not ratified it.

27. In February 2021, the Pre-Trial Chamber of the International Criminal Court ruled that it has criminal jurisdiction to hear complaints regarding purported violations of the Rome Statute with respect to the situation in Palestine.[45]

28. Accordingly, the relevant international law establishes that the Occupied Palestinian Territory is a territorial unit where the prohibition against apartheid can be applied to assess whether apartheid practices exist. Among the factors that support this conclusion are the universal application of customary international law, the ratification by both Israel and the State of Palestine of the International Convention on the Elimination of All Forms of Racial Discrimination, the ratification by the State of Palestine of the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, and the customary international humanitarian law status of the prohibition against apartheid.

Legal definition of apartheid

29. Only the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute provide legal definitions of apartheid. The two instruments were drafted and adopted in distinct eras, which likely explains the differences in their respective terminology. The drafting of the Convention in the early 1970s reflected the international community's focus on the specific practices of racial supremacy in southern Africa. When the Rome Statute was drafted and adopted 25 years later, the apartheid era in southern Africa had already ended, and the purpose of the Rome Statute was to provide a forward-looking definition with universal application. In particular, it made no reference to South Africa or southern Africa. Given this approach, there is no reasonable basis to think that the existence of apartheid is limited either in time or in geography. Furthermore, while the historical practice of apartheid in southern Africa provides useful reference points for assessing the possible existence of apartheid elsewhere, such historical and political comparisons are never exact, and cannot be expected to be.[46] Rather, the legal and political starting point to determine the presence of apartheid in another time and place is the application of a commonly accepted definition, drawn from the Convention and the Rome Statute.

30. In its report, Amnesty International correctly notes that there are two secondary differences between the definition of apartheid in the International Convention on the Suppression and Punishment of the Crime of Apartheid and that in the Rome Statute.[47] First, under the Rome Statute the crime of apartheid requires the existence of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group, with the intent of maintaining that regime. In contrast, the Convention takes a less-specific approach in that it does not refer to an "institutionalized regime". Nonetheless, since the Convention specifically mentions the "similar policies and practices" that were applied in southern Africa during the apartheid era, it stands to reason that these practices amounted to the sort of "institutionalized regime" that the Rome Statute refers to. The second difference goes to the broader list of inhuman acts proscribed in the Convention. However, a purposive reading of the respective lists indicates that there is considerable overlap, and the broad language used in the Rome Statute – that is, "other inhumane acts" – can reasonably be said to include the same prohibited provisions that are found on the list in the Convention.

31. These differences between the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute are secondary and reconcilable. Accordingly, the construction of a definition of the "crime against humanity of apartheid" that draws from, and is consistent with, both instruments would be made up of the following three features:

(a) There exists an institutionalized regime of systematic racial oppression and discrimination;

[45] *Situation in the State of Palestine*, No. ICC-01/18, Decision, 5 February 2021.

[46] J. Dugard and J. Reynolds, "Apartheid, International Law and the Occupied Palestinian Territory", *European Journal of International Law*, vol. 24, No. 3 (September 2013), pp. 867, 883–884.

[47] Amnesty International, *Israel's Apartheid against Palestinians*, note 28 at pp. 47–49.

(b) The regime was established with the intent to maintain the domination of one racial group over another;

(c) The regime features inhumane and inhuman acts committed as an integral part of the regime.

This definition has been accepted by scholars and human rights organizations that have assessed the contemporary meaning of apartheid in international law.[48] It must be noted that all three features are required: examples or patterns of racial discrimination by themselves are insufficient.

Question of "race" and "racial group"

32. The question of race and racial groups in the context of apartheid and domination requires an explanation. Neither the International Convention on the Suppression and Punishment of the Crime of Apartheid nor the Rome Statute defines "racial group". The initial approach towards "racial group" in the Convention might suggest that it was influenced by the racial categories employed by the apartheid regimes in southern Africa, which focused on black and white skin colour.[49] However, the understanding of "race" and "racial groups" has evolved significantly in recent decades, such that it has been recognized for some time that "race" and "racial group" are social constructs rather than a biological determination based on skin colour and/or assumptions regarding inherent racial differences.[50] Indeed, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination – which preceded the International Convention on the Suppression and Punishment of the Crime of Apartheid and is specifically mentioned in the preamble to that Convention – provides a broad definition of "racial discrimination" that goes beyond "race" and "colour" to include ethnicity, descent and national origin, that is, any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.[51]

33. Therefore, in the context of the actions of Israel towards the Palestinians living in the occupied territory, Jewish Israelis and Palestinian Arabs may be understood as distinct racial groups distinguished by their nationality, ethnicity, religion, ancestry and descent.[52] As social constructions, racial identities should be seen as a matter of perception, particularly in the eyes of a dominant group that distinguishes itself from other groups based on these various social markers. In the present case, the Government of Israel has determined the allocation, and the denial, of rights in the Occupied Palestinian Territory through a series of laws, practices and policies that define who is a Jew and who is not a Jew (the non-Jewish population being overwhelmingly Palestinian). The important point in international law is not what these respective groups represent in terms of any purported fixed identity, but rather how these respective groups are *treated* because of their perceived identity and classification.

[48] J. Dugard and J. Reynolds, "Apartheid, international law and the Occupied Palestinian Territory", note 51; Human Rights Watch, *A Threshold Crossed*, note 27; Amnesty International, *Israel's Apartheid against Palestinians*, note 28; and International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, "Apartheid in the Occupied West Bank", joint submission to the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, February 2022.

[49] C. Lingaas, "Jewish Israeli and Palestinians as distinct 'racial groups' within the meaning of the crime of apartheid?", EJIL:Talk!, 6 July 2021.

[50] C. Lingaas, *The Concept of Race in International Criminal Law* (Routledge, 2019).

[51] This definition was applied by the International Court of Justice in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, note 40, para. 131.

[52] International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, "Apartheid in the Occupied West Bank", note 53; and R. Falk and V. Tilley, "Israeli practices towards the Palestinian people and the question of apartheid", *Palestine and the Israeli Occupation*, No. 1 (Spring 2017), pp. 1–65.

Laws of occupation and legal prohibition against apartheid

34. The crime against humanity of apartheid is capable of being committed during an occupation that is governed by international humanitarian law. First, article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination obligates States to prevent, prohibit and eradicate all practices of this nature (i.e. "racial segregation and apartheid") in territories under their jurisdiction. This definition, drafted in the shadow of apartheid during the illegal rule of South Africa over Namibia, would capture the practices of any alien rule by a State beyond its recognized borders. Second, Protocol I Additional to the Geneva Conventions of 1949 expressly prohibits apartheid, meaning that the high contracting parties anticipated that the crime could be committed during an occupation. Third, the application of one body of law does not displace the operation of the other, except in cases of express contradiction. The application of *lex specialis* – a traditional approach in international humanitarian law that postulates that, if two laws govern a particular situation, the more specific law overrides the more general law – must be interpreted carefully in these circumstances, in order not to deny the intended beneficiaries the robust protection of these laws.[53] The ascendent legal view is that different bodies of laws can apply simultaneously to a given situation where they may provide complementary and concurrent protection.[54] This applies equally to the laws of occupation and the prohibition against apartheid.[55]

C. Application of the apartheid test to the Occupied Palestinian Territory

35. Since the beginning of the occupation in June 1967, the rule of Israel over the Palestinian territory has been epitomized by two core features. The first is the establishment of designed-to-be irreversible "facts-on-the-ground": the creation of 300 civilian settlements, with 700,000 Jewish settlers, meant to demographically engineer an unlawful sovereignty claim through the annexation of the occupied territory while simultaneously thwarting the Palestinians' right to self-determination. The second is the development of an oppressive system of military rule over the 2.7 million Palestinians in the West Bank, a shrunken and tenuous range of residency rights for the 360,000 Palestinians living in East Jerusalem, and a medieval military blockade of the 2 million Palestinians in Gaza.

36. These two features are deeply intertwined: it is impossible for an acquisitive occupying Power to settle hundreds of thousands of its citizens into occupied territory, create for them attractive living conditions equivalent to the home territory, and expropriate and alienate huge swaths of land and resources for their benefit and security, without also immiserating the indigenous people and triggering their perpetual rebellion. The past 70 years has taught us that a covetous alien Power has two choices: either to abandon the fever dream of settler colonialism and recognize the freedom of the indigenous people or instead to double down with increasingly more sophisticated and harsher methods of population control as the inevitable consequence of entrenching permanent alien rule over a people profoundly opposed to their disenfranchisement and destitution.

37. Israel has chosen the second path. Kofi Annan described this as a "prolonged and sometimes brutal occupation".[56] Ban Ki-moon has written that "indefinite occupation" by Israel has been imposed by "inhumane and abusive acts".[57] Barack Obama has criticized the "slow-motion annexation" of Palestinian land by Israeli settlements.[58] We must ask ourselves: has this occupation now congealed into apartheid?

[53] M. Jackson, "Expert opinion on the interplay between the legal regime applicable to belligerent occupation and the prohibition of apartheid under international law", paper prepared for the Diakonia International Humanitarian Law Centre, 23 March 2021.

[54] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

[55] M. Jackson, "Expert opinion on the interplay between the legal regime applicable to belligerent occupation and the prohibition of apartheid under international law", note 58; and Al-Haq, Addameer Support and Human Rights Association, and Housing and Land Rights Network, "Entrenching and maintaining an apartheid regime over the Palestinian people as a whole", note 25.

[56] K. Annan, *Interventions: a Life in War and Peace* (Penguin, 2012), p. 268.

[57] Ban Ki-moon, "Ban Ki-moon: US should back a new approach to the Israeli-Palestinian conflict".

[58] B. Obama, *A Promised Land* (Crown, 2020), p. 632.

Institutionalized regime of systematic racial oppression and discrimination

38. At the heart of the settler colonial project of Israel is a comprehensive dual legal and political system that provides comprehensive rights and living conditions for the Jewish Israeli settlers in the West Bank, including East Jerusalem, while imposing upon the Palestinians military rule and control without any of the basic protections of international humanitarian and human rights law.[59] Against the grain of the twenty-first century, Israel assigns, or withholds, these rights and conditions on the basis of ethnic and national identity.

39. Politically and legally, Jewish Israeli settlers enjoy the same fulsome citizenship rights and protections as Israeli Jews living inside the country's borders of 1949. The 475,000 Israeli settlers in the West Bank, all of whom live in Jewish-only settlements, have the full panoply of laws and benefits of the citizenship of Israel extended to them personally and extraterritorially. Like Israelis in Tel Aviv or Eilat, the West Bank settlers have the same access to health insurance, national insurance, social services, education, regular municipal services and the right of entry into and out of Israel and around much of the West Bank. They also received targeted benefits and incentives from the Government of Israel to live and work in the settlements.[60] The settlers are an integrated part of a wealthy society with a European standard of living.[61] The utilities and services that the settlements enjoy – water, power, housing, access to well-paid jobs, roads and industrial investment – are far superior to those available to the Palestinians. If settlers are charged with a crime, they are tried in an Israeli court with the full protection of Israeli criminal law. These settlers have the right to vote in Israeli elections, even though Israeli laws formally restrict the ability of Israeli citizens who live outside the country's territory to vote. To be sure, there are some citizenship rights possessed by a citizen of Israel that are not automatically extended territorially to the West Bank settlers, particularly regarding property, planning and building laws. However, Israeli military orders have been created to assign these rights to the local and regional settler councils in the West Bank, which effectively bridges the gap. These settler councils are regarded by Israel as equivalent to municipal councils inside Israel, and they are allocated substantial benefits and budgets by the Government of Israel accordingly. The major para-statal institutions that have been given the authority to operate in the occupied territory – the Jewish National Fund, the Jewish Agency for Israel, the World Zionist Organization and a multitude of foreign charities – work solely for the benefit of consolidating the presence of Israeli Jews in the settlements.

40. In sharp contrast, the 2.7 million Palestinians living in the West Bank enjoy none of the rights, protections and privileges possessed by the Israeli Jewish settlers living among them. They can vote in elections (when they are held) for the Palestinian Authority, but it has exceptionally limited powers. They have no democratic or political rights to hold the occupying Power – which exercises overwhelming control over their lives – accountable. The ubiquitous barriers to freedom of personal and commercial movement throughout the occupied territory have resulted in a structurally de-developed economy. The United Nations Conference on Trade and Development has estimated that Israeli closures, the confiscation of land and resources, rapacious settlement growth and military operations have cost the Palestinian economy $57.7 billion in arrested development since 2000.[62] Yet, notwithstanding the travails of the occupation, Palestinian society has become highly literate and quite well educated.[63] The result is a dynamic and talented population whose economy has become depleted and impoverished by a protracted military occupation, which is heavily

[59] International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, "Apartheid in the Occupied West Bank", note 53; N. Thrall, "The separate regimes delusion"; Amnesty International, *Israel's Apartheid against Palestinians*, note 28; Association for Civil Rights in Israel, *One Rule, Two Legal Systems* (October 2014); Human Rights Watch, *A Threshold Crossed*; Al-Haq and others, note 25; and D. Kretzmer and Y. Ronen, *The Occupation of Justice*, 2nd ed. (Oxford University Press, 2021).

[60] B'Tselem, *This Is Ours – and This, Too* (2021).

[61] According to the World Bank, Israeli gross domestic product per capita in 2020 was $44,168.

[62] See A/76/309.

[63] Palestinian Central Bureau of Statistics, *Palestine in Figures 2020* (2021).

dependent on international aid and which has only one thirteenth the gross domestic product per capita of Israel.[64]

41. The lives of the Palestinians in the West Bank are governed by more than 1,800 military orders issued since 1967 by the Commander of the Israel Defense Forces, covering such issues as security, taxation, transportation, land planning and zoning, natural resources, travel and the administration of justice. In particular, Israel has imposed a military legal system in the West Bank that applies to Palestinians but not the Jewish settlers. The focus of the military legal system is the regulation of security, which covers such offences as participating in protests and non-violent civil disobedience, standard criminal acts, traffic violations, terrorism, membership in over 400 banned organizations, taking part in political meetings and engaging in civil society activities. Palestinians arrested for security offences can be detained without charge for a much longer period of time than Israeli settlers. The military legal system is presided over by Israeli military judges and trials are conducted in Hebrew (which many Palestinian detainees do not speak). The system offers few of the procedural and substantive protections of a purposive criminal legal system, while the prisoners' lawyers are significantly restricted in their access to evidence and the conviction rate is over 99 per cent.[65] Even more draconian, there are at any one time hundreds of Palestinians imprisoned indefinitely through administrative detention, where they are incarcerated without the façade of a formal proceeding, that is, without charges, evidence, a trial or a conviction, and whose detention can be extended indefinitely. Investigations by the military into deaths and serious injuries rarely result in any accountability.

42. A central strategy of Israeli rule has been the fragmentation of the Palestinian territory into separate areas of population control, with Gaza, the West Bank and East Jerusalem physically divided from one another. The West Bank itself is further splintered into 165 disconnected enclaves. This strategic fragmentation – *divide et impera* – is geographically enforced by Israel through an elaborate series of walls, checkpoints, barricades, military closure zones, Palestinian-only roads and Israeli-only roads.[66] Israel closely monitors Palestinian society through advanced cyber-surveillance and its full control over the Palestinian population registry. The Occupied Palestinian Territory lacks any secure land, sea or air access to the outside world, with Israel controlling all of its borders (with the exception of the Rafah crossing between Gaza and Egypt). Palestinians require difficult-to-obtain special permits from the Israeli military to travel between the West Bank, East Jerusalem and Gaza.[67] This geographic division severs the Palestinians under occupation not only from each other socially, economically and politically, but also from Palestinians living in Israel and the wider world.[68] As the Special Rapporteur previously observed: "No other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness."[69]

43. In the West Bank and East Jerusalem, Palestinian lands – the single most important natural resource in the territory – are being steadily expropriated by Israel for Jewish-only use and settlement, buttressed by discriminatory planning laws and military orders. Since 1967, Israel has confiscated more than 2 million dunams of Palestinian land in the West Bank,[70] which has been used to build settlements, Israeli-only highways and roads, recreational parks, industrial centres and military bases and firing zones, all for the purpose

[64] According to the World Bank, Palestinian gross domestic product per capita in 2020 was $3,239. (The World Bank measures only the West Bank and Gaza; it excludes East Jerusalem.)

[65] War on Want, *Judge, Jury, Occupier* (London, 2021).

[66] Regarding the separate highway system, see Israeli Centre for Public Affairs and Breaking the Silence, *Highway to Annexation* (2020).

[67] Sari Bashi and Eitan Diamond, *Separating Land, Separating People: Legal Analysis of Access Restrictions between Gaza and the West Bank* (Tel Aviv-Jaffa, Gisha, 2015).

[68] Former Prime Minister Benjamin Netanyahu explained in 2019 that "maintaining a separation between the PA in the West Bank and Hamas in Gaza helps prevent the establishment of a Palestinian state". See Lahav Harkov, "Netanyahu: money to Hamas part of strategy to keep Palestinians divided", *Jerusalem Post*, 12 March 2019.

[69] A/71/554, para. 41.

[70] A metric dunam is 1,000 square metres.

of cementing a permanent and immovable demographic presence. Israel has employed three primary methods for land confiscation: (a) the appropriation of land for "military needs", some of which was later converted for civilian Jewish settlements, (b) the designation of land for "public needs", with the purpose of primarily or exclusively Jewish Israeli use, and (c) the declaration of "State land", with the ultimate aim of using these lands primarily for Jewish Israeli purposes. According to Peace Now in 2018, the allocation of 99.76 per cent of State land was for the exclusive use of Israeli settlements.[71] Unlike Jewish settlers, Palestinians have no representation or voice in decision-making over zoning and property use throughout most of the West Bank. The United Nations has observed that, because permits for construction for Palestinian homes and property in East Jerusalem and Area C of the West Bank "are nearly impossible to obtain", Palestinians often build without one. In turn, the Israeli military frequently orders the demolition of Palestinian homes and property built without a permit: the number of structures demolished in 2021 and 2020 are the second and third highest since these figures were first recorded in 2009.[72] In addition, outside of official expropriation policies are the tolerated actions of Israeli settlers, whose violence has been regularly employed to seize Palestinian land or to make its use untenable.[73]

44. In East Jerusalem, the 360,000 Palestinians have a more enhanced social and legal status than Palestinians in the West Bank, but their position is still greatly inferior to the 230,000 Jewish settlers who live among them in Jewish-only settlements. The Jewish settlers are regarded by Israel as residing in sovereign Israeli territory (arising from its two-stage illegal annexation of East Jerusalem in 1967 and 1980)[74] and, as such, they enjoy full citizenship rights, benefits and privileges. Almost all East Jerusalemite Palestinians possess residency status as opposed to Israeli citizenship; while this entitles them to some Israeli social rights (including health insurance), this residency status can be cancelled if they leave Jerusalem for a period of time, a threat that Jewish Israelis do not face. Approximately 75 per cent of Palestinian families in East Jerusalem live below the poverty line, compared to 22 per cent of Jewish families. About 38 per cent of land in East Jerusalem – mostly private Palestinian land, but some of it public land – had been expropriated by 2017 by the Government of Israel for Jewish-only use, leaving Palestinian Jerusalemites with a diminished land base to accommodate their growing population.[75] The Palestinian neighbourhoods in East Jerusalem live with significant shortages in schools, higher housing congestion, the discriminatory application of zoning and housing permits, and poorer access to municipal services (including sewage and water) than the Jewish settlers in their midst. About 120,000–140,000 Palestinian Jerusalemites have been forced to live on the West Bank side of the separation wall, physically separated from access to the city and its services.[76] The intentionally discriminatory neglect of Palestinians in East Jerusalem is best illustrated by the Jerusalem Master Plan, in which there is a target of maintaining a Jewish demographic majority with a 60:40 ratio, after an earlier target of 70:30 was not maintained.[77]

45. In Gaza, the apparent strategy of Israel is the indefinite warehousing of an unwanted population of 2 million Palestinians, whom it has confined to a narrow strip of land through its comprehensive 15-year-old air, land and sea blockade[78] (with further restrictions by Egypt on the southern border of Gaza). Ban Ki-moon has called this political quarantining of the

[71] "State land allocation in the West Bank: for Israelis only", 17 July 2018.

[72] Office for the Coordination of Humanitarian Affairs, "Data on demolition and displacement in the West Bank". Available at https://www.ochaopt.org/data/demolition.

[73] B'Tselem, "State business: Israel's misappropriation of land in the West Bank through settler violence", November 2021.

[74] See Security Council resolutions 476 (1980), 478 (1980) and 2334 (2016).

[75] United Nations Human Settlements Programme (UN-Habitat), *Right to Develop: Planning Palestinian Communities in East Jerusalem* (2015).

[76] Association for Civil Rights in Israel, "East Jerusalem: facts and figures", May 2021.

[77] International Crisis Group, "Reversing Israel's deepening annexation of occupied East Jerusalem", Middle East Report, No. 202 (Brussels, June 2019).

[78] Al Mezan Center for Human Rights, *The Gaza Bantustan*; Gisha, "Area G: from separation to annexation" (June 2020); and D. MacIntyre, *Gaza: Preparing for Dawn* (Oneworld, 2017).

population a "collective punishment",[79] which is a serious breach of international law.[80] The World Bank reported in 2021 that Gaza had undergone a multi-decade process of de-development and deindustrialization, resulting in a 45 per cent unemployment rate and a 60 per cent poverty rate, with 80 per cent of the population dependent on some form of international assistance, in significant part because of the hermetic sealing of the access of Gaza to the outside world.[81] The coastal aquifer, the sole source of natural drinking water in Gaza, has become polluted and unfit for human consumption because of contamination by seawater and sewage, substantially driving up water costs for an already destitute population. Gaza is heavily dependent on external sources – Israel and Egypt – for power, and Palestinians live with rolling power blackouts of between 12 and 20 hours daily, severely impairing daily living and the economy. The entry and export of goods is strictly controlled by Israel, which has throttled the local economy. The health-care system in Gaza is flat on its back, with serious shortages of health-care professionals, inadequate treatment equipment and low supplies of drugs and medicines. Palestinians in Gaza can rarely travel outside of Gaza, which is a denial of their fundamental right to freedom of movement. More acutely, they have endured four highly asymmetrical wars with Israel over the past 13 years, with enormous loss of civilian life and immense property destruction. The suffering was acknowledged by Antonio Guterres in May 2021, when he stated: "If there is a hell on earth, it is the lives of children in Gaza."[82]

Established with intent to maintain domination of one racial group over another

46. Across most of the political spectrum in Israel is a widely held consensus: Israel will keep East Jerusalem and either most or all of the West Bank, whether or not there is a peace agreement, and the Palestinians will remain under its permanent security control. Former Prime Minister Benjamin Netanyahu stated in 2019: "A Palestinian state will endanger our existence … I will not divide Jerusalem, I will not evacuate any community [settlement] and I will make sure we control the territory west of Jordan."[83] Before he became prime minister, Naftali Bennett stated: "The world does not respect a nation that is willing to give up its homeland. We need to apply Israeli law in Judea and Samaria."[84] Minister of Defence Benny Gantz declared in 2019: "We will strengthen the settlement blocs and the Golan Heights, from which we will never retreat. The Jordan Valley will remain our eastern security border."[85] Minister for Transportation Merav Michaeli, when campaigning in 2019, stated: "No one thinks that half-a-million settlers will be evacuated from Judea and Samaria."[86] Furthermore, before he became Minister for Foreign Affairs, Yair Lapid explained in 2016: "My principle says maximum Jews on maximum land with maximum security and with minimum Palestinians."[87] Among recent and current Israeli political leaders, the only debate regarding the Palestinians has come down to tertiary issues: whether the Palestinians will be granted a shrunken statelet with its own postage stamps and a seat at the United Nations or, alternatively, kept in their present state of statelessness. Either way, the intent is for the Palestinians to be encased in a political ossuary, a museum relic of twenty-first century colonialism.

[79] Haaretz, "UN chief Ban Ki-moon calls for Israel to end 'collective punishment' blockade of Gaza", Reuters, 29 June 2016.

[80] Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 33.

[81] These are among the highest rates of any economic unit in the world monitored by the World Bank. See World Bank, "Economic monitoring report to the Ad Hoc Liaison Committee", 17 November 2021.

[82] UN News, "Gaza children living in 'hell on earth', UN chief says, urging immediate end to fighting", 20 May 2021.

[83] Haaretz, "Netanyahu says will begin annexing West Bank if he wins Israel election", 7 April 2019.

[84] Alex Traiman, "On AIPAC sidelines, Israeli ministers express support for settlements", Jewish News Syndicate, 6 March 2018.

[85] Haaretz, "Benny Gantz, Netanyahu rival, gives campaign launch speech", 30 January 2019.

[86] Tovah Lazaroff, "Michaeli: no one thinks half a million settlers will be evacuated", *Jerusalem Post*, 9 March 2019.

[87] Gil Stern Hoffman, "Lapid: US helped Iran fund its next war against Israel", *Jerusalem Post*, 26 January 2016.

47. Except for a few weeks immediately following its 1967 occupation of the West Bank, East Jerusalem and Gaza, Israel has never accepted the international community's wall-to-wall consensus that the Palestinian territory is occupied, that the Geneva Conventions of 1949 apply, and therefore the strict rules of international humanitarian law apply.[88] The refusal by Israel to accept the international community's direction is not an honest difference in views over the interpretation of international law, but the obfuscation of an acquisitive occupier determined to maintain permanent control over the land and its indigenous population. Within a few months of the Six-Day War, the Israeli Cabinet was debating not whether to return the territory, but whether to either keep all of it or return only the major Palestinian cities to Jordan in a condominium arrangement.[89] In the summer of 1967, Israel initiated the construction of its first civilian Jewish settlements, covertly at first, and then openly. The most reliable route for an alien Power that covets the territory it occupies is to establish irreversible facts on the ground through the creation of civilian settlements. This not only establishes a thickening demographic footprint that consolidates the planting of the national flag, but it also generates a growing domestic political constituency that will support the embryonic claim for territorial annexation. The intention of Israel in building the settlements was never primarily about security or increasing the incentive of neighbouring Arab States to negotiate a final peace agreement, but to ensure that it retained as much of the land as possible. As the Minister of Labour of Israel at the time, Yigal Allon, a leading proponent of the settlements, explained in 1969: "Here, we create a Greater Eretz Israel from a strategic point of view, and establish a Jewish state from a demographic point of view."[90] Today, 10 per cent of Jewish citizens of Israel live in settlements in the Occupied Palestinian Territory, and the political constituency among Israeli Jews in support of settlement expansion continues to grow ever larger.

48. In 2018, the Israeli Knesset enacted the Basic Law: Israel – the Nation State of the Jewish People.[91] While Israel does not have a constitution, it has adopted a series of Basic Laws that have acquired a quasi-constitutional status. The Nation State Law entrenches constitutional inequality and racial-national discrimination into Israeli law by distinguishing the rights of Jewish Israelis from those of Palestinians and other non-Jewish citizens of Israel.[92] Senior American foreign policy scholar David Rothkopf has written in Haaretz that the Nation State Law "creates an apartheid society in which ethnic identity trumps fundamental human rights".[93] The Nation State Law is consistent with the regular proclamation by Israeli political leaders, including Benjamin Netanyahu, that "Israel is the national state, not of all its citizens, but only of the Jewish people".[94] The constitutionality of the Nation State Law was upheld by the Israeli High Court in July 2021.[95] For the purposes of the present report, article 7 proclaims that "the State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation".

49. The reach of the Nation State Law is not limited to the pre-1967 boundaries of Israel, as the Law refers to "the Land of Israel", a broader and more flexible term applying to areas of historic Jewish settlement, including the Occupied Palestinian Territory. As Israel considers the Jewish settlements in East Jerusalem and the West Bank to be part of the country, it is to be expected that article 7 will be employed by Israel in the future to justify

88 T. Meron, "The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War", *American Journal of International Law*, vol. 111, No. 2 (April 2017).

89 I. Zertal and A. Eldar, *Lords of the Land* (Nations Books, 2007).

90 R. Friedman, *Zealots for Zion* (Random House, 1992).

91 Law No. 5778 of 2018.

92 Adalah: Legal Center for Minority Arab Rights in Israel, "Israel's Jewish Nation-State Law", 20 December 2020.

93 David Rothkopf, "Why it's now every American Jew's duty to oppose Israel's Government", Haaretz, 5 August 2018.

94 Bill Chappell and Daniel Estrin, "Netanyahu says Israel is 'Nation-State of the Jewish people and them alone'", National Public Radio, 11 March 2019. The Minister of the Interior of Israel, Ayelet Shaked, made similar remarks. See Joseph Krauss, "Israel renews law to keep out Palestinian spouses", 11 March 2022.

95 Netael Bandel, "Israel's top court rules the Nation-State Law is constitutional, denies petitions against it", Haaretz, 8 July 2021.

further settlement expansion and the related methods to achieve that, including the expropriation of Palestinian land and resources.

Inhumane and inhuman acts committed as an integral part of the regime

50. The administration of the occupation by Israel has been replete with a range of inhumane and inhuman acts prohibited by the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute. In summary, these acts include the following:

(a) **Denial of the right to life and liberty.** The rule by Israel is requiring increasingly more violence and confinement to be maintained: between January 2008 and February 2022, 5,988 Palestinians were killed in the context of the occupation and conflict (262 Israelis died during the same time period). For Palestinians, 2021 was the deadliest year since 2014.[96] State-sanctioned extrajudicial killings by Israel continue to be part of its toolbox, including the killings of civilians posing no immediate threat to Israeli troops, and with little or no internal accountability.[97] In addition, the military courts incarcerate thousands of Palestinians on security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention.[98] Additionally, hundreds of Palestinians languish in administrative detention under open-ended confinement.[99] Collective punishment is frequently employed, whether it is the blockade of Gaza, the demolition of family homes of terror suspects or the withholding of bodies.[100]

(b) **Denial of full participation in all features of a society.** Palestinians not only have no voice or vote to hold the military regime that governs much of their lives accountable, but they are also severely restricted through Israeli military orders in the exercise of their inherent rights to freedom of expression, assembly, association and movement within their own society. They are confined in their travel by hundreds of checkpoints and separate roads and by the permit and identification system. They are restricted in their ability to leave and return to Palestine. Their right to work is impeded by a smothered economy, travel restrictions and the fragmentation of their territory. Hundreds of political and civil organizations are banned, and leading human rights organizations have been designated as "terrorist" groups. Israel has imprisoned members of the (dormant) Palestinian Legislative Council. Fragmentation divides Palestinians and ensures more comprehensive control by Israel.

(c) **Measures that divide the population along racial lines.** Israel has created hundreds of Jewish-only settlements in East Jerusalem and the West Bank, with settlers living separately and apart from Palestinian Arabs. The Israeli settlers enjoy substantially superior rights, benefits, privileges and standards of living. In 2022, the Israeli Knesset adopted the Citizenship Law, which restricts the ability of Palestinians from Israel to marry individuals from the West Bank or Gaza; this does not apply to Israeli Jews.[101] The Israeli military application of land, zoning and property rules in East Jerusalem and the West Bank discriminatorily benefits Israeli Jewish settlers and significantly disadvantages Palestinians. Separate settler and Palestinian highways run throughout the West Bank, and Jewish settlers do not encounter the myriad checkpoints and travel obstructions throughout the West Bank. Separate legal systems govern Israeli Jews and Palestinians.

(d) **Exploitation of labour of a racial group.** Palestinians have become a reserve labour force for Israel and for its settlements. Israel recently announced that it was planning

[96] Office for the Coordination of Humanitarian Affairs, "Data on casualties". Available at https://www.ochaopt.org/data/casualties.

[97] See A/HRC/40/74; and Al-Haq, "Al-Haq sends urgent appeal to UN Special Rapporteur on Israel's extrajudicial killing of three Palestinian men in Nablus", 13 March 2022.

[98] Luigi Daniele, "The Israeli military justice system and international law", *Questions of International Law*, vol. 20, No. 31 (November 2017).

[99] Addameer Prisoner Support and Human Rights Association, "Administration detention", July 2017.

[100] See A/HRC/44/60.

[101] Noa Shpigel, "Israel just re-banned Palestinian family unification. What does this law do, and how can it be fought?", Haaretz, 12 March 2022. In supporting the Law, the Minister of the Interior of Israel stated that there was no need to mince words, that the bill also had demographic reasons.

to issue up to 10,000 permits for Palestinians in Gaza to work in Israel.[102] Similarly, about 90,000 Palestinians in the West Bank have permits to work in Israel.[103] Another 35,000 Palestinians work in the Israeli settlements.[104] Many more work without permits. These jobs are almost all menial unskilled and semi-skilled positions in construction, agriculture and manufacturing. They are at the low end of the labour market in Israel, highly precarious, with no union protection, and involve long journeys each day. Palestinians working in Israel are paid more than their counterparts in the occupied territory, but their working conditions and wages are considerably inferior to those of Israelis in the Israeli labour market and they are subject to an abusive permit brokerage system. In a report from 2022, the International Labour Organization noted the exceptionally harsh impact that the COVID-19 pandemic had on Palestinian employment and working conditions, given that Palestinian society lacked the social shock absorbers possessed by Israel to manage the abrupt labour crisis.[105]

(e) **Other inhumane and inhuman acts causing great suffering.** Although strictly prohibited under international law, torture continues to be used in practice by Israel against Palestinians in detention. Methods of torture include sleep deprivation, beating and slapping, humiliation, unhygienic conditions and extended shackling in contorted positions.[106] Challenges to the Israeli Supreme Court against its use have been unsuccessful.[107] Beatings by Israeli soldiers of Palestinians during arrests are regularly reported, with little accountability.[108]

IV. Conclusions

51. **International humanitarian law permits differential treatment of an indigenous population during an occupation, but only in a restricted fashion. Such treatment must be anchored in the principle that any infringements to human rights and equality are to be as minimal and proportional as possible during the conduct of an occupation that is both temporary and short-term. This is not the case in the 55-year-old occupation by Israel. Permanent alien rule over occupied territory and its indigenous population is the antithesis of international humanitarian law and, in recent decades, the inexorable Israeli occupation has become indistinguishable from annexation.**

52. **Is this situation now apartheid? Applying each of the three steps of the amalgamated test from the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute, the Special Rapporteur has concluded that the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.**

53. **First, an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other. (The Palestinian Authority exercises restricted jurisdiction and provides services in limited**

[102] Emanuel Fabian, "Israel to boost number of Palestinian workers from Gaza, Gantz says", *Times of Israel*, 1 March 2022.

[103] Daniel Avis, "Israel to offer more work permits for Palestinians, Bennet says", Bloomberg, 18 January 2022.

[104] International Labour Organization, *The Situation of Workers of the Occupied Arab Territories* (Geneva, International Labour Office, 2022), para. 16.

[105] Ibid.; and Al-Haq, *Captive Markets Captive Lives* (Ramallah, West Bank, 2021).

[106] Public Committee against Torture in Israel, "Torture in Israel 2021: situation report".

[107] World Organisation against Torture, "It's now (even more) official: torture is legal in Israel", 21 March 2019.

[108] B'Tselem, "Torture and abuse in interrogation", 11 November 2017.

parts of the West Bank that Israel has no interest in delivering.) The differences in living conditions and citizenship rights and benefits are stark, deeply discriminatory and maintained through systematic and institutionalized oppression.

54. **Second, this system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves. This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other.**

55. **Third, the imposition of this system of institutionalized discrimination with the intent of permanent domination has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel.**

56. **This is apartheid. It does not have some of the same features as practised in southern Africa; in particular, much of what has been called "petit apartheid" is not present. On the other hand, there are pitiless features of the "apartness" rule by Israel in the Occupied Palestinian Territory that were not practised in southern Africa, such as segregated highways, high walls and extensive checkpoints, a barricaded population, missile strikes and tank shelling of a civilian population, and the abandonment of the Palestinians' social welfare to the international community.**[109] **With the eyes of the international community wide open, Israel has imposed upon Palestine an apartheid reality in a post-apartheid world.**

V. Recommendations

57. **The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely and unconditionally end the occupation of the Palestinian territory, with all deliberate speed. Throughout this process and thereafter, it must:**

(a) **End all discriminatory and apartheid laws, practices and policies that privilege Jewish Israelis living in the occupied territory and subjugate Palestinian Arabs;**

(b) **Fully respect the national rights and human rights of Palestinians, enable them to exercise their freedom of movement, assembly, expression and association, and remove all arbitrary and inequitable restrictions on family life, property, employment, access to and enjoyment of resources, education and daily life.**

58. **The Special Rapporteur recommends that the international community accept and adopt the findings by Palestinian, Israeli and international human rights organizations that apartheid is being practised by Israel in the Occupied Palestinian Territory and beyond. The international community should:**

(a) **Assemble a diplomatic menu of accountability measures to bring the Israeli occupation and its practice of apartheid in the Palestinian territory to a complete end;**

[109] J. Dugard, *Confronting Apartheid: a Personal History of South Africa, Namibia and Palestine* (Johannesburg, Jacana Media, 2018).

(b) **Support any references or applications to the International Criminal Court and/or the International Court of Justice with respect to the legal consequences of the practice of apartheid in the Occupied Palestinian Territory.**

59. **The Special Rapporteur recommends that the United Nations re-establish the Special Committee against Apartheid to investigate any and all practices of systematic discrimination and oppression purportedly amounting to apartheid anywhere in the world, including the Occupied Palestinian Territory.**

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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin

Addendum

MISSION TO ISRAEL, INCLUDING VISIT TO OCCUPIED PALESTINIAN TERRITORY*

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

Summary

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, conducted a mission to Israel from 3 to 10 July 2007, and visited the Occupied Palestinian Territory. In the introductory section of the present report, the Special Rapporteur acknowledges the particular challenge of combating terrorism in this region and the devastating violence suffered by all civilians living there. Section II addresses the overall framework of applicable law in which measures taken by Israel against terrorism should be examined, including the interplay between international human rights law and humanitarian law. It also addresses the state of emergency declared by Israel and potentially positive developments on the issue of derogation and legislative reform. However, of noted concern are the legal implications regarding the classification of suspected terrorists as "unlawful combatants".

In section III, the Special Rapporteur considers particular problems in the Israeli legal system concerning the investigation and prosecution of terrorist suspects, such as legal definitions regarding terrorism; the interrogation methods used by the Israeli Security Agency; and the use of military courts. In section IV, the construction of a barrier - partly a wall and partly a fence - in the West Bank is critically examined regarding its legality and its impact on the Palestinian people and, in particular, its effect on economic, social and cultural rights. Section V highlights some key concerns regarding the situation in Gaza. The Special Rapporteur addresses in section VI the operations of the Israeli Defense Force and the issues of the use of human shields, the demolition of houses and targeted killings, including the killing of civilians.

In the final section, the Special Rapporteur provides a brief conclusion and his recommendations to the Government of Israel. The recommendations include matters pertaining to legislative reform and the discontinuation of practices that are incompatible with international law. The Special Rapporteur also draws the Government's attention to the fact that the high emotional toll of counter-terrorism or security measures easily leads to counterproductive effects. The Special Rapporteur recommends the withdrawal of all Jewish settlements in the Occupied Palestinian Territory and the replacement of the still unfinished barrier with a security infrastructure that, for its geographical position, respects the Green Line or is otherwise accepted by the Palestinians. During the process of implementing such a decision, the Special Rapporteur recommends urgent action to ensure that the regime of permits, the administration of checkpoints and all other associated measures in the Occupied Palestinian Territory do not have a disproportionate impact on the enjoyment of civil, cultural, economic, political and social rights in the Territory.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM ON HIS MISSION TO ISRAEL, INCLUDING VISIT TO OCCUPIED PALESTINIAN TERRITORY (3-10 JULY 2007)

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I. INTRODUCTION

1. Pursuant to Commission on Human Rights resolution 2005/80, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, conducted, at the invitation of the Government of Israel, a mission to Israel from 3 to 10 July, when he also visited the Occupied Palestinian Territory.[1]

2. The Special Rapporteur met with the Minister for Foreign Affairs of Israel, Tzipi Livni. The Special Rapporteur had meetings on a specialist level with the Ministry of Foreign Affairs, the Ministry of Justice, the Israeli Defense Force, the Israeli Security Agency, members of the Knesset (Parliament), the Counter Terrorism Bureau and former and current Presidents of the Supreme Court of Israel. He travelled to various parts of Israel, including to the Hasharon and Hadarim prisons where he was able to conduct private interviews of detainees in conformity with the Terms of Reference for Fact-Finding Missions by Special Rapporteurs,[2] and to the Ofer Military Court, where he observed ongoing proceedings and met with the judges. In the Occupied Palestinian Territory, he visited, inter alia, Bethlehem, Ramallah and Nablus, examined the route and impact of the barrier erected by Israel, and met with the President's Office of the Palestinian Authority. He met with lawyers, academics, victims of terrorism and non-governmental organizations from Israel and the Occupied Palestinian Territory. He was also briefed by a number of international organizations, including by United Nations interlocutors.

3. The Special Rapporteur is deeply mindful of the difficulties faced by Israel in its efforts to combat armed attacks and acts of terrorism and of the long history of violence in the region, which has had a devastating effect on the Israeli and Palestinian civilian population. While emphasizing that not all acts of violence committed against an occupying power, particularly when violence is targeted at the military forces of an occupying power, amount to acts of terrorism properly construed, the Special Rapporteur cannot ignore that, since the second intifada of September 2000 and up to October 2007, 1,165 Israelis were killed (71 per cent of whom were civilians) and 8,635 injured in over 300,000 violent attacks characterized by the Israeli Security Agency as terror attacks. Threats of military attack or terrorism against the Israeli people also arise from other parts of the region and further abroad. The Special Rapporteur was touched by the personal accounts of victims of terrorism, who have not only faced the loss of family members and other physical losses, but also struggle to overcome the psychological and fear-inducing consequences of terrorism.

4. Resorting to the methods of terrorism is always a morally inexcusable decision by a person. Despite this, the Special Rapporteur emphasizes that perpetrators of acts of terrorism do not fall into a vacuum in the application of the law, and he is encouraged in that regard by

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[1] The Special Rapporteur conducted his mission assisted by the Office of the United Nations High Commissioner for Human Rights and Dr. Alex Conte of the University of Southampton.

[2] E/CN.4/1998/45, appendix V.

the position of the Supreme Court of Israel that the fight against terrorism must be achieved through compliance with the law, including international law. He is furthermore pleased to receive assurances from Government sources that Israel is not involved in any global programme of extraordinary rendition or secret detention.

5. The Special Rapporteur underscores the fact that sustainable security can only be achieved through due respect for human rights. As emphasised by the United Nations High Commissioner for Human Rights at the conclusion of her visit to Israel on 23 November 2006, the entitlement of all individuals to enjoy their rights is not dependent upon there being peace. Respect for human rights for all and the rule of law forms one of the four pillars of the United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly in its resolution 60/288 in September 2006. It is identified in the Strategy as "the fundamental basis of the fight against terrorism", thus applicable to all four pillars. Furthermore, the Strategy expressly identifies, in the preambular paragraph to pillar I, that a lack of the rule of law and violations of human rights amount to conditions conducive to the spread of terrorism. In the latter regard, as recognized by the Israeli Security Agency and the Israeli Counter-Terrorism Bureau, high on the list of motivations for carrying out terrorist attacks are those of revenge borne out of the attacker's personal or familial experience or perceptions of ill-treatment or humiliation. The Special Rapporteur further recalls that the Security Council has directed that all States members of the United Nations combat terrorism in compliance with international law, including international human rights and international humanitarian law.[3]

II. FRAMEWORK OF APPLICABLE LAW

A. International human rights and humanitarian law

6. The legal framework against which Israeli measures against terrorism are to be addressed is the combined effect of international humanitarian law and international human rights law. This is particularly the case with respect to Israeli conduct in, and the effect of counter-terrorism law and practice on, the Occupied Palestinian Territory, which has been under Israeli occupation for 40 years. Although Israel officially rejects the de jure application of the 1949 Geneva Conventions to the Occupied Palestinian Territory, it has undertaken to comply with the humanitarian principles under the Fourth Geneva Convention, which pertains to the protection of civilians during times of occupation.

7. With regard to the applicability of substantive norms of international humanitarian law, the Special Rapporteur agrees with the outcome of the positions of the International Committee of the Red Cross (ICRC) and the Israeli Supreme Court that the norms of this body of law, pertaining to international armed conflict, are applicable. The Special Rapporteur emphasizes that, since the adoption of the Geneva Conventions in 1949, the understanding of the substance and scope of international humanitarian law norms has evolved to the effect that the classification of an armed conflict as an international or non-international one cannot be treated as having major substantive consequences for the international humanitarian law obligations of a State that is a party to an armed conflict. He refers, inter alia, to the ICRC study on customary

[3] See for example Security Council resolution 1624 (2005), para. 4.

norms of international humanitarian law, to the undertaking by Israel to respect the humanitarian principles of the Fourth Geneva Convention, and to sources of international humanitarian law that predate the 1949 Geneva Conventions, including The Hague Regulations of 1907. The Special Rapporteur is therefore of the view that, when considering its substantive obligations under international humanitarian law, it is not material whether Israel is a party to Additional Protocol II of 1977 or whether the West Bank was part of a sovereign State prior to the country's occupation of the Territory.

8. The Special Rapporteur notes the Israeli position that the International Covenant on Civil and Political Rights does not apply beyond its own territory, notably in the West Bank, especially as long as there is a situation of armed conflict there. He reminds Israel that international human rights law continues to apply during occupation or armed conflict. This is a point made clear by the Human Rights Committee in its general comments Nos. 29 and 31 and in its concluding observations on Israel,[4] and has been confirmed by the International Court of Justice.[5] As further explained in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories,* the International Court stated that the protection offered by human rights conventions did not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in article 4 of the International Covenant on Civil and Political Rights.[6] The conduct of Israeli counter-terrorist operations must therefore comply not only with international humanitarian law, but also with applicable international human rights law.

9. Those same bodies, the Human Rights Committee and the International Court of Justice have also confirmed that human rights, including those enshrined in the International Covenant on Civil and Political Rights, are legally binding upon a State when it acts outside its internationally recognized territory.[7] Therefore, as a State party to the Covenant, Israel is obliged to honour the rights laid down in it - including the absolute prohibition against torture or any other form of cruel, inhuman or degrading treatment - of anyone within its power or effective

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[4] Human Rights Committee, general comment No. 31 (Nature of the general legal obligations on States parties to the Covenant) in *Official Records of the General Assembly, Fifty-ninth session, Supplement No. 40* (A/59/40), annex III; ibid., *Fifty-eight session, Supplement No. 40* (A/58/40), vol. I, chap. IV, para. 85 (11).

[5] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. 2006 Reports, 226, para. 25.

[6] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion,* I.C.J. Reports 2004, 136, para. 106. More recently, the Court applied both human rights law and international humanitarian law to the armed conflict between the Congo and Uganda: see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Merits* (2005), I.C.J. Reports, paras. 216-220 and 345 (3).

[7] See *Official Records of the General Assembly, Fifth-ninth session, Supplement No. 40* (A/59/40), annex III and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion,* I.C.J. Reports 2004, 136, at 179 (para. 109).

control, even if not situated within the territory of Israel. With regard to the application of the Covenant and the International Covenant on Economic, Social and Cultural Rights to the Occupied Palestinian Territory, the Special Rapporteur therefore concludes that the provisions of both covenants apply to the benefit of the population of the Occupied Palestinian Territory, for all operations by Israeli authorities or agents in those territories that affect the enjoyment of rights enshrined in the covenants and fall within the ambit of the State responsibility of Israel under the principles of public international law.

B. Declared state of emergency

10. The Special Rapporteur notes with encouragement that Israel is reconsidering its derogation from aspects of the International Covenant on Civil and Political Rights under a state of emergency, which has been in existence since the establishment of the State of Israel. This reform is long overdue, as the current legal framework for countering terrorism is vague and outdated, partly based on pre-1948 instruments and hardly compatible with the requirement of legality and the country's commitment to democracy. The Special Rapporteur is troubled by the fact that a challenge to the lawfulness of the state of emergency has been pending before the Supreme Court of Israel for more than eight years. The Human Rights Committee has repeatedly expressed its concern with the sweeping nature of measures under the declared state of emergency.[8] The Special Rapporteur reiterates the Committee's position that recourse to derogations under article 4 must be temporary and exceptional in nature, and that the enunciation of certain rights within the International Covenant on Civil and Political Rights already provide for the proportionate limitation of rights as prescribed by law and necessary for the protection of national security or public order, including articles 12 (3), 19 (3) and 21, relating to the freedoms of movement and residence, opinion and expression, and peaceful assembly.[9]

11. The Special Rapporteur was informed that new counter-terrorism legislation is being drafted and is encouraged by advice from the Israeli Ministry of Justice that he will be consulted and invited to comment on this legislation prior to its introduction to the Knesset. The undertaking of this cooperative enterprise should be seen as representing an element of best practice in the development and reform of counter-terrorism law and practice. The Special Rapporteur further notes that Israel is in the process of establishing a written constitution to replace the various basic laws currently in existence, and that it will include a charter of rights. He encourages Israel to use this vehicle as an opportunity to fully incorporate its obligations under international human rights law.

C. Unlawful combatants

12. One troubling development in the counter-terrorist framework of the United States of America and Israel has been the classification of suspected terrorists as "unlawful enemy combatants" who purportedly find themselves in a gap in protection in respect of international

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[8] *Official Records of the General Assembly, Fifth-eighth session, Supplement No. 40* (A/58/40), vol. I, chap. IV, para. 85 (12).

[9] Ibid. See also ibid., *Fifty-seventh session, Supplement No. 40*, vol. I, annex VI, para. 2.

humanitarian law or certain parts of it. Most renowned is the use of this classification by the United States in respect of persons detained at Guantánamo Bay, a matter considered in the report of the Special Rapporteur on his mission to the United States. Israel has similarly adopted the terminology in its Incarceration of Unlawful Combatants Law 2002.

13. The adjective "unlawful" was used together with the noun "combatant" by Allan Rosas, in his treatise *The Legal Status of Prisoners of War* to describe persons who commit hostile acts in international conflicts without authorization to do so under the law of war.[10] "Unprivileged belligerent" would be a synonymous expression. While such persons may not be entitled to prisoner of war status, they nevertheless enjoy certain minimum protections in respect of detention and trial.[11] The Special Rapporteur wishes to make clear that the term "unlawful combatant" is a description of convenience, meaningful only in international armed conflicts and even then only denoting persons taking direct part in hostilities while not being members of the regular armed forces or of assimilated units.

III. INVESTIGATION AND PROSECUTION OF TERRORIST SUSPECTS

A. Definitions

14. In its resolution 1566 (2004), the Security Council called on all States to cooperate fully in the fight against terrorism and, in doing so, to prevent and punish acts that have the following three cumulative characteristics:

(a) Acts, including those against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages;

(b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act;

(c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

15. In the view of the Special Rapporteur, this cumulative characterization represents the type of conduct that should be acted against in the context of State counter-terrorist law and practice.[12] Terrorism can be distinguished from other crimes or warfare by its use of deadly or otherwise serious violence against "civilians", i.e. against innocent bystanders, or members of

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[10] Allan Rosas, *The Legal Status of Prisoners of War* (Turku, Institute for Human Rights, Abo Akademi University, 2005).

[11] See also United States Supreme Court ruling in *Hamdan v. Rumsfeld*, 548 U.S. (2006), p. 72.

[12] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (E/CN.4/2006/98), sect. III.

the general population or segments of it, or the taking of them as hostages, in order to cause fear or compel an international organization or Government to act or abstain from acting. Any definition of terrorism must comply with the requirements of legality (accessibility, precision and non-retroactivity), applicability to counter-terrorism alone, and non-discrimination.[13]

16. In its concluding observations on the second periodic report of Israel under the International Covenant on Civil and Political Rights, the Human Rights Committee expressed concern about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant.[14] The definition of an "act of terrorism" under article 1 of the Prohibition on Terrorist Financing Law 2004, for example, includes acts creating danger to the health or security of the public; serious damage to property; or serious disruption of vital infrastructures, systems or services. The Special Rapporteur takes the view that this definition goes beyond the Security Council's characterization by including acts the commission of which go beyond causing death or serious bodily injury or the taking of hostages. While the acts described by article 1 would certainly amount to criminal conduct, they should not be treated as terrorist acts in the view of the Special Rapporteur. In contrast, article 144D (2) (b) of the Penal Law 1977 is properly restricted in its definition of "an act of violence or terror" as an offence that causes injury to a person's body or places a person in danger of death or danger of grievous bodily injury.

B. Interrogation methods

17. Sitting as the High Court of Justice, the Supreme Court of Israel held in 1999 that former governmental guidelines governing the use by the Israeli Security Agency of "moderate physical pressure" during interrogation were invalid.[15] Although the decision of the Supreme Court held that the "necessity defence" under article 34 (11) of Penal Law 1977 could not serve to ex ante allow Israeli Security Agency investigators to employ such interrogation techniques, the Court's decision left open the possibility that the defence could be available post factum.[16]

18. The Special Rapporteur emphasizes that, even when properly applied, the necessity defence does not validate the application of physical or psychological means of torture or any form of cruel, inhuman or degrading treatment. It means, at most, that such wrongful conduct may, in certain very limited circumstances, go unpunished in respect of a particular individual. He further draws attention to the fact that, notwithstanding the operation of this defence, it will never absolve a State of its duty to secure accountability and provide an effective remedy for the

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[13] Ibid, paras. 45-50.

[14] *Official Records of the General Assembly, Fifth-eighth session, Supplement No. 40* (A/58/40), vol. I, chap. IV, para. 14.

[15] *Public Committee Against Torture in Israel v. The State of Israel* (HCJ 5100/94).

[16] Ibid., para. 40.

human rights violation suffered. This position is consistent with that taken by the Human Rights Committee in its concluding observations to the third periodic report by Israel under the International Covenant on Civil and Political Rights where, although it welcomed the Supreme Court's decision, it noted that there was no defence under article 7 of the Covenant to conduct amounting to torture or cruel, inhuman or degrading treatment, equally prohibited in non-derogable terms by article 7.[17]

19. It was therefore troubling to the Special Rapporteur to receive reports of the continued use by Israel of interrogation techniques such as beatings, sleep deprivation, use of the "shabach" position (where a person's hands are tied behind his back, and he is seated for long periods on a small and low chair tilted forward towards the ground), and excessively tight handcuffs.[18] It is reported that child detainees have been subject to similar treatment, and threats being made of having the child's family members beaten or their family home destroyed.[19] The Special Rapporteur received assurances that all instances of the use of moderate physical pressure fell within the bounds of the necessity defence, and that no individual interrogator has been the subject of criminal charges since the 1999 Supreme Court decision, despite the existence of mechanisms facilitating the reporting of abuse by persons under interrogation. In that regard, Israel has established a process by which any person under interrogation may make an allegation of ill-treatment, which will then be investigated by a complaints inspector. Although the rules of operation of the Israeli Security Agency do not allow interference with the investigations of the inspector, who reports directly to the State Attorney's Office, the Special Rapporteur is concerned about the ability of the inspector, as an employee of the Israeli Security Agency, to act truly independently from the Agency and thus vigorously investigate allegations of ill-treatment or torture. According to the statistics given to the Special Rapporteur, since 2000, the inspector has initiated more than 550 examinations, but only 4 have resulted in disciplinary measures and not a single one in prosecution. The Special Rapporteur disagrees with the Supreme Court ruling that article 34 (11) of the Penal Law may be used to permit the exercise of discretion in deciding whether to prosecute an individual interrogator against whom allegations have been made of torture or cruel, inhuman or degrading treatment.[16] Given the non-derogable and peremptory nature of the prohibition of torture, such determinations should only be made by a court during the course of a criminal trial.

20. In its 1999 decision, the Supreme Court of Israel accepted that the necessity defence could arise in instances of a "ticking bomb", and that the imminence criteria of the defence could be satisfied even if the "bomb" was set to explode in a few days, or even in a few weeks, provided

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[17] *Official Records of the General Assembly, Fifth-eighth session, Supplement No. 40* (A/58/40), vol. I, chap. IV, para. 18.

[18] See for example Public Committee against Torture in Israel, "Ticking Bombs": Testimonies of Torture Victims in Israel (May 2007), and B'Tselem, "Utterly Forbidden. The Torture and Ill-treatment of Palestinian Detainees" in B'Tselem (May 2007).

[19] Defence for Children International, Palestine Section, Palestinian Child Political Prisoners 2006 Report, p. 5.

the act was certain to materialize and that there were no alternative means of preventing it.[20] This explanation by the Court is very troublesome and the Special Rapporteur was shocked by the unconvincing and vague illustrations by the Israeli Security Agency of when a "ticking bomb" scenario may be applicable. One such example given concerned the apprehension of a person found in possession of a small laboratory for manufacturing explosives and items capable of being used to perpetrate a kidnapping. Based upon information that the person had previously attempted a kidnapping, although not prosecuted for it, the Israeli Security Agency advised that it took these facts as amounting to a "ticking bomb" scenario, although special interrogation techniques were not actually used.

21. The Special Rapporteur was also concerned by the admission by the Israeli Security Agency officials that, in principle, there was no distinction, in the use of the "ticking bomb" scenario, between a terrorist suspect and a person otherwise holding information about a terrorist incident. He was further troubled by the process by which individual interrogators would, in line with internal guidelines, seek approval from the Director of the Israeli Security Agency for the existence of a "ticking bomb" scenario and the application of special interrogation techniques. This appears to render the use of special interrogation techniques a matter of policy rather than a case-by-case ex post facto defence in respect of wrongful conduct. Properly applied, the necessity defence only applies in respect of an improvised reaction by an interrogator in relation to an unpredictable event.[21]

C. Arrest and detention of security suspects

22. The arrest and detention of Palestinians in the West Bank, with the exception of those from East Jerusalem, is governed to a large extent by military orders. Such orders do not require Israeli authorities to inform the person at the time of arrest of the reasons for their detention, at variance with article 9 (2) of the International Covenant on Civil and Political Rights. Although Israel has notified the United Nations of its intention to derogate from article 9 of the Covenant, any derogation must be both necessary and proportionate. There is no good reason for failing to inform a person of the reasons for their detention at the time of arrest.

23. According to the Criminal Procedures (Non-Resident Detainee Suspected of Security Offense) (Temporary Provision) Law 2006, a suspect may be held for up to 96 hours before being brought before a judge. It also allows a suspect to be held for 35 days without an indictment.

24. The same law permits a security suspect to be detained for up to 21 days without access to a lawyer. Since detainees do not have a right to family visits before an indictment is filed against them, according to article 12 (b) of the Criminal Procedure (Enforcement - Arrests) (Conditions of Detention) Regulations 1997, this creates a situation whereby a detainee may be held without

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[20] *Public Committee against Torture in Israel v. The State of Israel* (HCJ 5100/94), para. 34.

[21] Ibid, para. 36.

contact with the outside world for periods that could amount to weeks at a time. The Special Rapporteur is gravely concerned about this position, since it is in just this type of circumstance that the risk arises of a detained person being made subject to torture, or cruel, inhuman or degrading treatment.[22]

25. Of further concern to the Special Rapporteur is the use in the West Bank of "administrative detention" authorized under Military Order 1229 (1988). This Order empowers military commanders in the West Bank to detain an individual for up to six months if they have "reasonable grounds to presume that the security of the area or public security require the detention" subject to confirmation by the District Court. Commanders can extend detentions for additional periods of up to six months, and the Military Order does not define a maximum cumulative period of administrative detention, thus meaning that detention can be extended indefinitely. At June 2007, Israel was holding approximately 830 Palestinians in administrative detention, and the Special Rapporteur is aware of cases in which persons have been held for periods of years under administrative detention. The terms "security of the area" and "public security" are not defined, their interpretation being left to military commanders, and thus lack the level of precision required by the principle of legality. Furthermore, much of the information concerning the reasons for such detention is classified, such that the detainee and his or her lawyer have no access to this information, available to the military court confirming the detention, and thereby no effective means of contesting the grounds of the detention. This is at variance with article 14 of the International Covenant on Civil and Political Rights, which not only guarantees the right to a fair criminal trial, but also requires that fundamental principles of fair trial be respected in any matter dealt with by a judicial body.

26. Detention of persons is also possible under the Incarceration of Unlawful Combatants Law 2002, which authorizes the Chief of General Staff to detain an "unlawful combatant", subject to judicial review every six months, along similar lines to the administrative detention regime. Particularly problematic in this regard is not only the use of the term "unlawful combatant", as discussed earlier in this report, but also its definition, which includes persons who have "indirectly" participated in hostile acts against the State of Israel. The latter term remains undefined and is therefore open to abuse and inconsistent with the principle of legality.

27. Although it would be improper to suggest that the right to liberty of members of political parties should be any greater than others, the Special Rapporteur urges caution in this area to ensure that counter-terrorism is never used as a means of obfuscating the existence or development of democracy. He notes that 45 of 132 members of the Palestinian Legislative Council have been charged with affiliation with, or membership in, a proscribed organization and are currently detained by Israel; 4 of them are being held in administrative detention.

28. Of the 700 Palestinian children arrested in 2006, 25 were held on administrative detention orders.[23] Article 37 (b) of the Convention on the Rights of the Child requires, inter alia, that the

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[22] As recognized by the Commission on Human Rights in its resolution 2005/39, para 9.

[23] Defence for Children International, Palestine Section, Palestinian Child Political Prisoners 2006 Report, p.1.

detention or imprisonment of a child be used as a measure of last resort and for the shortest appropriate period of time. There are also reports that solitary confinement has been used by prison authorities as a means of encouraging confessions from children, or as a punishment for infractions of prison rules.[24] Rule 67 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice prohibits disciplinary measures against children to include solitary confinement. Furthermore, whereas rule 26 (2) requires child detainees to receive educational care according to their age, it is reported that Hasharon prison, being one of five Israeli prisons at which children are detained, is the only facility providing Palestinian child prisoners with education facilities.[25]

D. Use of military courts

29. Terrorist and security suspects in the West Bank, who may be either civilians or persons directly participating in hostilities, are normally tried before military courts. In its general comment No. 32, the Human Rights Committee emphasized that the trial of civilians in military or special courts could raise serious problems as far as the equitable, impartial and independent administration of justice was concerned. Therefore, the Committee stressed the need that all necessary measures be taken to ensure that such trials are held under conditions which genuinely afford the full guarantees stipulated in article 14. According to the Committee, trials of civilians by military courts should be exceptional, and the jurisdiction of military courts should be limited to military personnel. The exercise of jurisdiction by a military court over civilians not performing military tasks is normally inconsistent with the fair, impartial and independent administration of justice.[26] The Committee has also clearly stated that the right to trial by an independent and impartial tribunal is so central to the due process of law that it is an absolute right that may suffer no exception, and thus not capable of derogation under article 4 of the International Covenant on Civil and Political Rights.[27] In a long line of helpful jurisprudence on the subject, the European Court of Human Rights has spoken of the need for a tribunal to be subjectively free of prejudice or personal bias, and to have an appearance of impartiality from an objective viewpoint.[28] While the Special Rapporteur makes no judgement as to the impartiality or otherwise of individual military judges, the fact remains that military courts have an appearance of a potential lack of independence and impartiality, which on its own brings into question the fairness of trials.

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[24] Ibid., p. 14.

[25] Ibid., pp. 12 and 13.

[26] Human Rights Committee, general comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial) (CCPR/C/GC/32), para. 22. For relevant examples of jurisprudence of the European Court of Human Rights, see *Ocalan v. Turkey* (2005) ECHR 282, para. 115 and *Incal v. Turkey* (1998), ECHR 48, para. 75.

[27] See, for example, *González del Rio v. Peru* (CCPR/C/46/D/263/1987), para. 5.2 and Human Rights Committee general comment No. 29, para. 11 and general comment No. 32, para. 6.

[28] See, for example, *Findlay v. United Kingdom* (1997) ECHR 8, para. 75.

IV. CONSTRUCTION OF A BARRIER IN THE WEST BANK

30. Central to the Israeli strategy in the fight against terrorism, and the suppression of suicide bombings in particular, is the continuing construction of a barrier - partly a wall and partly a fenced zone with multiple physical obstacles - between Israel and certain towns in the West Bank. According to Government interlocutors heard during the visit, the existence of this physical barrier makes terrorist operations more difficult, because they require greater coordination among more people; more opportunities for mistakes to be made are thus created and give more time for the detection and interception of terrorist operations. This, combined with reliance upon human intelligence, detection and other technology, has been credited by the Government as resulting in a marked reduction in the incidence of terrorist acts within the territory of Israel proper, from the height of 213 casualties in 2002 to 11 in 2006. According to the statistics provided by the Government, there has been an 85 per cent decline in the number of suicide attacks and an 80 per cent decline in the number of casualties.

31. Notwithstanding the correlation between the construction of the barrier and the reduction in the number of successful terrorist attacks against Israeli civilians, the barrier is having an enormously negative impact on the enjoyment of human rights by the Palestinian people. A considerable part of the Occupied Palestinian Territory, including towns and villages, is being separated from the rest of the Territory by the barrier. The winding route of the barrier is creating multiple obstacles for movement between even close-by communities within the Occupied Palestinian Territory and establishing a "seam zone" of land between the Green Line and the route of the barrier, representing approximately 10 per cent of the West Bank. The Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory reports a dramatic and continuing deterioration in the socio-economic conditions of many parts of the West Bank since the construction of the barrier.

A. Legality of the barrier and Israeli settlements in the West Bank

32. In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice held that the construction of the barrier was contrary to international law, despite the argument that its construction was consistent with the inherent right to self-defence of Israel and with Article 51 of the Charter of the United Nations.[29] The Court determined that Israel was under an obligation to immediately cease the construction of the barrier and to dismantle the structure, and to make reparation for all damage caused by its construction.[30] It is very problematic, in that regard, that the route of the barrier does not follow the Green Line but is largely located within the Occupied Palestinian Territory, capturing on its western side, or within so-called "fingers" extending deep into the Palestinian territory, several Israeli settlements located there.

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[29] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion,* I.C.J. Reports 2004, 136, para. 163 (3) (A).

[30] Ibid., para. 163 (3) (B) and (C).

33. Since the occupation of the West Bank in 1967, Israel has established an extensive system of roads and has improved or expanded existing roads. Although Israel explains that this work was, and continues to be, undertaken out of military needs and to improve infrastructure to the benefit of the Palestinian people, many such roads, such as routes 463 and 466, are built for use by Israelis only, and one cannot disagree with the conclusions of non-governmental organizations that this has been done to benefit and encourage the expansion of Israeli settlements in the West Bank.[31] Between 1997 and 2004, the number of Jewish settlers in the West Bank increased from 152,300 to 232,700, an increase of almost 53 per cent and representing 10 per cent of the entire population of the West Bank (not including East Jerusalem).[32]

34. The Special Rapporteur is troubled by the approach of the Supreme Court of Israel, which has rejected the outcome of the decision of the International Court of Justice and instead accepted the legitimacy and continued construction of the barrier on the basis of military necessity and the need to secure the safety of Israeli settlements in the West Bank. The Supreme Court's decisions have addressed the exact route of the barrier and often ordered changes to it but failed to address the legality of Israeli settlements in the West Bank. The International Court of Justice ruled, in that regard, that the policy applied by Israel since 1977 of establishing settlements in the Occupied Palestinian Territory was contrary to international law.[33] This position is consistent with that taken by the Security Council in response to the establishment of the policy by Israel,[34] and with the principle reflected in article 49 (6) of the Fourth Geneva Convention, which provides that an occupying power "shall not deport or transfer parts of its own civilian population into the territory it occupies".

35. The Special Rapporteur notes that the route of the barrier does not always appear to coincide with the location and protection of Israelis. The wall in Bethlehem, for example (and as affirmed by the Supreme Court), extends through the city to encircle Rachel's Tomb for the purpose of protecting Israeli visitors to the tomb. Furthermore, the route of the barrier in Bethlehem has caused a dramatic collapse in the economy of what was before a relatively prosperous area and centre of commerce for the Palestinian people, and has also resulted in a steep decline in Bethlehem's tourism sector.[35]

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[31] See, for example "Forbidden Roads. The Discriminatory West Bank Road Regime" in B'Tselem (August 2004).

[32] See "Perpetual Limbo. Israel's Freeze on Unification of Palestinian Families in the Occupied Territories", in B'Tselem (July 2006).

[33] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion*, I.C.J. Reports 2004, 136, para. 120.

[34] Security Council resolutions 452 (1979) and 465 (1980), para. 6.

[35] Office for the Coordination of Humanitarian Affairs, *Costs of Conflict: The Changing Face of Bethlehem* (Jerusalem, United Nations, December 2004).

36. The Special Rapporteur heard from Government sources of a long-term plan to replace the current and not yet complete unilaterally-positioned barrier with an agreed international border with a future Palestinian State. Until this is achieved on the basis of genuine negotiations and agreement, the Special Rapporteur emphasizes that no part of the barrier must be treated as a fait accompli or annexation of territory. To do so would amount to an illegal annexation of territory by Israel.

B. Impact of the barrier on the Palestinian people

37. As a physical obstruction, the barrier has an impact on the ability of the people in the West Bank to move from one place to another. Checkpoints at various locations are used for the security screening of people. A feature of these checkpoints is that many are closed without notice, this aimed at disrupting the execution of terrorist attacks. In April and May of 2007, 549 and 537 checkpoints were closed respectively. An average of almost 200 "flying checkpoints" each week were utilized by the Israeli Defense Forces during the same period.[36]

38. Security measures by Israel must not have a disproportionate impact on the lives of ordinary Palestinian people. Two crucial elements are relevant in this regard in order both to comply with the requirements of international human rights and to counteract the experiences by Palestinians of the barrier causing increasing arbitrariness and oppression. There must be a reduction in the level of hardship to people moving inside the Occupied Palestinian Territory. The practical implementation of all security measures, including at checkpoints and terminals, must also be by professional, transparent, accountable and, to the greatest possible extent, civilian means. While the civilianization of such work appears to be an important means of reducing tensions in the practical implementation of such measures, it is essential that there be a high level of accountability and professional training of civilian actors, including training on human rights and humanitarian law. The Special Rapporteur was troubled, for example, by the presence of a contracted security civilian at Qalqiliya terminal, who strolled casually outside the facility with his finger permanently on the trigger of his weapon without any sense of discipline or discretion. The need to secure accountability and full compliance by Israel with its international obligations, including as the occupying power, speaks against privatization as the method by which security measures are transferred from the military to civilians.

39. As a result of closures and the system of permits regulating the movement of people from one area to another, the Palestinian people are adversely affected in their ability to gain access to education; health services, including emergency medical treatment; other social services; and places of employment. Access by ordinary Palestinians to their land and water resources, including through the devastation or separation from villages of agricultural land in the course of erecting the barrier, is also being impeded, in some cases to the point of having a devastating socio-economic impact on communities.

40. Delays at checkpoints have complicated childbirth for Palestinian women. This has resulted in the delivery of children at checkpoints and unattended roadside births, putting at risk the health of both child and mother, and leading to numerous miscarriages and the death of at

[36] Office for the Coordination of Humanitarian Affairs, Closure Update (April 2007).

least five mothers.[37] These hardships are reported to have contributed to an 8.2 per cent increase in home deliveries.[38] The Special Rapporteur was furthermore troubled to hear of three cases in April 2007 in which Palestinian ambulance drivers are said to have been harassed and beaten at checkpoints in the Jenin area.[39] If true, not only were the civil rights of those individuals violated, as was the right to physical and mental health for all, as guaranteed under article 12 (1) of the International Covenant on Economic, Social and Cultural Rights, but it would also constitute a violation of international humanitarian law norms, which require that medical personnel be respected and protected at all times.

41. As a result of the barrier, Palestinian children encounter significant obstacles in attending or remaining at educational institutions. It also affects the movement of teaching staff, whether this be as a result of the barrier having been erected between "closed" communities and educational facilities, or the difficulties in obtaining special permits from the Israel Defense Forces to enter areas in which educational facilities are present.[40] As reflected in article 50 of the Fourth Geneva Convention, it is the duty of an occupying power to cooperate with national and local authorities to facilitate the proper working of all institutions devoted to the care and education of children. The Special Rapporteur was very troubled by reports of incidents involving attacks by the Israel Defense Forces on students, military raids on schools and the destruction of schools and school property.[41]

42. The permits regime also has an impact on the integrity of family units and the ability of men and women to marry with people outside their own permit zones. The permits regime, and checkpoint closures and procedures, have also had a negative impact on the ability of families to visit those in detention, whether sentenced prisoners or those held in administrative detention.[42]

43. In its advisory opinion on the wall, the International Court of Justice, after having found international humanitarian law, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the

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[37] Henrietta Aswad, "Checkpoints Compound the Risks of Childbirth for Palestinian Woman", 15 May 2007 (available from www.unfpa.org); and World Health Organization internal report, The issue of Palestinian pregnant women giving birth at Israeli checkpoints.

[38] Henrietta Aswad, ibid.

[39] "Abuse of Ambulance Drivers in Jenin Area" (16 April 2007)), available from the Al-Haq website www.alhaq.org.

[40] Defence for Children International, Palestine Section, "Sustained occupation, suspended dreams: an analysis of human rights violations against Palestinian children in 2005", (Ramallah, 2005), pp. 55-58.

[41] Ibid., pp. 58-62.

[42] "Barred from contact: violation of the right to visit Palestinians held in Israeli prisons" in B'Tselem (September 2006).

Rights of the Child applicable in respect of the conduct of Israel in the Occupied Palestinian Territory, concluded that various infringements of rights enshrined in those treaties resulting from the wall and its associated regime could not be justified by military exigencies or by the requirements of national security or public order. Hence, the construction of the wall constituted a breach by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.[43] The Special Rapporteur acknowledges that many of the human rights affected by the barrier and associated security measures, such as freedom of movement (article 12 of the International Covenant on Civil and Political Rights) and the right to privacy (art. 17) are subject to permissible limitations. In addition, during a publicly declared state of emergency, they may also be subject to derogations. As various interlocutors informed him of instances of arbitrariness or unprofessional conduct in the implementation of the security measures, and as the route of the barrier continues to breach international law, the Special Rapporteur is nevertheless convinced that the barrier and its associated regime continues to cause effects that violate the international obligations of Israel under both humanitarian law and human rights law. In respect of the Special Rapporteur's own mandate, it is even more important that the barrier and its associated measures are widely experienced by the Palestinians as unlawful, destructive to normal human life, and humiliating. As a consequence, the barrier has counterproductive effects by contributing to conditions that are conducive to the recruitment to terrorism.

V. SITUATION IN GAZA

44. Under the Disengagement Plan Implementation Law 2005, Israel has withdrawn all 21 Jewish settlements from the Gaza Strip. The Disengagement Plan ends, from the perspective of Israel, its occupation of the Gaza Strip and is in furtherance of a two-State solution in the pre-1948 territory of Palestine. While the Special Rapporteur accepts that the level of control by Israel over Gaza may fall short of occupation within the meaning of article 42 of The Hague Regulations, as a territory actually placed under the authority of a hostile army, Israel still exercises a good deal of control over the situation in the territory. With limited exceptions, Israel has sealed the borders of Gaza, and controls the only sea port in its vicinity. It retains a contingent of military personnel on the border between Egypt and Gaza, for the purpose of preventing the smuggling of arms from Egyptian territory into the Gaza Strip. Without the cooperation of Israel, Gaza is thus isolated from international trade routes and from its West Bank neighbours. The Israel Defense Forces also enforce a fishing limit of 6 nautical miles from the shore of Gaza, in marked contrast with the 20 nautical mile fishing limit under the 1995 Oslo Agreements, thus having a severe impact on the fishing industry of Gaza and its economy.[44]

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[43] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion*, I.C.J. Reports 2004, 136, para. 137.

[44] Office for the Coordination of Humanitarian Affairs, "Gaza Fishing: An Industry in Danger" (April 2007).

45. The consequent restriction of movement has resulted in similar consequences as those felt in the West Bank, outlined earlier in this report, particularly heightened in the context of the movement of persons between Gaza and the West Bank. If there is indeed to be a two-State solution in which Gaza and the West Bank are to function as a single State, as envisaged by the General Assembly in its 1948 Partition Plan for Palestine (General Assembly resolution 181 (II) and under the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, an urgent and concerted effort must be made to facilitate the movement of people and goods between the dislocated territories in a manner that has the least possible impact on movement and without the use of an arbitrary and non-reviewable permits regime.

46. The Special Rapporteur is deeply concerned about the recent deterioration of the humanitarian situation in Gaza, particularly following the numerous military interventions of the Israel Defense Forces since disengagement, including the bombing of the Gaza electricity power station on 28 June 2006, which destroyed six transformers responsible for 43 per cent of the total power capacity in Gaza. The Special Rapporteur is cognizant of the security threats arising from Gaza, heightened by recurring factional violence, and the fact that terrorist factions within the territory continue to repeatedly attack civilians in Israel. He nevertheless reminds Israel that international humanitarian law restricts the use of military force, including through the requirement to distinguish between civilians and military objectives.

VI. ISRAELI DEFENSE FORCE OPERATIONS

47. Particularly problematic to counter-terrorist operations in Israel and the Occupied Palestinian Territory is the overlap between armed conflict and policing. The Israeli Defense Force is a conscript armed force, with young soldiers facing a daily dilemma between the preservation of their own lives and the legitimate recognition and targeting of threats. This combination has led to many instances of unprofessional conduct, readily acknowledged by senior military staff and civil servants with whom the Special Rapporteur met. Such conduct can serve to undermine the very role of the Israel Defense Forces in seeking to achieve a sustainable end to terrorist activities. This is most palpably evident in the Israel Defense Forces security screening and search procedures at checkpoints, raising concerns about privacy and non-discrimination, particularly heightened in the case of women and children. The Special Rapporteur regrets that the Government of Israel chose not to share with him existing standing orders concerning searches by the Israel Defense Forces of persons, including those at checkpoints.

A. Use of “human shields”

48. Despite a decision of the Supreme Court of Israel in 2005 banning the use of human shields, the Special Rapporteur received allegations supported by videotape recordings of recent incidents in Nablus and Balata that Palestinians, including children, continue to be exposed to violence during the conduct of Israel Defense Forces operations by either forcing them to enter potentially dangerous buildings ahead of Israeli soldiers or to stand in front of military vehicles to stop the throwing of stones against those vehicles. Such unprofessional conduct may be deeply traumatizing for the individuals in question, in particular children, and has the effect of causing frustration and anger among the Palestinian people.

B. Demolition of houses

49. The Special Rapporteur heard from various interlocutors, including the Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory, of the demolition of housing by Israel. He was told of many such demolitions in response to the construction of houses without a permit or in some other way contrary to building laws, but was troubled to learn of the inconsistent and apparently discriminatory enforcement of such laws, whereby demolition consistently occurs in the case of property owned by Palestinians but rarely in the case of property owned by Israelis. According to reports, in July 2005, the village of Khirbet Tana in Nablus was almost entirely demolished, including an elementary school which had previously had 40 pupils enrolled, leaving only a mosque and a single building standing.[45]

50. As stated by the Human Rights Committee in its concluding observations on the second periodic report of Israel, the demolition of property and houses of families, some of whose members were or are suspected of involvement in terrorist activities or suicide bombings, contravenes the obligation of Israel to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art. 7). Although the Government's response to this view was that, in the midst of combat and when dictated by operational necessity, Israeli security forces may lawfully destroy structures used by terrorists, the Special Rapporteur remains concerned that the actual practice of the Israel Defense Forces appears to go well beyond such operational needs and does indeed amount to the breaches of the International Covenant on Civil and Political Rights noted by the Human Rights Committee.[46]

C. Targeted killings and the killing of civilians

51. The Special Rapporteur is troubled by the decision of the Supreme Court concerning targeted killings, in which the Court correctly noted that, under international humanitarian law, a person directly participating in hostilities may during armed conflict be a legitimate military target, but where it applied an overly broad and vague explanation of what amounted to direct participation in hostilities and paid insufficient attention to the fact that not every instance of terrorist conduct falls under the law of armed conflict.[47]

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[45] See Office for the Coordination of Humanitarian Affairs, "Costs of conflict: Nablus after five years of conflict" (December 2005).

[46] Comments by the Government of Israel on the concluding observations of the Human Rights Committee (CCPR/CO/78/ISR.Add.1), part III, para. 2.

[47] *Public Committee against Torture in Israel v. The Government of Israel* (HCJ 769/02).

52. The Court nevertheless qualified its position by stating that such recourse must be by way of last resort and that arrest must always be preferred and actively pursued. It also determined that, in every case of a targeted killing, a thorough and independent investigation must be held as to the precision of the identification of the target and the circumstances in which the killing took place. The Special Rapporteur endorses the Court's decision in this regard, as a matter consistent with the right to life and authoritative jurisprudence concerning the establishment of thorough, independent and impartial investigations into the loss of life caused by State agents.[48] He is therefore troubled by reports that such investigations are rare, and, when carried out, are conducted internally, by members of the Israel Defense Forces, with details of such investigations and their findings not made public.[49] As emphasized by the Special Rapporteur on extrajudicial executions, it is essential to ensure that the applicable rules of international human rights and humanitarian law are respected even in the midst of crisis, indeed especially in times of crisis.[50] Furthermore, where violations of law are found to have occurred, adequate reparation must be made.

53. The Special Rapporteur was encouraged to hear from the Israeli Security Agency its position that civilians taking direct part in hostilities may not be attacked if less harmful means, such as arrest and trial, can be employed, consistent with the decision of the Supreme Court. Such an approach, regrettably, does not appear to be borne out by statistics on civilian deaths. A total of 678 Palestinian civilians were killed in 2006, of which 127 were children.[51] Between the start of the intifada in 2000 and the end of 2005, 728 Palestinian children were killed as a result of Israeli military activity in the Occupied Palestinian Territory, representing the highest number of child fatalities at the hand of Israeli forces in any five-year period since the 1967 occupation

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[48] See, for example, *Edwards v. United Kingdom* (1992), ECHR 77.

[49] Office for the Coordination of Humanitarian Affairs, The Humanitarian Monitor (April 2007), p. 4; and, more generally, Al-Haq, "Extrajudicial Killings", Update on Al-Haq's November 2006 background brief on Israel's extrajudicial killings in the Occupied Palestinian Territory (June 2007).

[50] OHCHR press release, "Special Rapporteur on extrajudicial executions calls for accountability for killings in Occupied Palestinian Territory and Israel" (12 July 2006).

[51] The casualties in these figures include deaths caused during the course of Israel Defense Forces operations, artillery shelling, search and arrest campaigns, barrier demonstrations, targeted killings and settler violence. The figures do not include events indirectly related to the occupation of the Occupied Palestinian Territory, such as casualties from unexploded ordnance and the like, or where the circumstances of death remain unclear or are in dispute. See Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor* (April 2007), pp. 5-6 and 25 (note 1).

of the West Bank.[52] The Special Rapporteur was alarmed to receive reports of the killing of persons apprehended by Israeli agents in situations where such persons could have been arrested or provided with medical treatment to prevent death.[53]

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

54. The Special Rapporteur is encouraged by the reconsideration by Israel of its derogation from aspects of the International Covenant on Civil and Political Rights, and its invitation to him to comment upon new counter-terrorism legislation currently being drafted. He identifies this cooperative enterprise as one to be commended as an element of best practice. He has, in contrast, also identified serious situations of incompatibility of the country's obligations pertaining to human rights and fundamental freedoms with its counter-terrorism law and practice. Such situations include the prohibition of torture or cruel, inhuman or degrading treatment; the right to life and humanitarian law principles concerning legitimate targeting; the right to liberty and fair trial; and the severe impact of the construction of the barrier in the West Bank and associated measures on the enjoyment of civil, cultural, economic, political and social rights and freedoms in the Occupied Palestinian Territory. Addressing the full range of those situations is imperative, not only to secure compliance by Israel with its international obligations but also to address conditions that may be conducive to recruitment to terrorism.

B. Recommendations

55. **The Special Rapporteur recommends that Israel, in the development of its counter-terrorism legislation, ensure that definitions of terrorism and security suspects are precise and limited to the countering of terrorism and the maintenance of national security, respectively. Definitions surrounding the countering of terrorism should be restricted to the suppression and criminalization of acts of deadly or otherwise serious physical violence against civilians, i.e., members of the general population or segments of it, or the taking of hostages, coupled with the cumulative conditions identified by the Security Council in its resolution 1566 (2004). All legislation, regulations and military orders must comply with the requirements of the principle of legality with regard to accessibility, precision and non-retroactivity. Having achieved those requirements, the enactment by the Knesset of this new legislation should be accompanied by a repeal or revocation of all current counter-terrorism legislation, regulations and military orders. He further recommends that the Incarceration of Unlawful Combatants Law be repealed, without replacement.**

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[52] Defence for Children International, Palestine Section, "Sustained occupation, suspended dreams: an analysis of human rights violations against Palestinian children in 2005" (Ramallah, 2005), p. 21.

[53] Al-Haq, "Extrajudicial Killings", Update on Al-Haq's November 2006 background brief on Israel's extrajudicial killings in the Occupied Palestinian Territory (June 2007).

56. **The Special Rapporteur is encouraged by the decision of the Supreme Court of Israel regarding interrogation techniques by the Israeli Security Agency, but recommends that urgent steps be taken to ensure full compliance with that decision and associated international obligations. Since the proper application of the necessity defence under article 34 (11) of the Penal Law cannot validate conduct amounting to torture or cruel, inhuman or degrading treatment, the Special Rapporteur recommends that steps be taken to establish mechanisms by which victims of such conduct are provided with an effective remedy. Given the concerns that the Special Rapporteur has with the independence of the Israeli Security Agency complaints inspector, the non-derogable and peremptory nature of the prohibitions, and the apparent lack of understanding by Israeli Security Agency officers of the parameters of the necessity defence, he further recommends that all complaints of torture or cruel, inhuman or degrading treatment be referred to the Attorney General's office for the immediate filing of criminal charges against the individual interrogator wherever such complaints point to conduct that, if proven, would amount to torture or cruel, inhuman or degrading treatment, and that only the courts may pronounce on the applicability and effect of the necessity defence.**

57. **With regard to arrest and detention, the Special Rapporteur recommends that Israel take steps to ensure that all persons are informed of the reasons for their detention at the time of their arrest. He recommends the amendment of the Criminal Procedures (Non-Resident Detainee Suspected of Security Offense) (Temporary Provision) Law 2006 to ensure that security suspects are provided with immediate and continued access to legal counsel and, where appropriate, family visits. In the context of administrative detention, he recommends that the terms "security of the area" and "public security", currently under Military Order 1229, be defined with precision, and that steps be taken, such as the establishment of a panel of security-cleared counsel, to ensure that representations are able to be made to the district court on behalf of a detainee upon the making or extension of administrative detention orders. The practice of military or other courts authorizing administrative detention on the basis of evidence available neither to the detainee nor counsel should be discontinued as incompatible with article 14 (1) of the International Covenant on Civil and Political Rights.**

58. **The Special Rapporteur urges that care be taken to ensure that counter-terrorism law and practice never be used as a means of preventing or undermining the development of democracy in Palestinian territory. He further urges Israel to ensure that the detention or imprisonment of a child be used as a measure of last resort, that solitary confinement never be used by prison authorities as a means of coercion or punishment of children, and that all facilities in which children are detained provide educational care appropriate to the age of each child.**

59. **Given the illegality under international law of the existence and continued development of Jewish settlements in the Occupied Palestinian Territory, the Special Rapporteur recommends that a decision be made immediately to withdraw all such settlements and to replace the still unfinished barrier, extending deep into Palestinian territory, with a security infrastructure that, by its geographical position, respects the Green Line or is otherwise accepted by the Palestinians. During the process of implementing such a decision, the Special Rapporteur recommends urgent action to ensure that the permits regime, the administration of checkpoints, and all other associated**

measures in the Occupied Palestinian Territory do not have a disproportionate impact on the enjoyment of civil, cultural, economic, political and social rights in the territory. He also recommends that security measures be civilianized through means other than their privatization.

60. **The Special Rapporteur urges Israel to respect the rules of international humanitarian law, including the fundamental requirement of distinguishing between civilians and military objectives when resorting to the use of force. This must be the case irrespective of whether Israel is responding to an armed attack from Gaza, Lebanon or elsewhere and whether it classifies the attack as terrorism.**

61. **The Special Rapporteur urges Israel to ensure that any demolition of housing or other destruction of private property conducted as a measure aimed at combating or preventing terrorism is resorted to in strict compliance with international law and is accompanied by adequate reparation. Due to the high emotional impact of such measures easily leading to counterproductive effects in a sustainable fight against terrorism, the Special Rapporteur recommends that the Government of Israel exercise extreme caution in resorting to such measures.**

62. **While acknowledging that military necessity may dictate the deliberate killing of enemy combatants during an armed conflict, the Special Rapporteur recommends that transparent laws and guidelines on the practice of targeted killings be established, and that they be strictly limited to persons directly participating in hostilities and as a means of last resort after all possible measures to apprehend the person have been taken. All such killings must be followed by a thorough and independent investigation as to the accuracy of the identification of the target, whether alternative means were available, and whether the action was undertaken in a manner ensuring that no civilian casualties were caused. The result of such investigations should be made public and, where violations of law are established, adequate reparation made.**

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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*

Addendum

MISSION TO ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORY**

* Late submission.

** The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated as received, in the language of submission and in Arabic only.

Summary

The Special Rapporteur on freedom of religion or belief carried out a mission to Israel and the Occupied Palestinian Territory from 20 to 27 January 2008. In the present report she gives an overview of the international legal standards and the domestic legal framework on freedom of religion or belief. She also refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in Israel and the Occupied Palestinian Territory. Well aware of the complex situation and the heightened atmosphere of tension and militancy, the Special Rapporteur focuses on the following issues of concern: restricted access to places of worship; the preservation and protection of religious sites; the indication of religious affiliation on official identity cards; matters of personal status; the preferential treatment of Orthodox Judaism; the religious rights of persons deprived of their liberty; advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; conversions and missionary activities; and further concerns within the Occupied Palestinian Territory.

In the last part of the report, the Special Rapporteur presents her conclusions and recommendations. She notes that the State of Israel and the Occupied Palestinian Territory are home to a rich diversity of religions or beliefs and host religious sites revered by believers from all over the world. However, liberty of movement, including access to places of worship, is restricted, in particular for Palestinian Muslims and Christians, through the existing system of permits, visas, checkpoints and the Barrier. While the Government of Israel informed the Special Rapporteur that these restrictions were necessary for security reasons, she would like to emphasize that any measure taken to combat terrorism must comply with States' obligations under international law. The Special Rapporteur recommends, inter alia, that all parties - especially in the framework of a possible peace agreement - bind themselves legally to protect the rights of religious minorities and pay particular attention to include comprehensive guarantees for equality and non-discrimination on grounds of religion or belief. Moreover, she recommends that the Government of Israel issue non-selective regulations in order to protect and preserve religious sites on a non-discriminatory basis. Additional recommendations refer to official documents, matters of personal status and training for staff members of the police, military forces and personnel of detention facilities. Lastly, in both the State of Israel and in the Occupied Palestinian Territory, any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be effectively investigated, prosecuted and punished.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORY (20-27 JANUARY 2008)

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I. INTRODUCTION

1. Following invitations by the Government of Israel and by the Palestinian Authority, the Special Rapporteur on freedom of religion or belief carried out a mission to Israel and the Occupied Palestinian Territory from 20 to 27 January 2008. During her visit, the Special Rapporteur met with Government officials and political leaders as well as representatives of religious or belief communities, members of civil society and academics. She travelled to Jerusalem, Tel Aviv, Daliyat al Carmel, Haifa, Nazareth, Ramallah, Bethlehem, Hebron, Nablus and Qalqilya.

2. The Special Rapporteur wishes to thank both the Government of Israel and the Palestinian Authority for the cooperation extended to her before, during and after the country visit. In Israel, the Special Rapporteur held talks, inter alia, with the Interior Minister, the Religious Affairs Minister, the Deputy Foreign Minister, the Deputy State Attorney for Special Affairs, the Chairman of the Constitution, Law and Justice Committee of the Knesset, a Supreme Court Justice, the Director General of the Head Rabbinate and the mayor of Daliyat al Carmel. In the Occupied Palestinian Territory, the Special Rapporteur met, inter alia, with the Chief of Staff of the President of the Palestinian Authority, the Director General for International Relations of the Palestinian Authority, the Governor of Nablus, the Director General and Commissioner General of the Palestinian Independent Commission for Citizens' Rights, the President of Al-Najah National University as well as representatives of the Islamic Waqf in East Jerusalem and Hebron.

3. During her visit, the Special Rapporteur talked with religious leaders and representatives of the Baha'is, Christians, Druze, Jews, Muslims and Samaritans. She is also grateful for the information she received from members of various domestic and international civil society organizations as well as from individual academics, journalists and lawyers.

4. Furthermore, the Special Rapporteur benefitted from meetings with the United Nations Special Co-ordinator and Deputy Special Co-ordinator for the Middle East Peace Process (UNSCO) as well as with representatives from the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Development Fund for Women (UNIFEM). She sincerely appreciates the outstanding logistical support provided by the Office of the High Commissioner for Human Rights in the Occupied Palestinian Territory.

5. The present report first outlines international legal standards and then gives an overview of the domestic legal framework on freedom of religion or belief. In the third part, the Special Rapporteur refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in Israel and the Occupied Palestinian Territory. In the last part, the Special Rapporteur presents her conclusions and recommendations.

II. INTERNATIONAL LEGAL STANDARDS

6. The Special Rapporteur would like to refer to previous reports[1] with regard to the main international legal standards pertinent to her mandate. These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter, Israel has ratified all of the above-mentioned human rights treaties.

7. Upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the State of Israel expressed its reservation with regard to article 7 (b) of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel and with regard to article 16 of the Convention to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article. Upon ratification of the International Covenant on Civil and Political Rights, the State of Israel reserved the right to apply the religious law of the parties concerned to the extent that such law is inconsistent with its obligations under the Covenant.

8. The Special Rapporteur is also guided in her mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including by the General Assembly, the Human Rights Committee, the former Commission on Human Rights and the Human Rights Council. Of these instruments, most relevant for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights as well as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

9. The legal framework of her mandate also includes relevant provisions of international humanitarian law, in particular the four Geneva Conventions of 12 August 1949 and their Additional Protocols. As emphasized for example by the Human Rights Committee, the application of international humanitarian law and of international human rights law is not mutually exclusive, but is complementary.[2] With regard to the applicability in the Occupied

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[1] See E/CN.4/2005/61, paras. 15-20 and E/CN.4/2006/5, annex, as well as the online digest of her framework for communications (www2.ohchr.org/english/issues/religion/standards.htm).

[2] Human Rights Committee, general comment No. 31 (2004): "the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purpose of the interpretation of the Covenant rights, both spheres of law are complementary, not mutually exclusive". See also the joint report on the situation of detainees at Guantánamo Bay (E/CN.4/2006/120, paras. 15-16), where the five Special Procedures mandate-holders refer to the International Court of Justice Advisory Opinions of 8 July 1996 (I.C.J. Reports 1996, page 240, para. 25) and of 9 July 2004 (I.C.J. Reports 2004, page 178, para. 106).

Palestinian Territory of certain rules of international humanitarian law and human rights instruments, the Special Rapporteur would like to refer to the Advisory Opinion of the International Court of Justice of 9 July 2004, where this issue is discussed in detail.[3]

III. DOMESTIC LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF

10. Due to its history and various transition provisions, the domestic legal framework is characterised by a mosaic of applicable laws. In addition to laws enacted by the State of Israel during the past 60 years, the legal framework also includes laws from the Ottoman rule (1516-1917) and from the British mandate period (1920-1948) as well as religious laws and English laws, including the "substance of common law and the doctrines of equity in force in England".[4]

11. Already the League of Nations' Palestine Mandate of 24 July 1922 prohibited discrimination on religious grounds and addressed issues such as free access to the holy places, religious buildings and sites and the free exercise of worship. Furthermore, the 1922 Palestine Order-in-Council stipulated that all persons in Palestine shall enjoy full liberty of conscience and free exercise of their forms of worship subject only to the maintenance of public order and morals.

12. On 14 May 1948, Jewish communities of the dissolved British mandate of Palestine declared the establishment of a Jewish State, to be known as the State of Israel. This Declaration of the Establishment of the State of Israel also provides that the State of Israel "will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions".

13. The 1948 Law and Administration Ordinance No. 1 stipulates that the law which existed in Palestine on 14 May 1948 shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

14. The 1950 Law of Return provides that every Jew has the right to come to Israel as an *oleh* (immigrant to Israel). An *oleh*'s visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Interior is satisfied that the applicant is engaged in an activity directed against the Jewish people or is likely to endanger public health or the security of

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[3] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, I.C.J. Reports 2004, pages 171-181, paras. 86-113.

[4] Article 46 of the 1922 Palestine Order-in-Council, which was later absorbed into the law of the State of Israel by section 11 of the 1948 Law and Administration Ordinance No. 1.

the State or is a person with a criminal past, likely to endanger public welfare. For the purposes of the 1950 Law of Return, "Jew" means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.

15. Furthermore, a law of 27 June 1967 protects the holy sites from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.

16. Under section 173 of the Penal Law, a person who "publishes any print, writing, picture or effigy calculated to outrage the religious feelings or belief of other persons", or who "utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief" is liable to imprisonment of one year. Section 144D of the Penal Law prohibits incitement to an act of violence or terrorism and prohibits the possession of publications inciting to violence or terror. Furthermore, hostility based on religion or affiliation to a religious group is to be taken into account as an aggravating factor by the courts when adjudicating criminal offences according to section 144F of the Penal Law. Approval by the Deputy State Attorney (Special Functions) is required to initiate investigations into matters of great public sensitivity, for example concerning hate offences and incitement to violence.

17. According to the 1984 Basic Law "The Judiciary", judicial power is vested in the Supreme Court, district courts, magistrate's courts, religious courts and other courts designated by law. The Supreme Court sitting as a High Court of Justice is competent to order religious courts to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not within their jurisdiction. Moreover, section 1 of the 1992 Basic Law "Human Dignity and Liberty", as amended, provides that fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

18. Some international agreements and treaties also refer to religious places and related questions of access. For example, in the Fundamental Agreement of 30 December 1993 between the Holy See and the State of Israel, both sides affirmed their continuing commitment to respect the status quo in the Christian holy places and the respective rights of the Christian communities (art. 4). Furthermore, the peace treaty of 26 October 1994 between Israel and Jordan stipulates that "each party will provide freedom of access to places of religious and historical significance" and that "Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem" (art. 9).

19. With regard to the Occupied Palestinian Territory, the Palestinian Legislative Council ratified the Palestinian Basic Law on 29 May 2002, and further amendments were adopted in 2003 and 2005. Article 4 of the Palestinian Basic Law provides that Islam is the official religion in Palestine; that respect and sanctity of all other heavenly religions shall be maintained; and that the principles of Islamic Shari'a shall be the main source of legislation. All Palestinians are equal under the law and judiciary, without discrimination because of race, sex, colour, religion, political views or disability (art. 9). Furthermore, basic human rights and freedoms shall

be protected and respected and the Palestinian Authority shall work without delay to become a party to regional and international covenants and declarations that protect human rights (art. 10). According to article 18 of the Palestinian Basic Law, freedom of belief, worship and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals. Moreover, Shari'a affairs and personal status matters shall be assumed by Shari'a and religious courts in accordance with law (art. 101).

20. For marriage, divorce and other personal status matters of Muslims in the Occupied Palestinian Territory, the 1976 Jordanian Law of Personal Status is applied in the West Bank, whereas Gazan Muslims are governed by the 1954 Law of Family Rights issued during the Egyptian administration of the Gaza Strip. In East Jerusalem, the personal status jurisdictions of Israeli, Jordanian and Palestinian authorities compete. Furthermore, recognised Christian communities in the Occupied Palestinian Territory apply their own personal status laws in their respective religious courts.

IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORY

A. Religious demography

21. According to official data from the Israel Central Bureau of Statistics, the population of Israel numbered 7,111,700 inhabitants as of 31 December 2006. The population of Israel is comprised of Jews (about 75.7 per cent), Muslims (about 16.6 per cent), Christians (about 1.7 per cent Arab Christians and 0.4 per cent non-Arab Christians) and Druze (about 1.6 per cent), while about 4 per cent of the population of Israel has not been classified by religion.

22. Certain religious communities have the status of being a "recognized" religion or religious community, some of them already since Ottoman rule or the British Mandate period. The religious courts of these communities are granted jurisdiction in matters of personal status, such as marriage and divorce. The following religions and denominations have been officially recognized so far: Armenian Catholic, Armenian Orthodox, Baha'i, Chaldaic (Catholic), Druze, Evangelical Episcopal (Anglican), Jewish, Maronite, Muslim, Greek Catholic, Greek Orthodox, Latin (Roman Catholic), Syrian Catholic and Syrian Orthodox. The applications for State recognition of the Ethiopian Orthodox, the Coptic Orthodox and the United Churches Council of Israel are pending. Further religious communities, such as the Baptists, Lutherans, Quaker and Samaritans, operate in Israel without the status as "recognized" religions.

23. With regard to the population in the West Bank and Gaza Strip, the 2007 census by the Palestinian Central Bureau of Statistics indicates a total population of 3,761,646 individuals. No disaggregated official data seems to be available concerning the religious demography in the Occupied Palestinian Territory. It is estimated that about 98 per cent of Palestinian residents of the Occupied Palestinian Territory are Sunni Muslims and less than 2 per cent are Christians. Furthermore, the small Samaritan religious community counts around 700 members, half of them living on Mount Gerizim near the West Bank city of Nablus and the other half living near the Israeli city of Tel Aviv.

B. Issues of concern

24. The Special Rapporteur would like to highlight selected aspects of the status of freedom of religion or belief in Israel and the Occupied Palestinian Territory. She is well aware of the complex situation and the heightened atmosphere of tension and militancy. The Special Rapporteur will focus on the following issues of concern: (1) restricted access to places of worship; (2) preservation and protection of religious sites; (3) indication of religious affiliation on official identity cards; (4) matters of personal status; (5) preferential treatment of Orthodox Judaism; (6) religious rights of persons deprived of their liberty; (7) advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; (8) conversions and missionary activities; and (9) further concerns within the Occupied Palestinian Territory.

1. Restricted access to places of worship

25. A major issue of concern for the Special Rapporteur's mandate are restrictions on the access of believers to places of worship in Israel and the Occupied Palestinian Territory. Many of their shrines are located next to each other and some are sacred to believers from different religions.

(a) Situation of Muslims and Christians

26. The Israeli authorities control and restrict Palestinian movement through a system of permits, checkpoints, curfews, visas and the Barrier.[5] Due to this elaborate system, millions of Muslims and Christians have reportedly been impeded since 1993 from worshipping at some of the sites they consider to be their most holy places in the world, especially in Jerusalem.[6] This applies, for example, to Palestinians who want to attend religious services at the Al-Aqsa mosque or the Church of the Holy Sepulcher in Jerusalem. Their movement is also restricted within the Occupied Palestinian Territory, e.g. concerning access to the Ibrahimi mosque/Tomb of the Patriarchs in Hebron or the Church of the Nativity in Bethlehem. The United Nations Office for the Coordination of Humanitarian Affairs reported that in April 2008 there were a total of 607 closure obstacles in the West Bank, such as checkpoints, earth mounds, road blocks, trenches and road gates.[7]

27. The closure regime caused difficulties especially during the religious holiday of Ramadan in 2007, when due to the long queues at checkpoints many Muslims could not observe their prayers and break the fast at the mosque of their choice. There may also be an adverse social and psychological impact, for example when Palestinian applicants do not receive travel permits for the celebration of religious festivals, marriages or funeral ceremonies with their family members who live in different cities.

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[5] See the *Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 6/19* (A/HRC/8/18, paras. 14-39).

[6] OCHA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities – East Jerusalem, Update No. 7*, p. 37 (www.ochaopt.org/documents/Jerusalem-30July2007.pdf).

[7] OCHA, *Closure Update May 2008* (www.ochaopt.org/documents/UpdateMay2008.pdf).

28. Furthermore, on several occasions age restrictions have been imposed by the Government of Israel on the access to al-Haram al-Sharif/Temple Mount in Jerusalem. During Ramadan in 2007, for example, sometimes only Palestinians over the age of 45 were allowed entrance and at other times only Jerusalem identity cardholders or only residents of the old city over the age of 50 were permitted. On some Fridays, children were allowed to cross Israeli checkpoints with older relatives but on the last Friday of Ramadan in 2007 even young children were reportedly turned back. On 21 September 2007, no access was permitted for Palestinians from the West Bank since all checkpoints were closed for the Jewish holiday of Yom Kippur.[8]

29. The Special Rapporteur's predecessor had also transmitted a communication on 10 June 2004 to the Government of Israel concerning allegations that the renewal of visas for Christian clergy was obstructed by Israeli authorities (E/CN.4/2005/61/Add.1, para. 148). Visas for priests, religious men and women as well as seminarians were allegedly denied or were renewed with severe limitations, including with regard to their validity and the number of permitted entries. The new practice of issuing only single entry visas reportedly hindered the clergy's ability to carry out their pastoral ministry in an effective way. The Latin Patriarchate of Jerusalem for example includes Palestine, Israel and Jordan and it is feared that these different areas will be disconnected if Jordanian clergy are not allowed to move between Jordan and Israel or the Occupied Palestinian Territory. Similarly, the dioceses of several other Christian communities also cover Cyprus, Jordan, Lebanon or Syria. Since a majority of clergy and seminarians is Jordanian, many parishes might ultimately be left without priests and seminaries might be closed. Furthermore, religiously motivated visits for believers living abroad, including pilgrimages to the religious sites in Bethlehem and Jerusalem, are adversely affected by the Barrier which has created a concrete separation between these cities.

30. The Government of Israel informed the Special Rapporteur that all of these restrictions to movement are necessary for security reasons. One of her official interlocutors in Israel stated, from a military perspective, that "before you can guarantee quality of life you have to save lives". The Special Rapporteur would like to reiterate that the State's obligation to protect and promote human rights, including every human being's inherent right to life, requires it to take effective measures to combat terrorism. Several special procedures mandate-holders have publicly shared in the unequivocal condemnation of terrorism but have at the same time voiced their profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism which affect negatively the enjoyment of virtually all human rights.[9] The Special Rapporteur would like to emphasize that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights and humanitarian law as detailed further below.

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[8] OCHA, *The Humanitarian Monitor No. 17, September 2007*, p. 11 (www.ochaopt.org/documents/HM_Sep07.pdf).

[9] See for example the joint statement by participants of the tenth annual meeting of special procedures mandate-holders in June 2003 (E/CN.4/2004/4, annex I).

(b) International legal standards

31. With regard to international human rights law, the State must guarantee, inter alia, freedom of religion or belief as well as liberty of movement and must respect the principle of non-discrimination. The importance of the freedom of religion or belief is underlined by article 4 (2) of the International Covenant on Civil and Political Rights which stipulates that, even in time of public emergency or war, no derogation from article 18 of the Covenant is permissible.[10] Furthermore, freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. This list of permissible limitation grounds does not include the protection of "national security", unlike for example in articles 12 (3), 19 (3) or 21 of the Covenant. A comparison with the text of these articles also reveals that article 18 (3) does not allow restrictions on freedom of religion or belief "for all of the reasons stemming from the concept of *ordre public* under French civil law but rather only to avoid disturbances to public order in the narrow sense".[11] Furthermore, laws imposing limitations on the freedom to manifest one's religion or belief should not be arbitrary or unreasonable and any assessment as to the necessity of a limitation should be made on objective considerations. In addition, the burden of justifying a limitation upon a right guaranteed under the Covenant lies with the State. Consequently, it seems difficult to argue that the practice of imposing age limits for access to some religious places on specific occasions would pass these tests.

32. While the right to liberty of movement according to article 12 of Covenant may be subject to restrictions which are provided by law and are necessary to protect, for example, national security, such restrictions must also be consistent with the other rights recognized in the Covenant. Consequently, freedom of religion or belief and the prohibition of discrimination may be decisive in the evaluation of whether a restriction on the liberty of movement is permissible or not.[12] With regard to multiple forms of discrimination based on grounds such as religion, race or ethnic origin, the Special Rapporteur's predecessor has already emphasized that the identity of many minorities, or even large groups of people, is defined by both racial and religious aspects and that many instances of discrimination are aggravated by the effects of multiple identities (A/CONF.189/PC.1/7, para. 6). The Human Rights Committee emphasized in its general comment No. 27 that it would be a clear violation of the Covenant if the liberty of movement was restricted by making distinctions of any kind, such as on the basis of race or religion.

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[10] The Human Rights Committee has addressed the issues of derogations and the state of emergency in Israel in its concluding observations (CCPR/CO/78/ISR, para. 12 and CCPR/C/79/Add.93, para. 11).

[11] See Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein (2nd edition, 2005), art. 18, para. 39.

[12] Ibid., art. 12, para. 32.

33. Furthermore, the principle of proportionality requires that restrictive measures must be appropriate to achieve their protective function, must be the least intrusive instrument amongst those which might achieve the desired result, and must be proportionate to the interest to be protected. The various restrictions imposed on the access of Palestinians to religious sites - as documented in the High Commissioner's report on the implementation of Human Rights Council resolution 6/19 (see A/HRC/8/18, paras. 14-39) - appear to be disproportionate to their aim as well as discriminatory and arbitrary in their application.

34. Moreover, international humanitarian law also protects the freedom to practise one's religion through religious observances, services and rites. With regard to the rights of the civilian population in a period of occupation, the Fourth Geneva Convention provides that the protected persons are entitled, in all circumstances, to respect for "their religious convictions, and practices and their manners and customs" (art. 27). They must be able to practise their religion freely, without any restrictions other than those necessary for the maintenance of public law and morals. According to article 58 of the Fourth Geneva Convention, the "Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities". Referring to international humanitarian law, the High Commissioner concluded in her recent report (see A/HRC/8/18, para. 59) that Israel should take the necessary measures to ease existing restrictions on local and foreign clergy and allow unhampered movement and access for spiritual leaders to communicate with members of their faith.

(c) Situation of Jews

35. In the Occupied Palestinian Territory, there have been incidents and problems of safe access to religious sites revered by Jews, such as Joseph's Tomb in Nablus or Shalom Al Israel synagogue in Jericho. The Special Rapporteur would like to remind that these two places in the West Bank have been designated as Jewish holy sites according to Annex I of the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. According to its article 5, "Joint Mobile Units" should ensure free, unimpeded and secure access to these sites as well as ensure the peaceful use of such sites, prevent any potential instances of disorder and respond to any incident.

36. Furthermore, the Special Rapporteur was informed that, according to decisions of the Government of Israel and several court rulings, Jews are not allowed to pray in any overt manner on the al-Haram al-Sharif/Temple Mount. In addition, the Chief Rabbinate of Israel has enunciated a prohibition under Jewish law against entering this area and has placed a sign to that effect at the entrance of the pedestrian pathway indicating that "according to the Torah it is forbidden to enter the area of the Temple Mount due to its sacredness". Some rabbis, however, argue that Jewish law permits access of Jews to certain parts of the al-Haram al-Sharif/ Temple Mount.

2. Preservation and protection of Muslim and Christian religious sites

37. Several legal provisions in Israel (see paras. 15-16 above) aim to safeguard and preserve sacred places from desecration and stipulate criminal sanctions for the violation of a holy site. The Religious Affairs Minister is charged with the implementation of the 1967 Protection of Holy Sites Law and may issue regulations as to any matter relating to such implementation. However, all the 136 places which have been designated as holy sites until the end of 2007 are

Jewish and the Government of Israel has so far only issued implementing regulations for Jewish holy sites.[13] This approach may ultimately have discriminatory effects for the preservation of non-Jewish places and related budgetary allocations since the determination of holy sites also provides state funding to institutions which protect the sanctity of these places and preserve them from damage. Reportedly, there is an urgent need to preserve and protect Muslim and Christian religious sites, many of which have been made inaccessible or neglected since decades. In some cases, such religious sites have been converted into bars, night clubs or stores, which may also offend religious sensitivities.

38. One example for the sensitive issue of religious sites and their preservation is the controversy about excavation works in Jerusalem on the pathway leading from the Western Wall Plaza to the Mughrabi Gate of al-Haram al-Sharif/Temple Mount. In February 2007, the UNESCO Director-General decided to dispatch a technical mission to the Old City of Jerusalem. The technical mission recommended in its report that the Government of Israel should be asked to stop immediately the archaeological excavations, to engage immediately a consultation process with all concerned parties and to agree upon a plan of action before taking any further action and decision thereon.[14] In March 2007, the Committee on the Elimination of Racial Discrimination expressed its concerns about the excavations beneath and around Al-Aqsa Mosque and urged the State of Israel to ensure that the excavations in no way endanger the mosque and impede access to it (CERD/C/ISR/CO/13, para. 36). Another recent excavation project in the area of the Arab neighbourhood of Silwan, which is located a few hundred metres from al-Haram al-Sharif/Temple Mount, elicited protests and on 18 March 2008 the Israeli High Court of Justice ordered a halt to the excavations in Silwan (A/HRC/8/18, para. 41).

39. The Special Rapporteur would like to reiterate that places of worship, religious sites and cemeteries have more than a material significance for the religious community attached to them. General Assembly resolution 55/254 calls upon all States to exert their utmost efforts to ensure that religious sites are fully respected and protected as well as to adopt adequate measures aimed at preventing such acts or threats of violence. Furthermore, the General Assembly encourages all States, relevant intergovernmental and non-governmental organizations and the media to promote a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind. The Special Rapporteur would like to emphasize that the concept of collective heritage of humankind could be used more prominently when addressing on a case-by-case basis the intricate questions of how to preserve and protect religious sites.

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[13] US Department of State, *International Religious Freedom Report 2008: Israel and the Occupied Territories* (www.state.gov/g/drl/rls/irf/2008/108484.htm).

[14] Report of the UNESCO technical mission to the Old City of Jerusalem (176 EX/Special Plenary Meeting/INF.1, paras. 49 and 51).

3. Indication of religious affiliation on official identity cards

40. Every permanent resident of Israel and the Occupied Palestinian Territory above the age of 16, whether a citizen or not, is required by law to carry an official identity card. There are four kinds of identity cards: Israeli, West Bank Palestinian, Gaza Palestinian and Jerusalem Palestinian identity cards. The Government of Israel started issuing identity cards to Palestinian residents of the West Bank and the Gaza Strip following their occupation in 1967. Subsequent to the Oslo Declaration of Principles on Interim Self-Government Arrangements, the Palestinian Authority issues its residents with Palestinian identity cards; however, Israeli authorities control the population registry and identity cards of Palestinians are issued on the basis of this registry.

41. The approach with regard to indicating the holders' religious affiliation is different with the four kinds of identity cards. Since 2005, identity cards of Israeli citizens no longer state the holder's ethnic affiliation; however, it can still be determined whether a citizen is Jewish or not when the birth date of Jews are indicated in Hebrew letters according to the Jewish calendar while listing that of others according to the Gregorian calendar. Identity cards of Palestinians with West Bank or Gaza identity cards show whether the cardholder is Muslim or Christian. No other options of religious affiliation are allowed and consequently those who are not believers are classified the same way as their parents. Palestinians holding Jerusalem identity cards were listed until 2002 as "Arab" on their identity card but this approach has been discontinued.

42. The degree of somebody's ability to move in and out of Jerusalem or within the Occupied Palestinian Territory reportedly depends on which type of identity card he or she holds. The Special Rapporteur would like to reiterate that indicating the religious affiliation on official identity cards carries a serious risk of abuse or subsequent discrimination based on religion or belief, which has to be weighed against the possible reasons for disclosing the holder's religion. In case the State wishes to include on official documents an indication of religious affiliation, it would be discriminatory to provide only the possibility to choose from a limited number of officially recognized religions. In addition, any indication of one's religious affiliation on official documents should in general be on a voluntary basis (A/63/161, para. 73).

43. Furthermore, terrorist-profiling practices based on stereotypical assumptions that persons of a certain religion or ethnic origin are particularly likely to commit attacks may lead to practices that are incompatible with the principle of non-discrimination.[15] Consequently, it seems advisable to have no direct or indirect reference to the individual's religious or ethnic affiliation on official identity cards and in related application forms (A/63/161, para. 76).

[15] Concerning terrorist-profiling based on ethnic origin and religion, see the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26, paras. 32-62 and 83-89).

4. Matters of personal status

44. In matters of personal status, such as marriage, divorce and, to some extent, maintenance, guardianship and the adoption of minors, jurisdiction is vested in the judicial institutions of the respective religious communities. Problems may arise when the parties to a legal proceeding in matters of personal status belong to different religious communities or when it is not clear if the dispute falls within the jurisdiction of any religious court based on the substantive law of each denomination.

(a) Marriage

45. Under domestic law, more than 250,000 Israeli citizens and residents are currently barred from marrying in Israel. These include people who are unmarriageable according to Jewish law, immigrants who are not recognized by the Orthodox Rabbinate as certain to be Jewish, and Israeli citizens who have no officially recognized religion. The Special Rapporteur was informed that more than 7,000 Israelis married abroad in 2002, which represents about 8 per cent of all Israelis who married in Israel and abroad that year. In a judgment of 21 November 2006, the Supreme Court of Israel confirmed that civil marriages which have taken place between Jewish Israeli residents and citizens outside of Israel are indeed valid in Israel.

46. The Special Rapporteur would like to emphasize that freedom of religion or belief also includes theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. In order to prevent any discrimination based on religion or belief, the State should provide a civil alternative for those who are currently ineligible for marriage in Israel. In this regard, during the British Mandate period, article 65 A was added to the Palestine-Order-in-Council in 1939, according to which “provision may be made by ordinance for the celebration, dissolution and annulment of marriages of persons neither of whom is a Muslim or a member of a religious community and for the granting by the courts of orders or decrees in connection with the marriages of such persons, their dissolution or annulment”. However, the Mandate authorities never enacted implementing legislation and since 1948 the State of Israel has maintained religious law in matters of personal status and communal jurisdiction. The Government of Israel decided in September 2007 to resume consular marriages for Israeli residents abroad, but this decision only applies when neither partner belongs to a recognized religious community in Israel and if one or both of them are nationals of the country of the consulate in question. Consequently, there is still no domestic solution available for those who are ineligible to marry in Israel as detailed above.

(b) Dissolution of marriage

47. With regard to the dissolution of marriages where the spouses have different religious affiliations or no religious affiliation at all, the 1969 law on Matters of Dissolution of Marriage (Jurisdiction in Special Cases) was amended in July 2005. Spouses with different religious backgrounds wishing to dissolve their marriage no longer need to first apply to the president of the Supreme Court for a determination of jurisdiction but may apply directly to a Family Matters Court. This court can seek the consul of the relevant religious court to determine whether it is necessary to dissolve the marriage according to the religious laws of either spouse for the purpose of remarriage.

48. While the Special Rapporteur welcomes the recent amendments, she notes that the law does not apply to spouses who are both Jews, Muslims, Druzes or members of the same recognized Christian community unless one or both of them are foreigners. Consequently, matters of divorce of such couples have been left in the hands of the religious courts of their respective communities.

(c) Religious courts

49. The 1955 Religious Judges Law and the 1962 Druze Courts Law have been interpreted by Jewish, Muslim and Druze religious leaders to mean that judges in these courts must be male. The Special Rapporteur was informed that no women serve as judges in the religious courts of the various recognized religions and only a small number of municipal religious councils include women. She would like to refer to the concluding comments of the Committee on the Elimination of Discrimination Against Women (CEDAW/C/ISR/CO/3, para. 25), in which the Committee expressed its concerns at the State party's statement that the reservations to articles 7 (b) and 16 of the CEDAW are "unavoidable at this point in time" and its position that laws based on religious values cannot be reformed. It is important to apply a gender perspective and to ensure that women are not discriminated against, including in matters of personal status.

5. Preferential treatment of Orthodox Judaism

50. The State of Israel confers certain powers upon the Chief Rabbinate, which is organized under law and supported by public funding. Concerns have been voiced that preferential treatment is given to the Orthodox Rabbinate to the detriment not only of other religious or belief communities but also of non-Orthodox Jewish groups, such as Reform or Conservative branches. Non-Orthodox Jewish institutions do not have official status and consequently their rabbis cannot officiate at marriages in Israel. Allocations of state resources reportedly favour Orthodox Jewish institutions. Secular or non-observant Jews may also encounter problems if they do not want to be subject to Orthodox religious norms, for example with regard to dietary or burial provisions. The Government of Israel in its initial report to the Human Rights Committee acknowledged that it seems difficult to claim that "freedom from religion" is fully protected, particularly for the Jewish population, due to the interpenetration of religion and Government in several forms, for example by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population (see CCPR/C/81/Add.13, para. 532).

51. The Supreme Court of Israel has ruled on related issues, especially with regard to the recognition of conversions. In 1995, it decided that the Ministry of Interior had no authority to refuse to recognize non-Orthodox conversions to Judaism performed inside Israel for purposes of recognition under the Law of Return. In another decision of 2005, it held that non-Jews living legally in Israel would be able to convert to Judaism by Reform and Conservative religious courts abroad and that State authorities would register their conversion. However, in applying Jewish religious law in matters of personal status, the Orthodox Rabbinical Courts do not recognize persons converted by a non-Orthodox body as Jews which leads to problems as explained above for persons deemed to be unmarriageable in Israel.

6. Religious rights of persons deprived of their liberty

52. Although the Government of Israel confirmed that all detainees must be given the opportunity, to the extent practicable, to observe the commandments of their religion (see CCPR/C/81/Add.13, para. 331), the Special Rapporteur has received reports that the religious rights of detainees are not fully respected. While there are places for prayer for Jewish detainees and rabbis have been appointed for detention facilities, there are no or few religious representatives for Muslim and Christian detainees. The Special Rapporteur would like to reiterate rule 41 of the Standard Minimum Rules for the Treatment of Prisoners (see A/60/399, para. 81) which provides that a qualified representative of a religion should be appointed or approved if the institution contains a sufficient number of prisoners of the same religion and that the arrangement should be on a full-time basis if the number of prisoners justifies it and conditions permit.

53. Furthermore, Muslim detainees do not necessarily have access to books of religious observance and instruction of their denomination. Reportedly, collective prayers for Muslims are allowed in detention centres only on some Fridays. With regard to Christian detainees, the Special Rapporteur was informed that members of the prison pastoral team of the Latin Patriarchate of Jerusalem have been visiting foreign detainees in different Israeli prisons for several years and were allowed to celebrate the religious feasts of Christmas and Easter together. While detainees are in principle allowed to receive a special diet on religious grounds, there are reportedly problems also for some Jewish prisoners with regard to the type of kosher meals or threats of harassments based on their religious beliefs.

54. During her mission, the Special Rapporteur visited Hasharon prison on 23 January 2008. While she was given the authorization to speak with detainees, she regrets to report that she could not have “confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty”, as stipulated in the terms of reference for fact-finding missions by Special Rapporteurs (see E/CN.4/1998/45, appendix V). Since some of her female interlocutors were visibly frightened to speak openly and as the accompanying prison personnel would not let the Special Rapporteur and her security officer talk alone to the detainees, she ultimately decided to cut her visit to Hasharon prison short. The Special Rapporteur suggested to the Government of Israel that a visit of independent non-governmental organizations to the women’s section of Hasharon prison should be organised as a follow-up.

7. Advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence

55. The Special Rapporteur was informed about tendencies in Israel and the Occupied Palestinian Territory towards increased radicalization and serious examples for advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

56. In its Third Periodic Report concerning the implementation of the International Covenant on Civil and Political Rights, the Government of Israel provided several examples of recent indictments and judgments concerning cases of incitement to racism against the Arab population or hate crimes (see CCPR/C/ISR/3, paras. 337-339). However, the Special Rapporteur also received reports about incidents where advocacy of religious hatred or acts of violence by Jewish settlers against Muslims have not been adequately investigated.

57. There have also been worrying reports from the Occupied Palestinian Territory on cases of incitement to religious hatred vis-à-vis Jews. One shocking example brought to the attention of the Special Rapporteur was a broadcast in March 2007, in which the interviewer from Al-Aqsa TV in Gaza asked the two young children of a Palestinian suicide bomber "how many Jews" their mother had killed and if they wanted to join her in paradise. Furthermore, some Palestinian schoolbooks allegedly continue to idealize martyrdom and glorify the aspiration to seek a violent death in the name of religion. The Special Rapporteur would like to recall article 20 (2) of the Covenant which requires that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

8. Conversions and missionary activities

58. In Israel, the 1977 Penal Law Amendment (Enticement to Change Religion) Law stipulates that whosoever gives or promises to a person money, money's worth or some other material benefit in order to induce that person's conversion is liable to imprisonment for five years or a fine. Furthermore, it is also punishable to receive such benefits in return for a promise to change one's religion or to cause another person to convert.

59. Religious conversion of children is regulated by the Guardianship and Legal Capacity Law 1962. Children who have not yet reached the age of ten may be converted if both of their parents agree to conversion or if the court approves conversion upon the application of one of the parents. The religious conversion of children who have reached ten years of age requires both an application by their parents and the consent of the children. In this regard, the Special Rapporteur would like to reiterate that the choice of religion is restricted by the parents' rights to determine their child's religion up to an age where the child is capable of doing so on his or her own. Such a case-by-case approach is also supported by article 12 (1) of the Convention on the Rights of the Child, which requests States parties to "assure to the child who is capable of forming his or her own views to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

60. Some small religious communities in Israel have voluntarily refrained from proselytizing or from having a local Israeli community. For example, the founder of the Baha'i faith established the practice that conversion to the Baha'i faith in Israel is neither sought nor accepted. Furthermore, the Baha'is have not established a religious court in Israel although the Baha'i faith is one of the officially recognized religions in Israel. Moreover, the Church of Jesus Christ of Latter-day Saints reportedly refrains from domestic proselytizing under an agreement with the Government of Israel.

61. In the Occupied Palestinian Territory, the few conversions which have taken place, particularly when involving interfaith relationships, have been followed by serious tensions. Suspected incidents of proselytism have even led to violence. For example, on 6 October 2007, the manager of the only Christian bookstore in Gaza city, Rami Khader Ayyad, was kidnapped and subsequently killed. Prior to the kidnapping, his bookstore had been firebombed and the victim had been the target of several death threats. The question of whether Mr. Ayyad was engaging in missionary activities or not is entirely irrelevant since his kidnapping and killing

were hideous crimes and also a violation of his right to manifest his religion or belief. With regard to missionary activities and propagation of one's religion, the Special Rapporteur would like to refer to the relevant chapter in her report to the 60th session of the General Assembly (see A/60/399, paras. 55-68).

62. Furthermore, the approximately 2,000 Christians in the Gaza Strip have been openly warned by militants that after June 2007, no missionary activity will be tolerated any longer and that those suspected of trying to convert local Muslims to Christianity will be harshly punished. There are also reports of forced conversions to Islam by Palestinian groups in the Gaza Strip. For example, in August 2007, militants allegedly forced a female professor at Palestine University in Gaza City to convert from Christianity to Islam.

9. Further concerns within the Occupied Palestinian Territory

63. The Special Rapporteur was informed that religious minorities and women face several forms of pressure or violence within the Occupied Palestinian Territory.[16]

(a) Honour killings and social pressure on women

64. Women seem to be in a particularly vulnerable situation and bear the brunt of religious zeal. The Special Rapporteur was informed about cases of honour killings carried out in the name of religion with impunity in the Occupied Palestinian Territory. Reportedly some women in Gaza have recently felt coerced into covering their heads not out of religious conviction but out of fear. These are worrying allegations and the Special Rapporteur would like to emphasize that nobody should be subject to coercion which would impair the freedom to have, or to adopt, a religion or belief of his or her choice. It is vital to safeguard both the positive freedom of religion or belief as manifested in observance and practice and also the negative freedom from being forced to wear or display religious symbols (see E/CN.4/2006/5, paras. 36-60).

(b) Situation of religious minorities in the Occupied Palestinian Territory

65. Further apprehensions concerning the situation in the Occupied Palestinian Territory have been expressed by minority communities, including some small Christian groups, who fear a rising level of religious intolerance. The Special Rapporteur was informed of a significant decrease in recent years in the number of Christians living in the Occupied Palestinian Territory. For example, the Christian proportion of Bethlehem's population has reportedly dropped from 85 per cent (in 1948) and 62 per cent (in 1995) to currently about 15 per cent. Safety concerns, contacts abroad and a relatively high level of education were cited to be the main reasons for the trend of emigration of many Christian families.

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[16] In relation to the obligations of the parties - Government of Israel, Palestinian Authority and Hamas - to respect the rules of international human rights law and international humanitarian law, see *Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1* (A/HRC/8/17, paras. 4-9).

66. Some of her Christian interlocutors in the Occupied Palestinian Territory expressed that they were living between two fires. They emphasized that they were particularly vulnerable as a "minority within a minority", suffering both from the effects of occupation and from significant pressure within the Palestinian population. Allegedly, Christians have been harassed or intimidated by militants and the local judiciary has failed to adjudicate seizures of Christians' property by criminal gangs. There have been several cases of attacks on Christian churches and violence against priests or individuals in Gaza and the West Bank.

67. The Special Rapporteur would like to emphasize that both General Assembly resolution 61/161 and Human Rights Council resolution 6/37 urges States to take "all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities".

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

68. The State of Israel and the Occupied Palestinian Territory are home to a rich diversity of religions or beliefs and host religious sites revered by believers from all over the world. Yet, this very diversity, which should have been a blessing, tragically has polarized people on the lines of religion. The conflict has an adverse impact on the right of individuals and communities to worship freely and to attend religious services at their respective holy places. Liberty of movement, including access to places of worship, is restricted in particular for Palestinian Muslims and Christians through the existing system of permits, visas, checkpoints and the Barrier. While the Government of Israel informed the Special Rapporteur that these restrictions are necessary for security reasons, she would like to emphasize that any measure taken to combat terrorism must comply with the State's obligations under international law. Taking into account the individuals' freedom of religion or belief and liberty of movement as well as the principles of non-discrimination and international humanitarian law, the intrusive restrictions seem to be disproportionate to their aim as well as discriminatory and arbitrary in their application.

69. The Special Rapporteur's interlocutors from religious minorities living in Israel have by and large acknowledged that there is no religious persecution by the State. Within the Israeli democracy, she would like to emphasize the important role that the Supreme Court has played in the past and can continue to play for safeguarding freedom of religion or belief. However, groups within the Christian, Jewish and Muslim faiths have experienced different forms of discrimination in the State of Israel, for example with regard to the preservation of religious sites or allocation of public funding.

70. With regard to the situation in the Occupied Palestinian Territory, the Special Rapporteur is concerned about reports of the rising level of religious intolerance and the vulnerability of religious minorities, including some small Christian communities, against the background of a deficient rule of law.

71. Personal status questions in both Israel and the Occupied Palestinian Territory show the delicate relationship between State and religion. Even though the various religious courts for historical reasons have the jurisdiction for issues such as marriage and divorce, this does not absolve the authorities from their responsibility to ensure equal treatment and the implementation of human rights for all individuals.

72. The Special Rapporteur was deeply impressed by the guided tour through the Yad Vashem Holocaust Memorial Museum. She would like to emphasize the importance of documenting the history, preserving the memory of the victims and educating future generations. In her press statement of 27 January 2008, the Special Rapporteur referred to the International Day of Commemoration in memory of the victims of the Holocaust and joined the United Nations Secretary-General in remembering those whose rights were brutally desecrated at Auschwitz and elsewhere as well as in genocides and atrocities since.

73. The Special Rapporteur is encouraged by the engagement of many Israeli and Palestinian civil society organisations which have demonstrated that - despite conflict and religious polarization - people belonging to different religions and beliefs are able to extend respect and tolerance to each other. There also have been promising approaches of inter-faith and intra-faith dialogue on various levels. At the same time, the Special Rapporteur is concerned that many individuals she met during her visit in Israel and the Occupied Palestinian Territory bear deep resentments against other religions and their adherents.

74. A major challenge, which needs to be addressed immediately in order to avoid a further deterioration of the situation, is to effectively sanction any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. However, impunity for such acts of incitement is a concern both in the State of Israel and in the Occupied Palestinian Territory. Furthermore, the persistence of violence committed in the name of religion is disturbing, for example with regard to violent acts perpetrated by zealous settlers or even worse in the form of suicide bombings by militant Islamists.

75. It is particularly worrying when children are being incited to express hatred toward those with a different religious affiliation. Education for tolerance, respect and recognition of diversity seems vital to get out of a vicious circle of discrimination, hostility and violence. In addition, long-term confidence building measures are required on all sides and at various levels. The Special Rapporteur would like to refer to the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination, in which both the Government of Israel and the Palestinian Authority actively participated. The Madrid Final Document (E/CN.4/2002/73, appendix), which was adopted by consensus on 25 November 2001, emphasizes that the young generation should be brought up in a spirit of peace, tolerance, mutual understanding and respect for human rights - especially for the respect of freedom of religion or belief - and that it should be protected against all forms of discrimination and intolerance based on religion or belief. Appropriate measures should be taken against such forms of intolerance and discrimination which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including the Internet. Furthermore, teachers and students should be provided with voluntary opportunities for meetings with their counterparts of different religions or beliefs.

Recommendations

76. **The Special Rapporteur recommends that all parties - especially in the framework of a possible peace agreement - bind themselves legally to protect the rights of religious minorities. Particular attention should be paid to include comprehensive guarantees for equality and non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites. Existing rights in respect of these religious sites should not be denied or impaired and freedom of worship should be safeguarded in conformity with existing rights. Any commitments, especially those which may affect human rights and fundamental freedoms, must be implemented and monitored in an effective and independent manner.**

77. **With regard to the protection and preservation of religious sites, the Special Rapporteur recommends that the Government of Israel issue as soon as possible non-selective regulations and designate holy sites on a non-discriminatory basis. The unique spiritual and religious dimension of the holy sites and their importance for believers in the whole world need to be appropriately taken into account. Furthermore, Israeli authorities should avoid delays in issuing visas for clergy or seminarians and should not impose limitations which might unduly hinder their ability to carry out religious activities in an effective manner.**

78. **The relevant authorities in Israel and the Occupied Palestinian Territory should consider discontinuing the indication of the religious affiliation on those official identity cards where this is still the case. In the meantime, the authorities should provide the possibility to indicate "other religion" or "no religion" on identity cards as well as the possibility not to divulge the religious beliefs of the cardholder at all in the application process.**

79. **Staff members of the police and military forces should be provided with adequate training in order to raise their awareness of multiple forms of discrimination based on grounds such as religion, race or ethnic origin and to enhance sensitivity about their duty to promote and respect international human rights standards, including freedom of religion or belief.**

80. **The Special Rapporteur recommends that the freedom of religion or belief receive more emphasis in the training of personnel of detention facilities and that the Standard Minimum Rules for the Treatment of Prisoners, especially rules 41 and 42, be applied to every prisoner, regardless of his or her religion or belief.**

81. **Concerning the allocation of public funding for religious bodies, the Special Rapporteur recommends that regulations and criteria for funding be published and applied to all religious groups on an equal and equitable basis.**

82. **Since the application of religious law to determine matters of personal status and the absence of provision for civil marriage effectively denies a large number of persons the right to marry in Israel, the Government of Israel should consider introducing legal provisions which allow for civil marriages in Israel. Similar concerns with regard to matters of personal status apply to the Occupied Palestinian Territory.**

83. **Concerning the Government of Israel's reservations on the appointment of female judges of religious courts and concerning religious laws on personal status matters, the Special Rapporteur would like to reiterate the recommendation by the Committee on the Elimination of Discrimination Against Women, which urged the State of Israel to consider withdrawing its reservations to articles 7 (b) and 16 because these were contrary to the object and purpose of the Convention on the Elimination of Discrimination Against Women.**

84. **Both in the State of Israel and in the Occupied Palestinian Territory, any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be effectively investigated, prosecuted and punished. Similarly, any related violent acts should be investigated in a prompt, transparent and independent manner, the perpetrators should be prosecuted and sentenced, and avenues for redress and protection should be offered to the victims.**

85. **In terms of prevention activities, the Special Rapporteur encourages the Government of Israel and the Palestinian Authority to promote the principles, objectives and recommendations of the Madrid Final Document. One possible example could be support for, and funding of, voluntary school exchange programmes between pupils and teachers from Israel and the Occupied Palestinian Territory. In addition, concrete initiatives of inter-religious and intra-religious dialogue, especially at the grass-roots level, should be fostered and encouraged in order to bridge the divides along religious lines.**

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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty.*

* The annex to the present report is circulated as received, in the language of submission and in Arabic.

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I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip.

2. In its resolution, the Council requested all relevant special procedures mandate-holders, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty, to urgently seek and gather information on violations of the human rights of the Palestinian people and submit their reports to the Council at its next session.

3. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has submitted a separate report to the Council (A/HRC/10/20). The present report is submitted by the other above-mentioned mandate-holders, and includes individual sections submitted by each one as well as a joint introduction, legal analysis and set of recommendations. The section submitted by the Special Representative of the Secretary-General for Children and Armed Conflict is annexed to the report. Following her visit to the Occupied Palestinian Territory and Southern Israel from 2 to 6 February 2009, the information submitted was compiled by the inter-agency working group on children and armed conflict on the ground, in accordance with Security Council resolution 1612 (2005).

4. The mandate-holders solicited information from concerned parties, including relevant Governments, United Nations agencies and non-governmental organizations, and received a significant number of submissions. They extend their sincere thanks for the cooperation they received in gathering information. In view of the extremely limited time available, this brief report cannot do justice to the large volume of information received.

5. The special rapporteurs on violence against women, on the right to education, on the right to food, on the right to the highest attainable standard of health and the independent expert on extreme poverty requested to visit the Occupied Palestinian Territory, including Gaza, and to discuss with the relevant Israeli authorities the issues covered by their mandates.

6. The Occupied Palestinian Territory, particularly the Gaza Strip, has been affected by protracted conflict and occupation policies for decades. On 27 December 2008, the Israeli military launched a large-scale operation against Hamas in response to rockets fired at populated areas in Israeli territory. According to available estimates, a total of 1,453 people were killed. Of these, 1,440 were Palestinian, including 431 children and 114 women. A total of 13 were

Israelis, including 3 civilians and 6 soldiers killed by Hamas, and 4 soldiers killed in friendly fire incidents.[1] This operation also resulted in a dramatic deterioration of the living conditions of the civilian population. At the onset of the recent military operation, the population of the Gaza Strip was already rendered vulnerable following a 20-month-long blockade, which severely restricted the movement of people and goods and the delivery of humanitarian and development assistance. In addition, the discriminatory legislation and policies of the occupying Power in, inter alia, access to housing, health care, food and water systems, have governed for decades the institutional set-up in the Occupied Palestinian Territory, thus aggravating the situation of its residents. An estimated 80 per cent of the population in Gaza, particularly women and children, was already dependent on humanitarian assistance before the recent military operation.

7. Targeted and indiscriminate attacks on public facilities, including medical facilities, water and sanitation networks, Government and municipal buildings, electricity, gas, transportation, agriculture, fisheries and industries further eroded people's access to basic services and goods. Combined with the decreasing ability of the authorities to manage basic public services and the collapse of the local economy, the recent military operation exacerbated the situation of the 1.5 million Gaza residents whose rights, including the rights to education, food, health and housing and to be free from violence, could not be protected. The conflict further exacerbated the desperate situation of those living in poverty in Gaza and pushed even more people into a life of poverty.

8. Even after the ceasefire was declared on 18 January 2009, restrictions on movement of people and goods as well as humanitarian assistance continued, thus hampering efforts for recovery and return to normalcy.

II. LEGAL FRAMEWORK

A. International humanitarian law

9. The most relevant conventional international humanitarian law standards binding Israel are set out in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949. In addition, Israel is bound by the customary rules of international humanitarian law, which are applicable in the present context. The State's responsibilities in the Occupied Palestinian Territory as the occupying Power are set out in the Convention as well as in the Hague Regulations, which have become part of customary international humanitarian law.[2] The

[1] In addition to the 1,440, killed, the Palestinian Ministry of Health lists 5,380 Palestinians injured, including 1,872 children and 800 women. In addition to the 13 killed, the Magen David Adom lists 518 Israelis injured, including 182 civilians and 336 soldiers. For additional data on children, see annex. Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, Occupied Palestinian Territory, No. 33, January 2009.

[2] In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories of 2004, the International Court of Justice recalled that, while Israel was not a party to the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention IV), to which the Hague Regulations are annexed, the provisions of the Hague Regulations had become part of customary international law.

International Court of Justice has concluded that the Fourth Geneva Convention is applicable in the Palestinian territories, which before the 1967 conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel. This is also the case for the Gaza Strip despite the unilateral withdrawal by Israel of its forces from the Strip in 2005, as the continuing occupation has been confirmed repeatedly since then by the General Assembly and the Security Council.[3]

10. Hamas and other armed Palestinian groups are bound by the obligations of common article 3 of the 1949 Geneva Conventions and by the applicable rules of customary international humanitarian law, concerning, inter alia, the conduct of hostilities and the treatment of civilians and other protected persons. In the text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council on 17 March 2007, Hamas accepted that it was bound by its commitment to respect international law and international humanitarian law.

11. The most relevant rules of customary international humanitarian law applicable to the conduct of hostilities in the present context relate to the principles of distinction, proportionality and precaution.[4] These obligations are cumulative; an attack must comply with all of the rules in order to be lawful.

12. First, under the principle of distinction, the parties to a conflict must, at all times, distinguish between civilians and combatants; attacks may be directed only at military objectives, defined as those objects which, by their nature, location, purpose or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time offers a definite military advantage. The only circumstance in which civilians may be targeted is for such time as they take a direct part in hostilities. Thus, attacks on civilian objects are unlawful unless at the time of the attack they were used for military purposes and their destruction offered a definite military advantage.

13. Indiscriminate attacks are similarly prohibited. They are those that (a) are not directed at a specific military objective; (b) employ a method or means of combat which cannot be directed at a specific military objective; or (c) employ a method or means of combat the effects of which

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[3] See General Assembly resolutions 62/181, 63/96 and 63/98, and Security Council resolution 1860 (2009).

[4] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, J.-M. Henckaerts and L. Doswald-Beck (eds.), Cambridge University Press, 2005 (ICRC study). The study was prepared at the request of States at the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 and is based on an extensive analysis of State practice (e.g. military manuals) and documents expressing *opinio iuris*. Rules 6-9, 11-13, 15-24, 97.

cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. Attacks by bombardment which treat a number of clearly separated and distinct military objectives located in an urban area or rural village as a single military objective are prohibited. The prohibition of indiscriminate attacks must not only determine the strategy adopted for a particular military operation but also limit the use of certain weapons in situations where the civilian population will be affected.

14. Second, under the principle of proportionality, attacks on legitimate military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.

15. Third, the parties to a conflict must take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. This obligation is twofold. Precautions must be taken when planning and conducting attacks. A number of specific precautionary measures are prescribed by humanitarian law, inter alia, the determination of the military character of the objective and the evaluation of compliance with the principle of proportionality. In addition, parties to a conflict are required to give effective advance warning of attacks, which may affect the civilian population, unless circumstances do not permit.

16. Parties to a conflict must also take precautions to protect civilians and civilian objects under its control from the effects of attacks; this includes avoiding placing military objectives within or near densely populated areas and keeping civilians away from military targets. The use of human shields is also prohibited. Contrary to the general principle of precautions against the effects of attacks, this prohibition must be understood to require the specific intent to use civilians to immunize otherwise legitimate military objectives from lawful attack.

17. A violation of the obligation to take precautionary measures vis-à-vis the civilian population or their use as human shields by one side to a conflict does not change the obligations incumbent on the other party to the conflict to evaluate what constitutes an excessive attack in relation to concrete and direct military advantage.[5]

18. With regard to the treatment of protected persons in the occupied territories, article 33 of the Fourth Geneva Convention forbids collective punishment of civilians for crimes they have not personally committed. The provision of assistance to protected persons and civilian property also benefits from specific protections. Article 53 of the Fourth Geneva Convention prohibits the destruction by the occupying Power of private or public property unless rendered absolutely necessary by military operations. In addition, articles 55 and 59 provide that the occupying Power shall ensure food and medical supplies of the population and at the very least agree to relief schemes on behalf of the population of an occupied territory, and shall facilitate them by

[5] Article 28 of the Fourth Geneva Convention specifies that the presence of a protected person may not be used to render certain points or areas immune from military operations.

all the means at its disposal, if the whole or part of this population is inadequately supplied. Articles 23 and 59 further provide that all contracting parties shall permit the free passage of these consignments and guarantee their protection.[6]

B. Human rights law

19. Israel is party to the major human rights treaties relevant to the current situation.[7]

20. As regards the territorial scope of application, article 2 of the International Covenant on Civil and Political Rights obliges each State party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized within it.[8] In particular, in relation to the responsibilities of Israel under its international human rights treaty obligations with regard to the Occupied Palestinian Territory, in its advisory opinion on the Wall, the International Court of Justice concluded that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child were applicable.[2] United Nations human rights treaty bodies also underscore that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction there.[9] The

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[6] In resolution 1860 (2009), the Security Council called for the unimpeded provision and distribution throughout Gaza of humanitarian assistance, including food, fuel and medical treatment.

[7] They include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict.

[8] The Human Rights Committee has clarified that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party". General comment No. 31 (CCPR/C/21/Rev.1/Add.13), para. 10.

[9] An examination of the concluding observations of different United Nations treaty bodies confirms this view. In its concluding observations of 2003, the Human Rights Committee reiterated that the International Covenant on Civil and Political Rights provisions apply "to the benefit of the population of the Occupied Territories for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant". Similarly, in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control" (E/C.12/1/Add.90). The Committee on the Elimination of Racial Discrimination drew a similar conclusion in its concluding observations of March 2007 (CERD/C/ISR/CO/13), para. 32.

International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women contain no provisions limiting their application to the territory of States parties. In this respect, the International Court of Justice also noted that the obligations of Israel under the International Covenant on Economic, Social and Cultural Rights included an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.[2] The unilateral disengagement from the Gaza Strip by Israel, which was formally completed on 12 September 2005, does not dispense Israel from complying with its human rights obligations towards the population of that territory; Israel remains bound to the extent that the measures it adopts affect the enjoyment of human rights of the residents of the Gaza Strip.

21. The Palestinian Authority, as recognized in a number of public undertakings whereby the Palestinian Authority, the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council have declared their commitment to respect international human rights law, is also bound to abide by international human rights obligations.[10]

22. With respect to Hamas, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.[11]

23. Although the full body of human rights law is applicable in the Occupied Palestinian Territory, the particular relevance of some human rights norms stands out in the current context, namely the right to life and freedom of movement, as well as a number of economic and social rights, particularly the right to an adequate standard of living, including the rights to food and to adequate housing, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to work, the rights to education and to the prohibition of discrimination as enshrined in the International Covenant on Economic, Social and Cultural Rights. These rights impose obligations on States parties: the obligations to respect, protect and fulfil, which in turn incorporates both an obligation to facilitate and an obligation to provide.[12]

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[10] PLO chairman Yasser Arafat repeatedly stated that he and his Government were committed to respecting all international human rights standards, for instance, to representatives of Amnesty International on 2 October 1993 and 7 February 1996.

[11] For example, in a joint report on Lebanon and Israel, a group of four special rapporteurs concluded that: “Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. ... It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure.” (A/HRC/2/7), para. 19.

[12] Committee on Economic, Social and Cultural Rights, general comment No. 13 on the right to education.

C. The continued application of human rights law during armed conflict

24. Human rights law, which consists of the full range of economic, social and cultural rights as well as civil and political rights, does not cease to apply in times of war; only certain derogations which are in accordance with precise provisions relating to times of emergency are permissible.[13]

25. More specifically, the International Covenant on Civil and Political Rights and other international human rights instruments allow for the possibility, in circumstances that threaten the life of the nation, to derogate from some of its guarantees provided that the measures are strictly necessary and are lifted as soon as the public emergency or armed conflict ceases to exist.[14] Certain guarantees, in particular the prohibition of torture and cruel, inhuman or degrading treatment or the right to life, are non-derogable.[15] Israel remains in the state of public emergency proclaimed on 19 May 1948, four days after its declaration of establishment.[16] With regard to economic, social and cultural rights, the International Covenant on Economic, Social, and Cultural Rights does not explicitly allow for derogations in time of public emergency, but the guarantees of the Covenant may, in times of armed conflict, be limited in accordance with its articles 4 and 5 and because of the possible scarcity of available resources in the sense of article 2, paragraph 1.[17]

III. CONTRIBUTIONS BY INDIVIDUAL MANDATE-HOLDERS

A. Independent expert on the question of human rights and extreme poverty

26. In situations of armed conflict, the poor always suffer disproportionately. In the specific case of Gaza, the recent conflict and, in particular, the impact that Israeli military operations

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[13] International Court of Justice, "Legality of the Threat or Use of Nuclear Weapons", advisory opinion of 8 July 1996, ICJ Reports 1996 (I), para. 25; advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 106; "Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Uganda*)", ICJ Reports 2005, para. 219 (finding substantive violations of human rights law during an armed conflict). See also concluding observations of the Human Rights Committee on the second periodic report of Israel in *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, para. 11.

[14] International Covenant on Civil and Political Rights, art. 4, para. 1. See also Human Rights Committee, general comment No. 29 (2001), para. 3.

[15] International Covenant on Civil and Political Rights, art. 4, para. 2.

[16] CCPR/C/ISR/2001/2, para. 71.

[17] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 28-29.

have had on the infrastructure and the economy have pushed even more people below the poverty line. Poverty has been a long-standing concern in Gaza. Even prior to the recent conflict, 78.9 per cent of Gaza residents were already living below the official poverty line.[18] The recent conflict, the occupation and the 19-month blockade imposed by Israel on Gaza have exasperated this situation and had a devastating effect on the economy and the infrastructure and a profound pervasive impact on the lives of Palestinian people, particularly the poor.

27. While the blockade is the primary cause of poverty in Gaza, the situation has been further exacerbated by the limitation of aid in 2006, insufficient access for humanitarian organizations and the deterioration of the internal security situation owing to the escalation of intra-Palestinian violence. A full assessment is still under way. However, there is no doubt that the three-week military offensive by Israel has compounded the already catastrophic humanitarian situation of the Palestinian people and led to a range of human rights violations.

28. The military operation launched by Israel on 27 December 2008 has not only forced more people into a life of poverty, but also exacerbated the miserable situation of those already living in poverty by creating a need for urgent, massive humanitarian efforts to secure basic rights and minimum standards of living. The almost complete dependency on external aid and reliance on the informal market has further exposed the population to political manipulation affecting the poor disproportionately.

29. The independent expert expresses her grave concern at the fact that poverty in Gaza is a direct consequence of systematic violations of a wide range of civil, political, economic, social and cultural rights against Gazan residents, and that poverty in Gaza has also led to specific violations of human rights. Many of these violations are described in other sections of the present report and all are relevant to assessing the situation of the poor. In particular, the poor have suffered greatly from violations of the right to education, food, housing and health, which are described below in detail by other mandate-holders.

1. Cumulative and increasing destruction of livelihoods in Gaza

30. Reports received by the independent expert reveal that, over the years, the damage that the blockade and military incursions by Israel has inflicted upon the land, the environment and industrial infrastructure in Gaza has led to an escalation in unemployment and undermined the ability of the Palestinian people to find basic means of subsistence. The World Bank estimates that 98 per cent of Gazan industrial operations were inactive as a result of the closures. Up to 70,000 workers are reported to have lost their jobs since 2007.[19] In December 2008, the Office for the Coordination of Humanitarian Affairs estimated that 18 months of closures had caused

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[18] The official poverty threshold is $2.3 per person per day; see World Bank, *Palestinian Economic Prospects: Aid, Access and Reform*, 22 September 2008. The figure was recorded in 2007; no figures were available for 2008.

[19] Ibid.

a 50 per cent increase in unemployment. Women are particularly affected; the female participation in the Gaza job market was only 11.5 per cent in 2007, one of the lowest rates in the world.[20]

31. The lack of regular payment of salaries caused mainly by the suspension of financial aid and the discontinuation of the transfer of taxes and revenues as well as by the tensions between the different political parties controlling services to the Palestinian population caused a steady deterioration in the living conditions of public sector employees that has left them vulnerable to poverty. Restrictions imposed by Israel on the transport of currency have resulted in a liquidity crisis. The lack of currency has seriously compromised the provision of basic social services, including the payment of social allowances, thereby making the poorest fully dependent on aid and informal arrangements to survive.

2. Impact of the recent military operation on the poor

32. Preliminary assessments indicate that, during the recent military operations, health facilities, water and sanitation infrastructure, land and cellular communication networks, schools, universities, mosques, residential buildings, factories, commercial enterprises and farms were deliberately attacked and damaged as a result of fighting.[21] This has had a disastrous impact on the economy, the infrastructure and the enjoyment of human rights by the poorest Palestinian people.

33. It is reported that, during the military intervention, Israel deliberately obstructed the work of humanitarian personnel leaving the poor without basic medical, food and other services in violation of both international humanitarian and human rights law.[22] After the cessation of hostilities, reports suggest that the authorities in Gaza have also obstructed the distribution of humanitarian aid to Gaza and imposed restrictions on the work of civil society organizations and human rights defenders.[23]

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[20] United Nations Development Programme (UNDP), Programme of Assistance to the Palestinian People Mid-term Strategic Framework for the period 2008-2011 (2008).

[21] See UNRWA News, 16 January 2009; the Statement by Commissioner General Karen AbuZayd, 27 January 2009; International Committee of the Red Cross, Operational Update of 25 January 2009; Field update on Gaza from the Humanitarian Coordinator, 24-26 January 2009; Centre on Housing Rights and Evictions, "The collapse of Gaza's water and waste water sector. Grave breaches of international humanitarian law and serious violations of international human rights law", 2009, sects. B, C and E.

[22] See "WFP launches Operation Lifeline Gaza to get food to the hungry", 10 January 2009; J. Zarocostas "Agencies call for health workers in Gaza to be respected", *British Medical Journal*, 7 January 2009; and "The Conflict in Gaza", *AI report*, January 2009, sect. D.

[23] See Palestinian Centre for Human Rights, *Special Reports* (February 2009), "Inter-Palestinian Human Rights Violations in the Gaza Strip", 3 February 2009.

34. For the Gazan economy to revive (offering opportunities to people to pull themselves out of poverty), all Gaza entry points must be opened to ensure freedom of movement for all, the free inflow of industrial and agricultural inputs and cash and the export of products from Gaza.[24] There is also an urgent need to ensure that there are sufficient quantities of fuel, spare parts for damaged infrastructure (such as the power plant) as well as cement, sand and other construction materials.

35. Recovery will also require that Palestinians be provided with income-generating and work opportunities, including access to work in Israel. Furthermore, Palestinians require access to education at all levels, and students and professionals, such as doctors and teachers, must be able to receive education abroad. Special attention must also be paid to people who have been seriously wounded or disabled; they must be provided with rehabilitation services and have the means to live a dignified life and enjoy an adequate standard of living.

36. In addition to the above-mentioned measures, the independent expert stresses that, to improve the lives of those living in poverty, psychosocial support for those in need, in particular children, is urgently needed. The rights of the victims of human rights violations to have access to remedy and reparations must also be respected.

B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

37. Disregard for the right to adequate housing in the Occupied Palestinian Territory far predates the recent military offensive. Overcrowding, lack of sanitation and other difficult living conditions have been not only the result of demolitions and destruction of homes in the present and previous military offensives, but a permanent urban condition that prevents the people of Gaza from having access to the acceptable minimal standards of adequate housing.

38. The Special Rapporteur on adequate housing has received reports from numerous sources concerning the extensive destruction of homes and civilian property during the Israeli military offensive in Gaza from 27 December 2008 to 24 January 2009. Initial estimates indicate that more than 4,240 residences were destroyed and 44,306 were damaged, most of them rendered uninhabitable without considerable rehabilitation.[25] An estimated 2.6 per cent of homes in Gaza

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[24] On 12 February, a single truck with nearly 50,000 flowers was reportedly allowed to cross out of Gaza through Kerem Shalom for export. According to the same source, it was the first time since 18 January 2008 that Israel had allowed any exports from Gaza; however, it remains unclear as to whether further exports will be allowed. The Office for the Coordination of Humanitarian Affairs reported that, on 6 February, Israel allowed, for the first time since mid-December 2008, the transfer of NIS 170 million ($42 million) from banks in the West Bank to banks in the Gaza Strip. The new supply would enable the Palestinian Authority to pay the salaries of some 70,000 Gaza-based employees. The Office for the Coordination of Humanitarian Affairs, Situation Report, No. 21, February 2009.

[25] Rapid Shelter/NFI assessment, 11 February 2009.

were completely destroyed, an additional 20 per cent sustained serious damage,[26] reportedly forcibly evicting an estimated 80,000 to 90,000 people who have been rendered homeless, many forced to live in open space.[27] For buildings that are apparently still intact, it is unclear how much of their internal structure was damaged, which may cause problems in the long term, including collapse or fragility in the event of natural disaster.

39. The massive destruction and damage caused by the Israeli offensive to homes and infrastructure, including roads, water stations and electrical facilities, and the continued restrictions imposed on the urgent transport of reconstruction materials into Gaza could constitute grave violations of the right to adequate housing and are the cause of a severe humanitarian crisis.

40. Reports indicate that Israeli attacks have not always complied with the principle of distinction between civilians and combatants, and that some of the houses and properties attacked did not meet the definition of military objectives.

41. Countless communities in Gaza have been rendered virtually uninhabitable. In urban areas and several refugee camps in the northern part of Gaza, entire neighbourhoods have been flattened. These acts seem to be contrary to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, in particular article 53.[28]

42. The extensive damage to basic social services and infrastructures has severely eroded the ability of the people of Gaza to live according to the acceptable minimal standards of adequate housing. Many water tanks used by individual homes were also damaged,[29] causing 500,000 people to have no access to running water, and the rest of the population only sporadic access during the hostilities.[30] Thousands of people have been affected by damaged sewage networks and pumping stations, owing to both repeated bombing and the scarcity of fuel supplies

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[26] United Nations, Gaza Flash Appeal, January 2009; and Palestinian Central Bureau of Statistics.

[27] Centre on Housing Rights and Evictions, "European governments and citizens hold the key to imposing accountability on Israel", 12 January 2009; and Emergency Architects, information flash: "The foundation of Emergency Architects helps with emergency rehousing in Gaza", 18 February 2009.

[28] "Any destruction by the occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

[29] Aid Worker Diary: part 15, 14 July 2009.

[30] *New York Times*, "Israel and Hamas: Conflict in Gaza", 11 July 2009.

resulting from the closure of the border.[26] Unexploded ordnance has been discovered by civilians in residential areas; property and water supplies have been contaminated by sewage spills and reports alleged further contamination by toxic remnants from munitions.[31]

43. At a time when international support for the reconstruction and rehabilitation of homes and neighbourhoods is urgently needed, the Special Rapporteur is deeply concerned about persisting impediments to the entry of reconstruction materials into Gaza, either through their outright prohibition or protracted administrative delays. In addition, she recalls that, according to the Palestinian Central Bureau of Statistics, destruction of infrastructure and houses resulted in the waste of approximately $1.9 billion in international aid dollars given by donors and the international community.

44. The recent attacks have worsened the living conditions of the people of Gaza, who have been confined for decades to a small territory, in overcrowded conditions, with poor housing and sanitation conditions. Problems that have been poorly managed to date. The Special Rapporteur is particularly concerned that the scale of destruction bringing further destitution and the hardship endured by the people of Gaza will only add to the cycle of violence.

C. Special Rapporteur on the right to food

45. The right to food is realized when every man, woman and child has physical and economic access at all times to adequate food or the means for its procurement. This right is violated on a large scale, and on a routine basis, in the Gaza Strip, owing to both recent events and long-standing trends. The breakdown of the food system in Gaza and the lasting damage that has been inflicted on the Gaza food production infrastructure, resulting in the loss of jobs and incomes for many families, further aggravate a situation which, even before the recent military operation of December 2008-January 2009, was intolerable. The chronic restrictions on the movements of goods and people have also had a major impact on the right to food of the people living in Gaza.

1. Destruction of property and means of subsistence

46. According to the Palestinian Centre for Human Rights and the Integrated Regional Information Network, farmland and greenhouses were bombed extensively in Gaza, which has had a devastating impact on the ability of people to produce food for subsistence or trade purposes. The Palestinian Central Bureau of Statistics estimated that 80 per cent of agricultural land and crops was damaged during the recent hostilities, as evidenced by 395 impact craters resulting from shelling.[32] Arable land has been contaminated by spills of sewage and toxic munitions.[33] The Office for the Coordination of Humanitarian Affairs reported that extensive

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[31] *IPS* "Unexploded bombs hold more deaths", 24 January 2009.

[32] UNOSAT damage assessment, 20 January.

[33] *The Observer*, "Gaza desperately short of food after Israel destroys farmland", 3 February 2009.

destruction debilitated commercial enterprises and public infrastructure, including the largest flour mill and food processing plants in Gaza. The Special Rapporteur considers that this constitutes a serious violation of customary international humanitarian law, which prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.[34]

2. Closures and restrictions to free movement of goods, including food aid

47. Even before the recent conflict, recurrent closure of border crossings and other security measures had impeded the passage and delivery of food assistance and of traded foodstuffs. The consequences have been dramatic; for example, the closure of the Karni border crossing for over 46 days in the first quarter of 2006 resulted in severe shortages of food and the depletion of food reserves, and most bakeries in the Gaza Strip were forced to close owing to shortages of flour and fuel, leading to the rationing of bread. The prohibition of the export of agricultural products from Gaza at the height of the harvesting season reportedly led to the waste of hundreds of tons of tomatoes, peppers, cucumbers and strawberries and a loss of millions of dollars.[35] Restrictions on the entry of supplies essential for food production, such as fuel, fertilizers, plastics and seeds, have also been imposed over the years by the Israeli blockade.

48. The complete closure of Gaza's borders during the recent armed conflict affected both family-level food production and public and commercial centres. In a situation report from the Humanitarian Coordinator, the Office for the Coordination of Humanitarian Affairs reported that, in early January, only nine bakeries remained operational, causing many people to wait from 5 to 7 hours a day just to purchase a day's supply of bread. According to the Food and Agriculture Organization of the United Nations, shortages of nutritious and affordable food have further eroded food security for people in Gaza; meat and many vegetables are scarce and cost three times their regular price.

49. According to the Palestine Monitor Fact Sheet of 18 December 2008, even before the hostilities, approximately 80 per cent of families in Gaza relied on humanitarian food aid in order to survive;[35] this number had reached approximately 91 per cent by early February 2009.[36] In this context, obstacles to the delivery of urgently needed food aid during the recent hostilities caused by fuel shortages and the closure of the borders resulted in violations of the right to food on a large scale. The continuous bombing of civilian areas further impeded aid agencies from having access to hungry people, who were unable, or too afraid, to meet aid convoys;[22] the number of hungry people without access to basic food necessary for their survival soared as a result. Normal caseloads from the World Food Programme and the United Nations Relief and

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[34] ICRC study, rule 54.

[35] A/HRC/4/30/Add.1, para. 37.

[36] Save the Children: children of the Gaza crisis, Fact Sheet, 27 January 2009.

Works Agency for Palestine Refugees in the Near East have therefore increased, bringing the total number of people dependent on food aid from both organizations to 1,275,300.[37]

50. Even after the cessation of the hostilities, humanitarian aid convoys still met restrictions on providing for the urgent food and nutritional needs of the population of Gaza, a violation of the obligations of Israel as the occupying Power of the Gaza Strip.[38] These obstacles to food aid were further exacerbated by incidents of confiscation of food parcels destined for distribution to beneficiary families reportedly by Hamas police personnel.[39] While noting that these food parcels were returned, the Special Rapporteur would like to recall that respecting the right to food entails, inter alia, refraining from taking any measures that result in preventing people's access to food.

3. Impact on the right to food

51. According to the Palestine Monitor Fact Sheet of 18 December 2008, rates of food insecurity rose from 34 per cent in 2006 to 38 per cent in 2008, as 75 per cent of Palestinians reduced the quantity of food purchased and 89 per cent switched to less nutritious diets in 2006 and 2007. This has had a particularly severe impact on children, who are often the first victims of malnutrition.[40] The *Palestine Monitor* estimates that, in 2009, the rate of chronic malnutrition of Palestinian children under 2 has reached 10 per cent.[41] Close to half of children of that age group suffer from anaemia. Two thirds of all children reportedly suffer from a lack of vitamin A.[42] One in 10 girls and boys under the age of 5 evidence stunted growth in Gaza.[43]

52. Global food price increases have further driven the cost of food in Gaza far beyond the purchasing power of most of the population. According to the Palestine Monitor Fact Sheet, at

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[37] Ibid., 9 February 2009.

[38] "To the fullest extent of the means available to it, the occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." Fourth Geneva Convention, art. 55.

[39] *UN News*, "UN suspends aid operation after second Hamas-linked theft of supplies", 6 February 2009.

[40] The Office for the Coordination of Humanitarian Affairs, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

[41] "Why the Gaza disaster is not three weeks old and has not stopped along with the bombs", 22 January 2009. See www.palestinemonitor.org.

[42] See United Nations Children's Fund (UNICEF), "Aid for Gaza's Children", 11 January 2009, and Richard Falk, "The Siege of Gaza", 22 December 2008.

[43] See Save the Children, West Bank and Gaza at www.savethechildren.org.

the end of 2008, food cost on average 23 per cent more than in 2007. The Office for the Coordination of Humanitarian Affairs reports that shops and markets continue to provide limited food supplies at exorbitantly high prices. Shortage of currency further undermines access to food. Because agricultural inputs are prohibitively expensive, many farmers have been unable to invest in the 2009 agricultural cycle. Livestock owners have reportedly been reducing their flock size. Fishing has declined dramatically. The ability of these groups to feed themselves and their families is seriously jeopardized.[44]

53. The destruction of food production capabilities, mounting scarcities and rising costs together with obstructions to the delivery of aid constitute grave threats to the right to food. The ability of the people of Gaza to provide for their food and nutritional needs is essential to overcoming the underlying causes of conflict in the region and to ensuring a life of dignity.

D. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

54. The long-standing Israeli-Palestinian conflict and the Israeli military offensive launched on 27 December 2008 resulted in grave violations of the right to the highest attainable standard of health in Gaza. According to article 24 of the Convention on the Rights of the Child, the right to health encompasses not only access to health care, but also the underlying determinants of health, such as access to clean water and sanitation, food and nutrition, adequate housing and a healthy environment.

55. The prolonged conflict has seriously damaged the health infrastructure in Gaza, which has greatly undermined public health and service delivery throughout the affected area. The health situation has been further aggravated by the long-standing blockade imposed by Israel since June 2007. The blockade has prevented the passage of basic goods, including medical supplies, spare parts and fuel necessary for the normal functioning of medical facilities.

56. The conflict and its exacerbation by the blockade and consequent lack of fuel has resulted in severe electricity shortages. Hospitals were running on back-up generators, and medical personnel worked under tremendous strain, as many of them worked consecutive 12- to 24-hour shifts to attend to medical emergencies.[22] The number of hospital beds has been insufficient to cope with the mounting number of injured civilians, causing many health centres to send gravely ill and wounded people home before completing the necessary treatment.

57. The lack of fuel has also affected water supplies, which left approximately a million people without access to safe and potable water.[45] Waste water pumps repeatedly stopped working, threatening to cause grave environmental hazards. Monitoring and surveillance of water quality

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[44] See the FAO and emergencies page dedicated to the West Bank and the Gaza Strip at the FAO website (www.fao.org).

[45] World Health Organization (WHO), *Health Action Crisis*, Highlights No. 245, 2-8 February 2009.

has been suspended since the closure of the central public health laboratory on 3 January 2009, thus seriously affecting an already deteriorating public health system. Additionally, the lack of access to clean water and the closure of waste water pumping stations has resulted in exposure to numerous diseases. Farmland and urban areas have been flooded with sewage, and the remains of a number of unrecovered bodies in advanced stages of decomposition has further exacerbated the grave risks to public health in the Gaza Strip.

58. The obstacles faced by humanitarian medical efforts have particularly affected the most vulnerable groups among the civilian population, namely children and women. The discontinuation of preventive health care, including vaccination of children, has further threatened the long-term health of the population in Gaza, rendering the population vulnerable to outbreaks of highly infectious diseases such as measles, polio and hepatitis.[46]

59. Mental health represents an integral part of the right to the highest attainable standard of health. The prolonged conflict, and in particular the latest offensive, has affected the psychosocial well-being of the population and has been particularly challenging for women, children and disabled persons. The state of mental health of the population in Gaza has also been evidenced by a dramatic increase in drug abuse, estimated to affect almost 10 per cent of the young population in the region. Signs of extreme psychosocial distress and related psychosocial conditions have also increased.[47]

60. The denial of access to medical treatment outside of the Gaza Strip for seriously ill Palestinian patients is a long-standing issue (see A/HRC/4/28/Add.1). There are indications of a worsening trend in the denial of access to health care, as evidenced by the decline in the percentage of requests approved for medical permits for patients referred for treatment outside of the Gaza Strip, from 80 per cent in 2007 to 66 per cent in the first half of 2008.[46]

61. The Special Rapporteur notes that under international humanitarian law, all medical personnel and facilities must be protected at all times.[48]

62. The Special Rapporteur strongly condemns the targeting of medical facilities and workers by Israeli forces. For example, 16 medical workers were killed and 25 injured while on duty. Furthermore, 15 hospitals, 43 primary health centres and 29 ambulances were destroyed. In early February 2009, only 44 of 56 primary health-care centres were functioning. Use of primary health-care facilities has significantly declined since the military offensive; WHO estimates that 40 per cent of chronically ill patients no longer turn to public health-care centres for care.

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[46] WHO, Health Situation in the Gaza Strip, 7 January 2009.

[47] Integrated Regional Information Network, “Drug abuse on the rise in Gaza - specialists”, 16 January 2009 at the website www.irinnews.org.

[48] Fourth Geneva Convention, art. 20, and International Committee of the Red Cross study, rules 25, 28 and 29.

63. The material damages caused by the recent hostilities, the border closures resulting in the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute grave violations of the right to the highest attainable standard of health.

E. Special Rapporteur on the right to education

64. The blockade on Gaza imposed in June 2007 and the resulting restrictions on movement and goods have resulted in serious violations of the right to education, which was further exacerbated by the Israeli offensive on Gaza that began on 27 December 2008. Consequently, educational facilities have suffered extensive damage and destruction, their repair and reconstruction has been obstructed and students have experienced significant psychosocial distress, all of which pose great challenges to the creation of an environment conducive to the realization of the right to education.

65. The Special Rapporteur on the right to education received numerous reports of Israeli strikes on schools in Gaza, leading to major damage to 7 public schools and partial damage to an additional 236 schools (public, private and kindergarten) and to 36 UNRWA schools.[49] Israeli shells are reported to have hit two UNRWA schools and landed close to another, al-Fakhura school in Jabaliya refugee camp, which were sheltering displaced families. According to Save the Children Alliance and UNICEF, these incidents resulted in the killing of 47 people, including 15 children. On 17 January, the American International School of Gaza near the northern town of Beit Lahiya was destroyed by aerial bombing, leaving its 220 students without a place to continue their schooling. Warplanes also hit the science and engineering laboratories of the Islamic University in Gaza City, the territory's oldest and biggest facility for higher education, affecting over 20,000 students.[50]

66. The Special Rapporteur deplores the targeting of schools during wartime, an act that - provided the schools are not military objectives - is explicitly prohibited under customary international law,[51] and notes that such an attack has been qualified as a war crime by the Rome Statute of the International Criminal Court, which has been ratified by 108 States.

67. As often occurs during emergencies, educational activities ceased during the weeks of heavy bombing and ground fire and the pervasive insecurity across the Gaza Strip, causing 540,000 students of all educational levels to miss almost one month of classes.[26]

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[49] Office for the Coordination of Humanitarian Affairs , Rapid Needs Assessment Report (Education Cluster), 30 January 2009.

[50] *Associated Press*, "Israel-Hamas war deals blow to schools in Gaza", 3 February 2009.

[51] The targeting of civilian objects such as schools is prohibited by the general principle of distinction between civilian objects and military objectives (see section II); in addition, customary law prescribes that special care must be taken in military operations to avoid damage to buildings dedicated to education. ICRC study, rule 38.

Following the ceasefire, there were delays to the restoration of regular schooling, as insecurity persisted, reconstruction was impeded and numerous people continued to seek shelter in school buildings after being displaced by the fighting.[52]

68. Continued restrictions on the entry of reconstruction materials into Gaza have also posed serious threats to the right to education for Gazan children and youth, as construction materials have repeatedly been denied entry into the region, and Israeli authorities have insisted on case-by-case approval of all reconstruction projects affecting schools, resulting in long administrative delays.[53]

69. In addition to the particular violations of the right to education caused by the hostilities that began on 27 December 2008, access to safe and adequate educational conditions in Gaza has faced long-standing obstacles that far predate recent events. Overcrowding in the schools in Gaza had already caused a restriction in the hours of schooling, in order to allow for morning and afternoon shifts to accommodate the region's 450,000 students;[50] this problem has particularly affected the schooling of some 200,000 refugee children in Gaza, who have attended UNRWA schools in the past year.[54] Efforts by UNRWA to continue the regular school feeding programme have been hampered by repeated restrictions on the entry of supplies. According to UNICEF, power shortages owing to restrictions on the entry of fuel caused students to gather in classrooms that lacked heating and electricity, as well as light bulbs and other basic supplies, such as paper, chalk and essential equipment for teaching, such as printers and overhead projectors. Higher education has also been affected, illustrated by the denial by Israel, in November 2007, of permission for 670 Palestinian scholars to leave Gaza in order to study abroad, including 6 Fulbright scholars.[55]

70. Another concern is the fact that, in August 2008, Gaza lost around half of its teachers in Ministry of Education schools after they were fired for striking. Although new teachers have been recruited and trained, public schools were still lacking maths, science and Arabic teachers for all levels, resulting in fewer hours of teaching in these essential subjects. It is estimated that 250,000 students, more than half of Gaza's student population, in 381 schools were affected by the strike at that time.[56]

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[52] "Displaced Gazans seek shelter from the cold", at www.irinnews.org.

[53] Briefing by staff of the Office for the Coordination of Humanitarian Affairs based in Jerusalem, Inter-Agency Consultation on Gaza, United Nations Office at Geneva, 21 January 2009.

[54] "United Nations moves to counter deteriorating Gaza education levels", 17 September 2007 at www.irinnews.org.

[55] Human Rights Watch, "Israel Blocks 670 students from studies abroad", 20 November 2007.

[56] See Tamer Institute for Community Education, Fact Sheet August-October 2008, and Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report No. 276, September 2008.

71. The Special Rapporteur notes with concern a 5.6 per cent decline in enrolment rates for school grades 1 to 10 between 2000-2001 and 2006-2007.[57] In September 2007, UNRWA reported a failure rate of 80 per cent for grades 4 to 9, with rates of failure as high as 90 per cent in mathematics. The protracted collapse of the economy of Gaza and mounting food insecurity has further impeded the enjoyment of the right to education, as hundreds of children have been forced to search for work in order to contribute to the basic needs of their families at the expense of their schooling.[58]

72. The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gazan educational infrastructure, constitute violations of the right to education. The Special Rapporteur recalls that, while education is often interrupted in times of conflict, its restoration is an urgent priority. It is essential to generating a culture of mutual respect, breaking the cycle of hatred and prejudice between the peoples of the region and establishing a lasting peace.

73. As pointed out in the Special Rapporteur's first report, military occupations are an appreciable curb on the human right to education, and the most egregious example is that of the Israeli-Palestinian conflict (E/CN.4/2005/50, para. 124). The recent events in Gaza provide an even stronger illustration of the violations of the right to education in a conflict situation.

F. Special Rapporteur on violence against women, its causes and consequences

74. The Special Rapporteur on violence against women, its causes and consequences, expresses her grave concern at the violations of human rights and international humanitarian law witnessed during the recent Israeli military attacks against the Gaza Strip. The scale of civilian deaths, injuries and destruction during the offensive was unprecedented by all accounts. Among the casualties, it is estimated that 114 women were killed and 800 suffered injuries.

75. The Palestinian Centre for Human Rights stated that women suffered critical injuries from bombs, artillery shells, rockets and live ammunition as well as from bombs believed to have contained white phosphorous. The Special Rapporteur is particularly concerned by reports of women being killed while inside their own homes trying to protect their children or attempting to escape bombardment, sometimes after having been ordered to leave their houses by the Israel Defense Forces.[23] Some of the injuries sustained by women resulted in maiming, including amputations conducted in inadequate medical facilities.

76. The denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling constitutes a grave violation of human rights. In a press release dated 14 January 2009, the United Nations Population Fund (UNFPA) warned that the continuing violence and displacement presented serious risks to more than 40,000 pregnant

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[57] Agence France Presse, "Gaza blockade threatens education crisis: UNICEF", 1 February 2008.

[58] Save the Children, "Crisis Deepens for the Children of Gaza", 30 December 2008 and Oxfam America, "Escalating Humanitarian Crisis in Gaza", 11 March 2008.

women in Gaza, and reported on many cases of premature labour and delivery resulting from shock and trauma from continuous bombing, and the exposure of premature and newborn infants to hypothermia owing to the lack of electricity. UNFPA findings for the period during the crisis showed a 40 per cent increase in cases of miscarriage admitted to maternities, a 50 per cent increase in neonatal deaths and an important increase in the number of premature deliveries. For example, on 10 January 2009, Wafa al-Masrai, 40 years old and 9 months pregnant, left her home in Beit Lahia in north Gaza with her sister, Rada, and attempted to reach her local hospital. While en route to the hospital, she was struck by an Israeli rocket and critically injured. She gave birth to a healthy baby after having one of her legs amputated.[23] Given the primary role of women as caregivers, such a disability will not only adversely reflect on the level and quality of care of children and the family but it will also seriously undermine a woman's "value" in society as a whole.

77. The Palestinian Centre for Human Rights reported that women and children that had taken shelter inside schools administered by UNRWA suffered shell attacks inside those protected areas. The Special Rapporteur received alarming reports of entire families being hit by Israeli shelling.[59]

78. In addition, the worsening food insecurity in Gaza following the military operation led to a further deterioration in the health and nutritional status of the majority of Gazans, in particular women and children, many of whom are already largely dependent on meagre humanitarian assistance. In addition, the Special Rapporteur would like to highlight the disproportionate effects of house demolitions on women, children and the elderly (see also sections A, C and D above).

79. In 2005, following her visit to the Occupied Palestinian Territory, the Special Rapporteur concluded that the protracted conflict and occupation had contributed to creating an integrated system of violence that had a profound impact on Palestinian women. This situation has been aggravated by the recent military attacks. A UNFPA survey of 8 February 2009 on the situation of women in Gaza highlighted the immediate psychological problems endured by women, such as extreme feelings of fear and insecurity, depression and sadness, the debilitating effects of which often made them unable to fulfil their vital role as caregivers. The extent of the destruction in the latest military campaign, which took place in the wake of over a year and a half of severe blockade that brought the Gaza economy to the brink of collapse and has yet again debilitated the coping mechanisms of an already impoverished and traumatized population, will further increase the degree and extent of oppression of the occupation. Without a lifting of the blockade, women will continue to be prevented from having access to vital, sometimes life-saving medical treatment in Israel or neighbouring countries owing to restrictions on their freedom of movement and denial of travel permits. In addition, women will continue to endure the burden of chronic

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[59] In one case, 22 members of the Al-Sammoni family, including 9 children and 7 women, were killed in Zaytoun, east of Gaza City on 4 and 5 January 2009. The majority of the victims were killed while sheltering inside a house that collapsed after having been struck by three missiles launched by the Israel Defense Forces. See Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report, 16-20 January 2009.

shortages of basic supplies, such as food, fuel, electricity and safe drinking water, when having to provide for their children and families. As highlighted in the Special Rapporteur's mission report, this particularly precarious and traumatic environment is likely to heighten women's vulnerability to violence in the private sphere as well.

G. Representative of the Secretary-General on the human rights of internally displaced persons

80. The occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in large-scale forced displacement of Palestinians within the Occupied Palestinian Territory, even before the Israeli military incursion into Gaza that began on 27 December 2008.[60] Displacement is often caused by incursions and military clearing operations, evictions and land appropriation, the illegal expansion of settlements on occupied territory and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, violence and harassment by settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions.[61] Forced displacement is also caused by a system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that make life untenable for many residents in Palestinian enclaves and force them to leave.

81. The Israeli military incursion into Gaza resulted in further massive forced displacement of Palestinians inside Gaza. On 14 January 2009, at the height of the crisis, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator estimated that up to 100,000 Palestinians could be displaced. The preliminary report of a shelter/Internally Displaced Persons joint rapid needs assessment, conducted in 45 localities in Gaza several days after the ceasefire of 18 January 2008, indicated that 71,657 displaced persons were staying with host families.[62]

82. As border crossings into Egypt and Israel were closed, large numbers of civilians tried to find refuge in other parts or sites of Gaza. At the height of the conflict, more

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[60] Estimates on the displaced population vary owing to differences in definitions and available data. The non-governmental organization Badil Resource Centre for Palestinian Residency and Refugee Rights estimated in a survey of September 2007 that 115,000 Palestinians were displaced between 1967 and 2006.

[61] The International Court of Justice, in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, found that the route of the wall in the West Bank and its associated regime of permits and restrictions was contrary to international law, including applicable norms of international humanitarian law and human rights law. The Court also reaffirmed that "Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) had been established in breach of international law". See also note 2.

[62] Office for the Coordination of Humanitarian Affairs, Field Update on Gaza from the Humanitarian Coordinator, 30 January-2 February 2009.

than 50,000 displaced persons sought refuge in UNRWA schools. Many were also displaced because their homes had been destroyed or become uninhabitable, especially in rural areas.[63] On a number of occasions, the Israel Defense Forces also warned or ordered the civilian population to flee areas or sites, which were often attacked shortly thereafter.

83. International law prohibits arbitrary displacement, a notion that includes displacement in situations of armed conflict that is incompatible with international humanitarian law because it is not warranted by the security of the civilians involved or imperative military reasons.[64]

84. The conduct of the hostilities exacerbated forced displacement within Gaza. The Israel Defense Forces resorted to aerial bombardment and artillery shelling in densely populated areas of Gaza, reportedly disregarding the above-mentioned standards and the general rules of international humanitarian law concerning the targeting of objects (see paragraph 102 below). Incidents of Palestinian combatants placing military installations close to civilians or civilian objects, thereby increasing the danger for the civilian population and triggering their displacement, were also reported.

85. Displaced persons also became victims as a consequence of military attacks. On 6 January 2009, Israeli shelling is reported to have killed 37 persons and injured 55 outside a UNRWA school in Jabalya that sheltered a large number of displaced persons at the time (see annex).

86. When the present report was finalized, thousands of persons remained homeless because their homes had been destroyed or damaged during the fighting; the total number of displaced was unknown. Most displaced persons are staying in poor, overcrowded living conditions with host families who are already overstretched and face shortages of food, non-food items (such as mattresses and blankets), water and electricity. Continuing a 19-month blockade of Gaza, which had created a serious humanitarian crisis even before the military incursion began, Israel still restricts access to Gaza for goods urgently required to address emergency humanitarian needs and to permit rehabilitation and reconstruction efforts. On 9 February 2009, the Office for the Coordination of Humanitarian Affairs, in a field update, reported that international agencies had faced unprecedented denial of access to Gaza since 5 November 2008.

87. Some of the recently displaced persons within Gaza, especially in rural areas, are Palestinians belonging to families from Gaza, the West Bank and East Jerusalem. The remainder are Palestinian refugees, who fled or were driven from their homes on the territory inside the State of Israel or their descendants. The renewed displacement of Palestinian refugees inside Gaza creates additional vulnerabilities for them.

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[63] Initial estimates indicate that over 4,240 residences were destroyed and 44,306 were damaged, most of them rendered inhabitable without considerable rehabilitation.

[64] Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 6, restating articles 12 of the International Covenant on Civil and Political Rights and customary international humanitarian law (ICRC study, rules 24 and 129-131). See also chapter II.

88. The Representative underscores the fact that being displaced in one's own country or country of habitual residence is a factual state that neither confers a special legal status under international law nor alters a pre-existing special status. Palestinian refugees who suffered secondary displacement inside Gaza retain all rights under international law, including the right of return, as reaffirmed by the General Assembly in its resolution 194 (III). Israel, as occupying Power, and the Palestinian Authority must address the specific assistance and protection needs of all recently displaced persons, whether they are internally displaced in the sense of the description provided by the Guiding Principles on Internal Displacement or secondary displaced Palestinian refugees.

H. Special Rapporteur on extrajudicial, summary or arbitrary executions

89. All killings during the Gaza conflict that violated applicable human rights and humanitarian law norms come within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions. For that reason, the major focus is on the principle of accountability.

90. According to available estimates, a total of 1,440 people were killed (see paragraphs 1-8). The principal dispute concerns the proportion of the Palestinian men killed who can be classified as civilians or combatants. Israel has estimated that at least 700 Hamas fighters were among the dead, while the estimate of the Palestinian Centre for Human Rights is closer to 300. The difference relates in part to the status of those members of the civilian police force in Gaza who were not engaged in fighting, and whom Israel apparently intentionally targeted.

91. There are strong and credible reports of war crimes and other violations of international norms. On the basis of the extensive information available, the great majority of observers have concluded that systematic and impartial war crimes investigations must be undertaken. To date, as described below, there is no indication of any credible moves in this direction at the national level; on the contrary, all developments point in the opposite direction.

92. There are, however, also some who have sought to refute or discredit the information gathered and the conclusions drawn in those reports. To take but one example, a group called NGO Monitor in a report entitled "The NGO front in the Gaza war: the Durban strategy continues" of February 2009, called "entirely unfounded" a claim that Israel had committed indiscriminate attacks against civilians, a claim that it attributed to Human Rights Watch, the Palestinian Centre for Human Rights, Amnesty International, Al Mezan and a range of other groups. This refutation is based on the argument that the Israel Defense Forces had "legal advisers embedded with combat units making analyses prior to any military action". The assumption is that indiscriminate attacks could never occur given the role of these advisers. Moreover, the non-governmental organizations levelling these charges are said not to "possess military expertise, detailed information on the dispersal of weapons by Hamas", nor to be "privy to Israeli targeting decisions". As a result, the report argues that they can make no "credible evaluation".

93. This exchange goes to the heart of the issue. No amount of legal input into decision-making by lawyers can render post hoc accountability unnecessary. Indeed, such

assiduous conduct should make a party more willing to be subject to scrutiny. Similarly, the suggestion that international monitors lack the expertise or the information required to evaluate compliance precisely begs the question. If accepted, such a critique would undermine the entire concept of international accountability and leave States and others as the only ones qualified to judge their own compliance. Rather than the rule of law, this would be the law of the jungle.

94. While the Israeli military operation in Gaza was but one episode in a long-standing, complex and highly contentious conflict, these characteristics make it more, rather than less, imperative that there be full accountability in relation to alleged violations. The alternative is de facto impunity, which mocks the international legal order, makes hollow the international obligations undertaken and reaffirmed by the parties, increases the likelihood of more flagrant violations in the future, and poisons the prospects for an eventual solution to the conflict.

95. The accountability record to date of both sides should give the Council cause for deep concern. The Special Rapporteur has been requesting an invitation to visit the Occupied Palestinian Territory since June 2006. In that year, the Palestinian Authority issued an invitation but Israel has not done so, despite a series of follow-ups. Specific incidents raised in the context of communications from the Special Rapporteur addressed to Israel have generally drawn either no response or an unsatisfactory one.

96. The responses at the national level to calls for accountability have also been disappointing. Hamas, for its part, has given no indication of its willingness to investigate or respond to allegations directed at it. Israel has announced several inquiries into specific incidents, but these are being undertaken by the military authorities themselves, and the track record of the many such inquiries launched in the past is consistently problematic. During the conflict, Israel refused entry to Gaza to journalists and representatives of international non-governmental organizations seeking to monitor the conduct of hostilities. At the end of the invasion, the Prime Minister of Israel, Ehud Olmert, was widely quoted as having promised to provide “State protection” to military personnel who might face foreign war crimes prosecutions, stating that Israel would assist them on that front and defend them. Foreign prosecutions would, however, be both unnecessary and unsustainable if Israel were to honour its obligations to undertake credible investigations and, where appropriate, undertake domestic prosecutions.

97. Several issues of concern that need thorough investigation were brought to the attention of the Special Rapporteur. These include, inter alia, violations of the principles of conduct of hostilities, the targeting of Palestinian police and members of the Hamas political wing not taking part in hostilities, and the questionable use of certain weapons in densely populated areas, including white phosphorous shells, 155 mm shells and flechette shells. He is also concerned by credible reports of extrajudicial executions of Palestinians attributed to Hamas security forces during the conflict.

98. The above developments highlight the imperative need for the Israeli authorities and those of Hamas to cooperate fully with international endeavours to establish accountability in relation to the conflict. Recognition of such accountability should also include facilitating a visit by the appropriate special rapporteurs.

IV. RECOMMENDATIONS

99. **The recommendations formulated by the mandates whose submissions are included above have been compiled and merged in the section below.**

100. **The protection of civilians requires immediate action by all parties and the international community.**

101. **All parties to the conflict should cease all actions violating international human rights and humanitarian law. In particular, the occupying Power should:**

(a) End the blockade on Gaza negatively affecting civilians;

(b) Allow unimpeded and safe passage and access to Gaza of humanitarian assistance, including food aid;

(c) Allow the unrestricted imports of medical supplies, foodstuffs and agricultural inputs, fuel and construction materials;

(d) Grant prompt permission for patients with medical referrals for treatment outside Gaza, especially for expectant and nursing mothers;

(e) Ensure the free and unimpeded movement of civilians between Gaza and other parts of the Occupied Palestinian Territory.

102. **All parties should establish accountability mechanisms providing for law-based, independent, impartial, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law in accordance with their respective obligations. Such investigations must hold perpetrators to account and provide redress to victims where violations are found to have occurred. Investigations should address, inter alia, the following issues:**

(a) Violations of the principles of distinction, proportionality and precaution: a significant number of incidents have occurred where the circumstances and the large number of civilians killed in a single attack raise prima facie concerns that the attacks were carried out without respect for these principles;

(b) Targeting of Palestinian civilian police and members of the Hamas political wing: Israel is accused of having intentionally targeted civilians and civilian objects considered connected to Hamas, but not taking direct part in hostilities;

(c) Use of human shields and placing civilians at risk: there are credible reports of both Israel and Hamas co-locating military targets near civilians and civilian objects. There are specific reports that Hamas fired rockets and conducted other military offensives from residential areas, and that Israeli soldiers took sniper positions from within Palestinian homes, endangering the lives of residents;

(d) Extrajudicial executions by Hamas of Palestinian civilians;

(e) Unlawful use of incendiary weapons (white phosphorous artillery shells): the use of white phosphorous during a military offensive may be permissible where it is intended to provide cover for troop movements. There are, however, reports that Israel used such weapons in densely populated civilian areas, with severe consequences for residents. Unlawful use of artillery shells (155 mm): there is reliable evidence that artillery shells, which can have a casualty radius of up to 300 metres, were also used in densely populated civilian areas. Unlawful use of flechettes (4 cm darts): Israel is reported to have used 120 mm shells packed with flechettes in populated residential areas;

(f) Attacks on medical personnel and ambulances as well as hospitals and denial of medical treatment and access to treatment offered by ICRC and the Palestinian Red Crescent Society;

(g) Attacks on schools;

(h) Destruction of vital civilian infrastructure;

(i) Interference with the provision of humanitarian aid.

103. **All parties must implement their obligations to respect, protect and fulfil human rights, including, where necessary, by taking any measures needed to:**

(a) Ensure the protection of medical workers and facilities and facilitate rehabilitation for seriously wounded patients, as well as psychosocial health support and treatment, especially for children and youth;

(b) Enable the immediate resumption of regular educational activities, make schools zones of peace and ensure that schools are protected from military attacks and from seizure or use as centres for recruitment;[65]

(c) Promote education as a means to reduce psychosocial stress and build the conditions for lasting peace;

(d) Facilitate the prompt repair of greenhouses, farms and centres of food production;

(e) Enable the repair of water and pumping stations;

(f) Enable the import of reconstruction materials needed to build or repair vital infrastructure and housing, and facilitate the full reintegration in dignity and security of the recently displaced (without prejudice to the right of return of Palestinian refugees);

(g) Ensure access to liquidity and financial and other resources needed so that people may resume normal livelihoods;

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[65] See also the "Minimum standards for education in emergencies, chronic crises and early reconstruction", published by the Inter-Agency Network for Education in Emergencies in 2004.

(h) Take carefully into account the needs of particular groups, including children, women, persons with disabilities, refugees and those displaced by the recent violence.

104. **United Nations entities should continue to assess the needs of the Palestinian people with a view to contributing to the wide-scale reconstruction efforts of the international community in the Occupied Palestinian Territory, including by continuing its damage assessment by compiling satellite imagery and other detailed data on destruction in Gaza.**

105. **The international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures. In this respect, the mandate-holders recall the obligation of States to cooperate to bring to an end through lawful means any serious breach of an obligation arising from a peremptory norm of general international law. They also recall the obligation of all States to ensure respect for the provisions of international humanitarian law.**

Annex

SPECIAL REPORT ON GAZA AND SOUTHERN ISRAEL PREPARED BY THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR CHILDREN AND ARMED CONFLICT

1. From the launch of "Operation Cast Lead" on 27th December 2008 until the ceasefire of 17 January 2009, the extensive Israel Defense Forces (IDF) led air and ground operations within Gaza 1,440 people were reported killed, including at least 314 children, as verified by the inter-agency working group, and 5,380 injured, including 1,872 children; up to 200,000 people, including 112,000 children, displaced and movement for the majority of the population severely restricted. In the closely built-up areas of Gaza it became increasingly difficult to obtain accurate and updated information. At times during the 22 days of bombardment, international and local media broadcasts were the only information available to humanitarian or human rights agencies. In periods when there was a lull in air or ground attacks, there were some opportunities for staff of human rights agencies to verify information being received. Since the ceasefire, capacity to verify information has improved and this report is compiled from reliable reports provided by the inter-agency Working Group member organisations. In Southern Israel it is reported that 3 Israelis were killed and 182 people injured, although specific information on children is currently unavailable.

2. Civilian targets, particularly homes and their occupants, appear to have taken the brunt of the attacks, but schools and medical facilities have also been hit. This is despite the fact that, in the case of UNWRA schools, GPS coordinates were provided to the IDF by UNWRA.

3. The intensity of Operation Cast Lead has resulted in many psychosocial difficulties for children; so much so that UNICEF has made psycho-social support one of its emergency priorities in Gaza. This is also true in southern Israel, where the days of conflict resulted in a high incidence of psycho-social complaints on the part of children there.

Children killed and injured

4. 56 per cent of the 1.5 million population, of Gaza, are under the age of 18 years; the latest conflict and preceding 18 months of almost total blockade has had a massive impact on a generation of young people. The Palestinian Authority (PA) Ministry of Health (MoH) reports that at least 431 Palestinian children have been killed since 27th December 2008; independent monitors from the inter-agency working group have verified 314 cases of children killed to date. Work continues to verify final numbers.

5. Many children have been injured during the period of fighting and the PA MoH reports 1,855 children injured while independent monitors report at least 860 children have sustained injuries. Handicap International estimates that up to 50 per cent of people injured have sustained severe injuries that, without proper rehabilitation, could result in permanent disability.

6. During this period, the Magen David Adom, the national emergency medical, disaster, ambulance and blood bank service, reported that 3 Israelis were killed in Southern Israel and 182 people were injured by rocket fire from Gaza. The Inter-agency working group

(working group) have been unable to verify this. The lack of greater casualties is most likely attributable to a very effective programme of security awareness training in schools and an early warning system by the Israeli authorities.

7. Violations were reported on a daily basis, too numerous to list: below are just a few examples of the hundreds of incidents that have been documented and verified by the working group.

8. On 3 January, during an IDF operation in Gaza City at 6.30 AM a tank shell landed near a family's house; a father and his two young sons, both aged under 11 years, emerged to survey the situation. As they exited their home, IDF soldiers shot and killed them (at the entrance to their house), with the daughter witnessing. The IDF ordered the mother and daughter to leave the house, refusing the request of the girl to move the bodies. Bulldozers commenced destroying the house with the woman and child still inside; as they exited from the house the woman sustained a broken hip. The mother and child then watched as their home was destroyed; rubble and bodies being bulldozed together. Days later, the child was still in shock and only moving her eyes; the mother has lost the ability to speak.

9. On 7 January, after several days of requesting safe passage to the above-mentioned area of Gaza City, during a three-hour lull in hostilities, an ICRC/Palestinian Red Crescent Society[a] medical team was allowed on foot (without ambulances) into the closed military area to evacuate any remaining survivors. According to the ICRC, in one house, the team found four small children next to their dead mothers who were too weak to stand up on their own. Due to the limited time allowed, the team was not able to reach all houses in the area. In all, ICRC/PRCS evacuated by donkey cart 30 Palestinians including 18 wounded. The IDF restricted further access to the area, prompting the ICRC to issue a public statement demanding urgent access and charging the Israeli army with failing to assist wounded Palestinians.

10. On 15 January, as IDF tanks moved into Tal Al Hawa, south-west of Gaza City, families moved from their apartments to the ground floor of the building, bringing bags or personal belongings with them. IDF soldiers entered the building. A number of young people had their wrists tied and eyes covered and were ordered to stand aside. Other children and older women were made to stand on the other side of the room. One of the boys (aged 11 years) was told to open the bags one by one; one of the bags had a lock which a soldier shot at as the child struggled with it, although the boy was uninjured. The boy was then made to accompany the IDF for a number of hours during a period of intense operations. As the group of soldiers moved through the town the boy was made to walk in front. When they entered the building of the Palestinian Red Crescent Society the 11 year old boy was made to enter first, in front of the soldiers. Later while moving through the town the IDF met with resistance and were shot at, the boy remained in front of the group. On arrival at the Al Quds Hospital the boy was at the front

[a] The Palestinian Red Crescent Society is the recognized Red Cross and Red Crescent Movement in Gaza and is an internationally recognized organization with medical functions. It is the operational partner of the International Committee of the Red Cross in this humanitarian operation, and a member of the International Federation of the Red Cross and Red Crescent Societies.

but they released him at the entrance to the hospital. This appears to be in direct contravention to a 2005 Israeli High Court ruling on the illegality of the use of human shields and a violation of international law.

11. There have also been allegations of Hamas effectively using civilians as human shields. In addition there have been reports of Hamas firing from densely populated places and near protected areas. The working group is currently investigating these reports.

12. On Monday 29 December 2008, at about 1:00 a.m., an IDF missile struck Imad Aqel Mosque in the centre of the densely crowded Jabalia camp, damaging the surrounding houses. A family house was hit, and five sisters aged 4-17 years were killed in their sleep when their bedroom was completely destroyed. Four children, aged 2-16 years, were injured in the same attack.

13. On 4 January, IDF foot-soldiers moved members of one extended family, from different houses, into a single residence, ordering them to stay inside. There were over 100 Palestinian civilian family members in the house. Approximately twenty-four hours later, IDF forces shelled the home, killing twenty-three, including nine children aged 8 months-17 years, and seven women. Those who survived and were able walked two kilometres to Salah Ed Din road before being transported to the hospital. An additional seven members of the same family, including three children, were killed in the same area in separate incidents during the military operation.

14. On 28 December 2008, one family was sitting around a fire in farmland near their home in al-Zaitun village. The head of household asked his 7 year old daughter to fetch tea in their home and, as soon as the girl entered the house, it was hit by a missile and reduced to rubble. Family members outside all sustained shrapnel wounds and were transferred to Al-Shifa hospital to be treated for broken bones, cuts and bruises. The young girl’s body was found only the next morning, when rescue workers finished clearing the rubble.

15. On 2 January 2009, one 8-year-old boy, his brother (11), and a member of the extended family (11) went to pick some sugar cane from an adjacent property in Al-Qarara. North of Khan Younis, in southern Gaza. Upon returning from the field, they were struck by a missile fired from an Israeli drone aircraft. Two of the boys died at the scene, while the third boy died on the way to hospital.

16. On 3 January 2009, Israeli soldiers entered a family house in the Zeitoun neighbourhood of Gaza City. Standing at the doorstep, they asked the male head of the household to come out and shot him dead, without warning, while he was holding his ID, hands raised up in the air, and then started to fire indiscriminately and without warning into the room where the rest of the family was huddled together. The eldest son was shouting in vain the word “children” in Hebrew to warn the soldiers. The shooting did not stop until everyone was lying on the floor. The mother and four of the brothers, aged 2-12 years, had been wounded, one of them, aged four, fatally.

17. On 18 January, the IDF fired artillery shells that hit a house located on Salah Ad-Din Street in Jabalia Refugee Camp. The shelling killed 3 children, aged 14-17 years, and injured two others from the same family.

Alleged use of white phosphorous weapons in civilian areas by the Israel Defense Forces

18. There have been allegations of white phosphorous being used during the IDF attacks in Gaza. The use of weapons is governed by the general principles on the conduct of hostilities, i.e. the principles of distinction, proportionality and precaution, as outlined in the legal framework section. In addition, although not specifically banned in any treaty, the use of incendiary weapons is limited by Protocol III[b] of the 1980 Geneva Convention.[c]

19. The following are two reports on incidents that have been verified:

In Jabalia, on 10 January 2009, white phosphorous shells hit a family house which is located west of the (former) Civil Administration building. Two children were seriously injured from burns (two 16 year old boys). The first boy is in Shaifa Hospital and the other who is suffering from third degree burns has been transferred to a hospital in Egypt.

At 6:30 a.m. 18 January 2009, the IDF fired several shells - some of which appeared to be white phosphorus - which landed in and around the UNRWA Beit Lahia Elem School that sheltered displaced civilians. One shell struck a classroom, where civilians were sheltered. The shell broke through the roof and exploded on the ground, spreading its shrapnel into classrooms. Two children (5 and 7) were killed and their mother was injured. Total number of injuries from this incident was 14. Four of the injured indicated phosphorous burns (including one child) UNWRA has stated that they have evidence of white phosphorous having being fired into their installations, including the UNWRA school in Beit Lahia. This is also supported by video footage of phosphorous shells being used.[d]

20. The aftermath of the conflict has left many risks for children in the form of unexploded ordnances, small arms and possible contaminated shrapnel which has already resulted in deaths

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[b] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980.

[c] Israel did not ratify the Third Protocol but its military manuals reflect restrictions on white phosphorus use (A 1998 Israeli military manual states: “Incendiary arms are not banned. Nevertheless, because of their wide range of cover, this protocol of the CCW is meant to protect civilians and forbids making a population centre a target for an incendiary weapon attack. Furthermore, it is forbidden to attack a military objective situated within a population centre employing incendiary weapons. The protocol does not ban the use of these arms during combat (for instance, in flushing out bunkers).”

[d] Statement from the Times: The Israeli army has, however, launched an internal inquiry into whether white phosphorus was used in some cases in built-up areas, having eventually admitted that it did use the incendiary substance, which is not illegal as a battlefield smokescreen but is banned from being used in civilian areas. Camera footage from one such attack shows what appears to be white phosphorous raining down on a UN school in Beit Lahiya, where Red Crescent ambulances and their crews were stationed.

to children. On 20 January two children were killed by unexploded ordnances in Az-Zaitoun, in the eastern part of Gaza City. The boy (10) and girl (11) were playing in an area from which the IDF had recently withdrawn.

Attacks on schools and health facilities

21. Seven Ministry of Education schools were destroyed and 157 schools were damaged by air strikes and related bombardment in Gaza, in addition damage to 36 UNWRA schools. In an area where many Gazan schools already operate a double shift system, the provision of education to children will be under exceptional strain.

22. On 6 January 2009, three shells landed outside the UNRWA Jabalia Prep C Boys School, resulting in at least 37 fatalities, including 14 children (three aged 10, three aged 13, three aged 15 and one each of 3, 11,14, 16 and 17 years of age). There were at least 55 injuries (including 15 children) of which 15 are reported to be in critical condition. Further investigation is required to determine the exact location of where children were injured and killed. The school was being used as a shelter for people fleeing hostilities.

23. In the same period, two schools in Ashkelon, southern Israel were damaged by rocket fire from Gaza. One “Grad” rocket hit the Tzvia school, a religious girl’s school and another hit at the entrance to the Newe Dkalim school. Due to preparations made in both schools there were no casualties.

24. During the fighting, damage was reported in 14 of the 27 hospitals in Gaza and at least 38 clinics were damaged by IDF fire. Fata and Al-Wafa rehabilitation hospitals, managed by NGOs, are the only rehabilitation hospitals in Gaza and both were severely damaged. Additionally eight UNRWA health centres sustained light damage. Of the 148 ambulances in Gaza, at least 29 have been damaged or destroyed. Two ambulance stations (Gaza and Jabalia) were also destroyed.

25. Al-Quds Palestinian Red Crescent Society Hospital in south Gaza City, was hit by direct IDF fire. Soldiers surrounded the hospital during the early hours of 15 January and opened fire on the hospital compound. The administrative building and pharmacy adjacent to the hospital were hit and caught fire. Fearing an imminent explosion or the spread of the fire, hospital authorities evacuated all patients to the hospital’s ground floor and prepared for a complete evacuation. At least 50 patients, 20 of whom were confined to their beds, waited several hours to be evacuated. Fire-fighters and ambulances were prevented from evacuating the patients for about five hours. Between 27 December and 19 January, 16 health personnel were reported to have been killed while on duty, and an additional 22 injured.

Denial of humanitarian access

26. The 20-month blockade of Gaza had already resulted in a scarcity of many goods and an insufficiency of basic support services. This has impacted upon children in the decreased availability of nourishing foods, and the compromised ability to provide essential services such as health and education. The blockage of basic provisions has not changed since the crisis and continues to limit not only the normal development of children but now recovery from the immense impact of the 22-day conflict.

27. Approximately 91 per cent of Gaza's population - some 1,275,300 people including 14,168 children - are now dependent on food assistance. Despite the severity of the attacks and the immense humanitarian need, there have been no significant changes to access restrictions in Gaza prior to that of 26 December 2008. From 27 December to 21 January 2009, the total number of trucks that entered was an average 95 per day through Kerem Shalom and 56 through Karni, for a total average of 151 per day. Aid experts cite that a minimum of 400 trucks per day are needed to satisfy critical humanitarian needs in Gaza, while emergency reconstruction efforts would necessitate at least 1,500 trucks per day.

28. Without construction materials being allowed into Gaza there can be no significant recovery for the communities. The IDF continues to block the delivery of pipes and fittings, which is having a deleterious impact on the access to safe drinking water. On 25 January UNICEF was informed that a solar refrigerator for vaccines destined for North Gaza was denied entry; this is having a direct impact on children and pregnant women who are unable to receive vaccination at their local Primary Health Clinic.

29. An estimated 3,300 babies were born during the conflict, during which there were reports of premature labour and delivery due to the lack of access to healthcare. Also, primary health care services were reported to have declined by about 90 per cent, and many programmes such as vaccination schemes and neonatal care stopped completely for significant periods.

30. Water, sewer, electricity and education infrastructure and services were also extensively damaged and interrupted; almost certainly compounding obstacles to recovery and rehabilitation for displaced children and their families. For example, at the height of the conflict, nearly all of Gaza's population - including 793,520 children were without electricity, and at any given time during the conflict, some 500,000 people were without water. Around 30,000 babies - or three quarters of Gaza's infants under 6 months of age - are not exclusively breastfed, exposing them to a high risk of infection or malnutrition from using breast milk substitutes prepared with potentially contaminated water.

31. At least 2,200,000 litres of sewage have leaked out of Gaza's waste water system due to damage from shelling, affecting at least 91,727 people, including 51,367 children, this now poses serious health risks, and the impact on children has the potential to be significant.

32. Until the Government of Israel allows an increased range of supplies into Gaza, including construction materials, there can be no meaningful recovery for the children of Gaza. School and health facilities have been badly affected by the attacks. The education system was already under severe strain and now an increased number of schools are without adequate resources to provide education for children. In addition to construction materials, schools need paper for text books, school stationary supplies, recreation and sports kits - all of which have been denied access by the IDF since the end of the 22-day conflict.

Displacement

33. It has been estimated that 200,000 people were displaced, among them 112,000 children, at some point during the conflict. At the peak of displacement on 17 January, UNRWA was accommodating, 50,896 displaced persons in 50 UNRWA shelters. As

of 25 January 2009, 510 people (88 families) remained housed in UNRWA run emergency shelters in community based organisation and of the areas so far surveyed 66,000 people are living with host families for a total of 66,510 people.

34. For example, on 04 January 2009 at 15.00 hrs, fighting between militants and the IDF in Al Zatioun resulted in approximately 5,000 persons fleeing their houses and taking refuge into another area. In another incident, on 05 January 2009 at 06:00 hrs, IDF armoured vehicles advanced into the Customs Junction in Beit Hanoun and opened fire repeatedly into the nearby neighbourhoods. About 80 households were forced to evacuate their homes, owing to the IDF offensive, and take refuge in schools which UNRWA had opened to shelter them. Among them were about 150 children. Later, Israeli troops advanced into the aforementioned area and destroyed approximately 20 houses.

35. The situation for many families is now extremely difficult, with at least 4,100 residential structures destroyed and another 17,000 severely damaged; forcing many of the residents, among them thousands of children, to seek shelter elsewhere. The long term impact on children of being homeless increases their vulnerability and decreases their capacity to recover from the ordeal of the 22 days of attacks.

Arrests and detention

36. Reports have been received that children under the age of 18 years have been arrested for security offences along with adults by Israeli security forces in Gaza during the course of Operation Cast Lead. To date the working group has not been possible to verify this.

37. During the period of attacks in Gaza, lawyers have observed that the number of children arrested in the West Bank increased and the number of children brought to the Israeli Military Courts in pretrial hearings in the first two weeks of January was twice as high as in the same period in 2008. During the first two weeks of January alone, DCI-Palestine's legal department received 10 new cases of children for legal representation in the Military Courts compared with a monthly average of 10-15 new cases. Out of these 10 cases, eight were arrested from the street or during demonstrations against the Gaza attacks. DCI-Palestine has not yet been able to take statements from the children nor confirm if they were actively participating in demonstrations.

38. From 19-29 January, six cases of children aged 12-13 arrested for throwing stones at the Wall or in demonstrations, and taken to the Israeli Military Courts have been recorded. Lawyers were unable to obtain their release. These six children are awaiting trial and are likely to be sentenced and imprisoned. Under Israeli Military Order 378, stone-throwing carries a maximum sentence of 20 years, for adults and children. However, children usually serve 3-6 months in prison for throwing stones.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Addendum

Mission to Israel and the occupied Palestinian territory[*] [**]

Summary

The present report is submitted to the Human Rights Council by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 7/36 and 16/4. The Special Rapporteur undertook a mission to Israel and the occupied Palestinian territory from 6 to 17 December 2011 to examine the situation of the right to freedom of opinion and expression. In the present report, the Special Rapporteur outlines his main issues of concern in Israel, the West Bank, and Gaza vis-à-vis the respective obligations of the Government of Israel, the Palestinian Authority and the de facto authorities.

In Israel, the Special Rapporteur raises his concern regarding recent attempts to diminish the space for criticism within Israel regarding its policies and practices of occupation, including the adoption of a series of restrictive laws by the Knesset. He also notes the discriminatory treatment of Palestinian citizens of Israel and attempts to curtail their right to freedom of opinion and expression.

[*] The summary is being circulated in all official languages. The report, which is annexed to the summary, is being circulated in the language of submission only.

[**] Late submission.

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In the occupied Palestinian territory, the Special Rapporteur highlights the obstacles faced by journalists in undertaking their work, primarily as a result of restrictions to their freedom of movement imposed by the Government of Israel, and the internal division between the Palestinian Authority in the West Bank and the de facto authorities in Gaza.

In the West Bank, the Special Rapporteur express his concern regarding the worrying trend of an increasing number of journalists, human rights defenders and bloggers who are arbitrarily detained and interrogated by the security forces of the Palestinian Authority for expressing critical views. He also highlights undue restrictions imposed on the right to freedom of assembly by the Israel Security Forces as an area of concern.

In East Jerusalem, the Special Rapporteur draws attention to the restrictions imposed by the Government of Israel on the right of Palestinians to seek, receive and impart ideas and opinions.

In Gaza, the Special Rapporteur raises his concerns regarding various restrictions imposed by the de facto authorities on the rights to freedom of expression and of assembly.

The report concludes with recommendations to the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza regarding the main issues of concern.

Annex

[English only]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Israel and the occupied Palestinian territory

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I. Introduction

1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, carried out a visit to Israel and the occupied Palestinian territory from 6 to 17 December 2011, at the invitation of the Government of Israel and the Palestinian Authority. In Israel, he visited West Jerusalem, Tel Aviv, Be'er Sheva and other surrounding villages in the Negev desert. In the occupied Palestinian territory, he visited East Jerusalem, Ramallah, Nabi Saleh and Gaza.

2. The visit was undertaken with a view to contributing, through effective engagement with all interlocutors, to efforts aimed at enhancing the enjoyment of the right to freedom of opinion and expression for all, without discrimination of any kind. The Special Rapporteur thanks both the Government of Israel and the Palestinian Authority for their invitation and the cooperation extended to him before and during the visit.

3. In Israel, the Special Rapporteur met with the Deputy Prime Minister and Minister of Intelligence and Atomic Energy, Dan Meridor; Spokesperson of the Prime Minister's Office; Deputy Foreign Minister, Daniel Ayalon; Spokesperson of the Ministry of Foreign Affairs; Deputy Director General for International Organizations at the Ministry of Foreign Affairs, Eviatar Manor; Minister of Improvement of Government Services; Spokeswoman for the Minister of Internal Security; Director of the Human Rights Unit at the Ministry of Justice; Director-General of the Ministry of Communications; Minister of Education; Judge Eliakim Rubinstein of the Supreme Court; the Speaker and three Members of the Knesset; State Comptroller (Ombudsman); Deputy Mayor of Tel Aviv; and Head of the Central Command of the Israeli Defense Forces (IDF).

4. In the occupied Palestinian territory, the Special Rapporteur held meetings with the Prime Minister, Minister of Foreign Affairs, Minister of Justice, Minister of Telecommunications and Information Technology, Minister of Women's Affairs, Deputy Minister of Information and Media Affairs, Chief Justice of the Higher Judicial Council, representatives of the Palestinian Broadcasting Authority, members of the Palestinian Legislative Council, Head of Preventive Security, Deputy Minister of Interior, and Head of General Intelligence Services. He also met with the representatives of the de facto authorities in Gaza.

5. In addition, the Special Rapporteur met with journalists, human rights defenders, lawyers, and community leaders in Israel and the occupied Palestinian territory, as well as with representatives from the United Nations country team and the Office of the High Commissioner for Human Rights (OHCHR) in Ramallah. He wishes to express his sincere appreciation for the outstanding support provided to him by the staff of OHCHR and its office in the occupied Palestinian territory.

II. International legal standards

6. In carrying out his assessment of the situation regarding the enjoyment of the right to freedom of opinion and expression in Israel and the occupied Palestinian territory, the Special Rapporteur is guided primarily by article 19 of the International Covenant on Civil and Political Rights, which provides that:

(a) Everyone shall have the right to hold opinions without interference;

(b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless

of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;

(c) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or of public order (ordre public), or of public health or morals.

7. In addition, where relevant, given that peaceful assemblies and demonstrations constitute a form of expressing grievances and opinions, particularly in situations where media freedom is limited, article 21 of the International Covenant on Civil and Political Rights is also relevant to the mandate of the Special Rapporteur.

8. The legal framework of the mandate also includes relevant provisions of international humanitarian law, in particular the four Geneva Conventions of 1949 and their Additional Protocols. As emphasized for example by the Human Rights Committee in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the application of international humanitarian law and international human rights law is not mutually exclusive, but is complementary (para. 11). With regard to the applicability in the occupied Palestinian territory of certain rules of international humanitarian law and human rights instruments, the Special Rapporteur would like to refer to the Advisory Opinion of the International Court of Justice of 9 July 2004, where this issue is discussed in detail.[1]

III. International human rights obligations

9. Israel has acceded to the main United Nations human rights instruments,[2] including the International Covenant on Civil and Political Rights. With regard to the applicability of the Covenant in the occupied Palestinian territory, the Special Rapporteur underscores that the international human rights obligations of Israel continue to apply in territories under its effective control, as well as during armed conflict.[3]

10. The Palestinian Authority, the Palestine Liberation Organization and the Palestinian Legislative Council have made numerous statements and undertakings through which they have declared themselves bound by international human rights obligations.[4]

11. Although control over the Gaza Strip was officially transferred from Israel to the Palestinian Authority in 2005, it has been under the control of the de facto authorities following the Palestinian Legislative Council elections of January 2006. At the same time, despite the withdrawal of Israeli forces from the Gaza strip, the legal responsibility of Israel as the occupying power in Gaza has not ceased, as it continues to exercise control over Gazan airspace, territorial waters and land access.

[1] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, I.C.J. Reports 2004*, paras. 86–113.

[2] See www.ohchr.org/EN/countries/MENARegion/Pages/ILIndex.aspx.

[3] See, for example, concluding observations of the Human Rights Committee, CCPR/C/ISR/CO/3, para. 5.

[4] Reports of the High Commissioner for Human Rights on human rights situation in Palestine and other occupied Arab territories, A/HRC/8/17, para. 8; and A/HRC/12/37, para. 7.

12. Additionally, the jurisdiction of the Palestinian Authority in the West Bank remains limited, as Israel exercises exclusive control over approximately 62 per cent of the territory.[5] The Palestinian Authority only exercises control over security and civil matters in Palestinian urban areas ("Area A") and civil matters in Palestinian rural areas ("Area B"), while the remainder of the territories, including bypass roads between Palestinian communities in the West Bank, is under the exclusive control of the Government of Israel ("Area C").

13. With respect to the de facto authorities in Gaza, the United Nations High Commissioner for Human Rights has stressed that "non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control" (A/HRC/12/37, para. 7). The de facto authorities have also made public statements that they are committed to respect international human rights and humanitarian law (A/HRC/8/17, paras. 8–9).

IV. Main issues of concern in Israel

14. The Special Rapporteur is encouraged by the vibrant media landscape in Israel, where divergent opinions are openly exchanged. However, he underscores the importance of preventing undue media dominance or concentration by privately controlled media groups, as noted by the Human Rights Committee.[6] He would also like to raise the following issues of concern in Israel.

A. Lack of sufficient protection of the right to freedom of opinion and expression in domestic legislation

15. In the absence of a formal constitution, Israel has enacted a set of Basic Laws that set forth the State's main institutions and fundamental rights. Among these, the most important is the Basic Law on Human Dignity and Liberty (1992), amended in 1994. However, the right to freedom of opinion and expression, as well as a general provision for equality and non-discrimination, are lacking in the Basic Law. Furthermore, the Penal Code of 1977 contains several vaguely and broadly worded definitions of incitement, in contravention of international standards.

16. The Special Rapporteur notes that despite the lack of an explicit reference to the right to freedom of opinion and expression in the Basic Law on Human Dignity and Liberty, the Supreme Court has contributed to safeguarding the right through its case law. For example, in response to the ban imposed by the Israeli Film Board on a film entitled *Jenin, Jenin* on the premise that it presented a distorted version of events, the Supreme Court in 2003 affirmed that "the fact that the film includes lies is not enough to justify a ban", and that the film board's decision "infringes on freedom of expression above and beyond what is necessary". Nevertheless, the Special Rapporteur underscores that, as a

[5] Office for the Coordination of Humanitarian Affairs, "Area C Humanitarian Response Plan Fact Sheet" (2010). Available from www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf.

[6] CCPR/C/GC/34, para.40.

State party to the International Covenant on Civil and Political Rights, Israel is required to fully guarantee this right in its domestic legislation.[7]

17. The Israeli Penal Code contains several provisions that restrict the right to freedom of expression, including expression that constitutes incitement to racism, violence or terror. Publication of materials to incite racism, as well as any calls to "commit an act of violence or terror, or praise, words of approval, encouragement, support or identification with an act of violence or terror", is subject to five years' imprisonment (art. 1 A, paras. 144B and 144D2, respectively). Moreover, possession of publication that incites violence or terror is punishable by one year of imprisonment (para. 144D3). Furthermore, if a person "acts by speech in a public place or at a public gathering or by publishing to incite hostile acts against the Government of a friendly state", the individual is liable to three years' imprisonment (art. 5, para. 166).

18. In addition, under article 7, paragraph 173, of the Penal Code, a person who "publishes any printed, writing, picture, or effigy calculated to outrage the religious feelings or belief of other persons", or who "utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief" is liable to one year's imprisonment.

19. While article 20 of the International Covenant on Civil and Political Rights requires States to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, the Special Rapporteur is concerned about the vague and broad terms used in the aforementioned provisions, such as "words of approval" or "identification" with an act of violence or terror, inciting "hostile acts against the Government of a friendly state", and prohibition of expressions which "outrage the religious feelings or belief of other persons". Moreover, he finds that making mere possession of a publication which may incite violence or terror an offence punishable by imprisonment is excessive.

20. The Special Rapporteur reiterates that any legislation which restricts the right to freedom of expression must comply with the conditions set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights: the law must be narrowly defined and justified as being necessary and the least restrictive means to serve a legitimate aim. Additionally, an individual whose right to freedom of expression has been restricted must be able to challenge the legal basis of the restriction in an independent court. To avoid arbitrary application of the law, the Special Rapporteur urges the Government to ensure that all domestic legislation which restricts the right to freedom of expression is in compliance with such criteria.

B. Prior censorship on issues related to national security

21. The Israeli Military Censor is a unit in the IDF Directorate of Military Intelligence, which is headed by the Chief Censor, an officer directly appointed by the Minister of Defense. The Chief Censor is mandated to screen and censor materials related to national security issues before publication.

22. According to an agreement signed between the Israeli Editors' Committee and the Ministry of Defense in 1949, Israeli editors may voluntarily submit articles that relate to specific military issues or strategic infrastructure issues to the Chief Censor. The Special Rapporteur was informed that there were initially 65 topics subject to censorship, but that this has been reduced to 35 in the fifth agreement between the Editors' Committee and the

[7] See Human Rights Committee, general comment No. 34 on article 19, para. 8.

Ministry of Defense. Foreign journalists are exempt from this agreement and the need to seek prior authorization for publication on national security matters. The Censor's decision may be appealed to the High Court of Justice, and the Censor cannot appeal a court judgment.

23. The Special Rapporteur was informed by the Chief Censor that when materials are submitted by journalists, a threat assessment is undertaken, based on the criterion of "imminent certainty of actual harm to State security". According to the Chief Censor, the list of topics provided to journalists provides sufficient guidance to journalists and editors to determine whether they will need to submit certain articles for prior screening and censorship.

24. Journalists and editors can also reportedly challenge the decision of the Chief Censor by submitting an appeal to an arbitration committee known as the "Committee of Three", which is headed by a former judge. Journalists or editors concerned may also appeal the decision of the Committee to the Supreme Court of Israel.

25. While the Special Rapporteur has been informed that there have been very few articles that have been censored by the Chief Censor, and that foreign journalists are free to report on national security matters without her review, he is concerned by the very existence of such a body for prior censorship. In the view of the Special Rapporteur, such a body should not exist in any country. In addition, the Special Rapporteur would like to remind Israel that any restriction on the right to freedom of expression must be clearly established in law, which must be accessible, unambiguous, drawn narrowly and with precision, and justified as being necessary and the least restrictive means available to protect a specific and legitimate national security interest. He regrets that such a law is currently lacking in Israel.

26. Moreover, he would also like to remind the Government of Israel that journalists should not be held accountable for receiving, storing and disseminating classified data which they obtained in a way that is not illegal, including leaks and information received from unidentified sources (see the thematic report of the Special Rapporteur, A/HRC/20/17). Furthermore, journalists should not be forced to reveal their sources of information.

C. Restrictive bills and laws which threaten the right to freedom of opinion and expression

27. The Special Rapporteur is deeply concerned by various bills and laws that have been proposed or have been adopted by members of the Knesset which contravene international standards on the right to freedom of opinion and expression. These include three laws that have already been adopted, namely the Budget Principles Law (Amendment No. 40) (the Nakba Law); the Law Preventing Harm to the State of Israel by Means of Boycott, 2011 (the Anti-Boycott Law); and the Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity (the Foreign Funding Law).

1. The Nakba Law

28. The Nakba Law, which is an amendment to the Budget Principles Law of 1985, was adopted by the Knesset on 22 March 2011. This amendment empowers the Minister of Finance to fine public bodies that receive public funding, such as schools, universities or local authorities, if they hold events that commemorate "Independence Day or the establishment of the state as a day of mourning". Additionally, fines could also be imposed if such institutions hold events that aim to revoke "the existence of Israel as a Jewish and democratic State".

29. The Special Rapporteur is deeply concerned that this law is inherently discriminatory towards Palestinian citizens of Israel, who refer to Israeli Independence Day as the "Nakba", meaning catastrophe or tragedy, to commemorate those who died and were displaced following the Israeli Declaration of Independence in 1948. The law severely undermines their right to freely express their opinion, preserve their history and culture, and to their right to commemorate the Nakba, which is an integral part of their history. In this regard, the Special Rapporteur would like to recall that "laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on State parties … Restrictions on the right to freedom of opinion should never be imposed " (Human Rights Committee, general comment No. 34, para. 49).

30. Furthermore, given the vagueness and ambiguity of the wording of the law, the Special Rapporteur is concerned that fines could be imposed for holding events at which the Nakba is mentioned, or for criticism of the definition of Israel as a Jewish and democratic State. In order to avoid sanctions, individuals may self-censor themselves or refrain from organizing events which could be in breach of the law.

31. The Special Rapporteur also expresses his regret that, on 5 January 2012, the High Court, in response to a petition challenging the constitutionality of the law, avoided ruling on the matter until a concrete case arises. Given that the mere existence of the law itself encourages self-censorship and that the law itself is incompatible with the international obligations of Israel to fully guarantee the right to freedom of opinion and expression of all individuals, the Special Rapporteur strongly urges that the law be annulled.

2. Boycott Law

32. The so-called Boycott Law, passed by the Knesset on 11 July 2011, makes it a civil offence to call for a boycott against Israel and its products and those produced in the settlements in the West Bank. Parties filing lawsuits do not have to prove that a call to boycott has resulted in actual damages, as courts can order people or organizations calling for a boycott to pay compensation independently of the damages caused. In addition, the law allows the Minister of Finance to revoke the tax-exempt status of non-governmental organizations (NGOs) calling for a boycott. Furthermore, companies or organizations participating in a boycott may also be disqualified from applying for Government contracts.

33. On 29 August 2011, the Special Rapporteur submitted a joint allegation letter regarding this law, together with the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders (see communications report of special procedures, A/HRC/19/44, p. 70).

34. While the Special Rapporteur appreciates the reply received from the Government of Israel dated 15 December 2011,[8] the Special Rapporteur is of the view that the law violates the right to freedom of opinion and expression, as calling for or participating in a peaceful boycott is a legitimate form of expression which is internationally recognized. Moreover, given that lawsuits can be brought against individuals without any proof of damages, it creates further incentives for self-censorship, including on the Internet, to avoid litigation. The Special Rapporteur is concerned by reports that, since the adoption of the law, the ability of individuals to freely discuss boycott-related issues via social media platforms has diminished significantly.

35. As explained in the response from the Government of Israel, the Special Rapporteur looks forward to the decision of the High Court of Justice regarding the legality of this law.

[8] Available from https://spdb.ohchr.org/hrdb/19th/Israel_15.12.11_(7.2011).pdf.

3. Foreign Funding Law

36. The law known as the Foreign Funding Law, adopted by the Knesset on 2 March 2011, requires NGOs to report quarterly to the Registrar of Associations on any funding received from foreign Governments or any other foreign entities. While the declared purpose of the law is to increase transparency, it appears redundant, given that every non-profit organization in Israel is already required by law to list its donors and other financial information publicly on its website and to submit annual reports on donations received. The Special Rapporteur expresses concern about the discriminatory impact of the law on Israeli human rights NGOs who rely upon foreign Government funding, while other groups that receive private funding, such as Israeli Jewish settler groups, remain unaffected.

37. Additionally, there are two other bills which have been combined into the Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity, which would deprive NGOs that receive foreign funding of the legal right to be exempted from income tax. The Special Rapporteur welcomes the fact that this bill has been put on hold, given that if adopted, it would have further restricted the work of Israeli human rights NGOs.

4. Amendment to the defamation law

38. The bill on the amendment to the defamation law, which passed its first reading in the Knesset on 21 November 2011, increases the fine for defamation from NIS 50,000 to NIS 300,000 without proof of damages. Due to the dramatic increase in financial penalties, the bill, if adopted, will create a significant chilling effect and will discourage investigative journalists, human rights NGOs and individuals expressing critical views.

39. The Special Rapporteur expresses concern that such initiatives constitute an attempt to undermine the work of Israeli human rights NGOs who are critical of the Government, particularly in relation to the occupation. The Special Rapporteur underscores the importance of facilitating the work of human rights defenders in Israel by creating a conducive environment and enabling them to peacefully exercise their legitimate right to freedom of opinion and expression.

40. Finally, while he has raised these concerns with the Speaker of the Knesset, Reuven Rivlin, and members of the Knesset, Faina Kirshenbaum and Ahmad Tibi, he would like to call upon all members of the Knesset to ensure that any legislative proposals presented to the Knesset are in compliance with the international human rights obligations of Israel. The Special Rapporteur would also like to underscore that all branches of the State – executive, legislative and judicial – and other public or governmental bodies, at whatever level, are in a position to engage the responsibility of Israel for any actions taken in contravention of international norms and standards on the right to freedom of opinion and expression (Human Rights Committee, general comment No. 34, para. 7).

D. Restrictions on the right to freedom of opinion and expression of minority groups in Israel

41. The right to freedom of opinion and expression constitutes a key vehicle through which individuals and communities can draw attention to their grievances and combat situations of inequality and discrimination. Hence, the right is particularly important for the empowerment of vulnerable sectors of society, including minorities. In this regard, article 4, paragraph 2, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities stipulates that States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs,

except where specific practices are contrary to international standards. Additionally, as a State party to the International Covenant on Civil and Political Rights, Israel has a positive obligation under article 19 to promote media pluralism and diversity, including in minority languages.

42. However, as briefly mentioned earlier, the Basic Law on Human Dignity and Liberty does not explicitly guarantee the right to freedom of opinion and expression, and also lacks a general provision for equality and the prohibition of racial discrimination. With regard to the latter, the Committee on the Elimination of Racial Discrimination has repeatedly called upon the Government of Israel to ensure that the prohibition of racial discrimination and the principle of equality are included in the Basic Law and that a definition of racial discrimination is duly incorporated into the law (CERD/C/ISR/CO/13, para. 16; CERD/C/ISR/CO/14-16, para.13).

43. The Special Rapporteur has been informed that Palestinian citizens of Israel are frequently regarded and treated as "an enemy from within", given their ethnic and religious ties to the Palestinians in the occupied Palestinian territory and the surrounding Arab and Muslim States, and consequently suffer from various discriminatory policies and treatment. The Committee on Economic, Social and Cultural Rights has also expressed concern that "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens" (E/C.12/1/Add.27, para. 10; E/C.12/1/Add.90, para. 16).

44. As mentioned earlier, recent legislation passed by the Knesset, in particular the Nakba Law, infringe upon the right of Palestinian citizens of Israel to freely express their opinions and to commemorate a historically significant event. In relation to Arab Members of the Knesset, the Special Rapporteur is concerned about reports that following their participation in public events in defence of the rights of Palestinians and the exercise of their right to freedom of expression, certain parliamentary privileges have been revoked.

45. During his visit to the Negev desert, the Special Rapporteur was informed that the Bedouin community lacks clubs, meeting places and public places of worship to express and develop its culture, religion and traditions. In the city of Be'er Sheva, the Special Rapporteur visited the "Big Mosque", and was informed that it has been converted into a museum, and that the Israeli High Court ruled in June 2011 that it should be used as an Islamic museum for the Muslim community. The Special Rapporteur recommends that the municipal authorities of Be'er Sheva implement this decision of the court, and also allow it to be used as a site for public prayer to allow the Muslim community to collectively express and maintain their culture and religion.

V. Main issues of concern in the occupied Palestinian territory

46. Individuals living in the West Bank face difficulties in exercising their right to freedom of opinion and expression by the Israeli security forces and by the growing intolerance of criticism by the Palestinian Authority, while those living in Gaza face interference and harassment by the de facto authorities. The situation in the occupied Palestinian territory is further compounded by an unclear domestic legal system which comprises a patchwork of British, Jordanian and Egyptian laws and Israeli military orders, as well as internal inter-factional conflict between the Palestinian Authority and the de facto authorities.

47. The following section outlines the main issues of concern in the occupied Palestinian territory, and are examined vis-à-vis the respective obligations of the Government of Israel, the Palestinian Authority and the de facto authorities.

A. Restrictive provisions in the Press and Publications Law of 1995

48. The Palestinian Basic Law, passed by the Palestinian Legislative Council in 1997 and ratified by the President in 2002, serves as a temporary constitution for the Palestinian Authority, and guarantees basic human rights and liberties. In particular, article 19 of the Basic Law provides that "freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law".

49. In addition, article 27 of the Basic Law guarantees the establishment of all media as a right for all, protects media freedom, and prohibits censorship of the media, by stipulating that "no warning, suspension, confiscation, cancellation or restriction shall be imposed upon the media except by law, and pursuant to a judicial ruling".

50. However, despite these provisions guaranteeing the right to freedom of expression, the Special Rapporteur is concerned by the existence of provisions that unduly restrict the right to freedom of opinion and expression in the Press and Publications Law of 1995.

51. While the intended purpose of the Press and Publications Law is to provide guidance to the media, guarantee journalists' right to access information and to ensure every individual's right to freedom of expression, it contains various provisions which contravene the Palestinian Basic Law and international standards on the right to freedom of opinion and expression. These include excessive Government control over the media, including licensing of print media and censorship of publication, and broad restrictions on the content of what may be published, many of which are vague. For instance, publication materials that contradict principles of freedom, national responsibility, or are "inconsistent with morals" or which may "shake belief in the national currency" are prohibited under articles 7 and 37. Furthermore, materials must be submitted for review by the Government prior to publication, in contravention of article 27 of the Palestinian Basic Law which prohibits media censorship. In addition, the Press and Publications Law provides harsh sanctions, including imprisonment, for breach of its provisions.

52. The Special Rapporteur welcomes the acknowledgement by Government officials of such problematic elements in the Press and Publications Law and efforts made by the Ministry of Information to amend the law in consultation with civil society representatives. He has been informed that the final version of proposed amendments to the Press and Publications Law will be submitted to the President for approval. He would like to reiterate his willingness to provide technical assistance in the reform process to bring the law into conformity with international standards, and to establish a clear regulatory framework for the media which would facilitate the work of journalists in Palestine and prevent any undue or excessive interference with their work.

B. Defamation as a criminal offence

53. The Jordanian Penal Code of 1960, which remains applicable in the West Bank, provides for criminal penalties of up to two years in prison for defamation, including in relation to Government officials (arts. 189 and 191). The Special Rapporteur has consistently called for decriminalization of defamation as a criminal offence, which is inherently harsh and encourages self-censorship. He has also stressed that all public figures are legitimately subject to criticism and should exercise a higher degree of tolerance, given their functions to serve the public.

54. The Special Rapporteur is particularly concerned by recent reports of detention and investigation of individuals who have expressed criticism of Palestinian officials, including unfavourable comments regarding President Mahmoud Abbas posted on Facebook.[9] Such cases reveal a worrying trend of growing intolerance of criticism and monitoring of Palestinian users' Facebook accounts. Although individuals may not be formally prosecuted and convicted for defamation, the Special Rapporteur stresses that arrests, questioning and investigation themselves constitute a form of intimidation and harassment that engender a climate of fear and discourage individuals from criticizing authorities.

55. The Special Rapporteur thus calls upon the Palestinian Authority to decriminalize defamation and refrain from prosecuting individuals for defamation when it involves expression of opinion or criticism or matters of public interest which, even if false, was done without malicious intent. Moreover, the Palestinian Authority should take measures to promote a culture that is tolerant of diverse views, opinions and criticism.

C. Ensuring the independence and effective functioning of the Palestinian Broadcasting Corporation

56. The Palestinian Broadcasting Corporation (PBC) was established in 1993 under the direct control of the Palestinian Authority to offer public television and radio in Palestine, which was forbidden prior to its establishment. As a Government institution, its employees are civil servants and appointed by the Palestinian Authority. However, following a presidential decree of 2009, PBC has been undergoing a series of reforms to become an independent and autonomous public service institution. To this end, the Special Rapporteur was informed that initiatives have been taken to promote cultural diversity in broadcasting and provide airtime for private and independent programmes, including satirical programmes. In particular, he is pleased to note that PBC is willing to provide the space for all individuals to express their opinions regardless of their political affiliation.

57. The Special Rapporteur is cognizant of the difficulties and challenges faced by PBC in transforming into an independent and autonomous body, including the political climate, paralysis of the Palestinian Legislative Council, and resistance from within PBC and from certain sectors of society who deem certain programmes to be contrary to cultural values and traditions. While many of the initiatives have yet to be implemented, including the establishment and appointment of the Board of Trustees, the Special Rapporteur welcomes the gradual transformation of PBC and looks forward to receiving information on the progress of reform. He also hopes that the availability of independent and satirical programmes will create a culture of openness and tolerance towards criticism.

D. Restrictions on the distribution of certain newspapers in the West Bank and Gaza

58. As a consequence of the inter-factional division between the Palestinian Authority and the de facto authorities in Gaza following the Palestinian Legislative Elections of 2006, certain newspapers, perceived to be sympathetic towards either Fatah or Hamas, have been banned in Gaza and the West Bank, respectively. For example, *Al-Quds al-Arabi*, *Al-Hayaat al-Jadida* and *Al-Ayyam* are banned in Gaza, while *Al-Risala*, *Falastine* and *Minbar al-Islah* are prohibited in the West Bank.

[9] Details of these cases will be included in the next joint communications report of special procedures.

59. Restrictions on the distribution of newspapers in Gaza and the West Bank constitute a clear breach of domestic law, including article 27 of the Palestinian Basic Law, which guarantees media freedom and prohibits restriction of publications without legal basis and judicial ruling. The Special Rapporteur reiterates that any restriction on dissemination of information must be based on law and clearly justified as being necessary to pursue a legitimate aim. The banning of newspapers is not only a violation of the right to impart information, but the right of the public to receive information.

60. Moreover, the legitimacy of the prohibition of the aforementioned newspapers is further undermined by the fact that the content of newspapers is available online in both the West Bank and Gaza. As such, the Special Rapporteur recommends that these politically symbolic restrictions be lifted by both parties to create a more conducive environment for dialogue and mutual understanding.

E. Restrictions on freedom of movement of journalists and human rights defenders imposed by Israel

61. Palestinians living in the West Bank, including East Jerusalem, and Gaza face daily obstacles and humiliation to travel both inside and outside of the occupied Palestinian territory, as a result of the construction of the Wall and other barriers, coupled with the imposition of military checkpoints, permit requirements and travel bans by Israel. The work of journalists and human rights defenders in the occupied Palestinian territory is particularly hindered by these restrictions to movement, as documenting and collecting information is central to their work.

62. In this regard, the Human Rights Committee has stressed that it is incompatible with the obligations under the International Covenant on Civil and Political Rights to "restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party" (Human Rights Committee, general comment No. 34, para. 45).

63. In addition, the Special Rapporteur is concerned about the imposition of travel bans, which are often justified on the basis of secret evidence. For instance, joint urgent appeals have been sent to the Government of Israel regarding a travel ban imposed on Shawan Jabarin, Executive Director of *Al-Haq*, a human rights NGO.[10]

64. Following his meeting with Mr. Jabarin during his visit, the Special Rapporteur extended an invitation to him to participate in an event at the nineteenth session of the Human Rights Council, which enabled Mr. Jabarin to appeal to the High Court of Israel regarding his travel ban. On 22 February 2012, the State Prosecutor approved a "temporary exception" to the ban to allow Mr. Jabarin to travel to Geneva, albeit with strict conditions. The Special Rapporteur regrets that upon his return to the West Bank on 1 March 2012, the travel ban has been reinstated for an indefinite period.

65. The Special Rapporteur urges the Israeli authorities to lift the travel ban against Mr. Jabarin altogether and carefully review the necessity of travel restrictions imposed on other human rights defenders and journalists so as to enable them to exercise their right to freedom of expression. In the light of the disturbing information that travel bans are justified on the basis of secret evidence, he would like to emphasize that any travel

[10] A/HRC/7/14/Add.1, paras.348-350; A/HRC/14/23/Add.1, paras.1287-1296.

restriction imposed on an individual on the grounds of national security must allow the affected individual the opportunity to challenge the justifications for applying the restrictions, including the evidence supporting it, in a timely and open process.

F. Attacks against journalists, human rights defenders and bloggers

66. Local journalists in the occupied Palestinian territory face difficulties in undertaking their work not only as a result of their restrictions to movement as described earlier, but also due to arbitrary arrests and detention, physical attacks and raids of their offices by the security personnel of both Israel and the Palestinian Authority in the West Bank and the de facto authorities in Gaza.

67. In the West Bank, the Special Rapporteur is deeply concerned by the actions taken by the Palestinian Authority to arrest journalists and bloggers for critical comments regarding senior political officials, as noted in the preceding section. While the Special Rapporteur welcomes the announcement on 27 March 2012 of an annual press freedom prize recognizing exemplary journalism, he urges the Palestinian Authority to respect media freedom in practice.

68. Journalists in the West Bank are not only subjected to restrictions imposed by the Palestinian Authority, but by Israel, including arbitrary closure of radio and television stations, arbitrary arrests and detention, and attacks while covering demonstrations.

69. Recent cases of interference with Palestinian media include a raid by Israeli security forces on 2 April 2012 of a Palestinian radio, television and online media network established by Al-Quds University in East Jerusalem, when equipment and personal files were confiscated and two employees arrested. Similarly, Israeli security forces carried out night raids on 29 February 2012 of two Palestinian television stations in Ramallah and Al-Bireh, and confiscated broadcasting equipment, over 20 computers, two servers, hard drives containing the channel's archives and physical administrative and financial files. The Special Rapporteur expresses concern that such action may constitute an attempt by Israel to prevent the establishment of free and independent Palestinian media in occupied Palestinian territory. He urges the Government of Israel to refrain from such arbitrary interferences and return any seized equipment without any undue delay.

70. The Special Rapporteur also expresses deep concern over arbitrary arrests of journalists by Israeli security forces, including the recent arrest of Mohammad Anwar Muna on 3 April 2012 in Nablus. He notes with concern that journalists are among those held in administrative detention by the Israeli authorities.

71. Furthermore, the Special Rapporteur is concerned by reports of deliberate attacks against Palestinian, Israeli and foreign journalists covering demonstrations in the West Bank by the Israeli security forces. He would like to remind the Government of Israel to allow journalists to perform their functions to monitor and report on demonstrations, and to investigate all allegations of attacks by the Israeli security forces and to bring those responsible to account to prevent impunity.

72. In Gaza, journalists, bloggers and human rights defenders face restrictions on monitoring, documenting and reporting freely on matters such as human rights violations committed by the de facto authorities and calls for Palestinian unity. He has also been informed of cases of attacks against journalists, such as confiscation of their cameras and equipment while covering demonstrations, which in some cases are followed by raids, arrests and beatings, including torture allegedly. For example, following a public assembly in support of Palestinian unity, the security personnel of the de facto authorities raided the offices of Reuters, destroyed equipment, beat two employees and confiscated a camera (see report of the United Nations High Commissioner for Human Rights, A/HRC/19/20,

para. 14). Journalists who are detained or summoned for an interview with the internal security apparatus are often allegedly coerced to sign a document to refrain from acts of incitement against the authorities (ibid.). These forms of harassment have an intimidating effect and constitute a clear breach of article 27 of the Palestinian Basic Law.

73. Additionally, the Special Rapporteur notes that journalists working for local news agencies in Gaza are at particular risk of such forms of harassment and avoid reporting on human rights violations for fear of being summoned or penalized by the Government Press Office of the de facto authorities. Hence, local journalists reportedly tend to make reference to reports or statements already published by human rights organizations to avoid being identified as a major source.

74. Furthermore, the ability of journalists to report freely in Gaza has been threatened by a new practice adopted by the de facto authorities requiring foreign journalists to name a local contact in order to enter Gaza. The Special Rapporteur has been informed by representatives of the de facto authorities that such a requirement has been introduced for security reasons, following the death in April 2011 of an Italian activist, Vittorio Arrigoni. However, the Special Rapporteur is deeply concerned that such practice encourages visiting journalists to avoid reporting on sensitive issues and to apply self-censorship, as the named local may be placed at risk of reprisals.

75. The Special Rapporteur urges the de facto authorities in Gaza to ensure that both local and foreign journalists can carry out their legitimate work without intimidation, harassment and interference by officials from the Internal Security Agency and the General Intelligence Service. This includes halting the practice of short-term detentions; abolishing the requirement for foreign journalists to name a local contact in Gaza; and creating an atmosphere of openness towards criticism.

G. Restrictions on the right to peaceful assembly

76. Peaceful assemblies and demonstrations constitute a means for individuals to publicly express their opinions or to raise legitimate concerns and grievances. As such, undue restrictions on the right to freedom of assembly may also constitute violations of the right to freedom of opinion and expression.

77. In the West Bank, regular demonstrations have been taking place to express grievances against the practices of occupation by Israel in areas under the security control of the Israel Defense Forces (IDF). In such areas, IDF Order No. 101 Regarding Prohibition of Incitement and Hostile Propaganda Actions, also known as Military Order 101, has been used to restrict Palestinians' rights to freedom of expression and assembly.

78. Military Order 101, issued in August 1967 by the then Officer Commanding of the Central Command and Commander of IDF in the West Bank, criminalizes political expression and activities, including organizing and participating in protests; taking part in assemblies or vigils; holding, waving, or displaying flags or other political symbols; and printing and distributing any material "having a political significance". Any breach of the order is punishable by 10 years of imprisonment and/or a fine. One of the main problems with the order is the sweeping prohibition of expression deemed to be "political", which is vague and subject to interpretation. Additionally, the use of "required degree of force" to enforce the order is permitted, which leaves considerable room for discretion and the potential for excessive use of force.

79. The Special Rapporteur is deeply concerned by the IDF practice of preventing peaceful demonstrations from taking place by stopping demonstrators gathering by setting up temporary checkpoints prior to scheduled demonstrations and declaring the area a closed military zone. As a consequence, anyone who enters the area despite the military closure is

considered to have violated Military Order 101. Further, protesters are frequently dispersed by IDF using crowd control methods, even though the demonstrations are peaceful. The Special Rapporteur also expresses concern that IDF allegedly intimidate and collectively punish villagers of the site of demonstrations through night raids, using sound or gas bombs aimed at villagers' houses and declaring an entire village a closed military zone.

80. During his mission on 9 December 2011, the Special Rapporteur observed one demonstration in the village of Nabi Saleh in the West Bank. Since 2009, Palestinian, Israeli and international human rights defenders have been peacefully demonstrating against the construction of illegal Israeli settlements and the obstruction of access to Eing al-Qaws spring, which has been used by residents of Nabi Saleh for farming and recreational purposes. Despite the restraining effect that his presence at the site may have had on the large contingent of IDF forces, who withdrew from the main road leading to the village shortly after his arrival, the Special Rapporteur noted the use of tear gas and was informed of a young man who had been injured while he was in a meeting with the villagers in another area. The Special Rapporteur enquired about the fate of the demonstrator with the crew of an ambulance as he was passing the gate of a nearby checkpoint, and was informed that he had already been taken away for medical attention. The next day, the Special Rapporteur was informed that the young man, by the name of Mustafa Tamimi, had died in hospital as a result of his injuries caused by a tear gas canister fired from a short range directly into his face.

81. The Special Rapporteur is alarmed by the use of disproportionate and excessive use of force by the Israeli security forces to repress peaceful protests, including the use of tear gas, rubber-coated metal bullets and stun-grenades. He notes that the Secretary-General has also expressed concern regarding frequent and excessive use of force against unarmed demonstrators by Israeli security forces, including live ammunition and "tear gas canisters being fired as projectiles at protesters, resulting in severe injuries" (report of the Secretary-General, A/66/356, para. 20).

82. The Special Rapporteur raised such concerns during the meeting with Major General Mizrahi, Head of Central Command of IDF, including the specific case of Mr. Tamimi's death. He was informed that there are two ongoing investigations into Mr. Tamimi's death, one of which was to be concluded by 20 December 2011. The Special Rapporteur expressed his interest to receive the results of these investigations, which should also be made public, but regrets that he has not received such information.

83. In addition to the death of Mr. Tamimi, the Special Rapporteur has been informed that since 2003, a total of around 20 individuals have died while participating in demonstrations. The Special Rapporteur urges the Government of Israel to take effective measures to ensure prompt, impartial and effective investigations into every loss of life, which is essential to ensure accountability and to prevent impunity. He also emphasizes that any use of force against demonstrators or rioters must be strictly minimal and proportionate to the threat posed. For example, while the use of tear gas to disperse a crowd may be legitimate under certain circumstances, tear gas canisters should never be used at short range or aimed directly at protesters. While it has been alleged that IDF open-fire regulations prohibit such use, the Special Rapporteur has been informed of repeated infractions by members of IDF, who are rarely sanctioned or criminally held to account.

84. In the West Bank, the Special Rapporteur has also been informed of instances where security officials of the Palestinian Authority forcibly dispersed peaceful protests and journalists, photographers and human rights monitors were assaulted. The Special Rapporteur urges the Palestinian Authority to fully guarantee the rights of the Palestinian people to protest peacefully to express their views, including by investigating all attacks against protesters and journalists and holding perpetrators to account.

85. In Gaza, the Special Rapporteur is concerned by reports of excessive use of force by the security forces of the de facto authorities to disperse peaceful protests, as well as of arbitrary arrests and detention of protesters and journalists monitoring demonstrations. For instance, during a public assembly in support of Palestinian unity on 15 March 2011, at least 100 participants and observers were reportedly beaten, tents were destroyed and approximately 50 individuals were detained. Other smaller demonstrations in support of Palestinian unity during the following days were also allegedly violently dispersed.

86. Moreover, workshops and seminars in Gaza, including on human rights issues, are frequently disrupted by the security forces of the de facto authorities and prevented from taking place. For instance, the internal security personnel prevented the Palestinian Journalists' Syndicate from holding a workshop in commemoration of the International Day to End Impunity on 23 November 2011. The Special Rapporteur is also concerned by information received that organizers of events frequently receive phone calls from the internal security forces prior to the meeting telling them to cancel the event, or there will be "consequences".

87. In other instances, offices of human rights-oriented organizations have been closed by the police, including the offices of Sharek Youth Forum, a non-governmental organization funded by the United Nations Development Programme that seeks to create space for Palestinian youth to engage actively in the development of local communities. On 30 November 2010, the Attorney General of the de facto authorities ordered the offices to be closed on the grounds of "moral misconduct". The Special Rapporteur regrets that the closure order remains in place at the time of submission of the report.

88. Furthermore, the Special Rapporteur expresses deep concern over reports of individuals facing reprisals by the security forces of the de facto authorities as a result of participating in academic conferences or workshops outside of Gaza. These include arbitrary detention, summons for interrogation and, in some cases, threats and ill-treatment (A/HRC/19/20, para. 13).

89. The Special Rapporteur stresses that peaceful demonstrations and assemblies should not be viewed as a threat, and urges the Government of Israel, the Palestinian Authority, and the de facto authorities to promote a culture of tolerance of divergent and opposing views, which is essential for any democratic society.

H. Restrictions on the right to freedom of opinion and expression in East Jerusalem imposed by Israel

1. Loyalty to the State of Israel

90. Palestinians who were residing and physically present in East Jerusalem at the time of illegal annexation by Israel in 1967 (A/66/356, para. 34; Security Council resolution 478 (1980)) were designated permanent residents and issued with different identity documents to Palestinians living in other areas of the West Bank. However, following their election in 2006 to the Palestinian Legislative Council, the residency status of four Palestinian Members of Parliament, Mohammad Totah, Ahmad Attoun, Mohammad Abu Teir, and Khaled Abu Arafeh, was revoked due to their affiliation with a "hostile entity". On 8 December 2010, Mr. Abu Teir was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces, while Mr. Attoun was arrested in September 2011 and transferred on 7 December 2011.

91. The Special Rapporteur met with the two remaining members of the Palestinian Legislative Council who have been seeking refuge at the International Committee of the Red Cross, Mr. Totah and Mr. Abu Arafeh. He is disturbed by the news that they were

arrested by the Israeli police inside the premises of the Red Cross on 23 January 2012. As emphasized by the Secretary-General, the requirement of "loyalty to the State of Israel" is not only a violation of international humanitarian law, which prohibits the imposition of swearing "allegiance to the hostile power",[11] but also undermines the right of Palestinian residents in East Jerusalem to exercise their right to freedom of opinion and expression (see A/66/356).

92. The Special Rapporteur appeals to the Government of Israel to reinstate the residency status of the four members of the Palestinian Legislative Council and enable them to peacefully exercise their right to freedom of opinion and expression in East Jerusalem. He also calls upon the Israeli authorities to fully ensure that all Palestinians living in East Jerusalem are able to peacefully express dissent and criticism of Israel without fear of revocation of their residency status or other forms of reprisals.

2. Censorship of textbooks

93. According to the Declaration of Principles on Interim Self-Government Arrangements, the Palestinian Authority has jurisdiction over educational matters in East Jerusalem. However, the Special Rapporteur has been informed that sections of textbooks used in Palestinian schools have been censored by the Israeli Ministry of Education.

94. The Special Rapporteur emphasizes that Palestinians in East Jerusalem have the right to form their own opinions by following their own curriculum and determining the content of their textbooks. In addition, they should be able to maintain, express and impart their version of historical events.

3. Ban on cultural activities in East Jerusalem

95. Various Arab cultural events and activities in East Jerusalem have reportedly been prohibited by the Israeli authorities. For instance, in 2009, a number of cultural activities were prevented from taking place when Jerusalem was declared the Arab Capital of Culture as part of the Cultural Capitals Programme of the United Nations Educational, Scientific and Cultural Organization. Other examples were brought to the attention of the Special Rapporteur during his meeting with community leaders of Silwan, who informed him of various instances where cultural activities organized by the community members were banned by the Israeli authorities.

96. The Special Rapporteur calls on the Government of Israel to ensure that all cultural activities, which are an important element of the right to seek and share information, can be held without undue restrictions in East Jerusalem.

VI. Conclusions and recommendations

A. Government of Israel

97. **The Special Rapporteur is concerned by recent threats to openness and acceptance of divergent views in Israel as a result of an increasing emphasis on Israel as a Jewish State and growing intolerance of criticism regarding the policies and**

[11] Article 45 of the Regulations concerning the Laws and Customs of War on Land (Hague Regulations). Article 49 of the Fourth Geneva Convention also prohibits the forcible transfer of civilians of an occupied territory, except when necessary to ensure the security of the civilians involved.

practices of occupation. This has been manifested through a series of laws adopted by the members of the Knesset, including the prohibition of the commemoration of the Israeli independence day as a day of mourning; creation of additional, yet redundant, reporting obligations for Israeli human rights NGOs; prohibition of boycotts or calling for a boycott of Israeli products, including those produced in the settlements in the West Bank; and a six-fold increase of financial penalties for defamation.

98. **The Special Rapporteur calls upon the Members of Knesset to refrain from adopting laws that are inconsistent with the obligations of Israel under international human rights law, including article 19 of the International Covenant on Civil and Political Rights. While the Supreme Court can rule such laws to be incompatible with Israeli Basic Laws, the proposal and adoption of restrictive laws generates a climate of self-censorship. He would also like to underscore that all branches of the State – executive, legislative and judicial – and other public or Governmental bodies, at whatever level, are in a position to engage the responsibility of Israel for any actions taken in contravention of international norms and standards on the right to freedom of opinion and expression.**

99. **As recommended by various United Nations treaty bodies, the Basic Law on Human Dignity and Liberty should be amended to include principles of non-discrimination and equality and the right to freedom of opinion and expression.**

100. **The Special Rapporteur also recommends that the Government amend or repeal the vaguely worded provisions in the Penal Code, as highlighted in Chapter IV, section A.**

101. **The Special Rapporteur recommends that the post of Chief Censor be abolished in Israel, and that restrictions on the right to freedom of expression on the grounds of national security be prescribed by law. Such law must be accessible, unambiguous, drawn narrowly and with precision, and justified as being necessary and the least restrictive means available to protect a specific and legitimate national security interest. The law should also provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of a particular restriction by an independent court.**

102. **The right of individuals in the West Bank to express themselves through peaceful assemblies must be fully respected by the Israeli Security Forces. The Special Rapporteur urges the Government of Israel to repeal Military Order 101, and to ensure that there is no excessive use of force against peaceful protesters. Every injury or death resulting from the use of force by the Israeli security forces must be swiftly investigated and the individual responsible held accountable.**

103. **The Special Rapporteur calls upon the Government of Israel to ensure that all journalists in the West Bank, including East Jerusalem, can perform their professional duties without undue interference. This includes halting the practice of arbitrary raids of and seizure of equipment from media offices, arbitrary arrests and detention of journalists, and deliberate attacks against journalists monitoring demonstrations. He urges the Israeli authorities to return all confiscated equipment without undue delay, release journalists who have been arbitrarily arrested or ensure that they are promptly brought before a court in accordance with international standards on the right to a fair trial, and investigate all attacks against journalists and bring perpetrators to account in order to prevent impunity.**

104. **The right to freedom of movement is crucial to the work of human rights defenders and journalists to access information and monitor, record and report on human rights violations and other matters of public interest. The Government of Israel has an obligation to justify the continued need for the imposition of travel bans**

on human rights defenders and journalists, including presentation of evidence to enable individuals to challenge bans in court.

105. **The Special Rapporteur calls upon the Government of Israel to ensure that Palestinian citizens of Israel can fully exercise their right to freedom of opinion and expression, including through their own media and language. The requirement of "loyalty to the State of Israel" in East Jerusalem is in clear violation of international law and undermines the right to freedom of opinion and expression and should thus be repealed.**

106. **The right to freedom of opinion and expression of Arab Knesset members, as with all individuals in Israel, should be fully respected.**

107. **The Special Rapporteur appeals to the Government of Israel to reinstate the residency status of the four members of the Palestinian Legislative Council and to enable them to peacefully exercise their right to freedom of opinion and expression in East Jerusalem. He also calls upon the Israeli authorities to fully ensure that all Palestinians living in East Jerusalem are able to peacefully express dissent and criticism of Israel without fear of revocation of their residency status or other forms of reprisals.**

108. **The Special Rapporteur calls upon the Government of Israel to refrain from interfering with the content of text books used in Palestinian schools in East Jerusalem. Moreover, he calls upon the Government of Israel to ensure that all cultural activities can be held without undue restrictions in East Jerusalem.**

B. Palestinian Authority

109. **While recognizing the difficulties in implementing legislative reforms due to the paralysis of the Palestinian Legislative Council, the Special Rapporteur urges the Palestinian Authority to revise the Press and Publications Law of 1995, in consultation with civil society representatives, for ratification by the President.**

110. **The Special Rapporteur calls upon the Palestinian Authority to decriminalize defamation. He also urges public officials to exercise a higher degree of tolerance for critical comments and refrain from filing defamation lawsuits.**

111. **The Special Rapporteur recommends that the Palestinian Authority halt the practice of detaining and interrogating individuals for legitimate criticism of public officials. He also appeals to the Palestinian Authority to ensure that the right to freedom of expression on the Internet is fully guaranteed. Moreover, measures should be taken to promote tolerance of diverse opinions.**

112. **The Special Rapporteur recommends that the Palestinian Authority facilitate and support the reform of the Palestinian Broadcasting Corporation into an independent institution.**

113. **The Special Rapporteur calls upon the Palestinian Authority to lift the ban on newspapers affiliated with the de facto authorities, and ensure that journalists working for such newspapers can freely undertake their work in the West Bank without fear of harassment or intimidation.**

114. **Peaceful demonstrations should be allowed to take place in the West Bank without undue restrictions.**

C. De facto authorities in Gaza

115. **The Special Rapporteur calls upon the de facto authorities to promote a culture of tolerance of divergent views, including criticisms, which is essential for any healthy society. To this end, he urges the de facto authorities to stop the practice of arbitrary arrests, detention and interrogation of individuals expressing critical views, as well as raids of offices, and interference with human rights related conferences and events.**

116. **The Special Rapporteur recommends that the de facto authorities lift the ban on newspapers affiliated with the Palestinian Authority and that journalists working for such newspapers can carry out their legitimate work in Gaza without any undue interference or harassment.**

117. **Peaceful assemblies and demonstrations should be allowed to take place in Gaza without undue interference and restrictions, as well as peaceful conferences and workshops.**

118. **The Special Rapporteur urges the de facto authorities in Gaza to ensure that both local and foreign journalists can carry out their legitimate work without intimidation, harassment and interference by officials from the Internal Security Agency. This includes halting the practice of short-term detention and abolishing the requirement for foreign journalists to name a local contact in Gaza.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik

Addendum

Mission to Israel and the Occupied Palestinian Territory* **

Summary

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context carried out a mission to Israel and the Occupied Palestinian Territory from 30 January to 12 February 2012. In the present report she presents her findings and recommendations regarding the protection and promotion of the right to adequate housing in Israel and in the Occupied Palestinian Territory.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Arabic only.

** The term Occupied Palestinian Territory, used during the visit of the Special Rapporteur, is being reviewed pursuant to the adoption of General Assembly resolution 67/19.

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Annex

[Arabic and English only]

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Israel and to the Occupied Palestinian Territory (30 January–12 February 2012)

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I. Introduction

1. From 30 January to 12 February 2012, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, undertook an official country visit to Israel and the Occupied Palestinian Territory (OPT). The purpose of the mission was to assess the situation of the right to housing within Israel and in the OPT.

2. The Special Rapporteur expresses her gratitude to the Government of Israel and the Palestinian National Authority for the invitation and the support provided for her mission. She also thanks the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory for its logistical support for her work.

3. During her visit, the Special Rapporteur met with officials and representatives of the Government of Israel and the Palestinian National Authority, international agencies and non-governmental organizations in Israel and in the OPT. In Israel, she visited Jerusalem, Tel Aviv, Jaffa, Haifa, Akko, Sderot, Be'er Sheva and different villages in the Negev and Galilee. In the OPT, she visited East Jerusalem, Ramallah, Bethlehem, Hebron, communities in the Jordan Valley and the Gaza Strip. In her visits to Israeli and Palestinian communities, she met with local residents and saw their housing conditions. The Special Rapporteur thanks all those who met with her and shared information for the preparation of the present report. She is particularly grateful to all those who received her in their homes and communities.

4. The report is divided into three sections. The first describes the main findings of the Special Rapporteur's visit to Israel. The second section describes the findings relating to the OPT. The final section contains conclusions and recommendations.

II. Israel

5. Since the establishment of the State of Israel, adequate housing has been at the center of the Government strategy to absorb immigrants and refugees in order to establish a home for the Jewish community. Israel received successive immigration waves from different regions of the world and was relatively successful in quickly accommodating them in newly developed and expanded urban and rural areas. During the initial decades, the State acted as a major provider of public housing. However, since the 1980s—with a small interruption in the mid-1990s when approximately 500,000 families from the former Soviet Union immigrated to Israel—this approach has changed. Mortgage subsidies have reduced the direct public involvement in the housing sector.

6. The combination of subsidized mortgages policies with few rental options under an unregulated market has led to an exponential increase in housing prices. In 2011, large public demonstrations in Israeli cities underlined the public frustration with the rise in the cost of living, including the lack of alternatives for affordable housing, triggering a review of relevant laws and policies.

7. In addition to contributing to the affordability crisis that affects middle- and low-income quintiles of the overall Israeli population, housing laws and policies appear to have continuously failed to protect and assist Palestinian citizens of Israel (minorities representing 20 per cent of the population, also referred to as "Arab Israelis", which include Muslims, Christians, Druze and Bedouins). For example, tenure insecurity, overcrowding, evictions and demolitions are often reported among these groups.

A. Legal framework

8. Israel is party to six core international human rights treaties, including, inter alia, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

9. Israel has no formal constitution, but has adopted a series of Basic Laws that guarantee a number of fundamental rights.[1] The Basic Laws do not explicitly protect economic and social rights, such as the rights to adequate housing or access to water, which is an issue that has been the subject of ongoing public debate.[2] Specifically, the right to adequate housing is not explicitly recognized in any Israeli law. Internal procedures of the Ministry of Construction and Housing are used to regulate the provision of public housing and housing assistance. Additionally, the Basic Law: Human Dignity and Liberty does not explicitly guarantee equality and the prohibition of discrimination.

10. The Basic Law: Israel Lands establishes the principle of national ownership of the land (sect. 1). Currently, 93 per cent of Israel lands are publicly owned and can only be leased, not sold. They are managed by the Israel Land Administration. The Israel Land Council, a body comprised of representatives of Government ministries and of the Jewish National Fund, determines the policy of the Israel Land Administration.[3]

11. Following the creation of the State of Israel a series of laws were adopted regarding ownership of land, regulating the acquisition and management of private land and amending previous laws, notably from the Ottoman and British mandate periods. A number of these laws, as described below, disproportionally affected the Palestinian population.[4]

B. Housing affordability and adequacy

12. The mass construction of public housing under the framework of a planned development strategy was fundamental to the relative success of Israel in absorbing the successive waves of Jewish immigration. In the late 1960s, 206,000 units of public housing were in place.[5] Various housing schemes were associated with the creation and expansion of development towns and immigrant neighbourhoods, such as different packages of subsidies and infrastructure projects.

13. Over the initial decades, the State continued to play a central role in providing indirect support for home ownership, particularly through facilitating infrastructure for new residential developments and subsidized credit for home buyers. However, in the mid-

[1] Common core document submitted by Israel (HRI/CORE/ISR/2008), para. 109.

[2] The Association for Civil Rights in Israel (ACRI), Proposed Basic Law: Social Rights (November 2011), available from www.acri.org.il/en/wp-content/uploads/2012/01/social-rights-bill-ENG.pdf. See also The Association for Community Empowerment (YEDID), "YEDID presents a Basic Law of Social Rights to the Trachtenberg Committee", available from www.yedid.org.il/?id=4395.

[3] See www.mmi.gov.il/envelope/indexeng.asp?page=/static/eng/f_general.html.

[4] Examples include: the Absentees' Property Law, 5710-1950 and other related legislation; the Land (Acquisition for Public Purposes) Ordinance, enacted in 1943 during the British mandate, and amendments; the State Property Law, 5711-1951; the Prescription Law, 5718-1958, which modified the application of the Ottoman Land Code; the National Parks and Nature Reserves Law, 5723-1963; the Planning and Building Law, 5725-1965; the Land (Settlement of Title) Ordinance; the Land Law, 5729-1969; and the Antiquities Law, 5738-1978.

[5] ACRI, "Real estate or rights, housing rights and Government policy in Israel" (ACRI, 2008), p. 12.

1990s, a sharp policy shift took place, with a clear reduction of State involvement in providing housing support; the sale of public housing property; and an increasing emphasis on stimulus to enable private housing markets.

14. The strong emphasis on the promotion of home ownership through subsidized mortgages appears to have provoked a distortion in the housing market and contributed to a rise in inequality, as housing price increases have been disproportionally high for the poorest. For example, between 1993 and 1998, it was estimated that 44 per cent of households in Israel purchased a housing unit and the housing price index rose by 90 per cent. The price increase was faster and higher in the lower submarket range (88 per cent) than in the higher submarket range (51 per cent). For the lower wealth quintiles, the rise in housing prices led to an increase in household expenses for housing, while for the upper wealth quintiles it led to a decrease. The rise in real estate prices also seriously affected the rental market.[6]

15. The Special Rapporteur met with various representatives of civil society involved in the 2011 demonstrations, who emphasized that adequate housing had become practically unaffordable for too many Israelis, especially for young people and marginalized groups. Moreover, they stated that in the few cases housing support options were available, those were located in remote areas offering limited work opportunities. The Special Rapporteur also met with Government officials who described initiatives to assess public policies and devise new strategies to improve access to adequate housing in response to the protesters. Authorities indicated that there were prospects of increased budget support, but emphasized that the limited expansion of housing was partially related to stringent planning rules.

16. The number of households in low-rent publicly owned dwellings has fallen dramatically over the last 10 years.[7] The construction of new public housing units, except for the elderly, has all but stopped and the stock has shrunk to approximately 66,000 units,[8] mostly concentrated in the periphery and deprived areas. Moreover, in 1998, the Government started selling public apartments to long-time residents at discounted rates. The income generated through the sales was not used in the replenishment of the public housing stock (contradicting the law regulating this process).[9] This reduction seriously affected the capacity to assist the poorest groups of the population.

17. In this context, rental assistance programmes become the main alternative for the low-income groups. However, public rental assistance initiatives have also been reduced and rent assistance values have not kept up with the drastic rise in rent prices. Moreover, private rental contracts are governed only by general legislation and offer almost no protection as regards legal security of tenure.[10]

18. Additionally, the Special Rapporteur was informed that development projects implemented through new public tenders often do not make provision for affordable or public housing. Furthermore, only in 2009 were the laws amended to obligate the allocation

[6] See G. Ben Shitreet and D. Nahshon-Sharon, *Housing Policy in Israel* (Jerusalem, The Center for Social Policy Research in Israel, 2003) (in Hebrew only).

[7] P. Hemmings, "How to improve the economic policy framework for the housing market in Israel", Organization for Economic Co-operation and Development (OECD) Economics Department Working Paper No. 912 (2011), p. 10.

[8] ACRI, information submitted to the Committee on Economic, Social and Cultural Rights for consideration during the compilation of the list of issues on the third periodic report of Israel (October 2010), p. 9.

[9] ACRI, "Real estate or rights", p. 12.

[10] Ibid., pp. 3 and 11.

of portions of publicly tendered land to affordable housing, but this was allegedly not fully implemented.[11]

19. In response to some of these claims, Government authorities announced an increase in the support for rental assistance and additional initiatives to accelerate the development of residential units accessible to low-income groups.

20. The Special Rapporteur also received complaints regarding inadequate alternatives to public housing, the lack of transparency in the selection process, and deficiencies in criteria for eligibility for housing support. The Organization for Economic Co-operation and Development also underlined the inadequacy of the various complex point systems used in public housing assignments and rent and mortgage support.[12] The use of criteria such as number of years of marriage, number of children and number of years of military service seems to be ineffective in targeting the poorest groups and particularly reduces the eligibility of minorities, youth and single persons to obtain support.

21. The precarious housing situation of vulnerable groups excluded from all assistance schemes is an issue of grave concern that was also brought to the Special Rapporteur's attention. In particular, she received information concerning asylum seekers and refugees who are denied work permits and access to health and other basic services and find themselves in a very precarious situation. According to the information received, many such persons are homeless for long periods or live in extremely precarious conditions. In a number of cases their health can be at risk, as they often lack warm clothing to protect them from the cold and suffer from poor nutrition.

22. Another element that appears to contribute to the inadequacy of housing support policies is a disregard for specific social and cultural patterns of different groups by planners. The strict land and planning regime appears to have produced not only the clear exclusion of Palestinian groups, as detailed below, but has also affected some Jewish groups. The distribution of migrant waves in peripheral areas of Israel and the adoption of Northern/Western models of urbanization seem to have contributed to the marginalization of non-Western Jewish groups, creating political and economic gaps between Ashkenazi Jewish communities and all other groups. Historically, for example, research has indicated that members of the Ashkenazi communities benefited from better valued proprieties and received more land per capita than Sephardim (Mizrahi)-dominated localities.[13]

C. Palestinian minorities in Israel

23. Concerns about the prevalent social economic exclusion of Palestinian minorities living in Israel and the persistence of discriminatory laws and practices have already been expressed by international human rights mechanisms.[14] The persistence of these disadvantages over decades is reflected in recurrent reports on violations of the right to adequate housing of Palestinian minorities living in Israel.

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[11] ACRI, "What happened to us? How did Israel become a country impossible to live in with dignity?", second page. Available from www.acri.org.il/en/wp-content/uploads/2011/08/ACRI-what-happened-ENG-web.pdf.

[12] Hemmings, "How to improve", p. 23.

[13] A. Kedar and O. Yiftachel. "Land regime and social relations in Israel", in *Realizing Property Right*s, Swiss Human Rights Book, vol. 1, H. de Soto and F. Cheneval, eds. (Zurich, Rüffer & Rub, 2006), pp. 134-135.

[14] See, for example, the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/14-16) and of the Committee on Economic, Social and Cultural Rights (E/C.12/ISR/CO/3).

24. Throughout her visit to Galilee, the Negev (the situation of Bedouins is addressed below) and Jaffa and in meetings in Tel Aviv, the Special Rapporteur was informed about expropriation of Palestinian lands; inadequate city planning and non-issuance of construction permits, often leading to irregular construction and, in some cases, to eviction and demolition orders due to an absence of construction permits; inadequate financial allocations to address the housing needs of minorities in Israel; and the failure to adopt targeted and culturally adequate solutions to assist minorities.

25. The control by the State of 93 per cent of the land in Israel (achieved in part through the expropriation and acquisition of lands originally owned by displaced Palestinians) deeply affected the capacity of Palestinian communities living inside Israel to develop or expand.[15] The official role of Jewish organizations, such as the Jewish National Fund and the Jewish Agency, in the formal system of planning and development of Israel contributed further to the exclusion of all non-Jewish groups, who were often unable to directly benefit from development initiatives carried out by these agents.

26. The contrast between the effectiveness of planners in establishing new Jewish cities and villages and their failure in promoting the expansion or development of Palestinian areas is therefore stark: it is reported that since 1948, the State has established more than 700 new Jewish communities and not a single minority community (excepting towns established for promoting the forced urbanization of Bedouins).[16]

27. As indicated by various studies, not only have no new localities been developed to accommodate non-Jewish citizens, but a significant number of villages hosting Palestinian minorities remain unplanned or have outdated master plans. As all construction, including for the expansion of existing homes, requires a permit to build that is granted only after planning is concluded, the absence of planning often implies the prohibition of further construction to accommodate the natural growth of populations.

28. In this sense, decades of limited or inadequate planning has resulted in the proliferation of irregular constructions in communities hosting Palestinian minorities inside Israel. This places many minority families under great pressure, as building without a permit constitutes a criminal offence and structures built irregularly are often designated for demolition.

29. In Galilee, for example, the Special Rapporteur visited the village of Majd el-Krum, where residents informed her that despite the population having almost tripled over the last three decades, no expansion of the city municipal boundary had been authorized. In this context, most families had built and expanded housing units without official authorization. Some have had their newly built units demolished, while others have received demolition orders. Residents were particularly frustrated as many owned land in areas outside the existing municipal boundary where zoning restrictions had prohibited residential use. Residents pointed out that newer neighbouring villages with Jewish majorities enjoyed better infrastructure and had expanded over the same period of time.

30. In the old city of Akko, Palestinian citizens of Israel who live as protected renters in areas under public custody informed the Special Rapporteur about the impact of the ongoing process of gentrification. Most property in the area is under the control of the Israel Land Administration, which was in the process of privatizing some areas and developing its touristic potential. Residents claimed they were not consulted in this planning process and informed the Special Rapporteur that they were unable to afford to

[15] Kedar and Yiftachel, "Land regime", pp. 129-146.

[16] Oren Yiftachel, "Ghetto citizenship: Palestinian Arabs in Israel", in N. Rouhana and A. Sabagh, eds., *Israel and the Palestinians – Key Terms* (Haifa, Mada Center for Applied Research, 2009), p. 59.

buy the property they currently lived in or cover the costs required for the maintenance of the historic site; therefore they were placed under permanent threat of eviction. The Special Rapporteur observed the same phenomenon in Jaffa, where she visited another group of Palestinian residents under threat of eviction.

31. Uneven public budget allocations are also reported to further contribute to the deterioration of housing conditions of minorities. For example, an analysis of the Israeli State budget for 2012 showed that only 4 per cent of total allocations for city planning reached minority cities and that 99 per cent of the agriculture support was dedicated to Jewish farmers and associations.[17] Half of all budget allocations to assist housing in minority localities are earmarked for the Negev, where the Government pursues a strategy of urbanization of rural Bedouins.[18]

D. Bedouin communities in the Negev

32. Among Palestinian minorities, Bedouin inhabiting the Negev face one of the most severe problems of inadequate housing conditions and insecurity of tenure within Israel.

33. Bedouins have had a presence in the region for hundreds of years.[19] While their pastoral activities required travelling, their movements occurred around historic villages, privately owned plots and collective pasture lands. Estimates indicate that in 1948, prior to the creation of Israel, between 60,000 and 90,000 Bedouins inhabited the Negev.[20] Since the 1948 war, the groups that remained have been progressively concentrated in the Siyag area in the eastern part of the Negev.[21]

34. Since 1948, Israel has refused to recognize the land ownership of most Bedouin groups or the existence of many Bedouin villages. Israel describes the areas occupied by Bedouins as "the Bedouin dispersal", claiming that at least 40 per cent of the Bedouin communities live as squatters in "illegal homes" spread over State property.[22] The Government also affirms that the rate of population growth of the Negev Bedouin is the highest in the world, which, together with their dispersion over an extensive area, prevents the State from offering public services.

35. Currently, about 180,000 Bedouins live in the Negev. For decades, the State has promoted the urbanization of this population in planned cities, resulting in approximately 100,000 Bedouins inhabiting seven Government-planned cities. The remaining live either in one of the over 40 "unrecognized villages" or one of the 10 villages that were recently recognized by the State.[23] Israel has indicated that it will continue to invest in the development of planned cities that could host Bedouin families that agree to abandon legal claims for territory and settle in those urban areas.

[17] Mossawa Center, "Analysis of the Government State budget 2012: key statistics in land, housing and planning concerning the Arab minority in Israel", first and second pages. Available from www.mossawa.org/default.php?lng=3&pg=9&dp=2&fl=3.

[18] Ibid., first page.

[19] See Negev Coexistence Forum for Civil Equality et al., "The Bedouin-Arabs in the Negev-Naqab Desert in Israel" (2009).

[20] Ibid., p. 2.

[21] Ibid.

[22] Israel Land Administration, "Bedouin in the Negev", background note, first page. Available from www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf.

[23] Negev Coexistence Forum for Civil Equality, "Israel's violation of the [International] Convention on the Elimination of All Forms of Racial Discrimination with regard to the Negev Bedouin" (2012), p. 3.

36. During her mission, the Special Rapporteur was especially concerned to note the failure of the State to integrate the unrecognized villages, even those located in the outskirts of major urban areas. The unrecognized village of Assir, for example, has a population of about 2,300 living just outside the city of Be'er Sheva (the seventh largest city in Israel). While residents are counted in the city census, the village remains "illegal" for official purposes and has never been provided with basic public services or infrastructure, including water and sanitation connections.

37. The Special Rapporteur visited the unrecognized village of Al-Arakib and met with local residents who had received eviction orders and already had their homes and public buildings demolished on various occasions in previous years. The village leader presented evidence of the longstanding presence of his community in the area, including copies of documentation on land ownership dating from the Ottoman period. However, despite legal action taken by various civil society actors, demolitions are reportedly continuing.

38. On the other hand, the housing situation of Bedouin living in Government-planned towns is also a concern. The seven planned towns reportedly evolved into pockets of deprivation, unemployment, dependency, crime and social tension.[24] Despite some State benefits, such as health care and child allowances, the precarious infrastructure and spatial isolation of these areas have greatly restricted opportunities for personal mobility or development, contributing to their impoverishment. The planned urban models, often inspired by Northern/Western cultural patterns, were also considered to be culturally inadequate vis-à-vis the Bedouin family structure and their rural economic vocation, further contributing to the deterioration of the socioeconomic environment.

39. During the mission, the Special Rapporteur met also with Government authorities conducting consultations on a new State plan for the unrecognized villages in the Negev (known as the Prawer Plan). The plan was adopted in September 2012 and the Government is currently discussing a legislative proposal to implement it.

40. Serious reservations to the Prawer Plan and the proposed legislation for its implementation were expressed by representatives of the Bedouin community, who indicated, for example, that: (a) the plan still does not recognize the right of the Bedouin to ownership of their ancestral land; (b) it would legitimize the displacement, dispossession and eviction of residents in various unrecognized villages; (c) it proposes insufficient and inadequate compensation; and (d) it would strip courts of their power of judicial review and possibility to intervene or protect citizens from unfair State land and planning measures. Civil society also presented an alternative proposal, with indications on how to regularize all unrecognized villages and better integrate them into the existing local infrastructure.

41. The Special Rapporteur notes that Bedouin communities, who self-identify and have also been recognized as indigenous peoples by international human rights mechanisms, present both in Israel and the OPT enjoy land claims based on longstanding land use and occupancy linked to their traditional livelihoods and distinct cultural identity. These claims must be respected by the State, as affirmed by many international human rights bodies and mechanisms.[25]

[24] O. Yiftachel, "Bedouin Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance", in D. Champagne and I. Abu-Saad, eds., *The Future of Indigenous Peoples: Strategies for Survival and Development* (Los Angeles, University of California Press, 2003), p. 35.

[25] See, for example, the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/13), para. 25, and of the Human Rights Committee (CCPR/C/ISR/CO/3), para. 24. See also the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/18/35/Add.1), annex VI.

III. Occupied Palestinian Territory

42. Over the last four plus decades of military occupation of the OPT, successive international reports and studies have underscored the pervasive human rights impact of the multiple restrictions placed on the expansion and development of Palestinian society. At the same time, the expanding presence of Israeli settlers in East Jerusalem and the West Bank have greatly altered the territory's landscape, draining natural resources and fragmenting the connections between pre-existing urban areas. Having undergone almost total physical and political isolation for the last five years, Gaza has suffered an extreme deterioration of its socioeconomic environment—more so than any other area in the territory.

A. Legal framework

43. Regarding the issue of the applicability of certain norms of international humanitarian law and human rights instruments in the OPT, the Special Rapporteur would like to refer to the advisory opinion of the International Court of Justice of 9 July 2004,[26] as well as, among others, the concluding observations of the Committee on the Elimination of Racial Discrimination,[27] the Committee on Economic, Social and Cultural Rights[28] and the Human Rights Committee.[29]

44. The obligations of Israel as occupying Power are defined by the pertinent provisions of humanitarian and customary international law, notably the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the Regulations concerning the Laws and Customs of War on Land (Hague Regulations), which are recognized as part of customary international law. The Special Rapporteur notes that the same international legal framework is also applicable to East Jerusalem, which under international law is considered occupied territory.[30]

45. In the present context, it is particularly relevant to recall that the occupying Power must generally respect the laws in force in the occupied territory and is prohibited from destroying property except to the extent needed to maintain orderly governance of the territory and for military necessity.[31] Additionally, humanitarian law prohibits, without exception, the transfer of the occupying Power's own civilian population into the territory it occupies.[32]

Administrative division of the occupied territory

46. In 1995, pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo Accords), a temporary administrative division of the West Bank into three zones, referred to as Areas A, B and C, was agreed upon in view of a phased transfer of power from Israeli military and civil administration to the Palestinian National

[26] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004*, pp. 171-181.
[27] CERD/C/304/Add.45, paras. 10-12, CERD/C/ISR/CO/13, para. 32, CERD/C/ISR/CO/14-16, para. 10.
[28] E/C.12/1/Add.69, paras. 11 and 12, E/C.12/1/Add.90, paras. 15 and 31, E/C.12/ISR/CO/3, para. 8.
[29] CCPR/CO/78/ISR, para. 11; CCPR/C/79/Add.93, para. 10; CCPR/C/ISR/CO/3, para. 5.
[30] See International Court of Justice, *Legal Consequences*, p. 167.
[31] Hague Regulations, art. 43, Fourth Geneva Convention, art. 53.
[32] Fourth Geneva Convention, art. 49.

Authority.[33] Area A comprises the major Palestinian cities, and both security and civil responsibilities are under the Palestinian National Authority. Area B corresponds to most Palestinian rural communities, and civil authority is under the Palestinian National Authority while security is shared with the Israeli authorities. In Area C Israel retains authority over law enforcement and control over the building and planning sphere.[34] Areas A and B make up roughly 38 per cent of the West Bank; Area C corresponds to approximately 62 percent of the West Bank.

47. The Oslo Accords (annex III, appendix 1, art. 27) specified the responsibilities of planning and zoning, which were eventually to be under the purview of the Palestinian National Authority. Although the Interim Agreement foresaw a gradual transfer of power and responsibility in the sphere of planning and zoning in Area C from the Israeli civil administration to the Palestinian National Authority, this transfer was frozen in 2000.[35]

48. In Area C of the West Bank, Jordanian planning law, as modified by an Israeli military order, is applied.[36] In East Jerusalem, Israeli planning laws have been applied since the unilateral annexation of the area and the expansion of its municipal boundaries in 1967.

49. In Gaza and in Areas A and B of the West Bank, with regards to planning, Jordanian laws as modified by the laws adopted by the Palestinian National Authority are generally applied. Additionally, it is noteworthy that the Palestinian National Authority has adopted the Amended Basic Law of 18 March 2003, which protects the right to property, specifying that property "may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling" (art. 21, para. 3). It also protects the right to housing and determines that "every citizen shall have the right to proper housing. The Palestinian National Authority shall secure housing for those who are without shelter" (art. 23).

B. East Jerusalem

50. In East Jerusalem, the Special Rapporteur received multiple complaints on issues concerning the Palestinian population, including discriminatory planning, limited access to public services, evictions and house demolitions. Municipal planning procedures appear to disproportionately restrict the expansion and consolidation of Palestinian neighborhoods in the city, while Israeli settlements have proliferated.

51. The Local Outline Plan–Jerusalem 2000, although not finalized or officially approved, is the master plan setting out the municipality's strategies up to 2020. This plan is the first to include both East and West Jerusalem. While it includes questions of planning and development in the Palestinian neighborhoods of the city, the Local Outline Plan does not plan for enough housing units in the Palestinian areas to sufficiently address current shortfalls or accommodate the projected growth in population. Further, the master plan identifies "Maintaining a solid Jewish majority in the city" as one of its main aims and adds

[33] See, inter alia, Office for the Coordination of Humanitarian Affairs, occupied Palestinian territory (OCHA-oPt), Humanitarian Factsheet on Area C of the West Bank (July 2011). Available from www.ochaopt.org/documents/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf.

[34] OCHA-oPt, Area C Humanitarian Response Plan Fact Sheet (August 2010), p. 1. Available from www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf.

[35] Ibid.

[36] OCHA-oPt, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*, Special Focus (December 2009), p. 5. Available from www.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf.

5 square kilometres for the expansion of Israeli settlements in East Jerusalem.[37] This policy of "demographic balance", a stated aim of official municipal planning documents, is discriminatory and thus violates human rights law (see CERD/C/ISR/CO/14-16, para. 25).

52. In addition, it was reported that municipal planning processes lacked transparency and community consultation.[38] In discussions with the Special Rapporteur, Israeli authorities claimed that participation of the Palestinian community was limited because they refused to engage in existing mechanisms as they consider participation would amount to the recognition of the illegal annexation of East Jerusalem by Israel.

53. The situation of the community of Al-Bustan illustrates the challenges posed by planning procedures, even when Palestinian communities attempt to engage with the authorities. There, 750 residents living in 88 homes, some of them predating 1967, are reportedly at risk of being displaced due to a plan by the Municipality of Jerusalem to turn the area into an archaeological park. The Special Rapporteur visited families in Al-Bustan that are being targeted by criminal and civil legal action. She was also shown an alternative urbanization plan prepared by the local leadership and told that that the alternative plan was dismissed by all competent authorities and that they had already exhausted all possible legal mechanisms to challenge the adoption and implementation of the plans of the municipality.

54. Currently, tens of thousands of Palestinians in East Jerusalem and throughout the OPT are estimated to be at risk of their homes being demolished due to unregulated building.[39] As the overall number of permits issued is grossly inadequate to meet the housing needs of Palestinians, many Palestinians have built without obtaining a permit. As a result, numerous homes or extensions to homes are considered illegal and thus the inhabitants are in danger of being subjected to eviction orders and the demolition of their houses. Although persons faced with an eviction can institute court proceedings to protect their legal rights, such proceedings have very little chance of success and were perceived as serving mainly to delay the eviction and demolition process.

55. On the first day of her mission, the Special Rapporteur visited precarious housing units that had been demolished that same morning in East Jerusalem. Throughout the occupied territory, eviction and demolitions often appear to be undertaken without provision for relief and relocation.

56. The Special Rapporteur also received information regarding deficiencies in basic infrastructure in East Jerusalem. The situation on the ground is characterized by a visible neglect of services and infrastructure, including deficient sanitation services and dilapidated sewage and drainage infrastructure.[40] Approximately 53 per cent of the Palestinian residents have no suitable legal connection to water networks.[41] According to an internal Jerusalem

[37] OCHA-oPt, *East Jerusalem: Key Humanitarian Concerns*, Special Focus (March 2011), p. 33.

[38] See also OCHA, *East Jerusalem: Key Humanitarian Concerns*, Special Focus (March 2011).

[39] See Al-Haq and The Women's Centre for Legal Aid and Counselling (WCLAC), "Alternative report on Israel to the pre-sessional working group of the Committee on Economic, Social and Cultural Rights, 22-26 November 2010", para. 6.13; Save the Children UK, *Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High Risk Areas of the Occupied Palestinian Territory* (2009); and WCLAC *Forced Evictions: Assessing the Impact on Palestinian Women in East Jerusalem* (Jerusalem, 2010).

[40] Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/66/364), para. 14.

[41] Ibid.

government report, 2 billion new sheqalim (NIS) would be required to bring the quality of the sewage infrastructure of East Jerusalem to the level existing in the west of the city.[42]

57. When asked by the Special Rapporteur about the reason for these deficiencies, municipal authorities alleged that adequate allocations were made to service Palestinian neighborhoods, but service provision was hampered by the hostility of the local population towards municipal service providers.

58. Another issue of concern is the situation of members of Palestinian communities of East Jerusalem who, due to the construction of the barrier, found themselves on the "West Bank side" of the barrier, although they are located within the boundaries of the municipality of Jerusalem. These communities, such as the Shuafat refugee camp, Dahiyat al-Barid, Ras Khamis and Kfar Aqab—which the Special Rapporteur visited—have been cut off from the municipality. Although they continue to pay municipal taxes, they no longer have access to the basic services to which they are entitled as Jerusalem residents (health care, education, etc.) and face increasing difficulties gaining access to Jerusalem, leading to ever-declining living conditions.

59. The Special Rapporteur also visited areas affected by the barrier in the West Bank. In the village of Al-Walaja, for example, the construction of the barrier will completely encircle the city, which would be connected to the rest of the West Bank by a tunnel. Residents explained that the construction of the barrier combined with the expansion of neighbouring settlements would also completely isolate the community from its agriculture land.

C. West Bank

1. Areas A and B

60. The administrative and physical fragmentation of the West Bank into three different areas severely hampers planning and the implementation of housing and urban policies at the local and regional levels.

61. In both Areas A and B of the West Bank, planning and building powers rest with the Palestinian National Authority.[43] However, as outlined above, the partial implementation of the Oslo Accords left the major portion of the non-urban areas of the West Bank, known as Area C, under Israeli control. Thus, local authorities in areas A and B have limited possibilities with respect to expanding urban areas, promoting inter-municipal integration and improving the connection of urban areas under their control with all surrounding areas, which hampers their ability to better respond to growing housing demands. The Palestinian National Authority also reported facing particular difficulties in providing adequate water and sanitation due to irregular access to water sources controlled by Israel, depleted infrastructure and the lack of space for waste management and disposal.

62. The Palestinian National Development Plan (2011-13) prioritizes the goals of increasing home ownership and addressing the housing needs of a growing population. The Strategic Plan for the Housing Sector (2011-2013)[44] was presented by authorities to the

[42] The Municipality of Jerusalem's November 2010 *Survey of Infrastructure in East Jerusalem* report, as cited by OCHA-oPT, indicates that NIS 1.9 billion is required to bring the level of infrastructure in East Jerusalem up to that of West Jerusalem. OCHA-oPt, *East Jerusalem*, p. 120, endnote 49.

[43] Bimkom – Planners for Planning Rights, *The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C* (2008), p. 21. Available from http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf.

[44] Developed pursuant to the resolution of the Council of Ministers issued at its session on 17 August 2009 and in accordance with the Sectoral and Cross-Sectoral Strategies Preparation Guidelines issued

Special Rapporteur but she was informed it was still pending comprehensive implementation. The Plan highlights that the housing deficit in West Bank and Gaza (to 2010) was estimated by the Palestinian Central Bureau of Statistics to be about 132,759 residential units. It identifies the Israeli occupation and the destruction of homes as challenges for the housing sector, but also lists multiple additional internal problems. These include: lack of monitoring capacity, weakness of the judicial authority in dealing with housing and real-estate disputes, the absence of a database on housing, lack of planning and zoning mechanisms and the absence of official budget lines for investment in the housing sector and the absence of a semi-public institution. The plan also indicates several initiatives to be further developed and pursued, including revising and reforming laws regulating the housing sector, investing in public and private partnerships, promoting public and private investment in housing and developing housing policies for people with low income.

63. The Special Rapporteur welcomes the adoption of the strategy, but expresses her serious concern regarding the lack of implementation. Given the serious impact of poverty among Palestinian communities, the Special Rapporteur was particularly concerned by the absence of any further strategy to promote access to land and housing for low-income families, or to upgrade the living conditions, including in Palestinian refugee camps.

64. On other hand, the Special Rapporteur also visited the Rawabi town construction project[45] near Ramallah and Bir Zeit, including a large residential housing construction project undertaken through a public-private partnership supported by international aid and a private investor.[46] A master plan has been drawn up for the residential and commercial urban development, including 5,000 housing units for middle-income persons that will house 25,000 residents.[47] Given the already described serious resource limitations of the Palestinian National Authority to fulfil its mandate, the Special Rapporteur was concerned to note that international donors and local authorities had decided to focus important public investments in a project targeted mostly at high and middle-income persons, without including any affordable housing for the numerous communities living in inadequate conditions.

2. Area C

65. It is estimated that some 150,000 Palestinians live in Area C, including 27,500 Bedouin and other herders,[48] two thirds of whom live in localities which are partly located in Areas A and B. According to the information received, since the occupation in 1967 the land made available to Palestinian communities living in Area C has been dramatically restricted through a variety of means.

66. Planning and all decisions on construction permit requests by Palestinians in Area C are made by the Civil Administration's Higher Planning Council, comprised exclusively of

by the Ministry of Planning and Administrative Development on August 24, 2009. (Palestinian National Authority, Ministry of Public Works and Housing, Strategic Plan for Developing the Housing Sector in Palestine (January 2010), p. 5).

[45] Initiated at the Palestine Investment Conference, held in Bethlehem, 21-23 May 2008. See *Investment Opportunities – Project and Concept Profiles* (2008), available from www.pipa.gov.ps/p_book.pdf.

[46] The project is being developed by the Bayti Real Estate Company, a joint undertaking of the Qatari Government-owned Qatari Diar and Ramallah-based Massar International. (Rawabi Newsletter, Winter Edition–2012, p. 2. Available from www.rawabi.ps/newsletter/2012/download/en/full.pdf).

[47] Rawabi Newsletter, p. 2.

[48] OCHA-oPt, Humanitarian Factsheet, first page.

Israeli officials.[49] Modifications to Jordanian law introduced by Israel in 1971 eliminated Palestinian community participation in the zoning of Area C.[50] Palestinian community members retained the possibility of presenting objections to a plan, although this is extremely limited in cases of plans for settlements, as will be seen below.[51]

67. Two types of plans can be applied to Palestinian villages in Area C: Special Partial Outline Plans prepared by the Israeli civil administration and the Regional Outline Plans from the British Mandate period.[52] Special Partial Outline Plans cover less than 1 per cent of Area C land; that land, in practice, is the only part of Area C where Palestinian construction is allowed and much of the area is built up already. Israeli special plans have been approved only for Palestinian communities—no Israeli settlement has a special plan.[53] Mandatory Regional Outline Plans are applied to those villages without Israeli special plans. Approved by the British Mandate government of Palestine in the 1940s, such plans designate most of Area C as an agricultural zone, and are no longer adequate to deal with current Palestinian planning needs.[54]

68. About 70 per cent of Area C has been allocated for Israeli settlements, military zones, nature reserves, "State land" and the Seam Zone around the barrier, so possibilities for Palestinians to build are restricted.55 In practice, as Palestinian construction is only permitted in approximately 1 per cent of Area C[56] many residents are forced to build without a permit to meet their housing needs, putting these persons at risk of home demolition and displacement.

69. The Special Rapporteur received information which indicated an increase in the number of demolitions of Palestinian constructions. It was reported that in 2011, a total of 622 Palestinian structures were demolished by Israeli authorities, resulting in 1,094 people displaced, almost double the number for 2010. Between January and June of 2012, 351 demolitions were carried out in Area C, further displacing 615 persons (330 of them children) and affecting over 1900 individuals.[57] The first half of 2012 saw a 20 per cent increase in the monthly average number of demolitions in the West Bank when compared to the same period in 2011, and a 70 per cent increase compared to 2010.[58]

70. Another issue brought to the Special Rapporteur's attention is the restriction on movement and access to water, land and basic services. The effect of such measures is particularly severe in the herding communities, such as the Bedouin, which are often located in remote areas, causing their displacement. Destruction of water infrastructure also causes displacement in Area C, where Israeli forces regularly take over or target for destruction cisterns, wells and springs used by Palestinians[59] or confiscate water tanks.[60]

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[49] Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation of the al-Rashaydeh Bedouin community in Fasayil al-Wusta, Occupied Palestinian Territory (June 2012), p. 3.

[50] OCHA-oPt, *Restricting Space*, pp. 2 and 5.

[51] Bimkom, *The Prohibited Zone*, p. 43.

[52] OCHA-oPt, *Restricting Space*, p. 8.

[53] Ibid., p. 9.

[54] Ibid., p. 10.

[55] Ibid., pp. 5-6.

[56] OCHA-oPT, Humanitarian Factsheet, first page.

[57] United Nations Relief and Works Agency, Demolitions in 2012. Available from www.unrwa.org/etemplate.php?id=1287.

[58] OCHA-oPt, *The Monthly Humanitarian Monitor* (July 2012), p. 4. Available from www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_07_27_english.pdf.

[59] See OCHA-oPt, *How Dispossession Happens: The Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers*, Special Focus (March 2012); joint parallel report

71. The Special Rapporteur visited the al-Jahalin Bedouin community of Khan al-Ahmar in Area C, which is under the direct control of the Israeli authorities. Having previously been subject to numerous demolitions, the community is now at risk of displacement as a whole, due to its location on what is considered public or State land.[61] In the framework of an approved master plan ordering the expulsion of this community, an Israeli Civil Administration delegation visited the herding community in November 2011 to inform the people about their imminent transfer from the Ma'ale Adumim area.[62] According to information received by the Special Rapporteur during her visit, this plan was prepared and approved without any consultation or participation of the affected community. The only school in the area, which was built by the community itself, is subject to a demolition order. Although during the time of the visit community leaders were told by authorities that this school would not be demolished in the near future, the demolition order had not yet been repealed.

72. In the Jordan valley, the Special Rapporteur also visited the Al-Hadidiya community and the village of Al-Aqaba. A re-zoning that transformed their living space and the surrounding areas into a dedicated military and settlement area resulted in these communities being deprived of indiscriminate access and full exercise of their in rem usufruct and use rights, for example, access to grazing lands and sources of water, with respect to related and nearby agricultural land—a situation that threatens their livelihoods. The settlers have closed off the land, leaving access only through a gate and allowing the community to enter only at certain hours and for short periods of time. The members of this community are living under extremely harsh conditions, with no access to the most basic services.

D. Settlement activity

73. Throughout her visit the Special Rapporteur heard numerous complaints of discriminatory treatment by Israel in the implementation of the right to adequate housing of the Palestinian community in the OPT, based, to a great extent, on the differential and privileged treatment that is allegedly accorded to settlers in the territory.

74. The Special Rapporteur received information according to which: land with restrictions against use by Palestinians is made available for building and agricultural use by settlers; plans and planning processes involving settlers are, in practice, prepared with the participation of, and following meaningful consultation processes with, the settlers and approved within reasonable periods; the attribution, directly or indirectly, of substantial subsidies and incentives by the Government for settlers to build on and exploit the land in the OPT (and, particularly in the last few years, to expand existing settlements); the provision of ample infrastructure for the exclusive use of settlers, who are often living in areas close to Palestinians who have no access to the infrastructure and live in extremely difficult conditions.

submitted by Al-Haq, Addameer Prisoner Support and Human Rights Association, BADIL Resource Center for Palestinian Residency and Refugee Rights and WCLAC to the Committee on the Elimination of Racial Discrimination at its eightieth session, paras. 97–103.

[60] OCHA-oPt, *The Monthly Humanitarian Monitor*, p. 4.

[61] Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation of the Jahalin Bedouin community in Khan al-Ahmar, Occupied Palestinian Territory (June 2012), pp. 2-3.

[62] Israeli Committee against Housing Demolitions, *Nowhere Left to Go: Arab al-Jahalin Bedouin Ethnic Displacement* (2011), third page.

75. Additionally, it was alleged that, in stark contrast to the manner in which the authorities dealt with Palestinians found to be in contravention of building laws, illegal construction by settlers often leads to alternative solutions being sought and even, in some cases, the non-execution of eviction orders.

76. Settlement activities are ongoing, and the Government of Israel reportedly continues to plan for the expansion of settlements in the West Bank as well as East Jerusalem.[63] While there have been individual decisions to dismantle some settlement "outposts", others have been formalized and thus have become legalized under Israeli, if not international, law.

77. According to the information received, the nature of the support provided by the Government to the settlements has varied over the years, with a temporary freeze being imposed on some types in 2010. However, such changes do not seem to have had any impact in reducing the settler population in the OPT or halting expansion and construction. A recent report by the Secretary-General notes that plans for construction in settlements in East Jerusalem continue to be submitted and approved and that the settler population (excluding that of East Jerusalem) has over the past decade grown at an average yearly rate of 5.3 per cent, compared to 1.8 percent in the Israeli population as whole (A/67/375, para. 7). In a recent 12-month period alone the settler population increased by 15,579 persons (ibid.).

1. West Bank

78. As at 2008, there were 121 official settlements and 100 outposts in Area C. In contrast, no new Palestinian cities had been created since 1967.[64]

79. In Area C, while little zoning and planning has been carried out for Palestinian communities, the Israeli Civil Administration has developed and approved detailed plans for almost all Israeli settlements in the West Bank, and Israeli settlers are able to participate in the planning process.

80. The 1971 Israeli military order modifying the Jordanian planning law created a separate planning framework for settlements, implemented by a special category of planning committee (a "special local planning committee") in practice reserved for settlements.[65] Unlike the Palestinian community, settlers effectively participate in the planning process, notably through the Settlement Subcommittee, which formulates plans for settlements.

81. Israeli Local or Regional Councils are the local authorities that run the settlements. Some 39 per cent of the West Bank is currently under the jurisdiction of such councils. Most of this territory is land that has been declared "State land", and is not allocated for Palestinian use. Almost all of the area in the Jordan Valley and Dead Sea area falls under the jurisdiction of two Regional Councils.[66]

82. The settlements are provided with generous infrastructure, including water, electricity and roads that are, for the most part, unavailable to Palestinians. The Special Rapporteur also notes particularly that inequality in the amounts of water made available to the Israeli settlements and those made available to the Palestinian population was visible, since neighbouring settlements and villages had entirely different patterns of water supply.

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[63] Report of the Secretary-General on the implementation of Human Rights Council resolution 19/17 (A/HRC/20/13), para. 3.

[64] Bimkom, *The Prohibited Zone*, p. 17.

[65] Ibid., p. 40.

[66] OCHA-oPt, *Restricting Space*, pp. 5-6.

83. Settlement activity is also a regular source of violence and permanent tension. In Hebron, for example, the Special Rapporteur received testimonies from several persons of attacks by settlers on infrastructure, such as water tanks, and other violence against the Palestinian population. The heavy presence of soldiers in the heart of the city to protect the settlers contributes to a climate of fear and mistrust.

2. East Jerusalem

84. Since 1967, Israel has confiscated approximately 35 per cent of the territory in East Jerusalem and its surrounding area and 12 settlements have been constructed on this land. These settlements are some of the largest, with some 200,000 inhabitants. Israel considers these settlements in East Jerusalem (including annexed areas of the West Bank) as part of Israel rather than as settlements.

85. During the mission, information was collected on how settlements, which have been built both within the municipality and in the surrounding areas of East Jerusalem, have led to a decrease in the amount of land and resources available to Palestinians. More than one third of the area of East Jerusalem has been expropriated for construction of Israeli settlements.[67] The Special Rapporteur visited the neighbourhood of Sheikh Jarrah, where over 60 residents, including 24 children, were forcibly evicted from their homes, which are now occupied by settlers, and a further 25 families are at risk of eviction based on ownership claims dating back to the period prior to the 1948 founding of Israel.[68] Settlement activity is at times carried out by private settler groups or companies that enjoy the support of the Government of Israel, but who are not held accountable in the same manner as the Government. Palestinian residents are rarely engaged in the planning process.

E. Gaza

86. An almost complete physical and political isolation, combined with successive military operations, has deeply affected the housing situation in Gaza. While Israel withdrew its settlers and military from inside the Gaza Strip in 2005, it remains in control of the borders, including the entry and exit of people and goods, as well as the air space and access to the sea.

87. Since June 2007, the Gaza Strip has been subject to an intensified blockade, with severe restrictions on the movement of people, goods and services, resulting in severe shortages of electricity, fuel and consumer products. The Gaza Strip's isolation and the continued hostilities also have a profound impact in the urban infrastructure. It is estimated that only 10 per cent of the water in the Gaza Strip is safe for human consumption. Severe fuel and electricity shortages result in regular power outages.[69]

88. Housing conditions have been significantly affected by military operations. During the Israeli offensive codenamed "Cast Lead" alone, more than 20,000 homes were

[67] OCHA-oPt, *East Jerusalem*, p. 2.

[68] Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation in the Sheikh Jarrah area in East Jerusalem (June 2012), pp. 1-2.

[69] OCHA-oPt, "Five years of blockade: the humanitarian situation in the Gaza Strip", fact sheet (June 2012), first page.

destroyed or severely damaged.[70] It is estimated that approximately 71,000 new housing units are required to cover current housing needs.[71]

89. The Special Rapporteur was gravely concerned by information received from representatives of international humanitarian assistance agencies that a large proportion of the projects aimed at improving housing and vital services in Gaza that have been submitted for approval by the international community have not been approved by the Israeli authorities or had suffered from disproportional delays. In the Ezbet Abed Rabbo community (Northern Gaza), for example, the Special Rapporteur visited an area which had been severely damaged during the offensive of 2008/09 and remains in dire need of reconstruction, as international organizations have yet to obtain the necessary authorization from Israeli authorities to import construction materials.

90. The Special Rapporteur raised her concerns with the Israeli authorities, who claimed not to be responsible for all delays and informed her of upcoming measures to ease the entry of goods and construction materials. The Special Rapporteur remains however concerned at the serious and disproportionate impact of the Israel blockade on Palestinians' right to housing and basic services in the Gaza Strip.

91. At the same time, the Special Rapporteur was impressed by the degree of active engagement of Gaza inhabitants in undertaking the reconstructions and amelioration of their living conditions, mobilizing all the means and resources available to them. In this context, recent strategies of self-help reconstruction, making available direct funds to the households to rebuild demolished houses, have a very positive impact. However, the Special Rapporteur also noted her concern that these self-help schemes are available only to those with registered legal titles to the land, so that the most needy, those who are squatting on public land, are left with no alternative other than to wait for the completion of public housing projects, funded by international donors.

92. As noted in the report of the Special Rapporteur focused on the right to adequate housing in post-disaster and post-conflict situations, humanitarian agencies and donors have gained an acute awareness of the long-term impact of hastened early recovery efforts in the past decades (A/HRC/16/42, para. 57). Especially in the area of the right to adequate housing, this awareness must translate into interventions based on community consultations, if not designed by the affected communities themselves, and marked by accountability to the beneficiaries.

IV. Concluding remarks and recommendations

93. **The provision of housing has been central to efforts by Israel to integrate successive waves of Jewish immigrants. This policy was based on a highly centralized Government planning and intervention model, which in a number of cases ignored cultural differences and confined marginalized groups to the peripheries of the State.**

94. **Since the 1990s, the Government of Israel has increasingly disengaged from the housing sector, relying mostly on market incentives. Privatization, deregulation and commercialization of public assets seem to have further undermined the declared foundational goal to provide a safe and adequate home for all *Yishuv*, regardless of nationality or income level. The massive protests in 2011 highlighted the public frustration with increasing costs of living and in particular with regard to housing.**

[70] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/10/20), para. 8.

[71] OCHA-oPt, "Five years of blockade", first page.

95. **Nonetheless, even after the signing of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Israel has continuously dedicated important public financial and technical resources to promote the expansion of settlements in the Occupied Palestinian Territory. The State engagement in the settlement enterprise not only violates international law and seriously worsens the living conditions of Palestinians under occupation, but also ends up depriving Israeli nationals of important resources that could be used to promote access to adequate housing within the internationally recognized boundaries of the country.**

96. **Throughout her visit the Special Rapporteur witnessed a development model that systematically excludes, discriminates against and displaces minorities in Israel and which has been replicated in the occupied territory since 1967. In very different legal and geographical contexts, from Galilee and the Negev to the West Bank, she received multiple similar complaints from Palestinians, notably concerning a lack of or discriminatory planning, which seriously hampers the urban and rural development of these communities. As a consequence, a disproportionate number of members of such communities live and sometimes work in structures that are "unauthorized" or "illegal" and liable to eviction and demolition.**

97. **It is estimated that, since 1948, nearly 1,100 Jewish urban and rural communities have been built between the Jordan river and the Mediterranean Sea. At the same time, over 400 Arab villages have reportedly been destroyed and Arabs have been forbidden to build in new localities. The only exception has been the often forced urbanization of Bedouins in the Negev and Galilee.**[72]

98. **Thus, the recent plans for relocating Bedouins in the Negev—inside Israel—as well as decades of promotion of Jewish settlements in the West Bank, including in East Jerusalem, are the new expressions of dispossession of traditional inhabitants and control of the territory.**[73] **In this same context, the barrier and the blockade of Gaza are the most visible expressions of a process of de facto segregation that seems to be silently pursued in longstanding planning and zoning strategies both within Israel as well as in the occupied territory.**

99. **It is also important to underline that the spatial strategy of Israel has also been heavily shaped by security concerns, given the belligerent, conflictive nature of Israel-Palestine relations, marked by waves of violence and terror. But certainly the non-democratic elements in Israeli spatial planning and urban development strategies appear to contribute to the deepening of the conflict, rather than promote peace.**

100. **It would appear therefore that the Israeli planning, development and land system violates the right to adequate housing not only of Palestinians under Israeli control, but also of low-income persons of all identities, who find it increasingly difficult to obtain adequate and affordable housing under current policies. Both aspects of this discriminatory system should be changed to allow all those living under the control of the Israeli authorities to enjoy the most basic human right to adequate housing, within the framework of dignity and equality.**

101. **Accordingly, the Special Rapporteur presents the following recommendations to the State of Israel:**

[72] Oren Yiftachel, "Epilogue: Studying Naqab/Negev Bedouins—toward a colonial paradigm?" *Hagar Studies in Culture, Polity and Identities*, vol. 8, No. 2 (2009), p. 88.

[73] See Oren Yiftachel, " 'Ethnocracy': the politics of Judaizing Israel/Palestine", *Constellations*, vol. 6, No. 3 (September 1999).

(a) Revise and reform the Israeli legal framework relevant to the right to adequate housing:

(i) Revise and reform the laws of Israel in order to: (a) guarantee the protection of the right to adequate housing in all its elements; and (b) repeal all legislation and regulations relevant to the right to adequate housing that, in their application, do not comply with the principle of non-discrimination as provided in the international human rights instruments to which Israel is a party;

(ii) Revise zoning and planning legislation and processes so as to ensure, at a minimum, meaningful consultation with affected populations throughout the planning process. This implies: dissemination by the authorities of relevant information in advance; a reasonable time period for public review of, comments on, and/or objection to the proposed plan; opportunities to propose alternatives; and a decision-making process that is transparent;

(iii) In accordance with general comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights, take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in active and meaningful consultation with affected persons and groups (para. 8 (a));

(iv) Review legislation and procedures regarding evictions to bring them into conformity with international human rights norms and standards, in particular to ensure opportunity for genuine consultation with those affected, that alternative solutions and relief for those affected are considered and that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available;[74]

(v) Revise legislation regulating private rental in order to ensure adequate protection of private tenants against unreasonable rent levels or rent increases;

(vi) Recognize the specific rights of the Bedouin community as indigenous peoples as per the United Nations Declaration on the Rights of Indigenous Peoples, and revise all relevant policies and laws on this basis, ensuring respect for their land ownership and their cultural traditions;

(b) Revise public policies for the housing sector within Israel:

(i) Adopt a comprehensive national strategy and a plan of action on adequate housing, paying particular attention to the situation of groups living in poverty and historically marginalized groups, such as minorities;

(ii) Increase investment in the provision of social housing units and rental assistance schemes in order to meet the unserved demand for affordable housing;

(iii) Revise all existing criteria for the provision of land or economic support for housing in order to repeal the unfair exclusions and ensure priority

[74] See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions, paras. 15 and 16.

assistance for the most marginalized groups. Ensure transparency and participation in the design and implementation of all housing policies;

(iv) Adopt and adequately fund a targeted housing strategy in order to assist Palestinian minorities, both in rural and urban areas, ensuring that these are designed, implemented and evaluated through meaningfully participatory processes and are culturally acceptable;

(c) Respect, protect and fulfil the right to housing of Palestinians living under occupation:

(i) Stop immediately all home demolitions and evictions, both in the West Bank and in East Jerusalem, and explore all possible alternatives prior to evictions; consult with the affected persons; and provide effective remedies to those affected by evictions;

(ii) Stop, as a first step, the construction and expansion of all settlements and outposts, and develop a strategy to reverse the development of settlements;

(iii) Lift immediately the blockade of Gaza for all imports of construction materials and facilitate the work of international donors promoting reconstruction.

102. **The Special Rapporteur also makes additional recommendations to the Palestinian National Authority and international aid agents:**

(a) The Palestinian National Authority must devise and implement a strategy to progressively protect the right to adequate housing of its inhabitants;

(b) The international community must ensure flexibility in reconstruction strategies vis-à-vis ownership documentation, giving priority to those in extreme poverty situations;

(c) International donors should continue to provide the Palestinian National Authority with direct budget support to enable it to fulfil its mandate.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Occupied Palestinian Territory/State of Palestine*, **

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on violence against women, its causes and consequences, on the mission she undertook from 17 to 22 September 2016. In the report, the mandate holder examines the gaps and challenges in fulfilling the obligation to eliminate violence against women, its causes and consequences and recommends measures for preventing and combating violence against women and ensuring the enjoyment of human rights by women. The mandate holder will present a separate report on her official visit to Israel (A/HRC/35/30/Add.1), in which she also addresses the gendered impacts of the protracted conflict and prolonged occupation on violence against women.

* The phrase "Occupied Palestinian Territory" in the title is used in accordance with the relevant decisions of the competent principal organs, including General Assembly resolution 71/247 of 21 December 2016, to refer to the geographical area of the Gaza Strip and the West Bank, including East Jerusalem, and the phrase "State of Palestine" in the title is used in a manner that is consistent with General Assembly resolution 67/19 of 29 November 2012 and any other relevant resolutions.

** The present document was submitted after the deadline in order to reflect the most recent developments.

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Occupied Palestinian Territory/State of Palestine*, ***

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*** Circulated in the language of submission only.

I. Introduction

1. The present report covers the mission that the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, conducted from 17 to 22 September 2016. The mission dovetailed with a mission to Israel; the mission reports are being submitted separately, but cross-reference each other, particularly in the section on the general context.

2. On 29 November 2012, the General Assembly adopted resolution 67/19, by which it accorded to Palestine non-member observer State status in the United Nations. In order to reflect that development, the Special Rapporteur refers, in the title of the present report, to the Occupied Palestinian Territory/State of Palestine, without precluding any other use of terminology by the State of Palestine, Israel or others.

3. The Special Rapporteur expresses her sincere gratitude to the Government of the State of Palestine for its full cooperation. During her visit, the mandate holder visited Ramallah, Bethlehem, Hebron, Jericho, East Jerusalem and the Gaza Strip, where she met with representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Chief Justice of the High Judicial Council and the Chief of the sharia courts, as well as judges of the sharia courts, the Attorney General, the Minister and Deputy Minister of Women's Affairs, representatives of the Ministry of Social Development and the national committee on combating violence, the Deputy Minister of Health and the Minister of Education, among others. She also met with members of the Palestinian Legislative Council in Ramallah, including the Chair of its human rights committee, and members of the Palestinian Legislative Council in Gaza and the Independent Commission for Human Rights, and held consultations with civil society organizations, Bedouin women, internally displaced women, and representatives of United Nations agencies. She visited four shelters/safe houses, a refugee camp, a Bedouin community, a school, a health clinic and a safe space for those who have been subjected to gender-based violence, and provided the opening remarks at an international seminar on gender-based violence in the humanitarian context of the Gaza Strip, organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

4. In particular, the Special Rapporteur would like to thank the women and girl survivors of violence who shared their experiences with her throughout the visit, placing their trust and some of their hopes in her hands.

5. The mandate holder expresses her gratitude to the Office of the United Nations High Commissioner for Human Rights in the occupied Palestinian territory and its suboffice in Gaza, UN-Women and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as well as other United Nations agencies and other interlocutors involved in the organization of her visit.

6. She looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of the action-oriented recommendations included in the present report.

II. General context

7. The visit of the Special Rapporteur took place in a general context of protracted conflict and prolonged Israeli occupation punctuated by frequent incidents of violence and the absence of any prospect of peace, which creates a growing despair and hopelessness among the population. The complicated de jure and de facto situation provides the backdrop for assessing the different forms of violence against women, its causes and consequences in public and private life. This context requires the joint application of international human rights law and international humanitarian law to all persons under the States' jurisdiction or territory under their effective control. International human rights law, in particular the Convention on the Elimination of All Forms of Discrimination against Women, provides a broad framework for eliminating violence against women and its causes, including violence that is based on inequalities and discrimination against women in war, in peace and in conflict situations, while humanitarian law provides a specific framework for addressing some specific conflict-related forms of violence against women.

8. The Committee on the Elimination of Discrimination against Women has consistently held the view that the Convention on the Elimination of All Forms of Discrimination against Women and humanitarian law are applicable to all persons under the jurisdiction or effective control of Israel,[1] in line with the jurisprudence of the International Court of Justice[2] and the positions of other treaty bodies, such as the Committee on the Elimination of Racial Discrimination,[3] the Committee on Economic, Social and Cultural Rights[4] and the Human Rights Committee.[5] The Special Rapporteur shares those positions.

9. General Assembly resolution 67/19 and the accession of the State of Palestine to a number of international human rights instruments have not altered the obligations of Israel under human rights law and humanitarian law vis-à-vis the territory under its effective control and people under its jurisdiction.

10. Following her 2004 visit to the Occupied Palestinian Territory only, the former Special Rapporteur on violence against women, its causes and consequences, highlighted a number of issues of concern related to violence against women that remain unaddressed and unresolved.[6] Additionally, various United Nations bodies have expressed concern about the human rights, humanitarian and security issues that occupation brings, including with regard to the situation of women.

11. While recognizing the imperatives related to security and stability in the region, the mandate holder highlights the clear linkage between the prolonged occupation and violence against women and notes, like her predecessor, that the occupation does not exonerate the State of Palestine from its due human rights obligation to prevent, investigate and impose punishment and provide remedies for acts of gender-based violence in the areas under its jurisdiction or effective control. The de facto authorities in Gaza also bear human rights responsibilities, given their exercise of government-like functions and territorial control.

12. Under the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip agreement of 1995, the West Bank was divided into Areas A, B and C, each having a different status of governance. In Area A, representing 18 per cent of the territory of the West Bank, the State of Palestine exercises control over security and civil matters. Area B is administered by the Palestinian National Authority, which has control over civil matters, while the Israeli authorities, jointly with the Palestinian National Authority, have control over security. In Area C, which constitutes 62 per cent of the West Bank, the Israeli authorities have full control over security, planning and construction.[7] Within Area C, Palestinians have limited access to water, electricity, education and other State services.

13. The city of Hebron is divided into two zones: H1, under the control of the Palestinian National Authority, and H2, representing 20 per cent of Hebron, in which Israel retained all authority and responsibilities for internal security and public order under the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.[8]

14. In East Jerusalem, Israeli law provides Palestinian residents with the status of permanent residents of Israel, treating them as immigrants in the occupied territory.[9] While the law provides such residents with more freedom of movement in comparison to other

[1] See CEDAW/C/ISR/CO/3, para. 23 and CEDAW/C/ISR/CO/5, para. 12. See also Committee on the Elimination of Discrimination against Women, general recommendation 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 12, and general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, para. 8.

[2] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136 (in particular pp. 171-181) and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005*, p. 168 (in particular p. 216).

[3] CERD/C/304/Add.45, CERD/C/ISR/CO/13 and CERD/C/ISR/CO/14-16.

[4] E/C.12/1/Add.69, E/C.12/1/Add.90 and E/C.12/ISR/CO/3.

[5] CCPR/C//ISR/CO/3; see also CCPR/C/79/Add.93, CCPR/CO/78/ISR and CCPR/C/ISR/CO/4.

[6] E/CN.4/2005/72/Add.4.

[7] See www.ochaopt.org/location/area-c.

[8] See A/71/355, para. 26.

[9] See A/66/356, para. 34.

Palestinians, it discriminates against them in comparison to Jewish people who immigrate to Israel. The blockade of Gaza has led to a critical socioeconomic and humanitarian situation for Palestinians residing there, particularly women. There is limited access to water, housing, land and property, especially for widowed women, as well as to employment opportunities, higher education and health care.[10]

15. The situation is further complicated at the internal level, with a political deadlock characterized by an absence of legislative elections for the past 10 years and a divide between the Government of the State of Palestine and the de facto authority in Gaza since the previous elections.

16. Since October 2015, the security situation in the Occupied Palestinian Territory and Israel has continued to deteriorate, owing to an increase in violence and clashes between Palestinians and Israelis.

17. The complicated and conflicting political and legal regimes provide an equally or even more complicated and conflicting legal context for victims of violence against women, in which different authorities that share jurisdiction over security and other issues also share a complex due diligence responsibility to prevent violence against women, provide services for victims and punish perpetrators.

18. In this context of Israeli-Palestinian conflict, violence against women is a phenomenon that occurs on both sides of the divide. The Special Rapporteur looks at violence against women against this backdrop and with the conviction that combating and preventing violence against women will ultimately contribute to each society's growth, bridge divided communities and contribute to peace by removing obstacles to the full participation of women in the peace process.

III. Incorporation of the international framework on violence against women

19. In April 2014, the State of Palestine acceded to some of the key human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, and the Convention on the Rights of Persons with Disabilities. The Special Rapporteur notes that the State acceded to these instruments without any reservations. She notes as well the State's accession to the United Nations Convention against Transnational Organized Crime, the Rome Statute of the International Criminal Court and the Geneva Conventions relating to the protection of victims of international armed conflicts and the Protocol additional to the Geneva Conventions, and relating to the adoption of an additional distinctive emblem. The mandate holder welcomes the accession of the State of Palestine to these legal instruments.

20. In particular, the Special Rapporteur commends the accession to the Convention on the Elimination of All Forms of Discrimination against Women, through which the State of Palestine has assumed legal obligations to eliminate all forms of discrimination against women, including violence, and to ensure equality between men and women and the protection of the enjoyment by women of their human rights. She is confident that the State's accession to the Convention and the reporting to the monitoring body will play an important role in the ongoing harmonization of the State's outdated legislative framework and in bringing the framework into line with international norms and standards. She welcomes the submission in March 2017 of the State's overdue initial report under that Convention. She also welcomes the national consultations that took place with civil society organizations prior to the submission of the report.

[10] See E/CN.6/2016/6, paras. 7 and 14.

21. The Special Rapporteur also welcomes the standing invitation that was extended to all special procedures.

22. The Special Rapporteur notes with concern a lack of implementation of the recommendations included in the 2011 concluding observations of the Committee on the Elimination of Discrimination against Women,[11] with many of the concerns remaining valid at the time of her visit and followed up in the recommendations included in the present report. She also notes with concern a similar lack of implementation of other treaty bodies' concluding observations relevant to the context of the present report, including on the practice of torture and ill-treatment of Palestinian children who have been arrested;[12] the legality and use of the "defence of necessity" as a justification for torture; the lack of effective accountability demonstrated, and protection provided, by Israeli authorities with regard to violence perpetrated by Israeli settlers;[13] and the unequal treatment of Bedouin women and girls,[14] among others.

IV. Manifestations of violence against women, its causes and consequences

23. The Special Rapporteur notes that violence against women occurs both in private and public spheres. Women face multiple sources of discrimination and violence: they suffer the violence of the Israeli occupation, directly or indirectly, and also suffer under a system of violence emanating from the tradition and culture, with embedded patriarchal social norms and multiple outdated legal frameworks. She notes, however, that there are ongoing efforts to revise numerous laws relevant to combating and preventing violence against women, and that the taboo attached to such violence is less than it was at the time of the visit of her predecessor.[15]

Femicide or gender-related killings of women, including violence in the name of "honour"

24. The Special Rapporteur notes that many forms of gender-based violence are linked to "honour", including femicide or gender-related killings of women, forced marriage, imprisonment, rape, incest, domestic violence and suicide. She also notes that these patriarchal patterns are reflected in the legislation, which allows for the protection of "honour" in such crimes and provides for "pardoning excuses", in accordance with which, all too often, perpetrators receive a reduced sentence or are not even convicted.[16] The Special Rapporteur, however, notes the recent important legislative changes by which some of those provisions have been repealed (see para. 65 below).

25. The phenomenon of femicide exists and threatens Palestinian women's right to life. The Special Rapporteur notes that no government agency currently collects figures on femicides, but that several Palestinian women's rights groups reported that cases of "honour" crimes and killings of women and girls perpetrated by family members were often brought to their attention. For example, the Women's Centre for Legal Aid and Counselling, which collects such data, recorded 27 cases of the killing of women and girls in 2014, and 15 cases in 2015. In 2016, as at mid-August 18 cases of femicides had been documented by a civil society organization.[17]

26. Family honour plays a fundamental role in Palestinian society. Crimes in the name of "honour" have been defined as violent crimes committed against women for "tarnishing the

[11] CEDAW/C/ISR/CO/5.
[12] CRC/C/ISR/CO/2-4.
[13] CCPR/C/ISR/CO/4.
[14] E/C.12/ISR/CO/3.
[15] E/CN.4/2005/72/Add.4.
[16] Ahmad Al Ashqar, "Murder of women in Palestine under the pretext of honour" (Office of the United Nations High Commissioner for Human Rights-Occupied Palestinian Territory, 2014).
[17] See Women's Centre for Legal Aid and Counselling, submission sent to the Special Rapporteur.

name and the honour of the family".[18] In the Palestinian context, they constitute a manifestation of culturally inherited values of inequality that impose upon women socially expected behaviours deriving from patriarchal norms and standards. Women's transgressions of these social norms are considered violations of the honour of the family and men, which legitimizes violence against women as a disciplinary measure to maintain or restore the family honour.[19] Women are therefore discouraged from reporting abuses by social norms and family members who fear for their reputation. Additionally, in some parts of the Occupied Palestinian Territory that are under the jurisdiction of Israel, women face difficulties in reporting incidents to the Israeli police.[20]

27. The Special Rapporteur received several testimonies from Palestinian women who had found safety in protection programmes and shelters, such as the Mehwar Centre, which she visited. They shared their experiences of being punished for crimes they were the victims of, in a chain of sexual violence, fear and misguided persecution.[21]

28. While there is a lack of official statistics, it is known that the number of women killed under the pretext of protecting "family honour" has dramatically increased within the past years. The Special Rapporteur wishes to highlight the importance of collecting reliable data on femicide, or gender-related killing of women, including "honour" crimes, as a mandatory step towards addressing violence against women.

Domestic/family violence

29. Domestic violence is not specifically prohibited by law, although violence, whether perpetrated against males or females, is illegal and punishable under gender-neutral criminal law. The Special Rapporteur was, however, informed of draft legislation on domestic violence and protection of the family that had undergone national consultation and was reported by the Government to meet international standards.

30. The Palestinian Central Bureau of Statistics undertook a survey on gender-based violence in 2011 — its only such survey in 20 years. The results indicate that Palestinian women suffer from violence that emerges from the prevailing patriarchal culture in Palestinian society. The study showed that, of the respondents, about 37 per cent of the married women had been exposed to at least one form of violence by their husbands: 29.9 per cent in the West Bank and 51.1 per cent in Gaza.[22] Less than 1 per cent will seek the help of a social worker, a shelter, a civil-society organization or the police. Of those who do seek help from the police, less than one third of the cases will go on to court, where again justice is not guaranteed.[23]

31. The percentage of survey respondents who experienced psychological violence at least once was 58.6 per cent, while 55.1 per cent had been subjected to economic violence, 54.8 per cent to social violence, 23.5 per cent to physical violence and 11.8 per cent to sexual violence.[24]

32. Several testimonies the Special Rapporteur received highlighted that the impact of the economic situation, the level of unemployment and the pressure of the occupation was greater on women and children, making them more vulnerable to domestic violence, in particular in Gaza, due to the constant pressure of the blockade and the recurring cycles of conflict, as well as the overcrowding, which limits their mobility and privacy. It was noted that, in particular in Gaza, the political situation served as a "mitigating circumstance" that made

[18] Palestinian National Authority and UN-Women, Cross-Sectoral National Gender Strategy Booklet: Promoting Gender Equality and Equity 2011-2013.

[19] See E/CN.4/2005/72/Add.4, para. 56.

[20] See A/HRC/35/30/Add.1.

[21] See also Zeina Jallad, "Palestinian women and security: a legal analysis" (Geneva Centre for the Democratic Control of Armed Forces, 2012).

[22] See www.pcbs.gov.ps/Portals/_pcbs/PressRelease/el3onf2011_E.pdf.

[23] See http://palestine.unwomen.org/en/news-and-events/stories/2016/03/path-to-justice.

[24] See www.pcbs.gov.ps/Portals/_pcbs/PressRelease/el3onf2011_E.pdf.

violence against women more acceptable,[25] while social norms led to the shaming of women who reported abuse to the police.

33. The Special Rapporteur notes efforts related to the establishment of the government-sponsored shelter and support for shelters run by non-governmental organizations (NGOs), but remains concerned that some shelters do not provide overnight accommodation.

34. The Special Rapporteur also notes that women face discrimination in the areas of inheritance and divorce and that some women may not leave situations of violence because they fear losing custody of their children. A woman can keep her children until a legally determined age but loses them before they reach that age if she remarries.[26] After that age, custody becomes the father's legitimate right. In Gaza, widows are now able to maintain custody of their children for an open-ended period of time or until they remarry, which is an important change in interpretation of the strict religious law.

Sexual violence, including rape and incest

35. The mandate holder is concerned about the occurrence of sexual violence, as victims of sexual violence are stigmatized in society. Women and girls who report cases of rape or incest are more likely to incur abuse or even be killed by family members because making the incidents public brings shame to the family. She notes with concern the persistence of article 308 of the Palestinian Penal Code (Law No. 16 of 1961), under which a perpetrator of rape, kidnapping or statutory rape can be exempt from prosecution and punishment if he marries his victim.

36. Marital rape is not criminalized under the current Palestinian legal framework. The Jordanian Penal Code of 1960, in force in the West Bank, defines rape as forced sexual intercourse with a female (art. 292 (1)), and does not specify that the woman can be the perpetrator's wife. With regard to incest, both parties are considered guilty, sometimes even in the case of rape by a family member. When the victim of incest is a minor, the charge is filed by a male family member up to the fourth degree of kinship.

37. Existing laws also criminalize abortion, even if the pregnancy is the result of incest or rape,[27] which leads to families forcing the victim to marry in order to legitimize the pregnancy.

Forced/child marriage

38. Legal references to the minimum age for marriage reveal many discrepancies and even discrimination. The Palestinian Child Law of 2004 defines the age of majority as 18. The Jordanian Personal Status Law of 1976, which is enforced in the West Bank, sets the minimum age for marriage at 16 for males and 15 for females; the Egyptian law of 1954 on family rights, which is enforced in Gaza, sets it at 18 for males and 17 for females. A judge may authorize the marriage of a minor if he or she believes that it is in the best interest of the child.

39. The Special Rapporteur notes that there are no reliable statistics on child marriage, but reliable sources informed her that approximately 9 to 10 per cent of weddings involve a bride and groom who are under the age of 18. In the context of the occupation girls are under increased pressure to get married, as marriage is seen as a coping strategy, but also to cover up rape and incest. Such marriages often further cement the cycle of abuse and misdeeds, as marriage protects a rapist from prosecution for the rape. The Special Rapporteur highlights that the risk of violence against women is higher in cases of child marriage, especially when the age difference between the spouses is large, and notes that the lack of an agreed minimum age for marriage undermines the protection of young girls from violence.

[25] Catherine Müller and Laila Barhoum, Violence against Women in the Gaza Strip: After the Israeli Military Operation Protective Edge (Alianza por la Solidaridad and Actionaid, 2014).

[26] United Nations Development Programme, "A review of Palestinian legislation from a women's rights perspective" (2012), p. 25.

[27] See, for example, the Jordanian Penal Code, arts. 321-325.

Polygamy

40. Men are permitted to have multiple wives, even if a man's current wife objects. Under the Egyptian law on family rights and the Personal Status Law, women are able to include conditions in their marriage contract, such as restrictions on polygamy, but in the West Bank this right is rarely respected by judges.[28]

41. The Special Rapporteur wishes to recall that the Committee on the Elimination of Discrimination against Women, in its general recommendation No. 24 (1999) on women and health, refers to polygamy as a harmful practice, and that various studies show that a woman who is in a polygamous marriage incurs a higher risk of suffering from violence. Moreover, in its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee stated that polygamous marriage contravened a woman's right to equality with men, and could have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.

Violence against women in the workplace

42. In 2011, the Palestinian Central Bureau of Statistics conducted a study on gender-based violence in the workplace, in partnership with the International Labour Organization and the Institute of Women's Studies at Birzeit University. Of the 186 women (22.8 per cent of respondents) who reported having been exposed to gender-based violence in the workplace, 4.5 per cent claimed to have suffered unwanted sexual attention at least once, while 3.5 per cent said they had been victims of sexual coercion.[29] The survey revealed that the main perpetrators of gender-based violence at work were clients and co-workers, and showed that there were fewer incidences of such violence in Gaza than in the West Bank.

Groups of women particularly at risk

43. Among the adult population, the prevalence of women with disabilities is 3.7 per cent. It is not possible to establish exactly how many women with disabilities suffer from acts of violence per year, since women with disabilities are invisible in the national statistics.[30] Persons with disabilities have a higher risk of incurring violence or abuse due to their impaired ability to report such crimes and their placement within institutions; women with disabilities are particularly vulnerable to sexual violence or abuse. The Special Rapporteur was informed of several cases of violence against women with disabilities, which clearly show a pattern of impunity for perpetrators, made possible by the lack of adequate legislation protecting women and girls with disabilities. She notes a lack of access to protection services, including a lack of adequate shelters suitable for providing assistance to women with disabilities.

44. Bedouin women are particularly vulnerable to gender-based violence, including sexual violence, with some living in a context of fear of forced transfer by Israeli authorities.[31] Since 1997, livestock-dependent Palestinian Bedouin refugees from the Jahalin tribe living in Area C have been forcibly transferred to Jabal. Since the construction of the Wall between Abu Dis and Jerusalem, Bedouin women are physically cut off from employment prospects, leaving them with very few options for supporting themselves financially. Women excluded from the job market are more likely to marry, and women suffering from domestic violence are less likely to report it if it means losing their only source of income.

45. Internally displaced women suffer from a similar lack of access to the job market. Entry into East Jerusalem by Palestinian women who were relocated to one refugee camp is restricted owing to the Wall between Area A, where the majority of the camp is located, and Area C (controlled by Israel), where some of its periphery is located. The Special Rapporteur observed that the lack of access leads to a higher incidence of gender-based violence in itself,

[28] Jallad, "Palestinian women and security".

[29] See www.ilo.org/beirut/publications/WCMS_236942/lang--en/index.htm.

[30] QADER for Community Development and Stars of Hope Society, submission to the Special Rapporteur.

[31] A/HRC/35/30/Add.1.

on top of the already established fact that displacement increases vulnerability to and instances of gender-based violence.

46. Women and girls living in refugee camps are exposed to particular forms of violence that result from their confinement to the household, which isolates them and limits their ability to interact in society.

Access to justice

47. The implementation of existing laws condemning violence is hampered by the absence of a formal governmental authority in some areas. In this regard, the occupation is a real obstacle to the State's due diligence obligation to prevent violence against women in some areas where it does not have full jurisdiction, owing to the fragmentation of areas under the control of different authorities[32] and the political divide between the de facto authority in Gaza and the Government of the State of Palestine.

48. The Special Rapporteur notes that several critical steps have been taken in the justice chain to improve access to justice for victims and to fight against impunity for perpetrators.

49. Since 2008, family protection units in the Palestinian civil police force have been established in all districts of the West Bank and work in close cooperation with shelters. Units are specialized in and sensitive to gender-based issues; to file cases, units collaborate with the specialized public prosecutor on protecting families from violence, a position established in February 2016 in the Public Prosecution Office in order to improve protection for women victims of violence and ensure accountability. The Special Rapporteur notes that the units have increased women's trust in the police but that women still face obstacles to gaining access to the police, including the lack of police stations in women's residential areas and the inability to afford transportation costs. Another obstacle discouraging women from filing complaints is the lack of confidentiality, as units are located within police stations, which increases the risk of social stigmatization.[33] Privacy issues and the inability of the units to provide immediate protection to women are further impediments.

50. The Office of the Attorney General has established several gender units, which began operating in 2012 with the objective of integrating gender in the work of the public prosecution services and developing specialized services on violence against women. A new Chief Prosecutor was appointed in 2014 to work closely with the gender experts to institutionalize gender in the work of the services and improve access to justice. In 2014, the Attorney General assigned 15 specialized public prosecutors at various district offices to investigate cases of violence against women, with an emphasis on confidentiality, sensitivity and rapid legal procedures. Together with the new public prosecutor on protecting families from violence, specialized prosecution services investigate, litigate, prosecute, and appeal and monitor the enforcement of decisions in cases of violence against women and children in both the public and private spheres, and are specialized in dealing with sexual and electronic crimes. There are currently 23 specialized prosecution services in 10 districts. The Special Rapporteur was informed that, while they included women police officers, the services were understaffed. The services provided include core child protection services, psychosocial assessment, risk education and outreach for vulnerable families and children. The Special Rapporteur was appraised of the future plans of the gender units, which included developing a legal strategy to increase prosecution rates and punishment in violence against women cases and building the capacity of the public prosecution services with regard to the application of international treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women, in litigation.

51. Among the main obstacles identified by the public prosecution services themselves, however, are the absence of a special law on gender-based violence, an outdated criminal code, the absence of a law on electronic crimes, the absence of protection orders, the absence

[32] Prosecution under the Palestinian justice system is possible only in Areas A and B.

[33] Euro-Mediterranean Human Rights Network, "Palestine: report on violence against women in the context of conflict". Available from http://euromedrights.org/wp-content/uploads/2015/12/EMHRN-Factsheet-VAW-Palestine-EN.pdf.

of a specialized judiciary on violence against women, and a lack of use by lawyers of constitutional tools and treaties in litigation.[34] Additionally, the issue of enforcing court decisions when, for example, a husband flees to Area C is acute, as in those cases the Palestinian authorities lose jurisdiction and thus their power to enforce court decisions.

52. The Special Rapporteur observes that some judges still have traditional views and apply gender stereotypes to violence against women, which affect their verdicts in domestic violence cases. Judges often exercise their judicial discretion in ways that are unfavourable to women victims of violence.

53. There is no system that institutionalizes legal aid in a sustainable way and supports the coordination of legal aid and quality service delivery. Currently, most legal aid services are provided through civil society organizations and university legal clinics, which are primarily donor funded. Only a few women's rights organizations are in a position to support women victims by providing free legal assistance. The Special Rapporteur notes the draft bill of 2016 on legal aid for those in need, which includes a provision explicitly stating that women are to be given priority with regard to the allocation of such aid.

Women's empowerment: education, employment and political participation

54. Decades of Israeli occupation, in parallel with the continuation of patriarchal attitudes in Palestinian society, have led to women's roles becoming more subordinate, have exposed women to continuing violence and have marginalized women, hampering their ability to play an active role in political life, to engage in economic and social life and ultimately to make their own decisions.

55. Important factors that underpin violence against women include a lack of education and employment for women. Because of the conflict, young girls' education has been compromised. For example, UNRWA students in the West Bank lost 83 days of school between 1 October 2005 and 9 March 2016 due to raids and incursions in the vicinity of schools.[35] Children's right to education is further affected by high levels of harassment and attacks by Israeli soldiers.[36] On their way to school, it is not uncommon for girls and boys to witness or be the victim of violence or to be impeded at the checkpoint from accessing school facilities. Thus, many parents prevent their children, especially their daughters, from attending school. In 2015, 286 incidents of education-related violations were recorded by the United Nations Children's Fund (UNICEF).

56. A long-standing view on women's employment, in line with the patriarchal perception that a woman's rightful place is in the house to provide and care for male members of the family, is that Palestinian women should seek and be granted employment as a last resort and that women's employment is not perceived as a human right. This perception, coupled with limited work opportunities, has led to a striking employment gap in the Palestinian labour market. Palestinian women account for 17.4 per cent of the formal labour force (14.7 per cent in Gaza, 18.9 per cent in the West Bank) compared to 69.1 per cent for men, one of the lowest levels of labour force participation in the world. They account for 20.9 per cent of the formal labour force in rural communities, 16.8 per cent in urban communities and 15.7 per cent in refugee camps. A total of 32.9 per cent of Palestinian women are unemployed (25.3 per cent in the West Bank, 50.1 per cent in Gaza), compared to 20.5 per cent of Palestinian men (17.3 per cent in the West Bank, 26.8 per cent in Gaza). In 10 years, women's overall unemployment rate has almost doubled, from 17 per cent in 2002 to 32.9 per cent in 2012, while for men the rate has decreased from 33.5 per cent to 20.5 per cent over the same time period.[37]

57. It has been observed that social, cultural and institutional barriers to women's labour market participation are exacerbated by Israeli restrictions that impede mobility and

[34] Information provided by the Attorney General and Public Prosecutor.

[35] See www.unrwa.org/sites/default/files/content/resources/children_in_distress_briefing_note.pdf.

[36] See A/HRC/35/30/Add.1.

[37] See http://palestine.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures#sthash.V8HZCP1D.dpuf.

perpetuate weak demand for labour in the formal economy, resulting in substantial loss of economic potential, particularly in view of the high levels of educational attainment of Palestinian women. [38]

V. State responses and measures to address violence against women

A. Legislative framework

58. The Palestinian Basic Law, promulgated in 2003 and last amended in 2005, functions as a temporary constitution. Although the Basic Law establishes important rights that are to be enjoyed on the basis of equality and non-discrimination (arts. 9-33), such as equality before the law without distinction based upon sex, many laws, including penal legislation and the Personal Status Law, are not in compliance with the principle of non-discrimination on the basis of sex and the principle of equality between men and women. The guardianship clause in the Personal Status Law promotes the dependency of women, considering them incapable of making decisions. The Special Rapporteur notes the requirement under article 4 of the Basic Law that the principles of Islamic sharia shall be a principal source of legislation.

59. The Special Rapporteur received information that the Government had recently established a committee to harmonize the laws of the State of Palestine, and that the committee had started to review the penal legislation.

60. The Special Rapporteur was informed that work on a draft constitution for the State of Palestine was ongoing but that there was no clarity yet in the process or on the issue of the transposition of international law into domestic law (with respect to a monist or dualist model). She is concerned about the prospects for equal participation of women, including women representatives of civil society, in this process.

61. The current legislative frameworks in the West Bank and Gaza are comprised of a combination of unified laws promulgated by the Palestinian Legislative Council and ratified by the President; where no unified law has been promulgated, existing Jordanian and Egyptian laws continue to apply.[39] In East Jerusalem, considered under international law as occupied territory,[40] Israeli law has been applied. As noted by the former mandate holder, this multiplicity of laws has led to a lack of consistent and uniform Palestinian legal references.[41]

62. The legal framework on gender equality is limited and has yet to be adapted to become fully in line with human rights standards. The principles of non-discrimination and equality between women and men have not been embodied in national laws, hence they have not been extended to either the public or private spheres. The lack of gender-sensitive legislation, the outdated legal frameworks, discriminatory laws and the inaccessible justice system are some of the main issues that women and girls face.

63. Relevant laws are spread across legislation adopted under multiple legal regimes, including Palestinian laws, laws of the British Mandate, Jordanian and Egyptian laws and even laws from the Ottoman Empire. Combating violence against women is therefore hampered by an outdated, non-harmonized legal system that contains discriminatory provisions.

64. The main legal references for criminal offences are the Jordanian Penal Code, applicable in the West Bank, and the Criminal Code of 1936, applicable in Gaza. The Special Rapporteur notes in that regard that the penal legislation contains several discriminatory

[38] See International Labour Office, *The Situation of Workers of the Occupied Arab Territories* (2015), report of the Director-General, appendix, para. 33.

[39] See www.hrw.org/sites/default/files/reports/opt1106webwcover_0.pdf.

[40] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (in particular p. 167).

[41] E/CN.4/2005/72/Add.4.

provisions based on sex, age and marital status.[42] In 2003 a new penal code was presented, but the mandate holder was informed that its adoption had been delayed due to the current internal Palestinian political division and the resulting paralysis of the legislative process. The Palestinian Legislative Council has not been able to meet since the last parliamentary election, held in January 2006, and the political division between the West Bank and Gaza has led to the restriction of Palestinian National Authority rule to the West Bank. The Special Rapporteur was, however, informed that, under article 43 of the Palestinian Basic Law, presidential decree can be used to legislate in the West Bank until the Palestinian Legislative Council reconvenes and reviews the legislation adopted by presidential decree. She notes that the President has resorted to this provision, including for accession in April 2014 to a number of international treaties, and that in those cases, members of the Palestinian Legislative Council were consulted informally. While 140 laws were issued by Presidential decree between June 2007 and the end of 2015, only 2 per cent of those were issued in relation to women's rights. None had a clear impact with respect to addressing violence and discrimination against women.[43] This reveals a normative sociocultural structure that places women and girls in a subordinate position to men simply because they are women.

65. In 2011, the Palestinian President issued a decree amending some provisions of the Jordanian Penal Code and the Criminal Code of 1936 with a view to deterring "honour" killings. The Decree abrogated article 340 of the Jordanian Penal Code and its equivalent in the Criminal Code of 1936, which allowed for pardon or mitigated sentences against men accused of "honour" crimes, and article 98 of the Jordanian Penal Code, which effectively allowed perpetrators to plead "honour" as a mitigating factor in crimes against women. Article 18 of the Criminal Code of 1936 on pardoning excuses, under which "honour" killings had been had legally legitimized, was amended with the addition, at the end of the article, of the phrase "not including the murder of women on the grounds of 'family honour'".[44]

66. Despite these positive steps, the mandate holder expresses concern regarding the resort by defence lawyers to articles 99 and 100 of the Jordanian Penal Code, the application of which mitigates the penalty of killing, including if the victim belongs to the same family as the perpetrator. The sentence is then left to the discretion of the judge in accordance with the circumstances of the act. The Special Rapporteur was informed that most court rulings are based on these two provisions of the law, thereby denying women victims access to justice[45] and undermining the impact of the legislative amendments that were meant to act as a deterrent for crimes of killing women under the pretext of honour. She is particularly appalled by a two-year sentence delivered by a criminal court in Nablus for the killing of a wife by her husband, the judge having applied far-reaching discretionary powers under articles 99 and 100.[46] The case is emblematic of the patriarchal mindset of the judiciary when handling crimes of this nature, which has led to extremely lenient sentences for perpetrators of such crimes.

67. Additionally, violence against children by their parents is still justified under article 62 of the Jordanian Penal Code in the name of discipline, where the act of violence is permitted by law and by general custom. The Special Rapporteur was informed that this provision is often used in defence of a perpetrator who justifies abusing and/or killing his daughter as "discipline".

68. The Special Rapporteur notes with concern the lack of a specific law that directly addresses violence against women. She was informed of a process under way to draft a family protection act that would criminalize violence against women and provide for measures to protect against such violence. Due to the current gaps in the capacity of service providers and government-sponsored shelters, women victims of violence often have no alternative place

[42] For a thorough analysis of the penal laws, see Khadeeja Hussein Naser, "Palestine and the Convention on the Elimination of all Forms of Discrimination against Women: implications of ratification" (Independent Commission for Human Rights, 2013).

[43] Women's Centre for Legal Aid and Counselling submission to the Special Rapporteur, referring to a study on the laws and legislations issued since 2007.

[44] Al-Ashqar, "Murder of women", p. 7.

[45] Women's Centre for Legal Aid and Counselling, submission to the Special Rapporteur.

[46] Ibid.

to live, and thus remain in their houses. Moreover, female victims of violence are subject to patriarchal traditions and social norms that prevent them from seeking protection from violence outside the family.

69. Domestic violence is not defined as a specific crime and is handled under the general abuse articles of the Jordanian Penal Code (arts. 333-337). The 2003 draft penal code establishes domestic violence as a crime punishable by a two-year prison sentence, but legal action against the perpetrator could only be taken if the victim herself, or a relative to the fourth degree for minors under the age of 15, filed a complaint. The Special Rapporteur observes that family honour constitutes a direct impediment to this system of denunciation, as members may pressure the female victim to not come forward if she is of age, or refuse to file the complaint if she is under 15. The Special Rapporteur is also concerned about the fact that the Personal Status Law requires a male relative (*wali*) to file a complaint on behalf of the victim if she is under the age of 18. This becomes especially difficult when a family member is the perpetrator; shelters and government institutions have no legal capacity to accompany a minor to file a complaint.[47]

70. At the time of writing, under article 308 of the Jordanian Penal Code, a case may be dismissed if the perpetrator of the rape or sexual violence marries his victim. Female victims are often pressured to accept the marriage proposal to preserve the family "honour", to avoid social stigma or even to save their life. Under 304 of the Code a man who deflowers a virgin, promising to marry her, can be punished. However, women rarely report those cases, again because of social values related to "honour".[48]

71. Sexual harassment is not currently criminalized; the draft penal code provides for its criminalization.

72. Other problematic areas of law persist. Among the key areas that need reform are property rights, inheritance rights, marriage, divorce and guardianship. The Personal Status Law and the Egyptian law on family rights grant only men the power to file for marriage and the right to guardianship and trusteeship. A man is considered responsible for supporting his wife, so she must obey him and accept his decisions with regard to changing their place of residence or preventing her from working. A man has the legal right to divorce with no conditions or restrictions, while a woman's right to request divorce is conditioned on presenting justifications and the consent of the sharia judiciary.[49] The Special Rapporteur notes some encouraging efforts, made in 2012, to reform the Personal Status Law, but also notes that most provisions still contravene articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

B. Policy framework

73. The Special Rapporteur welcomes the establishment in 2013 of Takamol, the national referral system to connect women victims of violence with legal, health and social services. The system is based on a 2009 initiative developed by civil society organizations, namely, the Women's Centre for Legal Aid and Counselling and Juzoor for Health and Social Development. She notes that its use is now mandatory for all centres providing services to battered women, for the police and in the health and social affairs sectors.

74. There are only three anti-violence shelters in the West Bank, and only one in Gaza; a national consultative committee has been established for shelters. In Gaza, there are currently two women's health centres — in Jabalia and Bureij. They are managed by professional female staff who provide women with health, reproductive, psychological and recreational services. The centres are both active members of a coalition, supported by the United Nations Population Fund, that brings together 20 NGOs from all over Gaza. The centres serve as

[47] Jallad, "Palestinian women and security", p. 8.

[48] Ibid., p. 9.

[49] For a thorough analysis of the personal status laws, see Naser, "Palestine and the Convention on the Elimination of all Forms of Discrimination against Women: implications of ratification".

models, following an approach in which women help to shape the services they are provided with.

75. Most of the existing hotlines and shelters for battered women are managed by the Ministry of Social Development. The Mehwar Centre is the first national multipurpose centre; in addition to being a shelter for women and their children, the centre combines prevention, protection, empowerment and community-awareness activities and offers social, psychological and legal counselling services.

76. Only a few civil society organizations, such as the Women's Centre for Legal Aid and Counselling, operate emergency protection shelters and provide social and legal services to women victims of violence. Various other women's organizations provide counselling services, psychological support and empowerment services, with funding from foreign donors and in coordination with the Ministry of Social Development and the Ministry of Women's Affairs.

77. Implementing proactive services for women is made difficult by the lack of infrastructure. Particularly in marginalized areas, transportation and better facilities are needed. Economic hardship only deepens the challenge faced by women victims of violence seeking protection facilities. Furthermore, few shelters and safe houses are willing to provide protection to women with disabilities.[50]

78. The Special Rapporteur is concerned that no nationwide statistics on cases of violence against women exist, including data on domestic violence, rape, incest, femicide and honour-related crime. Moreover, no systematic analysis is being conducted with a view to identifying shortcomings of the system, prioritizing the end of violence against women at all levels and finding concrete solutions.

79. A lack of awareness of their rights is another reason why women continue to face violence on such a large scale. The Special Rapporteur notes that several national awareness campaigns on ending violence against women are being implemented by local women's rights and human rights organizations, and that the Ministry of Women's Affairs has conducted several awareness campaigns over the past three years. However, she also notes that more educational/awareness programmes addressed to women of all ages are needed and should be created.

80. The Palestinian civil police force provides training for public officials on women's rights and protection of battered women, and provides safe referral mechanisms for service providers in the social service and health sectors. While it was reported that the training programmes have been successful in changing perceptions of violence against women, the Special Rapporteur notes that the training is not conducted in accordance with a comprehensive strategy of capacity-building in the prevention of violence against women.

C. Institutional framework

81. The Ministry of Women's Affairs works to combat violence against women and aims to develop a governmental commitment to enhance the role of women and guarantee their political, economic and social rights. As the ministry in charge of implementing the Convention on the Elimination of All Forms of Discrimination against Women, the Ministry of Women's Affairs is committed to harmonizing laws and policies. It faces many challenges in its work, including a lack of accurate statistics that it could use to influence politicians and increase public awareness. The Special Rapporteur welcomes the news that, to address this issue, the Ministry plans to establish in 2017 a national observatory on violence against women, in collaboration with the Ministry of Social Development and the Ministry of Health, the police and a number of civil society institutions. She notes that such an observatory, which is in line with the call she made in 2015[51] and her thematic work on the issue, would have the potential to provide powerful and compelling support for decision makers with respect to making the necessary changes in the laws and policies to protect women.

[50] Stars of Hope Society, submission to the Special Rapporteur.

[51] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16796.

82. Due to the internal Palestinian political division, the governmental mechanisms put in place in the West Bank do not have parallels in Gaza. The de facto authorities in Gaza have taken a number of measures and opened some channels of coordination with local women's organizations but, on the whole, the measures have been very limited. The response mainly takes the form of humanitarian and development interventions that support local organizations providing services that respond to gender-based violence.

83. In August 2016, under the leadership of the Ministry of Women's Affairs, a national action plan on the implementation of Security Council resolution 1325 (2000) was adopted. The Special Rapporteur commends the Government for the adoption of the plan, which sends a strong signal to Palestinian women and girls that the Government recognizes their key role in advancing the peace and security agenda, as well as its own responsibility in responding to their needs.

84. The Ministry of Women's Affairs adopted the cross-sectoral National Strategy to Combat Violence Against Women 2011-2019 and established a technical committee to review femicides and to review legislation from a gender perspective. The Strategy is aimed at promoting the rule of law on the basis of women's rights and strengthening institutional mechanisms by improving social protection, social support and health services offered to female victims of violence.

85. The Cross-Sectoral National Gender Strategy serves as a political road map for the Government to address gender-related issues and supports the implementation of the national action plan. It is hoped that the Strategy will serve as a reference point for the development of appropriate and gender-responsive policies that will guarantee women's rights

86. The Special Rapporteur observes that there are not enough social programmes promoting women's rights. The Ministry of Social Development, which as part of its mandate raises awareness and empowers women economically, also provides women with permits and reports to enable them to gain access to shelters. However, the shelters usually do not have enough social workers or a good follow-up system that can be accessed outside of official working hours, forcing some women to wait in police stations until the shelters open the next day. The gaps in the system and the lack of protective laws mean that women must seek help from outside of formal protective frameworks.

87. Another key mechanism for combating violence against women is the National Committee to Combat Violence against Women, established in 2008 by the Council of Ministers and led by the Ministry of Women's Affairs. The Committee is responsible for following up on and monitoring the implementation of the National Strategy to Combat Violence against Women. Its wide-ranging membership includes a variety of key line ministries and other governmental institutions, as well as NGOs represented by the NGO forum for combating violence against women (Al-Muntada) and the General Union of Palestinian Women.

88. The mandate of the Independent Commission for Human Rights, which is the national human rights institution, includes receiving complaints from individuals regarding violations of human rights; reporting on the national human rights situation, on specific matters or through thematic reports, and on violations of any human right, including cases of killings of women; making recommendations to the Government, the parliament and other competent bodies on matters concerning legislative or administrative provisions; promoting the harmonization of national laws and practices with the international obligations of the State of Palestine and the implementation of recommendations of international human rights mechanisms; engaging with the international human rights system; conducting public education and awareness; and monitoring prisons and detention centres. The Commission reported positive developments, such as the openness of the Palestinian authorities to discuss human rights issues and the training and capacity-building provided to Commission officials, and noted positive legislative initiatives, for example the adoption by presidential decree in February 2016 of a juvenile protection law that unified and updated the legislative framework in that area and recognized minors as victims in need of protection, rehabilitation and reintegration into society, rather than as criminals deserving of punishment.[52] However, the

[52] See www.dci-palestine.org/president_abbas_signs_into_law_long_gestating_juvenile_protection_bill.

Commission reported a continued overall lack of State accountability for human rights violations.

89. Civil society organizations have been delivering services, raising awareness, carrying out advocacy and lobbying to end violence against women. They work in collaboration with official institutions, such as the Ministry of Women's Affairs, the Ministry of Social Development and the Ministry of Justice, to provide psychological counselling and legal aid services to women victims of violence. Jointly with official institutions, civil society organizations have undertaken policy-level responses, such as the Palestinian National Development Plan 2014-2016, which promotes a rights-based, gender-sensitive and more inclusive, integrated and sustainable social protection system to alleviate poverty, marginalization and social exclusion, and which is also aimed at empowering Palestinian women to enjoy more protection and better participation in the labour market and public life.

VI. Conclusions and recommendations

90. **During the visit, the Special Rapporteur noted that violence against women occurred in both the private and public spheres. Women face multiple sources of discrimination and violence: they suffer the violence of the Israeli occupation, directly or indirectly, and also suffer from a system of violence emanating from the tradition and culture, with embedded patriarchal social norms and multiple outdated legal frameworks. She notes, however, the State's ratification of the Convention on the Elimination of All Forms of Discrimination against Women and ongoing efforts to harmonize and revise numerous laws relevant to combating and preventing violence against women, and that the taboo attached to such violence is less than it was at the time of the visit of her predecessor.**

91. **With respect to the observed gaps in the fulfilment of the State's obligations, including the due diligence obligations to prevent violence against women, to protect and provide remedies to women who have been subjected to violence and to prosecute and punish the perpetrators, the Special Rapporteur would like to put forward the recommendations below.**

92. **With regard to law and policy reform, the Special Rapporteur recommends that the Government:**

(a) **Urgently repeal discriminatory provisions that are at the root of violence against women and that perpetuate and reinforce the subordination and inferiority of women. As stressed throughout the visit, women's rights cannot wait and specific laws to address gender-based violence need to be adopted urgently, while laws that perpetuate violence against women and discrimination need to be urgently repealed in compliance with international human rights law, in particular the Convention on the Elimination of All Forms of Discrimination against Women, and Committee on the Elimination of Discrimination general recommendation No. 19 (1992) on violence against women. The use of presidential decrees to do so should be encouraged;**

(b) **Consider including in its new Constitution a provision making the Convention on the Elimination of All Forms of Discrimination against Women directly applicable, and urgently ensure that the composition of the constitution committee is gender balanced and includes representatives of civil society;**

(c) **Urgently take all legal, administrative and legislative action necessary to amend penal legislation so as to repeal or amend discriminatory provisions that help perpetuate violence against women. More specifically, the Government should repeal or amend articles 99 and 100 and any other legal loopholes in the Jordanian Penal Code to ensure that such provisions are not applicable in cases of violence against women, and adequately define and criminalize different forms of violence against women, including marital rape, or adopt a unified penal code in line with the Convention on the Elimination of All Forms of Discrimination against Women and international standards;**

(d) **Adopt a unified personal status law by which equality and non-discrimination in family relationships are guaranteed, including provisions establishing the minimum legal age of marriage for girls and boys, with or without parental consent, at 18 years;**

(e) **Adopt the draft legislation on domestic violence/family protection and ensure that it is in line with accepted international standards on women's rights set out in the Convention on the Elimination of All Forms of Discrimination against Women, that it addresses prevention, protection of victims and prosecution of perpetrators and that it provides for protection orders and a sufficient number of shelters;**

(f) **Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;**

(g) **Provide mandatory training to law enforcement officers and members of the judiciary, including judges and prosecutors, on the Convention on the Elimination of All Forms of Discrimination against Women, the general recommendations of the Committee on the Elimination of Discrimination against Women and the Committee's jurisprudence on violence against women;**

(h) **Strengthen efforts to combat discriminatory gender stereotypes among society, including in the media;**

(i) **Conduct campaigns and programmes, including in cooperation with the public defender and civil society, to increase awareness and understanding among the general public, including women of all ages, of the different forms of violence and to raise women's awareness of their rights and avenues of redress.**

93. **With regard to investigations, prosecution support services and protective measures, the Special Rapporteur recommends that the Government:**

(a) **Increase the number of police stations in residential areas and continue its efforts to facilitate women's reporting of incidents to the police, including by taking measures to ensure privacy and confidentiality;**

(b) **Strengthen and ensure the sustainability of both the specialized public prosecutors and the family and justice protection units and adequate representation of women on the staff of both;**

(c) **Consider establishing specialized courts or judges for hearing cases of violence against women;**

(d) **Provide the judiciary with specialized training on gender-based violence; improve access to justice, and incorporate into the programmes of public service training institutions, including for the judiciary, modules on the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and national provisions on gender equality and domestic violence, including recent amendments to penal legislation;**

(e) **Conduct awareness-raising campaigns and training for law enforcement officials, the judiciary, health-care providers, social workers, community leaders and the general public, to increase the understanding that all forms of violence against women are human rights violations;**

(f) **Provide a sufficient number of adequate shelters for women who are victims of, or at risk of, violence, for both the short and long term (emergency shelters and alternative housing solutions) and services, including financial and legal assistance; particular attention should be paid to women with disabilities;**

(g) **Ensure implementation of the national action plan on the implementation of Security Council resolution 1325 (2000), with a focus on the full inclusion of women in any peace and development efforts, and adequate budget allocation for the realization of the plan;**

(h) **Engage in a constructive dialogue with the Israeli authorities on the issues relating to violence against women under joint responsibility.**

94. **The Special Rapporteur recommends that national human rights mechanisms and civil society support and strengthen their cooperation with the Independent Commission for Human Rights and civil society organizations to increase their capacity to monitor and report on the Government's international obligations in the area of women's human rights generally and violence against women in particular, and continue their collaboration in the elaboration and adoption of new laws, such as the law on domestic violence/protection of the family, which requires a consultative process that incorporates the opinions of civil society and victims/survivors, in dialogue with practitioners who will apply and enforce the laws;**

95. **With respect to the collection of data on femicide and other forms of violence against women, the Special Rapporteur recommends that the Government:**

(a) **Establish a system of standardized collection and analysis of data, disaggregated by sex, race, age, ethnicity and other relevant characteristics, in order to understand the magnitude, trends and patterns of violence against women. Monitoring and evaluation tools must also be developed to assess, in a clear and systematic way, progress made in eradicating violence against women;**

(b) **Establish a "femicide watch" or "gender-related killing of women watch" and annually collect and publish data on the number of femicides (all cases, including family related) and establish a separate body for, or entrust an existing body with, analysing each case of femicide in order to identify any failure of protection, with a view to improving and further developing preventive measures.**

96. **The Special Rapporteur recommends that the international community:**

(a) **Provide technical assistance to support legislative processes and the reform of the national framework to harmonize it with international standards, in particular the Convention on the Elimination of All Forms of Discrimination against Women, and provide capacity-building programmes for lawyers, judges, prosecutors, police officers and other law enforcement officials on the Convention and on women's human rights;**

(b) **Ensure better coordination between donors and NGOs to avoid duplication and overlapping of projects and policies aimed at ending violence against women; the area of prevention of violence against women should be better funded and the availability and capacities of service providers enhanced;**

(c) **Include a gender perspective in the projects funded and strengthen financial support for shelters and other services for victims.**

3. *Further calls upon* Israel to desist from imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan, and to desist from its repressive measures against them and from all other practices mentioned in the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories;

4. *Determines* that all legislative and administrative measures and actions taken or to be taken by Israel, the occupying Power, that purport to alter the character and legal status of the occupied Syrian Golan are null and void, constitute a flagrant violation of international law and of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and have no legal effect;

5. *Calls once again upon* Member States not to recognize any of the legislative or administrative measures and actions referred to above;

6. *Requests* the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, the specialized agencies, international and regional intergovernmental organizations and international humanitarian organizations and to give it the widest possible publicity, and to report on this matter to the Human Rights Council at its fourth session, due to be held in March/April 2007;

7. *Decides* to continue the consideration of the human rights violations in the occupied Syrian Golan at its fourth session.

31st meeting
27 November 2006

[Resolution adopted by a recorded vote of 32 to 1, with 14 abstentions. See chap. III.]

2/4. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Security Council and the General Assembly, most recently General Assembly resolution 60/106 of 8 December 2005 in which it reaffirmed, inter alia, the illegality of the Israeli settlements in the occupied territories,

Mindful that Israel is a party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1), and its conclusion that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004,

Recalling further its attachment to the implementation by both parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict (S/2003/529, annex), and noting specifically its call for a freeze on all settlement activity,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Noting the dismantlement of settlements in the Gaza Strip and parts of the northern West Bank,

Expressing grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Welcomes* the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/2006/29 and A/HRC/2/5) and calls upon the Government of Israel to cooperate with the Special Rapporteur to allow him fully to discharge his mandate;

2. *Expresses its grave concern* at:

(*a*) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention; settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(*b*) The Israeli so-called E1 plan aimed at expanding the Israeli settlement of Maale Adumim and building the wall around it, thereby further disconnecting occupied East Jerusalem from the northern and southern parts of the West Bank and isolating its Palestinian population;

(*c*) The new Israeli plans to construct more than 900 additional housing units in different Israeli settlements in the occupied West Bank;

(*d*) The implications on the final status negotiations of Israel's recent announcement that it will retain the major settlement blocs in the Occupied Palestinian Territory, including settlements located in the Jordan Valley;

(*e*) The expansion of Israeli settlements and the construction of new ones on the Occupied Palestinian Territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent, in which case, it would be tantamount to de facto annexation;[1]

(*f*) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev in violation of international law and relevant United Nations resolutions;

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[1] See International Court of Justice, Advisory Opinion of 9 July 2004 in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (see A/ES-10/273 and Corr.1, para. 121).

(*g*) The continued closures of and within the Occupied Palestinian Territory and the restriction of the freedom of movement of people and goods, including the repeated closure of the crossing points of the Gaza Strip, which have caused an extremely precarious humanitarian situation for the civilian population as well as impaired the economic and social rights of the Palestinian people;

(*h*) The continued construction, contrary to international law, of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem;

3. *Urges* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including "natural growth" and related activities;

(*b*) To prevent any new installation of settlers in the occupied territories;

4. *Urges* the full implementation of the Access and Movement Agreement of 15 November 2005, particularly the urgent reopening of Rafah and Karni crossings, which is crucial to ensuring the passage of foodstuffs and essential supplies, as well as the access of the United Nations agencies to and within the Occupied Palestinian Territory;

5. *Demands* that Israel implement the recommendations regarding the settlements made by the then United Nations High Commissioner for Human Rights in her report to the Commission on Human Rights at its fifty-seventh session on her visit to the occupied Palestinian territories, Israel, Egypt and Jordan (E/CN.4/2001/114);

6. *Calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

7. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the Advisory Opinion rendered on 9 July 2004 by the International Court of Justice;

8. *Welcomes* the Palestinian truce initiative and its acceptance by the Israeli side that came into effect on 26 November 2006 and urges all parties to maintain this truce, which could pave the way for genuine negotiations towards a just resolution to the conflict;

9. *Urges* the parties to give renewed impetus to the peace process and to implement fully the road map endorsed by the Security Council in resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, and other relevant United Nations

resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

10. *Decides* to continue the consideration of this question at its fourth session.

32nd meeting
27 November 2006

[Resolution adopted by a recorded vote of 45 to 1, with 1 abstention. See chap. III.]

2/5. Effective implementation of international instruments on human rights

The Human Rights Council,

Recalling Commission on Human Rights resolution 2004/78 of 21 April 2004,

1. *Takes note with appreciation* of the continuing efforts of the Member States of the United Nations, the human rights treaty bodies, the United Nations High Commissioner for Human Rights and the Secretary-General to improve the effectiveness of the treaty body system, and encourages further such efforts;

2. *Encourages* the High Commissioner to undertake a study on various options for reforming the treaty body system, and to seek the views of States and other stakeholders in this regard and to report thereon to the Human Rights Council.

33rd meeting
28 November 2006

[Resolution adopted without a vote. See chap. III.]

B. DECISIONS

2/101. Situation of human rights in Kyrgyzstan

At its 23rd (closed) meeting, on 2 October 2006, the Human Rights Council decided, without a vote, to make public the text it adopted relating to its consideration of the human rights situation in Kyrgyzstan under the procedure established in accordance with Economic and Social Council resolution 1503 [XLVIII] of 27 May 1970:

"*The Human Rights Council*,

"*Having examined* the material relating to the human rights situation in Kyrgyzstan brought before it under the 1503 procedure in accordance with Economic and Social Council resolution 2000/3, alleging the use of excessive force against demonstrators and the use of arbitrary arrest and detention against protestors in order to stifle political opposition,

7/18. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly, most recently General Assembly resolution 62/108 of 17 December 2007 in which the Assembly reaffirmed, inter alia, the illegality of the Israeli settlements in the occupied territories,

Mindful that Israel is a party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I),

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and its conclusion that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law",

Recalling also General Assembly resolution ES-10/15 of 20 July 2004,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts, including the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling its attachment to the implementation by both parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict (S/2003/529, annex), and noting specifically its call for a freeze on all settlement activity,

Expressing its grave concern at the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State, in violation of international humanitarian law and relevant United Nations resolutions,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Expressing grave concern at the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the route of the wall has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Welcomes* the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/7/17) and calls upon the Government of Israel to cooperate with the Special Rapporteur to allow him to discharge his mandate fully;

2. *Deplores* the recent Israeli announcements of the construction of new housing units for Israeli settlers in and around occupied East Jerusalem, as they undermine the peace process and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law and pledges made by Israel at the Annapolis Peace Conference of 27 November 2007;

3. *Expresses its grave concern* at:

(*a*) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and in particular article 49 of that Convention; settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(*b*) The Israeli so-called E-1 plan aimed at expanding the Israeli settlement of Maale Adumim and building the wall around it, thereby further disconnecting occupied East Jerusalem from the northern and southern parts of the West Bank and isolating its Palestinian population;

(*c*) The implications for the final status negotiations of the announcement by Israel that it will retain the major settlement blocks in the Occupied Palestinian Territory, including settlements located in the Jordan Valley;

(*d*) The expansion of Israeli settlements and the construction of new ones on the Occupied Palestinian Territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent and would be tantamount to de facto annexation;

(*e*) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, in violation of international law and relevant United Nations resolutions;

(*f*) The continued closures of and within the Occupied Palestinian Territory and the restriction of the freedom of movement of people and goods, including the repeated closure of the crossing points of the Gaza Strip, which have created an extremely precarious humanitarian situation for the civilian population and impaired the economic and social rights of the Palestinian people;

(*g*) The continued construction, contrary to international law, of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem;

4. *Urges* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including “natural growth” and related activities;

(*b*) To prevent any new installation of settlers in the occupied territories;

5. *Urges* the full implementation of the Access and Movement Agreement of 15 November 2005, particularly the urgent reopening of the Rafah and Karni crossings, which are crucial to the passage of foodstuffs and essential supplies, as well as the access of United Nations agencies to and within the Occupied Palestinian Territory;

6. *Demands* that Israel implement the recommendations regarding the settlements made by the United Nations High Commissioner for Human Rights in her report to the Commission on Human Rights at its fifty-seventh session on her visit to the occupied Palestinian territories, Israel, Egypt and Jordan (E/CN.4/2001/114);

7. *Calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

8. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

9. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State and to implement fully the road map endorsed by the Security Council in its resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

10. *Decides* to continue the consideration of this question at its session of March 2009.

40th meeting
27 March 2008

Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour: Angola, Azerbaijan, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, France, Gabon, Germany, Ghana, Guatemala, India, Indonesia, Italy, Japan, Jordan, Madagascar, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Sri Lanka, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against: Canada.

See chapter VII.

7/19. Combating defamation of religions

The Human Rights Council,

Recalling the 2005 World Summit Outcome adopted by the General Assembly in its resolution 60/1 of 24 October 2005, in which the Assembly emphasized the responsibilities of all States, in conformity with the Charter of the United Nations, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status, and acknowledged the importance of respect and understanding for religious and cultural diversity throughout the world,

9. *Requests* the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations organs, specialized agencies, international and regional intergovernmental organizations and international humanitarian organizations, to disseminate it as widely as possible and to report on this matter to the Council at its thirteenth session;

10. *Decides* to continue the consideration of the human rights violations in the occupied Syrian Golan at its thirteenth session.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 33 to 1, with 13 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia;

Against:

Canada;

Abstaining:

Bosnia and Herzegovina, Cameroon, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/18
Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Council, the Security Council and the General Assembly, reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories,

Mindful that Israel is a party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem, and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva

Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts, including the Annapolis Peace Conference of 27 November 2007 and the Paris International Donors' Conference for the Palestinian State of 17 December 2007, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling its attachment to the implementation by both parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict (S/2003/529, annex), and noting specifically its call for a freeze on all settlement activity,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlements building and expansion in the Occupied Palestinian Territory, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Expressing grave concern at the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the route of the wall has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Welcomes* the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/10/20), and calls upon the Government of Israel to cooperate with all relevant special rapporteurs in accordance with Council resolution S-9/1 to allow them to discharge their mandates fully;

2. *Deplores* the recent Israeli announcements of the construction of new housing units for Israeli settlers in the Occupied Palestinian Territory, particularly in and around occupied East Jerusalem, as they undermine the peace process and the creation of a contiguous, sovereign and independent Palestinian State and are in violation of international law and Israeli pledges at the Annapolis Peace Conference;

3. *Expresses its grave concern* at:

(a) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the Occupied Palestinian Territory, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention, and recalls that settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(b) The Israeli planned settlement construction in the vicinity of the Adam settlements in the occupied West Bank, which constitutes a new settlement block;

(c) The increasing number of newly built structures, in 2008 amounting to 1,257, including 748 permanent buildings and 509 mobile structures, which obstruct the efforts of the international community to advance the Middle East peace process;

(d) The implications for the final status negotiations of the announcement by Israel that it will retain the major settlement blocks in the Occupied Palestinian Territory, including settlements located in the Jordan Valley;

(e) The expansion of Israeli settlements and the construction of new ones in the Occupied Palestinian Territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent and would be tantamount to de facto annexation;

(f) The continued closures of and within the Occupied Palestinian Territory, and the restriction of the freedom of movement of people and goods, including the repeated closures of the crossing points of the Occupied Gaza Strip, which have created an extremely precarious humanitarian situation for the civilian population as well as impaired the economic and social rights of the Palestinian people;

(g) The continued construction, contrary to international law, of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem;

(h) The latest Israeli plan to demolish more than 88 houses in the Al-Bustan neighbourhood of Silwan, which will result in the displacement of more than 1,500 Palestinian residents of East Jerusalem;

4. *Urges* Israel, the occupying Power:

(a) To reverse the settlement policy in the occupied territories, including in East Jerusalem and the Syrian Golan and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including “natural growth” and related activities;

(b) To prevent any new installation of settlers in the occupied territories;

5. *Urges* the full implementation of the Agreement on Movement and Access of 15 November 2005, particularly the urgent reopening of the Rafah and Karni crossings, which are crucial to the passage of foodstuffs and essential supplies, as well as the access of United Nations agencies to and within the Occupied Palestinian Territory;

6. *Calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of

the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

7. *Also calls upon* Israel to implement the recommendations regarding the settlements made by the United Nations High Commissioner for Human Rights in her report to the Commission on Human Rights on her visit to the Occupied Palestinian Territory, Israel, Egypt and Jordan (E/CN.4/2001/114);

8. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

9. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State and to implement fully the road map endorsed by the Security Council in its resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) and 338 (1973), and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo accords and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

10. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 46 to 1, with no abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Egypt, France, Gabon, Germany, Ghana, India, Indonesia, Italy, Japan, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against:

Canada.]

10/19
Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory

The Human Rights Council,

Guided by the principles and objectives of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Guided also by the right of the Palestinian people to self-determination and the inadmissibility of the acquisition of land by the use of force, as enshrined in the Charter,

Affirming the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem,

Affirming also the applicability of international human rights law to the Occupied Palestinian Territory, including East Jerusalem,

Expressing serious concern at the lack of implementation by the occupying Power, Israel, of previously adopted resolutions and recommendations of the Council relating to the human rights situation in the Occupied Palestinian Territory, including East Jerusalem,

Condemning all forms of violence against civilians and deploring the loss of human lives in the context of the current situation,

Recognizing that the Israeli military attacks and operations in the Occupied Palestinian Territory have caused severe violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts towards achieving a just and lasting peace in the region based on the two-State solution,

Recognizing also that the Israeli siege imposed on the occupied Gaza Strip, including the closure of border crossings, leads to disastrous humanitarian, economic and environmental consequences,

1. *Demands* that the occupying Power, Israel, end its occupation of the Palestinian land occupied since 1967, and to respect its commitments within the peace process towards the establishment of the independent sovereign Palestinian State, with East Jerusalem as its capital, living in peace and security with all its neighbours;

2. *Strongly condemns* the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which have resulted in the killing and injury of thousands of Palestinian civilians, including a large number of women and children, and also condemns the firing of crude rockets on Israeli civilians;

3. *Demands* that the occupying Power, Israel, stop the targeting of civilians and the systematic destruction of the cultural heritage of the Palestinian people, in addition to the destruction of public and private properties, and the targeting of United Nations facilities, as laid down in the Fourth Geneva Convention;

4. *Also demands* that Israel, the occupying Power, cease immediately all current excavations beneath and around the Al-Aqsa Mosque compound, and refrain from any act that may endanger the structure or change the nature of the holy sites both Islamic and Christian, in the Occupied Palestinian Territory, particularly in and around Jerusalem;

5. *Calls for* immediate protection of all civilians, including an international protection for the Palestinian people in the Occupied Palestinian Territory, in compliance with international human rights and humanitarian law, both applicable in the Occupied Palestinian Territory, including East Jerusalem;

6. *Also calls for* the immediate cessation of all Israeli military attacks and operations throughout the Occupied Palestinian Territory and of the firing of crude rockets by Palestinian combatants against southern Israel;

7. *Demands* that the occupying Power, Israel, immediately stop its illegal decision to demolish a large number of Palestinian houses in the East Jerusalem neighbourhood of Al-Bustan in the Selwan area, near the Al-Aqsa Mosque, which will result in the displacement of more than 1,500 Palestinian residents of East Jerusalem;

8. *Demands* that the occupying Power, Israel, release Palestinian prisoners and detainees;

9. *Calls upon* the occupying Power, Israel, to lift checkpoints and to open all crossing points and borders in accordance with international agreements;

10. *Urges* all parties concerned to respect the rules of international human rights and humanitarian law and to refrain from violence against civilian populations;

11. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 35 to 4, with 8 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Switzerland, Uruguay, Zambia;

Against:

Canada, Germany, Italy, Netherlands;

Abstaining:

Cameroon, France, Japan, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/20
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) on 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the latest being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009
[Adopted without a vote. See part II, chap. VII.]

10/21
Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

The Human Rights Council,

Recalling its resolution S-9/1 of 12 January 2009,

Recalling also its decision to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the latest aggression, and that it called upon Israel not to obstruct the process of investigation and to fully cooperate with the mission,

Expressing with regret that resolution S-9/1 has not been fully implemented to date,

1. *Requests* the President of the Council to continue his tireless efforts to appoint the independent international fact-finding mission;

2. *Calls upon* the occupying Power, Israel, to abide by its obligations under international law, international humanitarian law and international human rights law;

3. *Demands* that the occupying Power, Israel, fully cooperate with all relevant special procedures mandate holders in the discharge of their mandates;

4. *Also demands* that the occupying Power, Israel, facilitate and provide unhindered access to the members of the independent international fact-finding mission;

5. *Decides* to remain seized of the matter.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 33 to 1, with 13 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Uruguay, Zambia;

Against:

Canada;

Abstaining:

Bosnia and Herzegovina, Cameroon, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/22
Combating defamation of religions

The Human Rights Council,

Reaffirming the pledge made by all States under the Charter of the United Nations to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming also that all human rights are universal, indivisible, interdependent and interrelated,

Recalling the 2005 World Summit Outcome adopted by the General Assembly in its resolution 60/1 of 16 September 2005, in which the Assembly emphasized the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind, and acknowledged the importance of respect and understanding for religious and cultural diversity throughout the world,

Recognizing the valuable contribution of all religions to modern civilization and the contribution that dialogue among civilizations can make towards improved awareness and understanding of the common values shared by all humankind,

United Nations A/HRC/RES/13/7

General Assembly

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Human Rights Council
Thirteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

13/7
Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly, reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Mindful that Israel is a party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem, and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

* The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.

Please recycle

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004 and other relevant United Nations resolutions,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein and undermine international efforts, including the Annapolis Peace Conference of 27 November 2007 and the Paris International Donors' Conference for the Palestinian State of 17 December 2007, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling its attachment to the implementation by both parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict (S/2003/529, annex), and noting specifically its call for a freeze on all settlement activity,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Expressing grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967,

1. *Welcomes* the Council of the European Union conclusions on the Middle East peace process of 8 December 2009, in which the European Union Council of Ministers reiterated that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-State solution impossible, and particularly its urgent call upon the Government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank and including natural growth, and to dismantle all outposts erected since March 2001;

2. *Welcomes with appreciation* the statements made by the majority of the States Members of the United Nations on the illegality of settlement activities in the occupied Palestinian territories, including East Jerusalem, and reaffirming the urgent calls

by the international community upon the Government of Israel to immediately stop all settlement activities, including in East Jerusalem;

3. *Deplores* the recent Israeli announcements of the construction of new housing units for Israeli settlers in and around occupied East Jerusalem, as they undermine the peace process and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law and Israeli pledges at the Annapolis Peace Conference of 27 November 2007;

4. *Condemns* the new Israeli announcement on the construction of one hundred and twenty new housing units in the Bitar Elite settlement, and thousand six hundred new housing units for new settlers in the East Jerusalem neighbourhood of Ramat Shlomo, and calls upon the Government of Israel to immediately reverse its decision which would further undermine and jeopardize the ongoing efforts by the international community to reach a final settlement compliant with international legitimacy, including the relevant United Nations resolutions;

5. *Expresses its grave concern* at:

(a) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention, and recalls that settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(b) The Israeli planned settlement construction in the vicinity of the Adam settlements in the occupied West Bank, which constitutes a new settlement block;

(c) The increasing number of newly built structures, in 2008 and 2009, amounting to several thousand, including a large number of permanent buildings and structures, which undermine the efforts of the international community to advance the Middle East peace process;

(d) The so-called E-1 plan aimed at expanding the Israeli settlement of Maale Adumim and building the wall around it, thereby further disconnecting occupied East Jerusalem from the northern and southern parts of the West Bank and isolating its Palestinian population;

(e) The implications for the final status negotiations of Israel's announcement that it will retain the major settlement blocks in the Occupied Palestinian Territory, including settlements located in the Jordan Valley;

(f) The expansion of Israeli settlements and the construction of new ones on the Occupied Palestinian Territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent and would in that case be tantamount to de facto annexation;

(g) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;

(h) The continued closures of and within the Occupied Palestinian Territory and the restriction of the freedom of movement of people and goods, including the repeated closure of the crossing points of the Gaza Strip, which have created an extremely precarious

humanitarian situation for the civilian population as well as impaired the economic and social rights of the Palestinian people;

(i) The continued construction, contrary to international law, of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem;

(j) The latest Israeli plan to demolish hundreds of houses in occupied East Jerusalem, including its decision to demolish more than eighty-eight houses in the Al-Bustan neighbourhood of Silwan, which would result in the displacement of more than two thousand Palestinian residents of East Jerusalem, in addition to the Israeli decision to evacuate Palestinian families from their houses in the Al-Sheikh Jarrah area of East Jerusalem and to replace them by Israeli settlers;

6. *Urges* Israel, the occupying Power:

(a) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including "natural growth" and related activities including in East Jerusalem;

(b) To prevent any new installation of settlers in the occupied territories, including in East Jerusalem;

7. *Urges* the full implementation of the Access and Movement Agreement of 15 November 2005, particularly the urgent reopening of Rafah and Karni crossings, which is crucial to ensuring the passage of foodstuffs and essential supplies, as well as the access of the United Nations agencies to and within the Occupied Palestinian Territory;

8. *Calls upon* Israel to implement the recommendations regarding the settlements made by the then United Nations High Commissioner for Human Rights in her report to the Commission on Human Rights at its fifty-seventh session on her visit to the occupied Palestinian territories, Israel, Egypt and Jordan (E/CN.4/2001/114);

9. *Also calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

10. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the Advisory Opinion rendered on 9 July 2004 by the International Court of Justice;

11. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State and to implement fully the road map endorsed by the Security Council in resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords, the Arab Peace initiative and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

12. *Decides* to continue the consideration of this question at its sixteenth session.

41st meeting
24 March 2010

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Egypt, France, Gabon, Ghana, Hungary, India, Indonesia, Italy, Japan, Jordan, Kyrgyzstan, Madagascar, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against:

United States of America]

United Nations A/HRC/RES/16/31

General Assembly

Distr.: General
13 April 2011

Original: English

Human Rights Council
Sixteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

16/31
Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly, reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Mindful that Israel is a party to the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

Please recycle

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004 and other relevant United Nations resolutions,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, are illegal under international law and constitute very serious violations of the international humanitarian law and of the human rights of the Palestinian people therein, and undermine international efforts, including the Annapolis Peace Conference of 27 November 2007 and the Paris International Donors' Conference for the Palestinian State of 17 December 2007, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling the statement made by the Quartet on 21 September 2010 and its attachment to the implementation by the parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict,[1] and noting specifically its call for a freeze on all settlement activities,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activities undermine the realization of a two-State solution,

Expressing grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution physically impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Welcomes* the Council of the European Union conclusions on the Middle East Peace Process of 8 December 2009, in which the European Union Council of Ministers reiterated that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-State solution impossible, and particularly its urgent call upon the Government of Israel to immediately end all settlement activities, in East Jerusalem and

[1] S/2003/529, annex.

the rest of the West Bank and including natural growth, and to dismantle all outposts erected since March 2001;

2. *Welcomes with appreciation* the statements made by the majority of the States Members of the United Nations on the illegality of settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the urgent calls by the international community upon the Government of Israel to immediately stop all settlement activities, including in East Jerusalem;

3. *Condemns* the recent Israeli announcements of the construction of new housing units for Israeli settlers in and around occupied East Jerusalem, as they undermine the peace process, constitute a threat to the two-State solution and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law, and calls upon the Government of Israel to immediately reverse its decisions, which would further undermine and jeopardize the ongoing efforts by the international community to reach a final settlement compliant with relevant United Nations resolutions;

4. *Expresses its grave concern* at:

(*a*) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention, and recalls that settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(*b*) Planned Israeli settlement construction in the vicinity of the Adam settlements in the occupied West bank, which constitutes a new settlement block;

(*c*) The increasing number of newly built structures, in 2008, 2009, 2010 and 2011 amounting to several thousand, including a large number of permanent buildings and structures, which undermine the efforts of the international community to advance the Middle East peace process;

(*d*) The so-called E-1 plan aimed at expanding the Israeli settlement of Maale Adumim and building the wall around it, thereby further disconnecting occupied East Jerusalem from the northern and southern parts of the West Bank and isolating its Palestinian population;

(*e*) The implications for the final status negotiations of Israel's announcement that it will retain the major settlement blocks in the Occupied Palestinian Territory, including the settlements located in the Jordan Valley;

(*f*) The expansion of Israeli settlements and the construction of new ones on the occupied Palestinian territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent, in which case it would be tantamount to de facto annexation;

(*g*) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;

(*h*) The continued closures of and within the Occupied Palestinian Territory and the restriction of the freedom of movement of people and goods, including the repeated

closure of the crossing points of the Gaza Strip, which have created an extremely precarious humanitarian situation for the civilian population, as well as having impaired the economic and social rights of the Palestinian people;

(*i*) The continued construction, contrary to international law, of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem;

(*j*) The latest Israeli plans to demolish hundreds of houses in occupied East Jerusalem, including their decision to demolish more than eighty eight houses in the Al-Bustan neighbourhood of Silwan, which would result in the displacement of more than two thousand Palestinian residents of East Jerusalem, in addition to the Israeli decision to evacuate Palestinian families from their houses in Al-Sheikh Jarrah and Beit Hanina areas of East Jerusalem and to replace them with Israeli settlers;

5. *Urges* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including "natural growth" and related activities, including in East Jerusalem;

(*b*) To prevent any new installation of settlers in the occupied territories, including in East Jerusalem;

6. *Urges* the full implementation of the Access and Movement Agreement of 15 November 2005, particularly the urgent reopening of the Rafah and Karni crossings, which is crucial to ensuring the passage of foodstuffs and essential supplies, as well as the access of United Nations agencies to and within the Occupied Palestinian Territory;

7. *Calls upon* Israel to implement the relevant resolutions and recommendations of the Security Council, the General Assembly and the Human Rights Council relating to the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem;

8. *Also calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of the Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

9. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

10. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State, and to implement fully the road map endorsed by the Security Council in its resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973 and 1850 (2008) of 16 December 2008. and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords, the Arab Peace initiative and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

11. *Decides* to continue the consideration of this question at its nineteenth session.

48th meeting
25 March 2011

[Adopted by a recorded vote of 45 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, France, Gabon, Ghana, Guatemala, Hungary, Japan, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Pakistan, Poland, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Slovakia, Spain, Switzerland, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia

Against:

United States of America]

United Nations A/HRC/RES/19/17

General Assembly

Distr.: General
10 April 2012

Original: English

Human Rights Council
Nineteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

19/17
Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Mindful that Israel is a party to the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied*

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its nineteenth session (A/HRC/19/2), chap. I.

Please recycle

Palestinian Territory, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004 and other relevant United Nations resolutions,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, are illegal under international law and constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein, and undermine international efforts, including the Annapolis Peace Conference of 27 November 2007 and the Paris International Donors' Conference for the Palestinian State of 17 December 2007, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling the statement made by the Quartet on 21 September 2010 and its attachment to the implementation by the parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and noting specifically its call for a freeze on all settlement activities,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Expressing grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967,

1. *Welcomes* the conclusions of the Council of the European Union on the Middle East peace process of 8 December 2009, in which the Council reiterated that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-State solution impossible, and particularly its urgent call upon the Government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank, and including natural growth, and to dismantle all outposts erected since March 2001;

2. *Welcomes with appreciation* the statements made by the majority of the States Members of the United Nations on the illegality of settlement activities in the Occupied Palestinian territory, including East Jerusalem, and reaffirming the urgent calls by

the international community upon the Government of Israel to stop immediately all settlement activities, including in East Jerusalem;

3. *Condemns* the recent Israeli announcements of the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as they undermine the peace process, constitute a threat to the two-State solution and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law, and calls upon the Government of Israel to reverse immediately its decisions, which would further undermine and jeopardize the ongoing efforts by the international community to reach a final settlement compliant with international legitimacy, including relevant United Nations resolutions;

4. *Expresses its grave concern* at:

(*a*) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention, and recalls that settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(*b*) The increasing number of newly built structures, in 2008, 2009, 2010, 2011 and 2012 amounting to several thousands, including a large number of permanent buildings and structures, which undermine the efforts of the international community to advance the Middle East peace process;

(*c*) The implications for the final status negotiations of Israel's announcement that it will retain the major settlement blocks in the Occupied Palestinian Territory, including the settlements located in the Jordan Valley;

(*d*) The expansion of Israeli settlements and the construction of new ones on the occupied Palestinian territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent, in which case it would be tantamount to de facto annexation;

(*e*) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;

5. *Urges* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of the existing settlements, including "natural growth" and related activities, including in East Jerusalem;

(*b*) To prevent any new installation of settlers in the occupied territories, including in East Jerusalem;

6. *Calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

7. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

8. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State, and to implement fully the road map endorsed by the Security Council in its resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 1397 (2002) of 12 March 2002, 1515 (2003) of 19 November 2003 and 1850 (2008) of 16 December 2008, and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords, the Arab Peace initiative and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

9. *Decides* to dispatch an independent international fact-finding mission, to be appointed by the President of the Human Rights Council, to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, with a mandate ending on submission of a report to the Council, and calls upon Israel, the occupying Power, not to obstruct the process of investigation and to cooperate fully with the mission;

10. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all administrative, technical and logistical assistance to enable the mission to fulfil its mandate promptly and efficiently;

11. *Requests* the Secretary-General to report on the implementation of the present resolution at its twentieth session;

12. *Decides* to remain seized of the matter.

53rd meeting
22 March 2012

[Adopted by a recorded vote of 36 to 1, with 10 abstentions. The voting was as follows:

In favour:

Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Chile, China, Congo, Cuba, Djibouti, Ecuador, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Switzerland, Thailand, Uganda, Uruguay

Against:

United States of America

Abstaining:

Cameroon, Costa Rica, Czech Republic, Guatemala, Hungary, Italy, Poland, Republic of Moldova, Romania, Spain]

United Nations A/HRC/RES/22/26

General Assembly

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12 April 2013

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Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/26. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Mindful that Israel is a party to the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied*

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

Please recycle

Palestinian Territory, and its conclusion that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were established in breach of international law,

Recalling also General Assembly resolution ES-10/15 of 20 July 2004 and other relevant United Nations resolutions,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, are illegal under international law and constitute very serious violations of international humanitarian law and of the human rights of the Palestinian people therein, and undermine international efforts, including the Annapolis Peace Conference of 27 November 2007 and the Paris International Donors' Conference for the Palestinian State of 17 December 2007, aimed at invigorating the peace process and establishing a viable, contiguous, sovereign and independent Palestinian State by the end of 2008,

Recalling the statement made by the Quartet on 21 September 2010 and its attachment to the implementation by the parties of their obligations under the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and noting specifically its call for a freeze on all settlement activities,

Expressing its grave concern about the continuation by Israel, the occupying Power, of settlement building and expansion in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law and relevant United Nations resolutions, including plans to expand and connect Israeli settlements around Occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State,

Expressing its concern that continuing Israeli settlement activity undermines the realization of a two-State solution,

Expressing grave concern about the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular about the route of the wall in departure from the Armistice Line of 1949, which could prejudge future negotiations and make the two-State solution impossible to implement and which is causing the Palestinian people further humanitarian hardship,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of the Government of Israel to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967,

1. *Welcomes* the conclusions of the Council of the European Union on the Middle East peace process of 8 December 2009, in which the European Union Council of Ministers reiterated that settlements, the separation barrier where built on occupied land, and the demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-State solution impossible, and particularly its urgent call upon the Government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank, and including natural growth, and to dismantle all outposts erected since March 2001;

2. *Welcomes with appreciation* the statements made by the majority of the States Members of the United Nations on the illegality of settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and reaffirming the urgent calls

by the international community upon the Government of Israel to stop immediately all settlement activities, including in East Jerusalem;

3. *Condemns* the recent Israeli announcements of the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as they undermine the peace process, constitute a threat to the two-State solution and the creation of a contiguous, sovereign and independent Palestinian State, and are in violation of international law, and calls upon the Government of Israel to reverse immediately its decisions, which would further undermine and jeopardize the ongoing efforts by the international community to reach a final settlement compliant with international legitimacy, including relevant United Nations resolutions;

4. *Expresses its grave concern* at:

(*a*) The continuing Israeli settlement and related activities, in violation of international law, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 of that Convention, and recalls that settlements are a major obstacle to the establishment of a just and comprehensive peace and to the creation of an independent, viable, sovereign and democratic Palestinian State;

(*b*) The increasing number of newly built structures, in 2008, 2009, 2010, 2011 and 2012 amounting to several thousands, including a large number of permanent buildings and structures, which undermine the efforts of the international community to advance the Middle East peace process;

(*c*) The implications for the final status negotiations of Israel's announcement that it will retain the major settlement blocks in the Occupied Palestinian Territory, including the settlements located in the Jordan Valley;

(*d*) The expansion of Israeli settlements and the construction of new ones on the occupied Palestinian territory rendered inaccessible behind the wall, which create a fait accompli on the ground that could well be permanent, in which case it would be tantamount to de facto annexation;

(*e*) The operation by Israel of a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;

5. *Urges* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of existing settlements, including "natural growth" and related activities, including in East Jerusalem;

(*b*) To prevent any new installation of settlers in the occupied territories, including in East Jerusalem;

(*c*) To immediately reverse its decision to unfreeze the planning process on the E-1 plan which, if implemented, would seriously undermine the prospects of a negotiated resolution of the conflict by jeopardizing the prospects of a contiguous and viable Palestinian State and of Jerusalem as the future capital of two States, and could also entail the forced transfer of the Palestinian civilian population;

6. *Calls upon* Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

7. *Demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

8. *Urges* the parties to give renewed impetus to the peace process in line with the Annapolis Peace Conference and the Paris International Donors' Conference for the Palestinian State, and to implement fully the road map endorsed by the Security Council in resolution 1515 (2003) of 19 November 2003, with the aim of reaching a comprehensive political settlement in accordance with the resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 1397 (2002) of 12 March 2002, 1515 (2003) of 19 November 2003 and 1850 (2008) of 16 December 2008, and other relevant United Nations resolutions, the principles of the Peace Conference on the Middle East, held in Madrid on 30 October 1991, the Oslo Accords, the Arab Peace initiative and subsequent agreements, which will allow two States, Israel and Palestine, to live in peace and security;

9. *Requests* the Secretary-General to report on the implementation of the present resolution at its twenty-fifth session;

10. *Decides* to remain seized of the matter.

50th meeting
22 March 2013

[Adopted by a recorded vote of 44 to 1, with 2 abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America

Abstaining:

Côte d'Ivoire, Kenya]

United Nations A/HRC/RES/25/28

General Assembly

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Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

25/28.
Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling the relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Mindful that Israel is a party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable de jure to Palestinian and all Arab territories occupied by Israel since 1967, including East Jerusalem and the Syrian Golan, and recalling the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001,

Considering that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the Geneva Conventions of 12 August 1949,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, as well as the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Taking note also of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, undermine regional and international efforts aimed at the realization of the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, on the basis of the pre-1967 borders,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically the Quartet's call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Taking note of General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and taking note of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the forced displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Expressing grave concern at the continuation by Israel, the occupying Power, of settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law, relevant United Nations resolutions, the agreements reached between the parties and obligations under the Quartet road map, and in defiance of the calls by the international community to cease all settlement activities,

Expressing grave concern in particular at the construction and expansion by Israel of settlements in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, thus threatening the creation of a contiguous Palestinian State, as well as at the

[1] A/HRC/22/63.
[2] A/67/738.

continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city and ongoing settlement activities in the Jordan Valley,

Expressing grave concern at the continuing construction, contrary to international law, by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, is fragmenting the territorial contiguity of the Territory and undermining its viability, and could prejudge future negotiations and make the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Deploring settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, as well as any activities involving the confiscation of land, the disruption of the livelihood of protected persons, the forced displacement of civilians and the de facto annexation of land,

Gravely concerned at the rising number of incidents of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including historic and religious sites, and agricultural lands,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights,[3] which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and urge States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas,

Reaffirming the fact that the High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War undertook to respect and ensure respect for the Convention in all circumstances, and that States should not recognize an unlawful situation arising from breaches of peremptory norms of international law,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

[3] A/HRC/17/31, annex.

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately and completely cease all of its settlement activities in all of the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of all relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980 and 1515 (2003) of 19 November 2003;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

5. *Condemns* the continuing settlement and related activities by Israel, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and in particular article 49 thereof;

6. *Also condemns* the recent Israeli announcements of the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as they seriously undermine the peace process and jeopardize the ongoing efforts by the international community to reach a final settlement compliant with international legitimacy, including relevant United Nations resolutions, constitute a threat to the two-State solution and the creation of a contiguous, sovereign, independent Palestinian State, and are in violation of international law and would entail the forced transfer of Palestinian civilians, and calls upon Israel to immediately reverse its decisions;

7. *Expresses its grave concern* at:

(*a*) The increasing number of newly built structures over the past years and to date, undermining the efforts of the international community to advance the Middle East peace process;

(*b*) The implications for the final status negotiations of Israel's announcement that it will retain the major settlement blocks in the Occupied Palestinian Territory, including the settlements located in the Jordan Valley;

(*c*) The expansion of Israeli settlements and the construction of new ones on the occupied Palestinian territory rendered inaccessible behind the wall, which create a fait

accompli on the ground that could well be permanent, in which case it would be tantamount to de facto annexation;

(*d*) The operation by Israel of a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions;

8. *Calls upon* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and discard its E-1 plan;

(*b*) To immediately cease construction of the new illegal settlement highway (the "Begin Highway") in the neighbourhood of Beit Safafa in occupied East Jerusalem, which is in clear violation of international law;

(*c*) To put an end to the human rights violations linked to the presence of settlements, especially of the right to self-determination, and fulfil its international obligations to provide effective remedy for victims;

(*d*) To take immediate measures to prohibit and eradicate all policies or practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, to the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, and to the application of a two-tier legal system;

(*e*) To put an end to measures resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves;

(*f*) To take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for, and preventing, all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(*g*) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian populations;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union from 2014 onwards;

10. *Encourages* all States and international organizations to continue to actively pursue policies that ensure respect of their obligations under international law with regard to all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem, particularly Israeli settlements;

11. *Urges* all States:

(*a*) To ensure that they are not taking actions that assist the expansion of settlements or construction of the wall in the Occupied Palestinian Territory, including East Jerusalem;

(*b*) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, to take appropriate measures to encourage businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, and to refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards;

(*c*) To provide information to individuals and businesses on the financial, reputational and legal risks, as well as the possible abuses of the rights of individuals, of becoming involved in settlement-related activities, including economic and financial activities, the provision of services in settlements and the purchasing of property;

12. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

13. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

14. *Welcomes* the decision of the Working Group on the issue of human rights and transnational corporations and other business enterprises to issue a statement before the twenty-sixth session of the Human Rights Council, in follow-up to Council resolution 22/29;

15. *Requests* the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report of the independent fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem, to the Human Rights Council at its twenty-eighth session;

16. *Requests* the Secretary-General to report on the implementation of the present resolution at its twenty-eighth session;

17. *Decides* to remain seized of the matter.

56th meeting
28 March 2014

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

Algeria, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d’Ivoire, Cuba, Czech Republic, Estonia,

Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Montenegro, Morocco, Namibia, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America]

United Nations A/HRC/RES/28/26

General Assembly

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10 April 2015

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Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

28/26. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, and recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014,

Noting the recent accession by Palestine to several human rights treaties and the core humanitarian law conventions and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Noting that Israel has over the years been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001 and the need for Israel to uphold its obligations and commitments in this regard,

Taking note of General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and taking note of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the forcible displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, the disruption of the livelihood of protected persons, the de facto annexation of land and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, undermine regional and international efforts aimed at the realization of the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, on the basis of the pre-1967 borders,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a

[1] A/HRC/22/63.
[2] A/67/738.

contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination,

Noting that the settlement enterprise continues to be a root cause of many violations of the Palestinians' human rights,

Condemning the continuation by Israel, the occupying Power, of settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law, relevant United Nations resolutions, the agreements reached between the parties and obligations under the Quartet road map and in defiance of the calls by the international community to cease all settlement activities,

Expressing grave concern in particular at the construction and expansion by Israel of settlements in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city and ongoing settlement activities in the Jordan Valley,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, is fragmenting the territorial contiguity of the Territory and undermining its viability, and could prejudge future negotiations by creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and make the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at the incidents of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians and their properties, which are a long-standing phenomenon that appears to be aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Stressing the need for Israel to investigate all acts of settler violence against Palestinians and their properties and to ensure accountability for these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights

of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Reaffirming the fact that the High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War undertook to respect and to ensure respect for the Convention in all circumstances, and that States should not recognize an unlawful situation arising from breaches of peremptory norms of international law,

Calling upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned about economic activities that allow the expansion and entrenchment of settlements, and aware that the conditions of harvesting and production for products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan**,** and calls in this regard for the full implementation of all relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980 and 1515 (2003) of 19 November 2003;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

5. *Condemns* the continuing settlement and related activities by Israel, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion of Palestinians and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 thereof;

6. *Also condemns* the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as they seriously undermine the peace process, jeopardize the ongoing efforts by the international community to reach a final and just peace solution compliant with international legitimacy, including relevant United Nations resolutions, and constitute a threat to the two-State solution;

7. *Expresses its grave concern* at, and calls for the cessation of:

(*a*) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(*b*) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, declarations of so-called "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(*c*) Israeli measures in the form of policies, laws and practices that have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

8**.** *Calls upon* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards their dismantlement, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its E-1 plan;

(*b*) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(*c*) To take immediate measures to prohibit and eradicate all policies or practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers who reside illegally in the said territory, to the complex combination of movement restrictions consisting of the

wall, roadblocks and a permit regime that only affects the Palestinian population, and to the application of a two-tier legal system;

(*d*) To cease the requisition and expropriation of Palestinian land and the allocation of "State land" for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(*e*) To put an end to all measures and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves;

(*f*) To take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(*g*) To bring a halt to all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian populations;

(*h*) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union from 2014 onwards;

10. *Encourages* all States and international organizations to continue to actively pursue policies that ensure respect of their obligations under international law with regard to all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem, particularly Israeli settlements;

11. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory;

12. *Urges* all States:

(*a*) To ensure that they are not taking actions that either recognize or assist the expansion of settlements or construction of the wall in the Occupied Palestinian Territory, including East Jerusalem;

(*b*) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards;

(*c*) To provide information to individuals and businesses on the financial, reputational and legal risks and the possible abuses of the rights of individuals of becoming involved in settlement-related activities, including economic and financial activities, the provision of services in settlements and the purchasing of property, and to consider informing businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights;

13. *Encourages* business enterprises to take transparent action to comply with the Guiding Principles on Business and Human Rights with respect to their activities relating to

Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid contributing to the establishment or maintenance of Israeli settlements or the exploitation of natural resources of the Occupied Palestinian Territory;

14. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

15. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

16. *Takes note* of the statement of the Working Group on the issue of human rights and transnational corporations and other business enterprises in follow-up to Human Rights Council resolution 22/29;

17. *Requests* the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report of the independent fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem, to the Human Rights Council at its thirty-first session;

18. *Requests* the Secretary-General to report on the implementation of the present resolution at its thirty-first session;

19. *Decides* to remain seized of the matter.

57th meeting
27 March 2015

[Adopted by a recorded vote of 45 to 1, with 1 abstention. The voting was as follows:

In favour:

Albania, Algeria, Argentina, Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, China, Congo, Côte d'Ivoire, Cuba, El Salvador, Estonia, Ethiopia, France, Gabon, Germany, Ghana, India, Indonesia, Ireland, Japan, Kazakhstan, Kenya, Latvia, Maldives, Mexico, Montenegro, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Paraguay]

United Nations A/HRC/RES/31/36

General Assembly

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Human Rights Council
Thirty-first session
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2016

31/36. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and as elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, and recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014,

Noting the recent accession by Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Please recycle

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Noting that Israel has over the years been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Taking note of General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and also of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the forcible displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, the disruption of the livelihood of protected persons, the de facto annexation of land and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, undermine regional and international efforts aimed at the realization of the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, on the basis of the pre-1967 borders, and stressing that the continuation of these policies seriously endangers the viability of the two-State solution, undermining the physical possibility of its realization,

[1] A/HRC/22/63.
[2] A/67/738.

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination,

Noting that the settlement enterprise and the impunity associated with its existence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Condemning the continuation by Israel, the occupying Power, of settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law, relevant United Nations resolutions, the agreements reached between the parties and obligations under the Quartet road map, and in defiance of the calls by the international community to cease all settlement activities,

Expressing grave concern in particular at the construction and expansion by Israel of settlements in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the Jordan Valley,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, is fragmenting the territorial contiguity of the Territory and undermining its viability, and could prejudge future negotiations by creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and make the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at all acts of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including homes, agricultural lands and historic and religious sites, and the acts of terror carried out by several extremist Israeli settlers, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Expressing concern at ongoing impunity for acts of settler violence against Palestinian civilians and their properties, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the

dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Reaffirming the fact that the High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, undertook to respect and to ensure respect for the Convention in all circumstances, and that States should not recognize an unlawful situation arising from breaches of peremptory norms of international law,

Calling upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, and aware that the conditions of harvesting and production for products made in settlements involve the breach of applicable legal norms, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of all relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980 and 1515 (2003) of 19 November 2003;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice;

5. *Condemns* the continuing settlement and related activities by Israel, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the expulsion and displacement of Palestinians, including entire communities and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 thereof;

6. *Also condemns* the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as it seriously undermines the peace process and jeopardizes the ongoing efforts by the international community to reach a final and just peace solution compliant with international law and legitimacy, including relevant United Nations resolutions, and constitutes a threat to the two-State solution;

7. *Expresses its grave concern* at, and calls for the cessation of:

(*a*) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(*b*) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance and the creation of unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, declarations of so-called "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(*c*) Israeli measures in the form of policies, laws and practices that have the effect of preventing Palestinians from full participation in the political, social, economic

and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

8. *Calls upon* Israel, the occupying Power:

(*a*) To reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its "E-1" plan;

(*b*) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(*c*) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, to the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of discrimination;

(*d*) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called "State land", and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(*e*) To put an end to all measures and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and changing the demographic composition of the Occupied Palestinian Territory;

(*f*) To take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(*g*) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(*h*) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

10. *Encourages* all States and international organizations to continue to actively pursue policies that ensure respect of their obligations under international law with regard to all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem, particularly Israeli settlements;

11. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;

12. *Urges* all States:

(*a*) To ensure that they are not taking actions that either recognize or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, including with regard to the issue of trading with settlements, consistent with their obligations under international law;

(*b*) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking all necessary steps;

(*c*) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses, and abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, procurements, loans and the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(*d*) To increase monitoring of settler violence with a view to promoting accountability;

13. *Calls upon* business enterprises to take all measures necessary to comply with the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights and to avoid contributing to the establishment or maintenance of Israeli settlements or the exploitation of natural resources of the Occupied Palestinian Territory;

14. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1] and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

15. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the

implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

16. *Takes note* of the statement of the Working Group on the issue of human rights and transnational corporations and other business enterprises in follow-up to Human Rights Council resolution 22/29;

17. *Requests* the United Nations High Commissioner for Human Rights, in close consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, in follow-up to the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1] and as a necessary step for the implementation of the recommendation contained in paragraph 117 thereof, to produce a database of all business enterprises involved in the activities detailed in paragraph 96 of the afore-mentioned report, to be updated annually, and to transmit the data therein in the form of a report to the Council at its thirty-fourth session;

18. *Requests* the Secretary-General to report on the implementation of the present resolution, with particular emphasis on the human rights and international law violations involved in the production of settlement goods and the relationship between trade in these goods and the maintenance and economic growth of settlements, at its thirty-fourth session;

19. *Decides* to remain seized of the matter.

66th meeting
24 March 2016

[Adopted by a recorded vote of 32 to 0, with 15 abstentions. The voting was as follows:

In favour:

Algeria, Bangladesh, Bolivia (Plurinational State of), Botswana, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, El Salvador, Ethiopia, India, Indonesia, Kenya, Kyrgyzstan, Maldives, Mexico, Mongolia, Morocco, Namibia, Nigeria, Panama, Philippines, Qatar, Russian Federation, Saudi Arabia, South Africa, Switzerland, United Arab Emirates, Venezuela (Bolivarian Republic of), Viet Nam

Abstaining:

Albania, Belgium, France, Georgia, Germany, Ghana, Latvia, Netherlands, Paraguay, Portugal, Republic of Korea, Slovenia, the former Yugoslav Republic of Macedonia, Togo, United Kingdom of Great Britain and Northern Ireland]

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Resolution adopted by the Human Rights Council on 24 March 2017

34/31. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling the relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, and recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014,

Noting the accession by Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention

and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Noting that Israel has been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Taking note of General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and also of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the destruction of property, including homes and projects funded by the international community, the forcible displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, the disruption of the livelihood of protected persons and the de facto annexation of land, and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

[1] A/HRC/22/63.
[2] A/67/738.

Affirming that the Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem, undermine regional and international efforts aimed at the realization of the two-State solution of Israel and Palestine, living side by side in peace and security within recognized borders, on the basis of the pre-1967 borders, and stressing that the continuation of these policies seriously endangers the viability of the two-State solution, undermining the physical possibility of its realization, and entrenching a one-State reality of unequal rights,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination,

Noting that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Condemning the continuation by Israel, the occupying Power, of settlement activities in the Occupied Palestinian Territory, including in East Jerusalem, in violation of international humanitarian law, relevant United Nations resolutions, the agreements reached between the parties and obligations under the Quartet road map, and in defiance of the calls by the international community to cease all settlement activities,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city and ongoing settlement activities in the Jordan Valley, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, is fragmenting the territorial contiguity of the Territory and undermining its viability, and could prejudge future negotiations by creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and make the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at all acts of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including homes, agricultural lands and historic and religious sites, and the acts of terror carried out by several extremist Israeli settlers, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Expressing concern at ongoing impunity for acts of settler violence against Palestinian civilians and their properties, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Aware that numerous Israeli policies and practices related to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, create a system that privileges Israeli settlements and settlers, against the Palestinian people and in violation of their human rights,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Reaffirming the fact that the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, undertook to respect and to ensure respect for the Convention in all circumstances, and that States should not recognize an unlawful situation arising from breaches of peremptory norms of international law,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of all relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the forcible transfer of Palestinians, including entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, and constitute a violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and in particular article 49 thereof;

6. *Also condemns* the construction of new housing units for Israeli settlers in the West Bank and around occupied East Jerusalem, as they seriously undermine the peace process and jeopardize the ongoing efforts by the international community to reach a final and just peace solution compliant with international law and legitimacy, including relevant United Nations resolutions, and constitute a threat to the two-State solution;

7. *Expresses its grave concern* at declarations by Israeli officials calling for the annexation of Palestinian land, and reaffirms the prohibition of the acquisition of territory resulting from the use of force;

8. *Also expresses its grave concern* at, and calls for the cessation of:

(*a*) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(*b*) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of so-called "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(*c*) Israeli measures in the form of policies, laws and practices that have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

9. *Calls upon* Israel, the occupying Power:

(*a*) To end without delay its occupation of the territories occupied since 1967, to reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its E-1 plan;

(*b*) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(*c*) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, to the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(*d*) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called "State land", and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(*e*) To put an end to all measures and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves, and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(*f*) To take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for, and preventing, all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(*g*) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(*h*) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

10. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

11. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect of their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

12. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;

13. *Calls upon* all States:

(*a*) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade, consistent with their obligations under international law;

(*b*) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(*c*) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(*d*) To increase monitoring of settler violence, with a view to promoting accountability;

14. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and other relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

15. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

16. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

17. *Takes note* of the statement of the Working Group on the issue of human rights and transnational corporations and other business enterprises in follow-up to Human Rights Council resolution 22/29;

18. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the provisions of the present resolution to the Human Rights Council at its thirty-seventh session;

19. *Decides* to remain seized of the matter.

58th meeting
24 March 2017

[Adopted by a recorded vote of 36 to 2, with 9 abstentions. The voting was as follows:

In favour:

Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Germany, Ghana, India, Indonesia, Iraq, Japan, Kenya, Kyrgyzstan,

Mongolia, Netherlands, Nigeria, Philippines, Portugal, Qatar, Republic of Korea, Saudi Arabia, Slovenia, South Africa, Switzerland, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Togo, United States of America

Abstaining:

Albania, Croatia, Georgia, Hungary, Latvia, Panama, Paraguay, Rwanda, United Kingdom of Great Britain and Northern Ireland]

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Agenda item 7

Resolution adopted by the Human Rights Council on 23 March 2018

37/36. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize an unlawful situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Noting that Israel has been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Taking note of General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and also of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the destruction of property, including homes and projects funded by the international community, the forcible displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, disruption to the livelihood of protected persons, the de facto annexation of land and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights,

[1] A/HRC/22/63.
[2] A/67/738.

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination,

Noting that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the Jordan Valley, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining its viability, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at all acts of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including homes, agricultural lands and historic and religious sites, and the acts of terror carried out by several extremist Israeli settlers, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Expressing concern at ongoing impunity for acts of settler violence against Palestinian civilians and their properties, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Aware that numerous Israeli policies and practices related to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers, against the Palestinian people and in violation of their human rights,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of all relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the construction and expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the forcible transfer of Palestinians, including entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Expresses its grave concern* at declarations by Israeli officials calling for the annexation of Palestinian land, and reaffirms the prohibition of acquisition of territory resulting from the use of force;

7. *Also expresses its grave concern* at and calls for the cessation of:

(a) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

8. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, to reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its so-called E-1 plan;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the

application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

10. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

11. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

12. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement

in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

13. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and other relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

14. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

15. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

16. *Requests* the United Nations High Commissioner for Human Rights to report to the Human Rights Council on the implementation of the provisions of the present resolution at its fortieth session;

17. *Decides* to remain seized of the matter.

56th meeting
23 March 2018

[Adopted by a recorded vote of 34 to 4, with 8 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d’Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Germany, Iraq, Japan, Kenya, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Switzerland, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Australia, Hungary, Togo, United States of America

Abstaining:

Croatia, Democratic Republic of the Congo, Georgia, Panama, Rwanda, Slovakia, Ukraine, United Kingdom of Great Britain and Northern Ireland]

United Nations A/HRC/RES/40/24

General Assembly

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Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 7

Resolution adopted by the Human Rights Council on 22 March 2019

40/24. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize as lawful a situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Noting that Israel has been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Recalling also General Assembly resolution 67/19 of 29 November 2012, by which, inter alia, Palestine was accorded the status of non-member observer State in the United Nations, and also of the follow-up report thereon of the Secretary-General,[2]

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the destruction of property, including homes and projects funded by the international community, the forcible displacement of Palestinian civilians, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, disruption to the livelihood of protected persons, the de facto annexation of land and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination, and deeply concerned that the magnitude, persistence and character of the settlement enterprise suggest

[1] A/HRC/22/63.

[2] A/67/738.

that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force,

Noting also that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the Jordan Valley, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining its viability, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Deeply concerned that the wall's route has been traced in such a way to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned at all acts of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including homes, agricultural lands and historic and religious sites, and the acts of terror carried out by several extremist Israeli settlers, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Expressing concern at ongoing impunity for acts of settler violence against Palestinian civilians and their properties, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Aware that numerous Israeli policies and practices related to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers, against the Palestinian people and in violation of their human rights,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights

of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and to cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and in this regard calls for the full implementation of all relevant Security Council resolutions, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the construction and expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, the forcible transfer of Palestinians, including entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Expresses its grave concern* at declarations by Israeli officials calling for the annexation of Palestinian land, and reaffirms the prohibition of acquisition of territory resulting from the use of force;

7. *Also expresses its grave concern* at and calls for the cessation of:

(a) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

8. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, to reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its so-called E-1 plan;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside

illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

10. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

11. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

12. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles

and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

13. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

14. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

15. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

16. *Requests* the United Nations High Commissioner for Human Rights to report to the Human Rights Council on the implementation of the provisions of the present resolution at its forty-third session, with particular emphasis on the policies and practices linked to the settlement enterprise that discriminate against the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem;

17. *Decides* to remain seized of the matter.

54th meeting
22 March 2019

[Adopted by a recorded vote of 32 to 5, with 10 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Bahamas, Bahrain, Bangladesh, Burkina Faso, Chile, China, Cuba, Egypt, Eritrea, Fiji, Iceland, India, Iraq, Italy, Japan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Saudi Arabia, Senegal, Somalia, South Africa, Spain, Tunisia, Uruguay

Against:

Australia, Denmark, Hungary, Togo, United Kingdom of Great Britain and Northern Ireland

Abstaining:

Austria, Brazil, Bulgaria, Cameroon, Croatia, Czechia, Democratic Republic of the Congo, Rwanda, Slovakia, Ukraine]

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 22 June 2020

43/31. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also Human Rights Council resolution 19/17 of 22 March 2012, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize as lawful a situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention

and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Deeply concerned that the wall's route has been traced in such a way to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Taking note of the recent relevant reports of the Secretary-General, the Office of the United Nations High Commissioner for Human Rights, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party, and the recent reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

Recalling the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,[1]

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Noting that Israel has been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Recalling the Quartet road map to a permanent two-State solution to the Israeli-Palestinian conflict, and emphasizing specifically its call for a freeze on all settlement activity, including so-called natural growth, and the dismantlement of all settlement outposts erected since March 2001, and the need for Israel to uphold its obligations and commitments in this regard,

Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the destruction of property, including humanitarian relief items, homes, community infrastructure and projects funded by the international community, the forcible displacement of Palestinian civilians or threat thereof, including Bedouin families, the exploitation of natural resources, the conduct of economic activity for the benefit of the occupying Power, disruption to the livelihood of protected persons, the de facto annexation of land and other actions against the Palestinian civilian population and the civilian population in the occupied Syrian Golan that are contrary to international law,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of Palestinian self-determination, and deeply concerned

[1] A/HRC/22/63.

that the magnitude, persistence and character of the settlement enterprise suggest that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force,

Noting also that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the West Bank, including East Jerusalem, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, which is causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining its viability, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Gravely concerned at all acts of violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, including homes, agricultural lands and historic and religious sites, and the acts of terror carried out by several extremist Israeli settlers, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements,

Expressing concern at the ongoing impunity for acts of settler violence against Palestinian civilians and their properties, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land and the forced diversion of water resources, including the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Noting that the agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of the dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets owing to the construction, consolidation and expansion of Israeli settlements,

Aware that numerous Israeli policies and practices related to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers, against the Palestinian people and in violation of their human rights,

Recalling Human Rights Council resolution 22/29 of 22 March 2013, in follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to

provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and to cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and in this regard calls for the full implementation of all relevant Security Council resolutions, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the construction and expansion of settlements, the expropriation of land, the demolition of houses, the confiscation and destruction of property, including humanitarian relief consignments, the forcible transfer of Palestinians, including entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Also condemns* the declarations made by Israeli officials calling for the annexation of Palestinian land, and reaffirms the prohibition of acquisition of territory resulting from the use of force;

7. *Expresses its grave concern* at and calls for the cessation of:

(a) The operation by Israel of a tramway linking the settlements with West Jerusalem, which is in clear violation of international law and relevant United Nations resolutions;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

8. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, which may be contrary to international law, to reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its so-called E-1 plan;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and

expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

9. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

10. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

11. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

12. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the

formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

13. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

14. *Requests* that all parties concerned, including United Nations bodies, implement and ensure the implementation of the recommendations contained in the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and endorsed by the Human Rights Council through its resolution 22/29, in accordance with their respective mandates;

15. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

16. *Requests* the United Nations High Commissioner for Human Rights to prepare a report on the consequences of the intensification of settlement activity and other steps taken towards formal annexation in the Occupied Palestinian Territory, particularly in and around East Jerusalem and the so-called E-1 area, for the contiguity of the Palestinian Territory and their implications for the civil, political, economic, social and cultural rights of the Palestinian people, and to present the report to the Human Rights Council at its forty-sixth session;

17. *Decides* to remain seized of the matter.

46th meeting
22 June 2020

[Adopted by a recorded vote of 36 to 2, with 9 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Armenia, Bahamas, Bahrain, Bangladesh, Burkina Faso, Chile, Denmark, Eritrea, Fiji, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Senegal, Somalia, Spain, Sudan, Uruguay, Venezuela (Bolivarian Republic of)

Against:

Australia, Marshall Islands

Abstaining:

Austria, Brazil, Bulgaria, Cameroon, Czechia, Democratic Republic of the Congo, Slovakia, Togo, Ukraine]

United Nations A/HRC/RES/46/26

General Assembly

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Human Rights Council
Forty-sixth session
22 February–24 March 2021
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 24 March 2021

46/26. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling all relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also all relevant United Nations reports, including reports by mechanisms of the Human Rights Council, and calling upon all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained therein,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize as lawful a situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian

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Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, and in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, thereby causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining its viability, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Expressing its grave concern also at the calls made by Israeli officials for the annexation of Palestinian lands,

Noting that Israel has been planning, implementing, supporting and encouraging the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely undermining the exercise of Palestinian self-determination, and deeply concerned that the magnitude, persistence and character of the settlement enterprise suggest that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force,

Noting also that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of the Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes and eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the West Bank, including East Jerusalem, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Gravely concerned about all acts of terror, violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the confiscation of land, denial of access to

farmers and the dispossession of their land and crops, the forced diversion of water resources, the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic consequences in this regard, including the loss of livelihoods in the agricultural sector, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Aware also that numerous Israeli policies and practices relating to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers against the Palestinian people, and in violation of their human rights,

Recalling the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and to cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the

occupied Syrian Golan, and in this regard calls for the full implementation of all relevant Security Council resolutions, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the transfer of its nationals into the occupied territory, the construction and expansion of settlements, the expropriation and de facto annexation of land, the demolition of homes and community infrastructure, disruptions to the livelihood of protected persons, the confiscation and destruction of property, including humanitarian relief consignments, the forcible transfer of Palestinian civilians or the threat thereof, including of entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Expresses its grave concern* at and calls for the cessation of:

(a) The conduct of economic activities in the Occupied Palestinian Territory, including East Jerusalem, for the benefit of the settlement enterprise and associated activities;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance, including projects funded by the international community, and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological sites" to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

7. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, which may be contrary to international law, to reverse the settlement policy in the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the expansion of existing settlements, including so-called natural growth and related activities, to prevent any new installation of settlers in the occupied territories, including in East Jerusalem, and to discard its so-called E-1 plan;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and the enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage to, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

8. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

9. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

10. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

11. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from

committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, the importation of settlement products, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

12. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

13. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

14. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the provisions of the present resolution to the Human Rights Council at its forty-ninth session;

15. *Decides* to remain seized of the matter.

51st meeting
24 March 2021

[Adopted by a recorded vote of 36 to 3, with 8 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Bahrain, Bangladesh, Bolivia (Plurinational State of), Burkina Faso, China, Côte d’Ivoire, Cuba, Denmark, Eritrea, Fiji, France, Gabon, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Uruguay, Uzbekistan and Venezuela (Bolivarian Republic of)

Against:

Czechia, Marshall Islands and United Kingdom of Great Britain and Northern Ireland

Abstaining:

Austria, Bahamas, Brazil, Bulgaria, Cameroon, Malawi, Togo and Ukraine]

United Nations A/HRC/RES/49/29

General Assembly

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Human Rights Council
Forty-ninth session
28 February–1 April 2022
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 1 April 2022

49/29. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling all relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also all relevant United Nations reports, including reports by mechanisms of the Human Rights Council, and calling upon all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained therein,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize as lawful a situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a grave breach of the Fourth Geneva Convention and relevant provisions of customary international law, including those codified in Additional Protocol I to the four Geneva Conventions,

Please recycle

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Expressing grave concern at the continuing construction by Israel of the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, and in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, thereby causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining its viability, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Expressing its grave concern also at the calls made by Israeli officials for the annexation of Palestinian territory in whole or in part, and recalling that such measures are internationally wrongful and are not to be recognized, aided or assisted,

Noting that Israel has been planning, implementing, facilitating and promoting the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely undermining the exercise of Palestinian self-determination, and deeply concerned that the magnitude, persistence and character of the settlement enterprise suggest that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force,

Noting also that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of Palestinians' human rights, and constitute the main factors perpetuating Israel's belligerent occupation of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes, livelihoods and community infrastructure, including those structures provided as humanitarian relief by State-donors and independent humanitarian agencies, the eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the West Bank, including East Jerusalem, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Gravely concerned about all acts of terror, violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, which are a long-standing phenomenon aimed at,

inter alia, displacing the occupied population and facilitating the expansion of settlements, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the appropriation of land, denial of access to farmers and the dispossession of their land and crops, the forced diversion of water resources, the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic and humanitarian consequences in this regard, including the loss of livelihoods in the agricultural sector, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Aware also that numerous Israeli policies and practices relating to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers against the Palestinian people, and in violation of their human rights,

Recalling the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements, thereby contributing to the economic incentive structure perpetuating the occupation and its illegal manifestations throughout the Occupied Palestinian Territory, including East Jerusalem,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and to cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and in this regard calls for the full implementation of all relevant Security Council resolutions, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the transfer of its nationals into the occupied territory, the construction and expansion of settlements, the expropriation and de facto annexation of land, the demolition of homes and community infrastructure, disruptions to the livelihood of protected persons, the confiscation and destruction of property, including humanitarian relief consignments, the forcible transfer of Palestinian civilians or the threat thereof, including of entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Expresses its grave concern* at and calls for the cessation of:

(a) The conduct of economic activities in the Occupied Palestinian Territory, including East Jerusalem, for the benefit of the settlement enterprise and associated activities;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forced evictions and "relocation" plans, the obstruction and destruction of humanitarian assistance, including projects funded by the international community, and the creation of a coercive environment and unbearable living conditions by Israel in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological" sites to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of Israel's obligations under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

7. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, which may be contrary to international law, to reverse and redress the settlement policy in

the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the establishment of new settlements and the expansion of existing settlements, including so-called natural growth and related activities, and to discard any and all plans to install settlers in the occupied territories, including in East Jerusalem;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties and to afford all victims of settler violence access to justice and effective remedy without discrimination in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

8. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

9. *Urges* all States and international organizations to ensure that they are not taking actions that either recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

10. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

11. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, the importation of settlement products, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

12. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

13. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

14. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the provisions of the present resolution to the Human Rights Council at its fifty-second session;

15. *Decides* to remain seized of the matter.

58th meeting
1 April 2022

[Adopted by a recorded vote of 38 to 4, with 5 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Benin, Bolivia (Plurinational State of), China, Côte d’Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, India, Indonesia, Japan, Kazakhstan, Libya, Luxembourg, Malaysia, Mauritania, Mexico, Montenegro, Namibia, Nepal, Netherlands, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Senegal, Somalia,

Sudan, United Arab Emirates, Uzbekistan, Venezuela (Bolivarian Republic of)

Against:

Malawi, Marshall Islands, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Brazil, Cameroon, Honduras, Lithuania, Ukraine]

United Nations A/HRC/RES/52/35

General Assembly

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Human Rights Council
Fifty-second session
27 February–4 April 2023
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 4 April 2023

52/35. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

The Human Rights Council,

Guided by the principles of the Charter of the United Nations, and affirming the inadmissibility of the acquisition of territory by force,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms, as stated in the Charter and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable instruments,

Recalling all relevant resolutions of the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem,

Recalling also all relevant United Nations reports, including reports by mechanisms of the Human Rights Council, and calling upon all duty bearers and United Nations bodies to pursue the implementation of the recommendations contained therein,

Noting the accession by the State of Palestine to several human rights treaties and the core humanitarian law conventions, and its accession on 2 January 2015 to the Rome Statute of the International Criminal Court,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan,

Recalling the declarations adopted at the Conferences of High Contracting Parties to the Fourth Geneva Convention, held in Geneva on 5 December 2001 and 17 December 2014, and reaffirming that States should not recognize as lawful a situation arising from breaches of peremptory norms of international law,

Affirming that the transfer by the occupying Power of parts of its own civilian population to the territory it occupies constitutes a grave breach of the Fourth Geneva Convention and relevant provisions of customary international law, including those codified in Additional Protocol I to the four Geneva Conventions,

Please recycle

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, and recalling also General Assembly resolutions ES-10/15 of 20 July 2004 and ES-10/17 of 15 December 2006,

Expressing grave concern at the continuing construction by Israel of settlements and the wall inside the Occupied Palestinian Territory, including in and around East Jerusalem, in violation of international law, and expressing its concern in particular at the route of the wall in departure from the Armistice Line of 1949, and in such a way as to include the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, thereby causing humanitarian hardship and a serious decline in socioeconomic conditions for the Palestinian people, fragmenting the territorial contiguity of the Territory and undermining the viability of a Palestinian State, creating a fait accompli on the ground that could be tantamount to de facto annexation in departure from the Armistice Line of 1949, and making the two-State solution physically impossible to implement,

Noting that the International Court of Justice concluded, inter alia, that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law,

Expressing its grave concern at any action taken by any body, governmental or non-governmental, in violation of the Security Council and General Assembly resolutions relevant to Jerusalem,

Expressing its grave concern also at the calls made by Israeli officials for the annexation of Palestinian territory in whole or in part, and recalling that such measures are internationally wrongful and are not to be recognized, aided or assisted,

Noting that Israel has been planning, implementing, facilitating and promoting the establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, since 1967, through, inter alia, the granting of benefits and incentives to settlements and settlers,

Affirming that the Israeli settlement policies and practices in the Occupied Palestinian Territory, including East Jerusalem, seriously endanger the viability of the two-State solution, undermining the physical possibility of its realization and entrenching a one-State reality of unequal rights, and constitute an attempted acquisition of sovereignty over territory through the denial of the right of the Palestinian people to self-determination,

Noting in this regard that the Israeli settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely undermining the exercise of Palestinian self-determination, and deeply concerned that the magnitude, persistence and character of the settlement enterprise suggest that the occupation has been established with the intention of making it permanent, in violation of the prohibition of acquisition of territory resulting from the use of force,

Noting also that the settlement enterprise and the impunity associated with its persistence, expansion and related violence continue to be a root cause of many violations of Palestinians' human rights, and constitute the main factors perpetuating the prolonged and belligerent occupation by Israel of the Palestinian Territory, including East Jerusalem, since 1967,

Deploring in particular the construction and expansion of settlements by Israel in and around occupied East Jerusalem, including its so-called E-1 plan, which aims to connect its illegal settlements around and further isolate occupied East Jerusalem, the continuing demolition of Palestinian homes, livelihoods and community infrastructure, including those structures provided as humanitarian relief by State donors and independent humanitarian agencies, the eviction of Palestinian families from the city, the revocation of Palestinian residency rights in the city, and ongoing settlement activities in the West Bank, including East Jerusalem, all of which further fragment and undermine the contiguity of the Occupied Palestinian Territory,

Gravely concerned about all acts of terror, violence, destruction, harassment, provocation and incitement by extremist Israeli settlers and groups of armed settlers in the

Occupied Palestinian Territory, including East Jerusalem, against Palestinian civilians, including children, and their properties, which are a long-standing phenomenon aimed at, inter alia, displacing the occupied population and facilitating the expansion of settlements, and stressing the need for Israel to investigate and to ensure accountability for all of these acts,

Aware of the detrimental impact of the Israeli settlements on Palestinian and other Arab natural resources, especially as a result of the appropriation of land, denial of access to farmers and the dispossession of their land and crops, the forced diversion of water resources, the destruction of orchards and crops and the seizure of water wells by Israeli settlers, and of the dire socioeconomic and humanitarian consequences in this regard, including the loss of livelihoods in the agricultural sector, which precludes the Palestinian people from being able to exercise permanent sovereignty over their natural resources,

Aware also that numerous Israeli policies and practices relating to settlement activity in the Occupied Palestinian Territory, including East Jerusalem, amount to blatant discrimination, including through the creation of a system privileging Israeli settlements and settlers against the Palestinian people, and in violation of their human rights,

Recalling the Guiding Principles on Business and Human Rights, which place responsibilities on all business enterprises to respect human rights by, inter alia, refraining from contributing to human rights abuses arising from conflict, and call upon States to provide adequate assistance to business enterprises to assess and address the heightened risks of abuses in conflict-affected areas, including by ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses,

Noting that, in situations of armed conflict, business enterprises should respect the standards of international humanitarian law, and concerned that some business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the Israeli settlements in the Occupied Palestinian Territory,

Emphasizing the importance for States to act in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses,

Concerned that economic activities facilitate the expansion and entrenchment of settlements, aware that the conditions of harvesting and production of products made in settlements involve, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard, including the obligation to ensure respect for the Fourth Geneva Convention,

Aware that products wholly or partially produced in settlements have been labelled as originating from Israel, and concerned about the significant role that the production and trade of such products plays in helping to support and maintain the settlements,

Aware also of the role of private individuals, associations and charities in third States that are involved in providing funding to Israeli settlements and settlement-based entities, contributing to the maintenance and expansion of settlements, thereby contributing to the economic incentive structure perpetuating the occupation and its illegal manifestations throughout the Occupied Palestinian Territory, including East Jerusalem,

Noting that a number of business enterprises have decided to disengage from relationships or activities associated with the Israeli settlements owing to the risks involved,

Expressing its concern at the failure of Israel, the occupying Power, to cooperate fully with the relevant United Nations mechanisms, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,

1. *Reaffirms* that the Israeli settlements established since 1967 in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal under international law, and constitute a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace, and to economic and social development;

2. *Calls upon* Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and to the occupied Syrian Golan, to abide scrupulously by the provisions of the Convention, in particular article 49 thereof, and to comply with all its obligations under international law and to cease immediately all actions causing the alteration of the character, status and demographic composition of the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan;

3. *Demands* that Israel, the occupying Power, immediately cease all settlement activities in all the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and in this regard calls for the full implementation of all relevant Security Council resolutions, including, inter alia, resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 497 (1981) of 17 December 1981, 1515 (2003) of 19 November 2003 and 2334 (2016) of 23 December 2016;

4. *Also demands* that Israel, the occupying Power, comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice, including to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, and to make reparation for the damage caused to all natural or legal persons affected by the construction of the wall;

5. *Condemns* the continuing settlement and related activities by Israel, including the transfer of its nationals into the occupied territory, the construction and expansion of settlements, the expropriation and de facto annexation of land, the demolition of homes and community infrastructure, disruptions to the livelihood of protected persons, the confiscation and destruction of property, including humanitarian relief consignments, the forcible transfer of Palestinian civilians or the threat thereof, including of entire communities, and the construction of bypass roads, which change the physical character and demographic composition of the occupied territories, including East Jerusalem and the Syrian Golan, constitute a violation of international humanitarian law, in particular article 49 of the Fourth Geneva Convention, and of international human rights law, and undermine the viability of the two-State solution;

6. *Expresses its grave concern* at and calls for the cessation of:

(a) The conduct of economic activities in the Occupied Palestinian Territory, including East Jerusalem, for the benefit of the settlement enterprise and associated activities;

(b) The expropriation of Palestinian land, the demolition of Palestinian homes, demolition orders, forcible transfer and "relocation" plans, the obstruction and destruction of humanitarian assistance, including projects funded by the international community, and the creation by Israel of a coercive environment and unbearable living conditions in areas identified for the expansion and construction of settlements, and other practices aimed at the forcible transfer of the Palestinian civilian population, including Bedouin communities and herders, and further settlement activities, including the denial of access to water and other basic services by Israel to Palestinians in the Occupied Palestinian Territory, including East Jerusalem, particularly in areas slated for settlement expansion, and including the appropriation of Palestinian property through, inter alia, the declaration of "State lands", closed "military zones", "national parks" and "archaeological sites" to facilitate and advance the expansion or construction of settlements and related infrastructure, in violation of the obligations of Israel under international humanitarian law and international human rights law;

(c) Israeli measures in the form of policies, laws and practices that have the effect of preventing the full participation of Palestinians in the political, social, economic and cultural life of the Occupied Palestinian Territory, including East Jerusalem, and prevent their full development in both the West Bank and the Gaza Strip;

7. *Calls upon* Israel, the occupying Power:

(a) To end without delay its occupation of the territories occupied since 1967, which may be contrary to international law, to reverse and redress the settlement policy in

the occupied territories, including East Jerusalem and the Syrian Golan, and, as a first step towards the dismantlement of the settlement enterprise, to stop immediately the establishment of new settlements and the expansion of existing settlements, including so-called natural growth and related activities, and to discard any and all plans to install settlers in the occupied territories, including in East Jerusalem;

(b) To put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims;

(c) To take immediate measures to prohibit and eradicate all policies and practices that discriminate against and disproportionately affect the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, by, inter alia, putting an end to the system of separate roads for the exclusive use of Israeli settlers, who reside illegally in the said territory, the complex combination of movement restrictions consisting of the wall, roadblocks and a permit regime that only affects the Palestinian population, the application of a two-tier legal system that has facilitated the establishment and consolidation of the settlements, and other violations and forms of institutionalized discrimination;

(d) To cease the requisition and all other forms of unlawful appropriation of Palestinian land, including so-called State land, and its allocation for the establishment and expansion of settlements, and to halt the granting of benefits and incentives to settlements and settlers;

(e) To put an end to all practices and policies resulting in the territorial fragmentation of the Occupied Palestinian Territory, including East Jerusalem, and which are isolating Palestinian communities into separate enclaves and deliberately changing the demographic composition of the Occupied Palestinian Territory;

(f) To take and implement serious measures, including the confiscation of arms and enforcement of criminal sanctions, with the aim of ensuring full accountability for and preventing all acts of violence by Israeli settlers, and to take other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties and to afford all victims of settler violence access to justice and effective remedy without discrimination in the Occupied Palestinian Territory, including East Jerusalem;

(g) To bring to a halt all actions, including those perpetrated by Israeli settlers, harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian population;

(h) To cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and of the occupied Syrian Golan;

8. *Welcomes* the adoption of the European Union Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the European Union since 2014;

9. *Urges* all States and international organizations to ensure that they are not taking actions that recognize, aid or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, and to continue to actively pursue policies that ensure respect for their obligations under international law with regard to these and all other illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem;

10. *Reminds* all States of their legal obligations as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, including not to recognize the illegal situation resulting from the construction of the wall, not to render aid or assistance in maintaining the situation created by such construction, and to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention;

11. *Calls upon* all States:

(a) To distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade with settlements, consistent with their obligations under international law;

(b) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking appropriate steps in view of the immitigable nature of the adverse impact of their activities on human rights;

(c) To provide guidance to individuals and businesses on the financial, reputational and legal risks, including the possibility of liability for corporate involvement in gross human rights abuses and the abuses of the rights of individuals, of becoming involved in settlement-related activities, including through financial transactions, investments, purchases, the importation of settlement products, procurements, loans, the provision of services, and other economic and financial activities in or benefiting Israeli settlements, to inform businesses of these risks in the formulation of their national action plans for the implementation of the Guiding Principles on Business and Human Rights, and to ensure that their policies, legislation, regulations and enforcement measures effectively address the heightened risks of operating a business in the Occupied Palestinian Territory, including East Jerusalem;

(d) To increase monitoring of settler violence with a view to promoting accountability;

12. *Calls upon* business enterprises to take all measures necessary to comply with their responsibilities under the Guiding Principles on Business and Human Rights and relevant international laws and standards with respect to their activities in or in relation to the Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid the adverse impact of such activities on human rights, and to avoid contributing to the establishment, maintenance, development or consolidation of Israeli settlements or the exploitation of the natural resources of the Occupied Palestinian Territory;

13. *Calls upon* the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Human Rights Council resolution 17/4 of 16 June 2011, on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations “Protect, Respect and Remedy” Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem;

14. *Requests* the United Nations High Commissioner for Human Rights to report on the implementation of the provisions of the present resolution to the Human Rights Council at its fifty-fifth session;

15. *Decides* to remain seized of the matter.

57th meeting
4 April 2023

[Adopted by a recorded vote of 38 to 4, with 5 abstentions. The voting was as follows:

In favour:

Algeria, Argentina, Bangladesh, Belgium, Benin, Bolivia (Plurinational State of), Chile, China, Costa Rica, Côte d’Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, Honduras, India, Kazakhstan, Kyrgyzstan, Luxembourg, Malaysia, Maldives, Mexico, Montenegro, Morocco, Nepal,

Pakistan, Paraguay, Qatar, Senegal, Somalia, South Africa, Sudan, United Arab Emirates, Uzbekistan and Viet Nam

Against:

Czechia, Malawi, United Kingdom of Great Britain and Northern Ireland and United States of America

Abstaining:

Cameroon, Georgia, Lithuania, Romania and Ukraine]

United Nations A/HRC/22/63

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Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*

Summary

The present report is submitted pursuant to Human Rights Council resolution 19/17, in which the Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

* The annexes to the present report are circulated as received, in the language of submission only.

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I. Introduction

A. Mandate

1. In its resolution 19/17, the Human Rights Council decided to establish an independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

2. On 6 July 2012, the President of the Human Rights Council appointed three high-level experts as members of the fact-finding mission: Christine Chanet (Chairperson), Asma Jahangir and Unity Dow.

B. Terms of reference and methods of work

3. The members of the mission convened for the first time in Geneva in August 2012, and held meetings with the representatives of concerned permanent missions and other relevant stakeholders. The mission adopted its terms of reference in the light of the mandate conferred on it by the Human Rights Council, which it considered had clearly instructed it to investigate all the human rights implications of the Israeli settlements for the Palestinians in the Occupied Palestinian Territory. The mission interpreted its mandate to require it to conduct its investigations within the legal framework of international human rights law, together with other relevant bodies of international law. The mission notes that the Israeli settlements also have other implications, including for the rights of those residing inside the settlements and in Israel.

4. For the purpose of its work, the mission understands "Israeli settlements" to encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory (see annex I).[1] The mission did not differentiate between "settlements", "settlement blocks", "outposts" or any other structures that have been erected, established, expanded and/or appropriated or any land or natural resources appropriated.

5. Guided by the principles of "do no harm", independence, impartiality, objectivity, discretion, transparency, confidentiality, integrity and professionalism, the mission carefully analysed all available information that it considered relevant and credible.

6. To ensure the greatest availability of such information, the mission issued a public call for written submissions, which it also directly shared with representatives of Israeli settler communities. In response to the call, it received 62 submissions. The mission analysed information received from Governments, intergovernmental organizations, international and national non-governmental organizations, professional bodies, academics, victims, witnesses and the media. The mission did not receive any testimony or submission on an anonymous basis. All information received was treated with due confidentiality.

7. The mission had expected to undertake field visits to Israel and the Occupied Palestinian Territory in order to observe directly the situation on the ground. It addressed

[1] These include, inter alia, the "wall" (denoting the physical barrier constructed by Israel since 2002); checkpoints, closure obstacles, bypass roads, tunnels and the permit system; legal systems; commercial and industrial infrastructure; and planning and zoning regimes. See annex II.

five requests for cooperation to the Government of Israel through the Permanent Mission of Israel in Geneva. The Government did not respond to the mission's requests. The mission regrets the fact that the Government did not respond and that, consequently, it did not have access to Israel and the Occupied Palestinian Territory. Alternative arrangements were made to obtain direct and first-hand information in the form of a series of meetings held with a wide range of interlocutors from 3 to 8 November 2012 in Jordan.

8. During its visit to Jordan, the mission listened to and collected information on a wide range of relevant issues from more than 50 people affected by the settlements and/or working in the Occupied Palestinian Territory and Israel. It met with victims of human rights violations, officials from the Ministry of Foreign Affairs of Jordan, officials from the Palestinian Authority, and representatives of international and non-governmental organizations and United Nations agencies. The mission kept a record of all testimony given.

9. The present report is the result of the mission's consideration and analysis of all the submissions and information it received and gathered.[2] The mission points out that a number of interlocutors requested explicitly that their identity not be disclosed. The mission is grateful to all those who extended their cooperation to it.

II. Applicable law

10. The international legal framework applicable to the issue before the mission is primarily provided for in international human rights law and international humanitarian law.

11. Israel is bound to respect, protect, promote and fulfil the full range of the social, economic, cultural, civil and political human rights of all persons within its jurisdiction as a result of its being party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, and the International Convention on the Elimination of All Forms of Racial Discrimination. Israel is also bound by relevant international human rights rules that are a part of customary international law.

12. The rights protected by human rights treaties must be available to all individuals in the territory of or subject to the jurisdiction of Israel, except where the State has lawfully derogated from them. The treaty bodies of the United Nations that monitor the implementation of the applicable human rights treaties have consistently concluded that the treaties to which Israel is a party are applicable with regard to acts carried out by Israel in the Occupied Palestinian Territory.[3] This was confirmed by the International Court of Justice in 2004.[4] Furthermore, the human rights obligations of Israel apply in both peace and times of armed conflict. In the latter situation, they continue to apply alongside

[2] For a list of sources consulted by the mission in the course of its work, see www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/IsraeliSettlementsInTheOPT.aspx.

[3] For a compilation of selected conclusions and recommendations made by human rights mechanisms, see www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/IsraeliSettlementsInTheOPT.aspx.

[4] Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004 (see A/ES-10/273 and Corr.1), paras. 109-113.

international humanitarian law to provide complementary and mutually reinforcing protection.

13. A situation of military occupation prevails in the Occupied Palestinian Territory. As the occupying Power, Israel is bound under international humanitarian law by a set of obligations which are provided for in the Hague Regulations of 1907, annexed to the Convention with Respect to the Laws and Customs of War on Land, which are recognized as part of customary international law, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention), to which Israel is a High Contracting Party.

14. The applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory was decisively established by the International Court of Justice,[5] and has been recognized and consistently reaffirmed by, inter alia, the Commission on Human Rights, the Human Rights Council, the Security Council and the General Assembly.[6] Under the Fourth Geneva Convention, Palestinians living under occupation are "protected persons" and thus the focus of the obligations of Israel under humanitarian law therein.

15. International humanitarian law establishes obligations on Israel concerning, inter alia, humane treatment and physical integrity of the Palestinians as protected persons; respect for their basic rights to education, a fair trial, family, health, religion, and work; maintenance of public order and safety; respect for existing laws; respect for and protection of real and personal property; and the management of public property, including natural resources.

16. Article 49 of the Fourth Geneva Convention also prohibits the occupying Power from transferring parts of its own civilian population into the territory that it occupies. This prohibition has attained the status of customary international law. The mission notes that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, violate this provision and are, thus, illegal under international law.[7]

17. The mission also considered, where necessary, other international law frameworks and principles. In a situation of prevailing impunity, the law on State responsibility for internationally wrongful acts, including third-State responsibility, is relevant. International criminal law enables the pursuit of individual criminal responsibility for conduct that amounts to international crimes. In this regard, on 3 December 2012, Palestine addressed identical letters to the Secretary-General and the Security Council. Citing article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, it stated that "Israeli settlement activities" constitute war crimes, and that Israel must be held accountable for such acts.[8]

[5] Ibid., para. 101.

[6] See for example Commission on Human Rights resolutions 6 (XXIV), 6 (XXV) and 2001/7; Human Rights Council resolutions 7/18, 10/18 and 19/17; Security Council resolutions 271 (1969), 446 (1979), 641 (1989), 681 (1990) and 799 (1992); and General Assembly resolutions 2546 (XXIV), ES-10/2, 36/147 C, 54/78, 58/97, ES-10/18 and 66/225.

[7] See for example the advisory opinion of 9 July 2004, para. 120; Security Council resolution 471 (1980); General Assembly resolutions 3092 (XXVIII), 47/172 and 66/225; Commission on Human Rights resolution 2000/8; Human Rights Council resolutions 13/7 and 16/31; and Council of the European Union, Conclusions on the Middle East Peace Process, 3166th Foreign Affairs Council Meeting, 14 May 2012.

[8] A/ES-10/573 - S/2012/899.

III. Context[9]

18. Israeli settlements are located beyond the Green Line of 1949 and include structures in East Jerusalem and in Area C of the West Bank. The Oslo Accords established Area A, comprising approximately 18 per cent of the West Bank and encompassing urban Palestinian areas under the full control of the Palestinian Authority; Area B, representing some 22 per cent of the vast majority of Palestinian rural areas, under Palestinian civil control, while the Israeli army has security control; and Area C, comprising an estimated 60 per cent of the territory, under full Israeli control for security, planning and construction purposes. Settlements are generally located among the more vulnerable sections of Palestinian society, predominantly agrarian villages.

19. The mission was informed that settlers may be divided broadly into three categories. The first are those who have moved on quality-of-life grounds and live in settlements close to Jerusalem and Tel Aviv. The second, ultra-Orthodox Jews, who constitute more than 25 per cent[10] of the settler population, live in settlements largely isolated from other Israelis; ultra-Orthodox Jews seem also to be motivated by economic incentives and cheaper housing and are generally found in settlements closer to the Green Line. A third group seems to be motivated by political and religious ideologies; they live in the central part of the West Bank, often very close to Palestinian communities.

20. Since 1967, the Governments of Israel have openly led and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements by including explicit provisions in the fundamental policy instrument (basic policy guidelines), establishing governmental structures and implementing specific measures. These specific measures include (a) building infrastructure; (b) encouraging Jewish migrants to Israel to move to settlements; (c) sponsoring economic activities; (d) supporting settlements through public services delivery and development projects; and (e) seizing Palestinian land, some privately owned, requisitioning land for "military needs", declaring or registering land as "State land" and expropriating land for "public needs".

21. Government investment in the settlements has not been made explicit in the public budget, but allocated through hidden provisions in a process described by the former Head of the Israeli Civil Service Commission, Itzhak Galnoor (1994-1996), as (in 2007) "partially secretive" and (in 2011) as "a political tool". Government investment, excluding military expenses, has fluctuated over the years, with an estimated peak of $795.8 million in 2005.[11] Quasi-governmental organizations, funded by the Government, including the World Zionist Organization, also provide funds to the settlements.

22. A governmental scheme of subsidies and incentives has been put in place to encourage Jewish migrants to Israel to move to settlements and to boost their economic development. Settlements have been defined as "national priority areas", and benefit from housing and education subsidies and direct incentives to the industrial, agricultural and tourism sectors.

23. Various sources refer to settlement master plans, including the Allon Plan (1967), the Drobles Plan (1978) – later expanded as the Sharon Plan (1981) – and the Hundred Thousand Plan (1983). Although these plans were never officially approved, they have

[9] See also annex I.

[10] Dror Etkes and Lara Friedman, "The Ultra-Orthodox Jews in the West Bank", October 2005, available from http://peacenow.org.il/eng/content/ultra-orthodox-jews-west-bank.

[11] Jeremy M. Sharp, "U.S. Foreign Aid to Israel", Congressional Research Service report, 12 March 2012, available from www.fas.org/sgp/crs/mideast/RL33222.pdf.

largely been acted upon by successive Governments of Israel. The mission notes a pattern whereby plans developed for the settlements have been mirrored in Government policy instruments and implemented on the ground.

24. The first settlement established was Kefar Ezyon, in September 1967. In the early years, the establishment of settlements followed a typical pattern. The settlers had access to the highest ranking Government officials, played on their emotional ties to the land and encouraged these officials to lead and participate in establishing and expanding settlements through, inter alia, the seizure of land for "military purposes".

25. In June 1967, Israel illegally annexed 70 km^2 of land incorporating East Jerusalem and a number of nearby Palestinian villages into the expanded boundaries of the Jerusalem municipality of Israel. It promptly built 12 Israeli "neighbourhoods" that enveloped nearby Palestinian quarters and villages. An outer layer of settlements beyond the municipal boundaries were then built, thereby severing the geographical continuity of the city from the rest of the West Bank. Since the 1970s, the Jerusalem municipality of Israel has openly pursued a policy of "demographic balance", most recently seen in the city master plan also known as "Jerusalem 2000". The master plan calls for a 60/40 demographic balance in favour of Jewish residents.

26. Studies on settlements commissioned by the Office of the Prime Minister in 2005 (the Sason report) and 2012 (the Levy report) document the Government's authorization in the establishment and expansion of settlements up to 1992, and indicate that settlements built afterwards with no Government authorization ("outposts") were established with the "full knowledge of all [authorities], starting with the government ministers and prime minister, and until the lowest enforcing agencies (…) the denial had but one goal only: to withstand criticism by various factors, mostly international".[12] Sason concluded that "unauthorized outposts violate[s] standard procedure, good governing rules (…) endanger the principle of the rule of law [and thus] urgent measures must be taken to change [this] reality".[13] In contrast, the findings of the Levy report suggested the retroactive authorization of "outposts".

27. In September 2005, through the "disengagement plan", Israel dismantled 21 settlements in the Gaza Strip (and four in the West Bank), evacuated the settlers residing there and withdrew the army, while maintaining exclusive control of the airspace of Gaza and continued to conduct military activities in the territorial waters of the Gaza Strip. The "disengagement plan" was presented in Israel as an essential step to preserve its control over the settlements in the West Bank. Former Prime Minister Ariel Sharon has been quoted as saying "in the framework of the 'disengagement plan', Israel would strengthen its control of those parts of the land that will constitute an inalienable part of the State of Israel in any future agreement."[14]

28. Since 1967, some 250 settlements in the West Bank, including East Jerusalem, have been established, either with or without Government authorization. The number of settlers is estimated at 520,000[15] (200,000[16] in East Jerusalem and 320,000 in the rest of the West

[12] Yehudit Karp, "A harsh indictment", *Haaretz*, 27 November 2012.

[13] Talya Sason, "Summary of the Opinion Concerning Unauthorized Outposts", 10 March 2005. Available from www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Summary+of+Opinion+Concerning+Unauthorized+Outposts+-+Talya+Sason+Adv.htm.

[14] Idith Zertal and Akiva Eldar, *Lords of the Land: the War for Israel's Settlements in the Occupied Territories, 1967-2007* (New York, Nation Books, 2007).

[15] Office for the Coordination of Humanitarian Affairs, "The Humanitarian Impact of Israeli Settlement Policies", Update December 2012. Available from

Bank). According to the Israeli Central Bureau of Statistics, over the past decade, the settler population has grown at a much higher rate than the population in Israel itself, with a yearly average growth of 5.3 per cent (excluding East Jerusalem), compared with 1.8 per cent in Israel.

29. After years of court orders, the Migron and Ulpana "outposts" were evacuated in 2012. Settlers responsible for appropriating private Palestinian land without Government authorization were, however, provided after the evacuation with new homes in nearby settlements. The Government paid for the transfer of their property and the rental on the new homes.

30. The Government in office since April 2009 has contributed to the consolidation and expansion of settlements. Government spending on the settlements during 2011 was 38 per cent more than in 2010.[17] On 14 November 2012, the Minister for Finance, Yuval Steinitz, stated "we've doubled the budget for Judea and Samaria [the West Bank]. We did this in a low-profile manner, because we didn't want parties either in Israel or abroad to thwart the move."[18]

IV. Implications of Israeli settlements on the rights of Palestinians

31. The mission notes that the impact of settlements on the human rights of the Palestinians is manifested in various forms and ways. These are interrelated, forming part of an overall pattern. The structure of the report is intended to reflect this reality.

A. Right to self-determination

32. The mission notes that, in its resolution 67/19, the General Assembly reaffirmed "the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian Territory occupied since 1967".

33. In a report on the issue, the Secretary-General warned that (the demographic and territorial presence of the Palestinian people in the Occupied Palestinian Territory was put at risk by the continued transfer by Israel, the occupying Power, of its population into the occupied territory, observing that Israel had transferred approximately 8 per cent of its citizens into the Occupied Palestinian Territory since the 1970s. He also recalled that the International Court of Justice concluded that the construction of the wall, coupled with the establishment of Israeli settlements, was altering the demographic composition of the Occupied Palestinian Territory, and thus was severely impeding the exercise by the Palestinian people of their right to self-determination.[19]

34. The establishment of the settlements and the creation of dozens of enclaves have also caused the fragmentation of the West Bank. The mission heard that the establishment

http://reliefweb.int/sites/reliefweb.int/files/resources/ocha%20opt%20settlements%20FactSheet%20December%202012%20english.pdf.

[16] Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Key Humanitarian Concerns", Update December 2011. Available from www.ochaopt.org/documents/ocha_opt_Jerusalem_FactSheet_December_2011_english.pdf

[17] Chaim Levinson, "Israeli government spent NIS 1.1 billion on settlements in 2011, reports show", *Haaretz*, 31 July 2012.

[18] "Like a thief in the night" *Haaretz* editorial, 14 November 2012.

[19] A/67/375, para. 12.

of Ma'ale Adummim and its expansion has had a much wider significance than the local impact of most settlements by severing territorial continuity between Palestinian communities.[20] The Wall "where it is built or planned, truncates and chops up Palestinian space with 'fingers' extending deep into the West Bank. (…) Its "route threatens to divide the West Bank into two separate areas and cut off East Jerusalem from the rest of the West Bank".[21]

35. The Government of Israel has full security and administrative control over the settlement areas, and effectively controls the external borders of the Occupied Palestinian Territory. Regional councils composed exclusively of representatives of Israeli settlers exercise planning functions in settlement areas. Neither the Palestinian Authority nor local Palestinian communities have any control over the governance, administration and planning of these areas.

36. The settlements, including the associated restrictions, impede Palestinian access to and control over their natural resources. In his report, the Secretary-General noted that Palestinians had virtually no control over the water resources in the West Bank.[22] Eighty-six per cent of the Jordan Valley and the Dead Sea is under the de facto jurisdiction of the settlement regional councils. Settlements exploit mineral extraction and fertile agricultural lands, denying Palestinians access to their natural resources.

37. In December 2012, the Office for the Coordination of Humanitarian Affairs reported that, while the fenced areas of settlements cover only 3 per cent of the West Bank, in reality 43 per cent of the territory is allocated to local and regional settlement councils.[23] There are approximately 150,000 Palestinians living in Area C in close proximity to more than 320,000 Israeli settlers. In East Jerusalem, some 200,000 settlers have been introduced into Palestinian areas with a Palestinian population of about 390,000. The negative impact of Israeli settlements on the right of self-determination of the Palestinian people extends, however, to the Palestinian people as a whole.

38. The mission considers that the right to self-determination of the Palestinian people, including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the Occupied Palestinian Territory and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and ongoing expansion of the settlements. The transfer of Israeli citizens into the Occupied Palestinian Territory, prohibited under international humanitarian law and international criminal law, is a central feature of the practices and policies of Israel.

[20] "The Hidden Agenda: The Establishment and Expansion Plans of Ma'ale Adummim and their Human Rights Ramifications", B'Tselem, December 2009, available from www.btselem.org/download/200912_maale_adummim_eng.pdf.

[21] See "Arrested Development: the Long Term Impact of Israel's Separation Barrier in the West Bank", October 2012 (available from http://reliefweb.int/sites/reliefweb.int/files/resources/201210_arrested_development_eng.pdf), and "By Hook and by Crook: Israeli Settlement Policy in the West Bank", B'Tselem, July 2010 (available from www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf).

[22] A/67/375, para. 14.

[23] Office for the Coordination of Humanitarian Affairs, "The Humanitarian Impact of Israeli Settlement Policies" (see footnote15).

B. Equality and right to non-discrimination

1. Inequality and discrimination in the application of the law

39. Information presented to the mission demonstrates that distinct legal systems exist in the Occupied Palestinian Territory and are applied separately to Israeli settlers and Palestinians. Broadly, Israelis in Area C are subject to Israeli domestic law enforced by the police and courts in Israel. A patchwork of Israeli military orders and Ottoman, British and Jordanian legislation is applied to Palestinians, who are also subject to a military court system with a wide jurisdictional reach.

40. By "channelling" Israeli civil law into the territory of settlements, "legal zones" have been established within the West Bank where Israeli laws apply to settlers in order, for example, to regulate the status and authority of governmental institutions within settlements. These laws do not apply to Palestinians. Other Israeli laws are applied personally to Israelis in the West Bank, giving them preferential legal status over Palestinians. A matrix of military orders applies personally, by law or by practice, only to Palestinians to regulate and control most aspects of daily life, including by restricting an extensive range of rights. Israelis and Palestinians are also treated differently by the same laws; for instance, some military orders designate areas in the Occupied Palestinian Territory as "closed military zones/areas". With the exception of military training or firing zones, only Palestinians are prohibited from entering such areas unless they have a permit, even if the area encompasses Palestinian land, thereby denying Palestinians access to or ownership of land. The so-called "seam zone" is closed to Palestinians, while Israelis and foreign visitors have unrestricted access. Certain other Israeli laws expressly discriminate against Palestinians. In 2012, the Committee on the Elimination of Racial Discrimination reiterated its concern about the Citizenship and Entry into Israel Law (Temporary Provision) that suspends, with rare exceptions, family reunification between an Israeli citizen and a person residing in the Occupied Palestinian Territory, with a severe impact on family rights.

41. The mission again noted the extraterritorial personal application of Israeli legislation, with the application of Israeli criminal law to Israelis in the West Bank with respect to offences they allegedly committed there.

42. According to the Secretary-General, lack of accountability permeates all types of acts of violence committed by Israeli settlers against property and persons.[24] The situation today closely resembles that described by the inquiry conducted in 1984 into action taken with regard to settler violence headed by the then Israeli Deputy Attorney General, Yehudit Karp. According to Yesh Din, an Israeli non-governmental organization that monitored 869 cases between 2005 and 2012, more than 91 per cent of all investigations concluded into complaints of criminal offences against Palestinian persons and property in the Occupied Palestinian Territory were closed without an indictment being served, mostly owing to investigative failures.[25] This is despite the fact that attacks and intimidation by settlers against Palestinians are often carried out in daylight and in the presence of Israeli army or police personnel, who frequently do not stop the violence or are ineffective.

43. The mission was informed that, when acts of violence are committed by Palestinians against settlers, these are appropriately addressed, indicating that the lack of law

[24] A/67/375, para. 39.

[25] Yesh Din, "The impact of the settlements on Palestinian rights in the West Bank", November 2012, available from www.yesh-din.org/userfiles/file/Position%20Papers/Yesh%20Din%20Position%20to%20UN%20FF%20Mission.pdf.

enforcement experienced by Palestinians is largely a matter of political will. Between 90 to 95 per cent of cases against Palestinians are investigated and go to court.

44. The failure to conduct effective investigations and prosecutions of settler violence impedes Palestinians' access to an effective remedy. This is compounded by the multiple barriers presented to Palestinians by the court system, including time, cost, language and procedural barriers coupled with inadequate notification of relevant orders and declarations. Fear and lack of confidence in the courts also act as deterrents to seeking redress. Palestinians are also significantly limited from seeking compensation from the State of Israel for certain conduct by its agents pursuant to the Civil Torts (Liability of the State) Law 2005, as amended in 2012.

45. The Supreme Court of Israel sitting as the High Court of Justice does not offer Palestinians a clear avenue for recourse. The High Court has consistently deferred to the Government of Israel on matters relating to the settlements, and has rendered the question of the legality of the settlements non-justiciable. While on occasion the Court has found in favour of Palestinian petitioners, it has both substantially limited its oversight role and provided a legal space in which the settlements have been developed. Additionally, where judicial rulings have favoured the Palestinian petitioners, there is a consistent lack of enforcement of them.

46. Palestinians in the Occupied Palestinian Territory endure a discriminatory application of a military court system that does not comply with international standards of fair trial and administration of justice.[26] In testimony to the mission, a witness explained that "two individuals in the West Bank may commit the same offence. One is investigated by the police in the West Bank and brought before a military court, and can be detained up to eight days without seeing a judge. The Israeli who has done the same is investigated and brought before a civilian judge, and enjoys all the safeguards of a modern criminal process. Both face different penalties. The prevailing legal systems in Occupied Palestinian Territory translate into stark inequality before the law.

47. Palestinians are routinely subject to arbitrary arrest and detention, including administrative detention, mass arrests and incarceration. It is estimated that more than 700,000 Palestinians, including children, have been held in Israeli military detention since the beginning of the occupation, many in prisons located within Israel.[27] In 2012, approximately 4,100 Palestinians were in Israeli military detention, of whom 143 were aged between 16 and 18 years, and 21 were below 16 years old.[28] It is well documented that the military court system does not ensure Palestinians basic fair trial guarantees, including minimum standards of independence, clear evidentiary or procedural rules, the presumption of innocence or the duty to hear witnesses or examine all material evidence.

48. Most children are arrested at friction points, such as villages near settlements or on roads used by the army or settlers and that run by a Palestinian village. From point of arrest, they face multiple violations of their rights to liberty and security and fair trial through interrogation, arbitrary detention and abuse, trial and sentencing. Approximately 90 per cent of children plead guilty and are given custodial sentences. The mission heard testimony that "in short, pleading guilty is the quickest way out of the system, whether the

[26] See CCPR/CO/78/ISR, para. 12, and CCPR/C/ISR/CO/3, para. 7.

[27] A/HRC/7/17, para. 45. See also B'Tselem, "Statistics on Palestinians in the custody of Israeli security forces" (2008 to 2012).

[28] B'Tselem, "Statistics on Palestinians" (see footnote 27).

offence was committed or not." Approximately 60 per cent of Palestinian children serve their sentences inside Israel.[29]

49. The legal regime of segregation operating in the Occupied Palestinian Territory has enabled the establishment and the consolidation of the settlements through the creation of a privileged legal space for settlements and settlers. It results in daily violations of a multitude of the human rights of the Palestinians in the Occupied Palestinian Territory, including, incontrovertibly, violating their rights to non-discrimination, equality before the law and equal protection of the law.

2. Settlers violence and intimidation

50. All spheres of Palestinian life are being significantly affected by a minority of settlers who are engaged in violence and intimidation with the aim of forcing Palestinians off their land. There was consistency in testimonies with regard to the following facts: attacks and intimidation regularly take place during daylight hours; the identity of perpetrators are well known, or perpetrators could easily be identified; the frequent presence of police and army at the scene; the involvement and presence of settlement security officers; the frequent existence of video and photographic footage of the incidents; and the lack of accountability for the violence.

51. The mission heard testimonies on incidents of settler violence and intimidation dating back to 1973. A report of the Security Council Commission established under resolution 446 (1979)[30] drew attention to settler attacks on property and acts of intimidation that restricted access to water and obstructed children's schooling. The Commission noted that the intent of these attacks was to pressure Palestinians to leave the land. Palestinian deaths and injuries as a result of settler attacks have been recorded since 1980; the mission notes the statistics compiled by the Office for the Coordination of Humanitarian Affairs that show that, in the period from 1 July 2011 to 30 June 2012, Israeli settlers injured 147 Palestinians, including 34 children.

52. The mission heard numerous testimonies on violent attacks by settlers, including physical assaults, the use of knives, axes, clubs and other improvised weapons, as well as shootings and the throwing of Molotov cocktails. The testimonies also recounted the psychological impact of intimidation by armed settlers trespassing on Palestinian land, at Palestinian water springs or in the midst of Palestinian neighbourhoods in Hebron and East Jerusalem. In some cases, testimonies described years of violence and intimidation directed at the same Palestinian family living in proximity to settlements that had pushed it to abandon its properties.

53. The mission heard testimony of the impact of settler violence on children, and notes an increasing trend in their death and injuries. In a submission to the mission, Defence of Children International –Palestine had documented 127 cases in the West Bank, including East Jerusalem, including four fatalities, since 2008. Settler attacks on schools and harassment of children on their way to school has followed an upward trend since 2010. Testimonies from residents of the village of Al Twanyi describe how children must have Israeli army escorts on their way to and from school to protect them from settler attacks. These escorts are not always provided by the Israeli army or, when provided, are often erratic.

[29] See Defense for the Children International – Palestine Section, "Children prosecuted in Israeli military courts: update", 2 October 2012, available from www.dci-palestine.org/documents/children-prosecuted-israeli-military-courts-%E2%80%93-update.

[30] S/13679.

54. The mission also notes the impact of violence and intimidation on the lives and livelihoods of Palestinian farmers, by preventing the access of Palestinians to their land close to settlements through violence and intimidation; burning, uprooting and attacking Palestinian crops; settlers taking over the land and planting their own crops; and fencing off and building on Palestinian agricultural lands. The olive industry is a primary source of income for Palestinian farmers; the olive harvest is therefore a particularly vulnerable period of the year for Palestinian farmers and their crops.[31] From 2005 to 2012, Yesh Din monitored 162 investigations into vandalism against Palestinian trees (predominantly olive trees); only one investigation led to an indictment.[32] Figures for 2012 (until mid-October) show that, during that period, more than 7,500 trees had been damaged or destroyed by settlers.[33]

55. The mission heard testimonies on "price-tag" attacks, a phenomenon considered distinct from other forms of settler violence. The attacks aim at exacting a price on the Palestinian population living close to settlements for any political or legal move that the settlers interpret as being contrary to their interests. The mission understands that the intent is to deter Israeli authorities from taking any action perceived to be against settlers' interests while at the same time to provoke Palestinians into a reaction. An-Najah University identified 119 price-tag incidents from 2008 to September 2012.[34] The attacks most commonly involve vandalism and the burning of property, cars and houses, and are often accompanied by racist graffiti. The Department of State of the United States of America categorized three price-tag attacks on mosques and a Muslim cemetery as terrorist incidents.[35]

56. The mission is concerned that specific programmes devised to deal with the impact of settler violence on physical and mental health have had to be developed by non-governmental organizations as a result of the failure of Israeli authorities to stop settler violence and of the persistence of impunity in this regard. The mission notes with particular concern the situation of children and the impact on their development.

57. Violence, verbal and physical abuses, inhumane and degrading treatment, forced evictions, land and property grabbing, the destruction of property and housing and many of the issues for which testimonies and information was gathered gravely affect the right to the enjoyment of the highest attainable standard of physical and mental health. Depression, anxiety, symptomatic stress, mood disorder and behaviour problems, and post-traumatic stress disorders are some of the most current conditions reported by specialists. Impunity, a feeling of injustice, the recurrence of events and anticipation of renewed abuses, especially on relatives and children, compound these conditions.

[31] The Palestinian Ministry of Agriculture estimates that 3.5 million olive trees have been destroyed since the second intifada.

[32] Yesh Din, "Police investigation of vandalization of Palestinian trees in the West Bank", October 2012, available from www.yesh-din.org/userfiles/file/datasheets/DS%20Trees%20Oct,%202012%20Eng.pdf.

[33] Office for the Coordination of Humanitarian Affairs, Olive Harvest Factsheet, October 2012, available from www.ochaopt.org/documents/ocha_opt_olive_harvest_factsheet_october_2012_english.pdf.

[34] An-Najah University, "Outposts and Price Tag Violence: A Blow upon a Bruise ", September 2012, available from www.najah.edu/sites/default/files/shared-uploads/outposts_and_price_tag_violence_-_a_blow_upon_a_bruise_-_sept_2012.pdf.

[35] United States Department of State, Country Reports on Terrorism 2011, available from www.state.gov/j/ct/rls/crt/2011/.

3. Restrictions on religious freedom and related intolerance

58. In the Occupied Palestinian Territory, Jerusalem, Hebron, Bethlehem and Nablus all host places of considerable religious significance for Christianity, Judaism and Islam. While the impact of settlements is manifested in various forms throughout the West Bank, the mission notes that both Jerusalem and Hebron have been targeted by particularly aggressive settlement policies and practices owing to their religious significance. Settlements have been established in the heart of both cities, disrupting the lives and the development of hundreds of thousands of Palestinians. In addition, major settlement infrastructure has been built around Jerusalem and, to a lesser extent, Hebron, enveloping them and severing social and economic ties with the rest of Palestinian society, while linking the various settlements and the territory of the State of Israel.

59. The mission was also informed about archaeological excavations being conducted in and around the Old City of Jerusalem and the construction there of a network of underground tunnels, including those connecting settlement installations in the Palestinian neighbourhood of Silwan with the Old City. It has been alleged that these archaeological excavations are intended to emphasize Jewish cultural heritage while disregarding – or worse undermining – the rich heritage of other cultures that have contributed to the millenary history of the city.

60. The mission received numerous reports of Palestinians being denied access to places of worship. Limited entry through checkpoints and area closures during holy days prevents Palestinians from attending holy rituals at appointed times at places of worship. The mission also learned that, since 2008, mosques and Christian churches have been targeted in price-tag attacks, including at least nine price-tag arson attacks against Palestinian mosques and 21 incidents where graffiti was used to desecrate mosques, churches and burial grounds with provocative slogans of a racist or a sacrilegious nature, intended to inflame the situation.[36]

61. The mission is concerned that policies and acts aimed at altering the composition of Jerusalem and Hebron by erasing cultural heritage on the basis of religious affiliation, together with redrawing municipal boundaries, are being carried out with the involvement of the Government of Israel, with pernicious effects. It is further concerned that the Palestinians' right to freedom of religion is being restricted by the settlements.

4. Dispossession and displacement

62. Dispossession and displacement featured in most of the submissions, reports and testimony received by the mission. The information brought to light a number of different mechanisms exploited to seize Palestinian land, as well as a discriminatory planning and zoning policy that favours the development of settlements and, as the Committee on the Elimination of Racial Discrimination concluded, breaches a range of fundamental rights of Palestinians.[37]

63. Since the beginning of the occupation, Palestinians have seen over 1 million dunams[38] of their land seized, enabled by a combination of military orders and selective interpretation of the Ottoman Land Code that ruled land tenure throughout the Ottoman, Mandatory and Jordanian periods. In particular, land has been lost through seizure for military needs, absentee property laws and the declaration of State lands.

[36] An-Najah University, "Outposts and Price Tag Violence" (see footnote34).
[37] CERD/C/ISR/CO/14-16, para. 25.
[38] One dunam equals 1,000 m^2.

64. Seized lands are placed within the jurisdictional boundaries of local and regional settlement councils, used not only for urbanization but also as buffer zones surrounding settlements or turned into recreational and nature areas to which Palestinians have no access.

65. While the issue is critical throughout the West Bank, the mission notes the large number of demolitions, demolition orders, forced evictions and "relocation" plans in zones identified for the consolidation of settlements, including around Bethlehem and the E-1 project, aimed at creating an urban continuum between East Jerusalem and Maale Adumim. In this area, the Jahalin Bedouin community in Khan Al-Akhmar, which in the past has experienced several demolitions, lives under the threat of forcible displacement. "Relocation" plans are currently under discussion, including to a location near a landfill site where, in 1996, Bedouins had already been relocated in connection with earlier settlement expansions.

66. Bedouin communities in general are particularly vulnerable to displacement and dispossession. Eighty per cent of them live in the Jordan Valley, the Dead Sea area and around Hebron, constituting the majority of the population in closed military training and firing zones. Many of these communities have already experienced multiple displacements. Many are food insecure, do not have access to basic services, and are not connected to the electricity grid, the road network or water systems. More than 90 per cent face water scarcity, living with less than one-quarter of the minimum standards set by the World Health Organization (WHO).[39] The Israeli army routinely demolishes their shelters and property, including those provided by or built with the assistance of aid agencies and international donors. In the South Hebron hills, eight villages are at risk of eviction to make way for a new firing zone.

67. The processes of dispossession and displacement in the vicinity of settlements and the seam zone include preventing access of Palestinians to their agricultural lands, the takeover and demolition of springs and wells, and movement restrictions. Settler violence and intimidation also play a significant role.

68. In East Jerusalem, multiple factors, such as discriminatory building regulations, the large number of demolition orders, residence permit restrictions, the acute housing shortage and violence and intimidation from settlers, put enormous pressures on the city's Palestinian population. Cases of forced eviction in East Jerusalem, such as in the Sheikh Jarrah neighbourhood, were also reported to the mission, including following successful appeals by settler organizations, some of which linked to Jewish property claims based on their pre-1948 ownership. Numerous testimonies spoke of settlers taking over individual houses inside the Old City.

69. Absence of proof of registration (land registration was discontinued by military order in 1968) makes it extremely difficult for Palestinians to obtain recognition of tenure or permits. Besides, Palestinians are excluded from consultative decision-making processes and are not represented in the special planning committees, which are made up of settlers and are entitled to issue and enforce building permits.

70. Testimonies confirmed that building permits are rarely if ever granted; in the past 20 years, 94 per cent of permit applications were denied. Building without a permit is an offence under military orders, and the execution of a demolition order is accompanied by a large fine. The mission heard in this regard about "self-demolitions", namely, of residents

[39] Office for the Coordination of Humanitarian Affairs, "The Humanitarian Impact of Israeli-declared 'Firing Zones' in the West Bank", August 2012, available from www.ochaopt.org/documents/ocha_opt_firing_zone_factsheet_august_2012_english.pdf.

demolishing their own houses to avoid having to pay a fines. Self-demolitions are not recorded in statistics on demolitions.

71. As corroborated by testimonies, many Palestinians are forced to build without a permit, thus living under the constant threat that their home or property may be demolished. Many families and entire communities are at risk of displacement. In East Jerusalem alone, where 33 per cent of Palestinian homes lack building permits, at least 93,100 residents are potentially at risk of being displaced.[40]

5. Restrictions on the freedom of movement

72. The mission received information according to which the vast majority of restrictions on the freedom of movement of Palestinians seem to be directly linked to the settlements, and include "restrictions aimed at protecting the settlements, securing areas for their expansion, and improving the connectivity between settlements and with Israel itself."[41] The restrictions themselves come in many forms, including settler-only roads, a regime of checkpoints and crossings (closure obstacles), impediments created by the wall and its gate and permit regime, as well as administrative restrictions. The Office for the Coordination of Humanitarian Affairs reports more than 540 closure obstacles in 2012.[42] Although there have been significant easing measures in recent years (which have improved connectivity between the main Palestinian cities and towns), movement restrictions reportedly remain in place in areas around settlements.

73. The mission notes that restrictions on freedom of movement have a detrimental impact on the access of Palestinians to their land, and have direct consequences for their ability to work and earn a livelihood. The outer expanses of many settlements incorporate Palestinian private property, and access to this land is regulated through the "prior coordination" regime whereby the Palestinian landowners are granted a permit for access to their land for a limited number of days each year, normally coinciding with harvest time and based on prior coordination with the Israeli authorities. This regime is in place for Palestinian landowners in some 90 communities with land in the environs of some 55 settlements.[43] In some cases, the prior coordination regime is applied to private Palestinian land that has been unilaterally fenced off by settlers without authorization by the Israeli authorities. The widespread access restrictions in and around the wall in the form of gate and permit regimes particularly affect access to agricultural land in the seam zone and, as previously noted, these restrictions only apply to the Palestinian population (see paragraph 40 above).

74. Israel has extended the prior coordination regime to situations where Palestinians face potential settler violence and intimidation. This response has been ineffective in preventing settler violence, while it places the burden of restricting access to land on the victims of settler violence.

75. The mission notes that discrimination is particularly evident in the movement restrictions in Hebron and the Jordan Valley, where large Palestinian populations are subjected to permit regimes and areas off limits to traffic and, in some cases, pedestrian

[40] Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Key Humanitarian Concerns" (see footnote 16).

[41] Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access Update, September 2012 (available from www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf), p. 2.

[42] Office for the Coordination of Humanitarian Affairs, "Humanitarian Impact of Israeli Settlement Policies" (see footnote 15).

[43] Office for the Coordination of Humanitarian Affairs, "West Bank Movement" (see footnote 41).

transit. In the H2 area of Hebron, there are 123 movement obstacles are in place to facilitate the movement of approximately 550 Israeli settlers in Hebron and 7,000 in the nearby settlement of Kiryat Arba, at the expense of the Palestinian population (170,000).[43] The mission notes that the presence of these settlements has a direct impact on Palestinian livelihoods, as military orders have led to the closure of 512 Palestinian businesses, while at least another 1,100 have closed owing to the restricted access of customers and suppliers.[43]

76. The human rights treaty bodies have expressed their deep concern at restrictions on freedom of movement, describing them as being targeted at a particular national or ethnic group and amounting to gross violations of economic, social and cultural rights.[44]

6. Restrictions on freedom of expression and peaceful assembly

77. The mission notes that the settlements, including the wall, are the subject of Palestinian demonstrations in places such as Bili'in and Nabi Saleh, where the vast majority of demonstrators are reported to be acting in a non-violent manner. The Israeli authorities often respond to these demonstrations with restrictions on assembly, declaring areas closed military zones, and employing violent means to suppress demonstrations by firing tear gas, rubber bullets and, on occasion, live rounds. As in the case of closure obstacles that restrict freedom of movement, restrictions on expression and assembly have at their core the aim of ensuring that the daily life of Israeli settlers continues without interruption.[45]

78. The mission heard testimony that, since 2009, residents of Nabi Saleh, a village of 600 people, have protested every Friday against the takeover by nearby settlers of the village's water spring. The witness described a litany of violent attacks by the Israeli army on peaceful demonstrators that have resulted in one person being killed and more than 400 people being injured, including 195 children. On certain occasions, the army has reportedly stopped demonstrations before they have begun by firing tear gas inside the village, forcing all villagers to flee.[46]

79. The mission was informed that Israeli politicians, academics and civil society actors voicing criticism of the settlements are discredited in public discourse. An example of this includes the targeting of veteran combatants who have served in the Israeli military in the Occupied Palestinian Territory and who voice dissent with the official line of the establishment. The mission acknowledges the valuable contribution made by members of Israeli civil society in highlighting the denial of human rights to the Palestinians by the presence of the settlements.

7. Restrictions on the right to water

80. Information and testimonies corroborate the impact of settlement expansion on the right to water of Palestinians, including, as pointed out by, inter alia, the Committee on Economic, Social and Cultural Rights, the great discrepancy between water allocation for Palestinians and settlers, and inequitable access.

81. The capacity of the Palestinian Water Authority to develop new water resources is hampered by the water management arrangements governed by the Interim Agreement and the Joint Water Commission that it established, in which "fundamental asymmetries – of power, of capacity, of information" give Israel predominance in the allocation of West

[44] CERD/C/ISR/CO/13 and E/C.12/1/Add.69.

[45] A/67/375, para. 40.

[46] B'Tselem, "Human Rights in the Occupied Territories" 2011Annual Report (available from www.btselem.org/download/2011_annual_report_eng.pdf), p. 50.

Bank water resources, of which it withdraws 90 per cent.[47] The mission learned that a large number of Palestinian projects are rejected by the Commission. In Area C, additional approval is required from the Israeli Civil Administration, even for such small-scale projects as wells or rainwater collection cisterns.

82. The ability of the Palestinian Water Authority to transfer water to areas facing water shortages is severely inhibited by territorial fragmentation, since almost every project implies movement through Area C. The mission received testimony about water resources damaged or destroyed by the construction of the wall or lost to the seam zone, cutting off villages from their wells, springs and cisterns. In the Jordan Valley, deep-water drillings by Mekorot, the Israeli national water company, and Mehadrin, an agro-industrial company, have caused Palestinian wells and springs to dry up. Eighty per cent of the total water resources drilled in the area is consumed by Israel and the settlements.

83. The lack of availability of Palestinian water resources has led to chronic shortages among Palestinian communities in Area C and a dependence on Mekorot, to which authority over the West Bank water resources was transferred from the military in 1982.

84. Mekorot supplies almost half the water consumed by Palestinian communities. The mission heard that Palestinians do not have access to Israeli recycled water available to settlements, and have to use water from the more expensive drinking water supply for irrigation purposes. In the event of a water shortage, valves supplying Palestinian communities are closed; this does not happen for settlements.

85. The mission heard of situations where villagers must travel several kilometres to retrieve water when closer water resources serve neighbouring settlements. Settlements benefit from enough water to run farms and orchards, and for swimming pools and spas, while Palestinians often struggle to satisfy their minimum water requirements. According to testimonies received, some settlements consume around 400 litres per capita per day (l/c/d),[48] whereas Palestinian consumption is 73 l/c/d, and as little as 10-20 l/c/d[49] for Bedouin communities, which depend on expensive and low-quality tanker water. In East Jerusalem, houses built without a permit cannot connect to the water network.

86. Water shortages are further exacerbated by restrictions on movement, the destruction of infrastructure, expropriations, forced evictions and settler violence, which also largely contributes to diminishing access to water for Palestinians.

87. Forcible takeovers and vandalism by settlers increasingly impede access to water. According to the Office for the Coordination of Humanitarian Affairs, in March 2012, 30 springs in the vicinity of settlements were completely taken over by settlers and 26 were at risk, with settlers fencing them off and threatening villagers. Some of the springs seized have become "tourist attractions" or recreational sites, and receive support from the Government of Israel.

88. According to testimony received, the destruction of water infrastructure, including rainwater cisterns, by Israeli authorities has increased since the beginning of 2010, doubling in 2012 the number of acts committed in 2011. The denial of water is used to trigger displacement, particularly in areas slated for settlement expansion, especially since these communities are mostly farmers and herders who depend on water for their livelihoods. A

[47] World Bank, "West Bank and Gaza Assessment of Restrictions on Palestinian Water Sector Development", April 2009, para. 130.

[48] The minimum recommended by WHO is 100 l/c/d.

[49] Office for the Coordination of Humanitarian Affairs, "The Humanitarian Impact of Israeli-declared 'Firing Zones'" (see footnote 39).

number of testimonies highlighted that the cutting off from water resources often precedes dispossession of lands for new settlement projects.

8. Impact on economic rights

89. The agricultural sector, considered the cornerstone of Palestinian economic development, has not been able to play its strategic role because of dispossession of land and the denial of access for farmers to agricultural areas, water resources and domestic and external markets. This has led to a continuous decline in the share of agricultural production in GDP and employment since 1967.

90. The expansion of settlements and the development of relevant infrastructure have eroded Palestinian agricultural assets. Dwindling water resources, high transaction and transport costs and shrinking markets have led to a decline in the size of agricultural holdings. It has also resulted in a shift from irrigated to less profitable rain-dependent crops and a decrease in productivity, given that the import of fertilizers into the West Bank is banned for Palestinians. Besides the demolitions carried out by the authorities, villagers suffer recurrent attacks from nearby settlements (especially during the olive harvest season), the destruction of trees, water installations and livestock, putting them under additional pressure to relinquish agricultural activities.

91. The wall has divided villages, cut off farmers from their lands and water and curtailed trade with traditional markets, stifling the local economy. One example of this pattern is the village of Nazelt Issa, where half of pre-existing businesses were destroyed to build the wall, while other activities closed down, given that most of their trade was with neighbouring villages now cut off by the wall. With few income-generating prospects left in the village, unemployment is high, and young people leave to seek work.

92. The mission was informed by testimony received that "Israeli settlement agriculture is blooming". In the Jordan Valley, settlements set up in the 1960s and 1970s as farming communities on land formerly cultivated by Palestinians have developed into a high-technology irrigation agricultural zone and become major contributors to Israeli exports of date palm fruits. In the central West Bank, many agricultural settlements have been developed over the past decade, cultivating olives and grapes for winemaking in Israel. Many Israeli cultivated areas correspond to lands that were cultivated by Palestinians until the second intifada (2000-2005).

93. The inability of the Palestinian economy to expand and offer opportunities, high unemployment rates and falling wages in the Palestinian labour market, inflation and increasing poverty are factors that drive Palestinians to seek employment in the settlements and in Israel, where wages are about twice as high as in the Palestinian private sector. A stringent system of permits and quotas that determines employment in Israel and the settlements lends itself to abuse by contractors and middlemen. Palestinians employed in the settlements work primarily in the manufacturing industry and the construction sector. Women are mostly engaged in domestic work and agriculture.[50]

94. While wages might be higher, employment conditions in the settlements remain precarious. Workers claiming their rights are easily dismissed, and supervision of employers by the Israeli authorities in the settlements remains largely absent. In an audit conducted in June 2011, the State Comptroller noted the "lack of substantial supervision and enforcement in the field of safety and hygiene", even in factories holding and using

[50] International Labour Organization, "The situation of workers of the occupied Arab territories", June 2012 (available from www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_181071/lang--en/index.htm), para. 87.

dangerous materials. It was noted that, between 2006 and 2010, only four audits were conducted in the 20 industrial zones/settlements operating in the West Bank.

95. The employment conditions of Palestinian workers in settlements are subject to a system characterized by legal uncertainties. Palestinians are contracted under the far less favourable pre-1967 Jordanian labour laws, while Israeli citizens in the West Bank are employed under Israeli labour laws. Although the High Court of Israel ruled in 2007 that Israeli labour laws also applied to Palestinian workers, the ruling – which left open the possibility for the parties to agree otherwise – is often not enforced. Numerous interlocutors told the mission that this "cheap labour" from the numerous Palestinian villages within convenient commuting distance represented an additional incentive for enterprises to move to the settlements.

C. Impact of businesses

96. Information gathered by the mission showed that business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements. In addition to the previously mentioned violations of Palestinian worker rights, the mission identified a number of business activities and related issues that raise particular human rights violations concerns. They include:

- The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures
- The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements
- The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops
- The supply of security services, equipment and materials to enterprises operating in settlements
- The provision of services and utilities supporting the maintenance and existence of settlements, including transport
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses
- The use of natural resources, in particular water and land, for business purposes
- Pollution, and the dumping of waste in or its transfer to Palestinian villages
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints
- Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements

97. It is with the full knowledge of the current situation and the related liability risks that business enterprises unfold their activities in the settlements and contribute to their maintenance, development and consolidation. Industrial parks in settlements, such as Barkan and Mishor Edomim, offer numerous incentives, including tax breaks, low rents and low labour costs. Economic activities in these zones are growing. A number of banks provide mortgage loans for home buyers and special loans for building projects in settlements. They also provide financial services to businesses in settlements and, in some cases, are physically present there.

98. The mission noted that some enterprises had withdrawn from settlements because it harmed their image and might entail legal consequences.

99. The mission also noted that Israel labels all its export products as originating from "Israel", including those wholly or partially produced in settlements. Some companies operating in settlements have been accused of hiding the original place of production of their products. This situation poses an issue of traceability of products for other States wishing to align themselves with their international and regional obligations. It also poses an issue with regard to consumers' right to information. The mission notes that these issues are increasingly being addressed by States, regional organizations and some private businesses.

V. Conclusions

100. **The facts brought to the attention of the mission indicate that the State of Israel has had full control of the settlements in the Occupied Palestinian Territory since 1967 and continues to promote and sustain them through infrastructure and security measures. The mission notes that, despite all pertinent United Nations resolutions declaring that the existence of the settlements is illegal and calling for their cessation, the planning and growth of the settlements continues of existing as well as of new structures**.

101. **The establishment of the settlements in the West Bank, including East Jerusalem (see annex II), is a mesh of construction and infrastructure leading to a creeping annexation that prevents the establishment of a contiguous and viable Palestinian State and undermines the right of the Palestinian people to self-determination**.

102. **The settlements have been established and developed at the expense of violating international human rights laws and international humanitarian law as applicable in the Occupied Palestinian Territory, as recognized notably by the International Court of Justice in its advisory opinion of 9 July 2004.**

103. **The settlements are established for the exclusive benefit of Israeli Jews, and are being maintained and developed through a system of total segregation between the settlers and the rest of the population living in the Occupied Palestinian Territory. This system of segregation is supported and facilitated by a strict military and law enforcement control to the detriment of the rights of the Palestinian population.**

104. **The mission considers that, with regard to the settlements, Israel is committing serious breaches of its obligations under the right to self-determination and certain obligations under international humanitarian law, including the obligation not to transfer its population into the Occupied Palestinian Territory. The Rome Statute establishes the jurisdiction of the International Criminal Court over the deportation or transfer, directly or indirectly, by the occupying Power of parts of its own population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside that territory. Ratification of the Statute by Palestine may lead to accountability for gross violations of human rights law and serious violations of international humanitarian law and justice for victims.**

105. **The existence of the settlements has had a heavy toll on the rights of the Palestinians. Their rights to freedom of self-determination, non-discrimination, freedom of movement, equality, due process, fair trial, not to be arbitrarily detained, liberty and security of person, freedom of expression, freedom of access to places of**

worship, education, water, housing, adequate standard of living, property, access to natural resources and effective remedy are being violated consistently and on a daily basis.

106. **The volume of information received on dispossession, evictions, demolitions and displacement points to the magnitude of these practices. These are particularly widespread in certain areas and acute in East Jerusalem.**

107. **The mission noted that the identities of settlers who are responsible for violence and intimidation are known to the Israeli authorities, yet these acts continue with impunity. It is led to the clear conclusion that institutionalized discrimination is practiced against the Palestinian people when the issue of violence is addressed. The mission believes that the motivation behind this violence and the intimidation against the Palestinians and their properties is to drive the local populations away from their lands and allow the settlements to expand.**

108. **The mission is gravely concerned at the large number of children who are apprehended or detained, including for minor offences. They are invariably mistreated, denied due process and a fair trial. In violation of international law, they are transferred to detention centres in Israel**.

109. **Children endure harassment and violence, and encounter significant obstacles in attending educational institutions, which limits their right to have access to education. The occupying Power, Israel, is failing in its duty to protect the right of access to education of the Palestinian children and failing to facilitate the proper working of educational institutions.**

110. **Information gathered by the mission showed that some private entities have enabled, facilitated and profited from the construction and growth of the settlements, either directly or indirectly.**

111. **Women alone in their homes, the Bedouins and other vulnerable groups are easy targets for settler violence, creating a sense of insecurity in Palestinian society in general.**

VI. Recommendations

112. **The mission calls upon Israel to, in compliance with article 49 of the Fourth Geneva Convention, cease all settlement activities without preconditions. In addition it should immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory. The mission also urges Israel to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that are a result of the settlements in accordance with that State's international obligation to provide effective remedy. Where necessary, steps must to be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community.**

113. **The mission calls upon Israel to put an end to the human rights violations that are linked to the presence of settlements.**

114. **The mission calls upon Israel to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity.**

115. **The mission urges Israel to put an end to arbitrary arrest and detention of the Palestinian people, especially children, and to observe the prohibition of the transfer**

of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention.

116. **The mission calls upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations.**

117. **Private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law as well as the Guiding Principles on Business and Human Rights.[51] The mission calls upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations. The mission recommends that the Working Group on Business and Human Rights be seized of this matter.**

[51] A/HRC/17/31, annex.

Annexes

Annex I

[English only]

Timeline: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem

1948

- The "Declaration of the Establishment of the State of Israel" is issued. It equates *Eretz-Israel* (in Hebrew "the Land of Israel") to the territory of British Mandate Palestine[1], in contrast to the provisions of 1947 United Nations General Assembly Resolution 181 on the partition of the British Mandate of Palestine into two Independent Arab and Jewish States with a special international regime for the City of Jerusalem[2].
- The "Israeli Proclamation" is issued. It creates a legislative authority: the Provisional Council of State, which unilaterally revokes the British Parliament Decision 6019 (the White Paper of 1939)[3]. The White Paper of 1939 indicates that "the terms of the (Balfour) Declaration [sic] (…) do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a Home should be founded IN PALESTINE.[sic] (…) His Majesty's Government (…) now declare unequivocally that it is not part of their policy that Palestine should become a Jewish State (…) Jewish immigration during the next five years will be at a rate which, if economic absorptive capacity permits, will bring the Jewish population up to (…) one third of the total population (…) some 75,000 immigrants (…) After the period of five years, no further Jewish immigration will be permitted unless the Arabs of Palestine are prepared to acquiesce in it. (…) there is now in certain areas no room for further transfers of Arab land, whilst in some other areas such transfers of land must be restricted.*"*[4]
- The Law and Administration Ordinance 5708-1948 is enacted. Article 15 indicates that: "(a) 'Palestine', wherever appearing in the law, shall henceforth be read as

[1] The document is found on the Israeli MFA website: http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm

[2] A/RES/181(II)[A-B]

[3] David M. Sassoon, "*The Israel Legal System*" in The American Journal of Comparative Law, Vol. 16, No. 3, Summer, 1968. Pages 405-415 (http://www.jstor.org/stable/838665) and Yvonne Schmidt "*Foundations of civil and political rights in Israel and the occupied territories*" Doctoral Thesis / Dissertation, 2001

[4] Parliament Decision 6019 was considered a British policy paper. Full original text consulted on http://avalon.law.yale.edu/20th_century/brwh1939.asp

'Israel'" [5] disregarding 1947 UN Resolution 181 partitioning British Palestine into two States, Arab and Jewish[6].

1950

- The "Absentee Property Law" 1950 enables the Israeli Government to transfer the property left behind by Palestinians after the 1948 War for the exclusive use by Israel. The Law defines any Palestinian who 'left his ordinary place of residence' for a place outside the nascent state as an 'absentee'. The definition is broadly interpreted and includes Palestinians who are deemed to have been absent, even though they are present within the territory of Israel. Such persons are termed "present absentees".

1965

- Planning and Building Law No. 5725 is enacted by the Knesset.[7] It establishes a hierarchy of planning bodies (national, regional and local) responsible for land-use planning. The law requires development plans to be prepared, approved, and kept up to date. A permit may be refused if the development conflicts with a plan; penalties for unpermitted development may include, in extreme cases, demolition[8] (Article 212 allows the State to demolish homes considered "a public nuisance"[9]). The Law is used by Israeli Governments to justify a large amount of demolitions of Palestinian houses, notably in Jerusalem after the Six-Day War.[10]

1967

- The Six-Day War. (5-10 June)
- Military Order No 59 Regarding Government Property (Judea and Samaria [West Bank]) 5727-1967 defines "State Lands" as any land belonging to an "enemy state", or registered in its name. It authorizes the person delegated by the Commander of Israeli Defence Forces (IDF) in the Region to take possession of "enemy state's" properties and to manage these at his discretion. The Order is used through 1979 to seize control of land registered in the name of the Jordanian Government.[11] (7 June)

[5] Law and Administration Ordinance No. 1 of 5708-1948, Full text and amendments consulted on: http://www.geocities.com/savepalestinenow/israellaws/fulltext/lawandadministrationord.htm

[6] A/RES/181(II)[A-B]

[7] Planning and Building Law, 5725—1965, Full text and amendments consulted on http://www.israellawresourcecenter.org/israellaws/fulltext/planningbuildinglaw.htm

[8] Amnesty International, "*Israel/Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*". 8 December 1999

[9] Human Rights Watch, "Sample Judicial Demolition Order" [Translated by HRW from the Hebrew original Beer Sheva Magistrate Court BS 008759/05], March 2008 http://www.hrw.org/reports/2008/iopt0308/15.htm

[10] ICAHD submission to the Fact-Finding Mission http://icahd.org/node/429

[11] *B'Tselem*, Land Grab, 2002.

- Article 11 of the Law and Administration Ordinance is amended to indicate that: "The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order." [12] (27 June)
- Israel illegally annexes 70 km2 of land, incorporating Palestinians living in East Jerusalem and a number of villages in the West Bank.[13] (27 June)
- Yigal Allon, Israeli Defence Minister and chair of the Ministerial Committee on Settlements, presents a plan to Prime Minister Levi Eshkol for the creation of "security" borders by establishing Israeli settlements on unpopulated Arab areas of the West Bank (along the Jordan Rift Valley, the expanded Jerusalem and parts of the Judean Desert). The plan is not officially approved but is subsequently implemented.[14] (26 July)
- Theodor Meron, legal counsel of the Foreign Ministry, provides a legal opinion on the legality of civilian settlement in the West Bank and the Gaza Strip at the request of the PM's Office: "civilian settlement in the administered territories contravenes the explicit provisions of the Fourth Geneva Convention."[15] (18 September)
- The first Israeli settlement in the OPT is established, *Kefar Ezyon*.[16] (September)
- The UN Security Council adopts Resolution 242 and calls for Israeli withdrawal from the Gaza Strip, the Sinai Peninsula, the Golan Heights, and the West Bank, including East Jerusalem. The Resolution emphasises the "inadmissibility of the acquisition of territory by war." [17] (22 November)

1968

- The Jerusalem 1968 Master Plan, and subsequent plans provides for the building of a belt of 12 Israeli 'neighbourhoods' enveloping and bisecting the Palestinian neighbourhoods in the city.[18]
- The first of a series of expropriations of private land in Jerusalem takes place. The land is used to build the settlements such as *French Hill*, *Gilo*, *Pisgat Ze'ev* and *Ramot Allon*. In the great majority of known cases the owners of the expropriated land are Palestinians.[19]

[12] Amendment of 1967 to article 11 of the Law and Administration Ordinance No. 1 of 5708-1948 also available at: http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/13+Law+and+Administration+Ordinance+-Amendment+No.htm?WBCMODE=PresentationUnp?DisplayMode=print

[13] *B'Tselem*, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, May 1995.

[14] Senior Foreign Policy Analyst, Dan Diker "*Israel's return to Security-Based Diplomacy*", Jerusalem Center for Public Affairs, http://www.jcpa.org/text/security/diker.pdf

[15] Israel State Archives, 153.8/7921/3A. Legal opinion numbered as document 289-291, with unnumbered cover notes http://southjerusalem.com/settlement-and-occupation-historical-documents/

[16] Idith Zertal and Akiva Eldar, "Lords of the Land", 2005.

[17] S/RES/242

[18] Eyal Weizman, Hollow Land. 2007

[19] *B'Tselem*, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, May 1995.

- *Kiryat Arba* settlement (the first in Hebron) is established. Ninety *dunums*[20] of Palestinian land are seized for "military purposes"; Palestinians are evicted, vineyards uprooted and 250 housing units for the settlement are built in their place.[21]
- Military Order No. 291 concerning Land and Water Settlement (Judea and Samaria) provides the basis for the suspension of land registration in the West Bank and enables tens of thousands of hectares of the West Bank to be declared "State land" making it difficult for Palestinians to obtain security of tenure or pursue land development (as proof of registration is often a first requirement), while at the same time increasing the amount of land available to build settlements.[22] (19 December)

1969

- Israeli Prime Minister Golda Meir (1969-1974) presents her basic policy guidelines to the Knesset, mirroring the 1967 *Allon Plan*'s main objective by referring to "security" civilian borders on strategic areas in the occupied territories.(15 December)

1971

- Military Order No 418 is issued. The order "amends" Jordanian Law No 79 of 1966 as it creates High Planning Councils (HPC) appointed by the Israeli Army Commander, dissolving the Palestinian planning committees and later establishing six regional and village HPCs in the West Bank and two in the Gaza Strip. The order transfers the authority to make all significant decisions on permits and plans in the OPT from the district level to the HPC, a body of the Israeli Army. It allows the HPCs to prepare, amend, cancel, disregard, or dispense any plan or permit and to exempt persons from obtaining the necessary license. The Military Order restricts Palestinian urban growth and limits Palestinian construction by refusing building permits and reducing the land earmarked for industrial and economic projects, thereby depriving a functioning Palestinian economy. It also allows to set aside for future use vast areas of land for settlements in the OPT.[23] (March)
- The UN General Assembly mandated Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories refers in 1971 to the Israeli Ministerial Committee for Settlement of the Territories and notes that "the very existence of such a committee headed by a person of ministerial rank shows, beyond doubt, that it is a policy of the Government to settle the territories occupied as a result of the hostilities of June 1967."[24] (5 October)

[20] One *dunum* equals 1000 m2.
[21] Idith Zertal and Akiva Eldar, "Lords of the Land", 2005.
[22] Order Regarding Government Property (Judea and Samaria)(No. 59)
[23] Amnesty International, "*Israel/Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*". 8 December 1999
[24] A/8389

1974

- A group of prominent settler activists form the *Gush Emunim* movement (in Hebrew the "Bloc of the Faithful") to advance the cause of establishing settlements throughout the West Bank. [25]
- Israeli Prime Minister Yitzhak Rabin's (1974-1977) in a Cabinet Communiqué confirms the existence of a settlement policy: "Settlements in the Administered territories are established solely in accordance with the government's decisions (…) The Prime Minister and the Minister of Defence are authorized to implement this policy."[26] (26 July)

1977

- Thirty-one settlements have been established in the West Bank (excluding East Jerusalem), most of them within the outlines of the *Allon Plan* including in the Jordan Valley (the prime agricultural land of the West Bank), in the *Ezyon* bloc, in the southern Hebron hills and the Judean Desert. The settler population in the West Bank (excluding East Jerusalem) reaches about 4,500. [27] Some 50,000 Israelis live in settlements in East Jerusalem.[28]
- Israeli Prime Minister Menachem Begin (1977-1981) presents his basic policy guidelines to the Knesset. Paragraph 9 indicates the Government's support for the development of Israeli settlements throughout a land that goes beyond the green line: "Settlement in Eretz Yisrael is a right as well as an integral part of the nation's security. The Government will act to achieve the strengthening, the widening and the development of Jewish settlement..."[29] (20 June).
- Israeli Prime Minister Begin's Government statement anticipates the *Drobles Plan*. It outlines the mixed high-ranking structure, involving the Government and World Zionist Organization (WZO), responsible for granting legal status to new settlements. " [N]o part of Judea and Samaria [the West Bank] should be handed over to foreign rule (…) the Ministerial Committee on Settlements, conferred legal status on three settlements in the West Bank established during the previous government's term of office (…) The joint Government-World Zionist Organization Settlement Affairs Committee today decided to recognize *Ma'aleh Adumim, Ofra* and *Elon Moreh* as full-fledged settlements, and charged the settlement institutions with granting them commensurate treatment."[30] (26 July)

[25] Idith Zertal and Akiva Eldar, "Lords of the Land", 2005.

[26] Israeli Ministry of Foreign Affairs "17 Cabinet communiqué on settlements in the West Bank- 26 July 1974- and statement in the Knesset by Prime Minister Rabin- 31 July 1974, 26 Jul 1974, VOLUME 3: 1974-1977" www.mfa.gov.il

[27] *B'Tselem*'s report, Land Grab, May 2002

[28] *B'Tselem*'s report, Land Grab, May 2002

[29] Israeli Ministry of Foreign Affairs "Basic guidelines of the government- 20 June 1977, 20 Jun 1977, Volume 4-5: 1977-1979" www.mfa.gov.il The 9th paragraph of policy guidelines presented in 1977 is quoted to in the presentation of Begin's policy guidelines in his second tenure in office on 5 August 1981.

[30] Israeli Ministry of Foreign Affairs "23 Government statement on recognition of three settlements- 26 July 1977, Volumes 4-5: 1977-1979" www.mfa.gov.il

1978

- The WZO, co-member of the Ministerial Committee on Settlements, publishes the *Drobles Plan* to build settlements on the central mountain ridge around Palestinian population centres. The plan shifts away from the *Allon Plan* in that the later had focused on agricultural settlements in unpopulated Arab areas, whereas the former focuses on urban settlements which are relatively easy to set up, market and populate in the midst of populated Arab areas. (October)

1979

- By 1979 there are 43 settlements and 10,000 settlers in the West Bank, excluding East Jerusalem.[31]
- The UN Security Council adopts Resolution 446 affirming "that the Fourth Geneva (…) is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem" and determining that "the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East." [32] The resolution also provides for the establishment of a commission to examine the situation in relation to the settlements in the occupied territories including Jerusalem, which submits a report[33] to the Security Council. (22 March)
- Military Order 783 5739 "Concerning the Administration of Regional Councils" is issued. The order establishes the actual area controlled by settlements which can be modified at the discretion of the Israeli Military Regional Commander "'Area of a settlement' – the area bearing the settlement's name is circumscribed by a line on the map of the regional council which is signed by the regional commander (…) The regional commander has the right to alter (…) the boundaries on the map (…)"[34] (25 March)
- Israeli Defence Ministry, Ezer Weizman, declares that some 61,000 *dunums* had been seized for military needs since 1967, with more than 40,000 *dunums* of private land given to the establishment of settlements.[35]
- The High Court decision on the *Elon Moreh* case rules against the temporary seizure of land for military purposes. The testimony of retired military personnel that the land seized for the *Elon Moreh* settlement served no military purposes in addition to the testimony of the settlers themselves that they, along with the Israeli Prime Minister, saw the *Elon Moreh* settlement as a permanent settlement served to convince the High Court that the land was not legitimately seized for military purposes.[36] (22 October)
- Israeli Prime Minister Begin, in a Cabinet communiqué on settlements which mirrors the *Drobles Plan*, confirms that the Government has been implementing

[31] Figures from Israeli Central Bureau of Statistics, *B'Tselem* Land Grab May 2002
[32] S/RES/446
[33] S/13450; S/13679
[34] Quoted by Hagit Ofran and Dror Etkes "And Thou Shalt Spread …" Construction and development of settlements beyond the official limits of jurisdiction A special report presented by the "Peace Now" Settlement Watch. Jerusalem, June 2007
[35] Idith Zertal and Akiva Eldar, "Lords of the Land", 2005
[36] Duweikat v. Government of Israel, HCJ 390/79, 22 October 1979 (*Elon Moreh* case)

settlement activities in the OPT. It also indicates the new basis (declarations of "State Land") to continue with this endeavour after the ruling in the *Elon Moreh* case: "Settlement activities were carried out in Judea, Samaria and the Gaza region (…) the allotment of land for existing settlements or those settlements whose establishment was previously decided upon in Judea and Samaria [the West Bank] (…) *Givon* will be established partly on land belonging to state and partly on land owned by Jews, which will be purchased from its owners for this purpose (…) *Beit Horon* will be established on state lands (…) *Efrat* will be established on state lands (…) *Elkana* and *Kedumim* will be expanded by additional of state land (…) An inter-ministerial committee will be established which will examine the situation in the settlements of *Ophra* and *Kedumim*, and which will recommend solutions for their problems in the framework of government policy."[37] (14 October)

1980

- Military Order 892 Concerning the Administration of Local Councils is issued. The order regulates the issue of larger settlements which have been awarded the status of "local councils", and defines the manner in which the area of the council is defined at the discretion of the Israeli Army Regional Commander: (1 March)
- The UN Security Council adopts Resolution 465 which follows Resolutions 446 and 452, determining "that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention (…) and a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East."[38] (1 March)
- Between 1980 and 1984 over 800,000 *dunums* of land is confiscated through the selective use of the Ottoman Land Law of 1858. The method is largely devised by the director of the Civil Department at the State Prosecutors Office, Plia Albek, with the backing of her superiors: Attorneys General Aharon Barak and Yitzhak Zamir (both later Supreme Court Justices)[39]. The West Bank was surveyed by air and on the ground to identify uncultivated land. This would then be cross checked with land records and any lands not under private ownership would be declared as State Land. The onus is placed on those liable to be injured by the declaration to appeal to a military committee within 45 days.[40]

1981

- The Defence Minister (1981-1983) Ariel Sharon prepares a plan (the *Sharon Plan*) covering areas he believes are vital for Israel's security and which should be annexed. Only a small number of enclaves densely populated by Palestinians are not

[37] Israeli Ministry of Foreign Affairs "50 Cabinet communiqué on settlements- 14 October 1979 VOLUME 6: 1979-1980" www.mfa.gov.il
[38] S/RES/465
[39] Idith Zertal and Akiva Eldar, "Lords of the Land", 2005
[40] *B'Tselem*'s report, Land Grab, May 2002

considered. While the plan is not officially adopted by the government, it provides the basis for future settlements.[41]

- Israeli Deputy Attorney General Yehudit Karp is appointed to head a team looking at investigations and legal actions taken with regards to Israeli settler violence and intimidation in OPT. The report's findings identified: an unusually high number of files closed for reasons of "perpetrators unknown"; an indulgent and forgiving attitude from the police towards the settlers; in some cases no sincere efforts to find culprits; no questioning of witnesses; unreasonable lengths of time and a lack of sensitivity in investigations. The report observes that, "Israeli residents of the territories are given to understand that they are soldiers to all intents and purposes. [...] Israeli residents of Judea and Samaria [West Bank], explicitly relying on this assurance, refuse to cooperate with the police or provide information; they reject any contact with the police, basing themselves on 'high-level policy' and declaring that they are under no obligation to cooperate in this matter."[42] The report is not released by the Government of the day, only appearing in truncated form in 1984, 20 months after its submission by the Karp team.

1982

- Prime Minister Menachem Begin (1981-1983) presents the basic policy guidelines of his second tenure in the Government. The document largely mirrors the *Sharon Plan* and the plan to confer a permanent nature to settlements in the OPT: "any suggestion for the dismantlement or removal of any settlement in which Israeli citizens and members of the Jewish people have settled and reside, will be rejected."[43] (3 May)

1983

- The Israeli Ministry of Agriculture publishes the *Hundred Thousand Plan* aiming at building settlements in the West Bank through 2010. It includes an implementation plan 1983-1986. The plan aims at attracting 80,000 Israelis to live in 43 new Israeli settlements which would bring the total settler population to 100,000. Along with the construction of settlements, up to 450 km of new roads for settlers are to be paved.[44]

1984

- Israeli Prime Minister Shimon Peres (1984 - 1986) presents his basic policy guidelines to the Knesset in line with the *Hundred Thousand* Plan. The fourth point of the document establishes that "there will be no change in the sovereignty over Judea, Samaria [West Bank] and the Gaza District except with the consent of the

[41] *B'Tselem*'s report, Land Grab,May 2002

[42] The Karp Commission, Report on Investigations of Suspicions Against Israelis in Judea and Samaria: Conclusions (25 May 1982)

[43] Israeli Ministry of Foreign Affairs "44 Statement in the Knesset by Prime Minister Begin upon the Presentation of his Second Government- 5 August 1981, 5 Aug 1981, VOLUME 7: 1981-1982" www.mfa.gov.il

[44] Ministry of Agriculture and the Settlement Division of the World Zionist Organization, "Master Plan for Settlement for Judea and Samaria, Development Plan for the Region for 1983-1986" (Jerusalem, April 1983)

Alignment and the Likud". Other points include: "(A) The existence and development of settlements set up by the governments of Israel will be ensured, and the extent of their development will be determined by the government; (B) 5-6 settlements will be established within a year (…); (D) The establishment of new settlements will require approval by a majority of the cabinet ministers." [45] (13 September)

1986

- Prime Minister Designate Yitzahk Shamir (1986 - 1988) addresses the Knesset to present the national unity Government in its second period and confirms the economic support to settlements: "the government will seek to forge a 'Zionist Economy.' An economy that will not be based only on solid economic principles, but also on the Zionist values which must be our guide, and among them the supreme value of settlement throughout *Eretz-Israel*."[46] (20 October)

1988

- During the period 1988-1992, settlement activities accelerate rapidly and the number of settlements increase by more than 60% in line with the *Hundred Thousand Plan*.[47]
- Israeli Prime Minister Yitzhak Shamir (1988 - 1990) presents to the Knesset his basic policy guidelines, mirroring provisions of the *Hundred Thousand Plan*. Point 15 elaborates on the settlement policy as follows "The existence and development of settlements set up by the governments of Israel will be ensured. An attached appendix … elaborates on various issues, whose execution will be agreed upon together with other issues in this framework. b. Between five and eight settlements will be established within a year. ... c. The settlements elaborated on in attached appendix will be established in subsequent years as per a timetable to be determined in an agreement between the prime minister and the vice premier, toward the conclusion of the first year. Point 20 refers to settlements as "national preferential areas" for Government support "20: The Government will assist sectors of national-social preference, including the settlement sector (within the framework of the Recovery Plan), and [will assist] the populace of development areas."[48] (22 December)

1992

- By 1992, following wide-scale confiscation of Palestinian land, the number of settlements had risen sharply to 120 inhabited by 100,500 settlers.[49]

[45] Israeli Ministry of Foreign Affairs "Basic Policy Guidelines of the Government's Program, 13 September 1984.Volume 9-10: 1984-1988" www.mfa.gov.il

[46] Israeli Ministry of Foreign Affairs "196 Statement in the Knesset by Prime Minister Designate Shamir- 20 October 1986, Volume 9-10: 1984-1988" www.mfa.gov.il

[47] Applied Research Institute, Jerusalem (ARIJ) "Undermining Peace: 'Israel's Unilateral Segregation Plans in the Occupied Palestinian Territory'" 2003.

[48] Israeli Ministry of Foreign Affairs "Basic Policy Guidelines of the Government's Program- 22 December 1988, Volume 11-12: 1988-1992" www.mfa.gov.il

[49] Figures from Israeli Central Bureau of Statistics, *B'Tselem* Land Grab May 2002

- Israeli Prime Minister Yitzahk Rabin (1992-1995) presents to the Knesset his basic policy guidelines, revisiting the previous policy to establish new settlements in the OPT while at the same time guaranteeing the existence of settlements already established through public services' delivery, promoting the consolidation of the settlements. The revision in the establishment of new settlements is perceived in Israel as a virtual freeze on settlement expansion (13 July)
- As a result of Prime Minister Rabin's virtual freeze on settlement construction, there is a reduction in the frequency and the amount of declarations of "State Land"[50]
- A Committee led by Haim Klugman, director-general of the Israeli Ministry of Justice, examines the transfer of expropriated Palestinian property in East Jerusalem from the State to settler organisations like *Elad* and *Ateret Cohanim*. The report found that the Custodian for Abandoned Properties effectively served as an institution to dispossess Palestinians of their land and property.

1993

- The Oslo I Accords are signed. Permanent issues including Israeli settlements are deliberately left to future negotiations.[51] (13 September)

1994

- The *Shamgar* Commission report into the killing of twenty-nine Palestinian worshippers praying inside the Ibrahim Mosque (or Mosque of Abraham) at the Cave of the Patriarchs site in Hebron also reviews in general law enforcement on Israeli citizens in OPT and describes actions in this regard as "too slow, too little and too late."

1995

- The Oslo II Accords are signed. They divide the West Bank and Gaza into three areas, allow Palestinian election and for Israel to legally close crossing points into Israel if deemed necessary.[52] (28 September)
- Israeli Prime Minister Yitzhak Rabin is assassinated by a militant Israeli allegedly in retaliation for undermining the pace of Jewish settlement expansion in the OPT.[53] (4 November)

1996

- Prime Minister Benjamin Netanyahu (1996-1999) presents to the Knesset the basic policy guidelines of his first tenure in Government. The sixth strategic goal (out of

[50] *B'Tselem*, By Hook and By Crook: Israeli Settlement Policy in the West Bank, 2010

[51] Declaration of Principles on Interim Self-Government Arrangements, The Oslo Accords Between Israel and Palestine, 13 September 1993

[52] The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, "Oslo 2" 28 September 1995

[53] *Haaretz*, "Settler rabbi: Time has come to apologize for Rabin assassination. In memorial evening in West Bank, Tekoa's Menachem Froman says: We vow not to repeat the dance of hatred. By Chaim Levinson, 7 Nov 2012

ten) is entitled "Settlement". Whether inside or outside Israel, settlements are identified as a national priority and, as such, recipients of preferential Government support. The document puts particular emphasis on supporting settlements beyond the green line: "1. Settlement in the Negev, the Galilee, the Golan Heights, the Jordan Valley, and in Judea, Samaria [West Bank] and Gaza is of national importance, to Israel's defense and an expression of of [sic] Zionist fulfillment. 2. The Government will alter the settlement policy, act to consolidate and develop the settlement enterprise in these areas, and allocate the resources necessary for this. The Government of Israel will safeguard its vital water supplies, from water sources on the Golan Heights and in Judea and Samaria." (18 June)

- Settlements with no Government authorization ("outposts") begin to be established on the hills east of *Itamar*, in *Amona* east of *Ofra* and on *Givat Hadagan* north of the settlement of *Efrat*.[54]

1998

- The Israeli Government approves Decision No, 3292, which defines certain towns and villages as National Priority Areas (NPA) "A" and "B". Many settlements are defined as NPA "A", which entitles them to a number of benefits in housing, a wide-ranging benefits in education as well as for industry and agriculture, grants and subsidies, indemnification for the taxes imposed on their produce by the European Union; tax levels significantly lower than those established for communities inside the Green Line, and larger balancing grants to the settlements to cover deficits. [55] (15 February)

1999

- More than 50 new settlements without Government authorization ("outposts") are reported to have been established by the end of Prime Minister Netanyahu first tenure in Government (May).[56]
- Israeli Prime Minister Ehud Barak (1999-2001) presents to the Knesset his basic policy guidelines. The third strategic line (out of twelve) is entitled "Settlement" and indicates the Government support to continue developing settlements already established in the West Bank and Gaza, while indicating that no new settlements will be built: "4.1 The Government views all forms of settlement as a valued social and national enterprise (…); 4.2 Until the status of the Jewish communities in Judea, Samaria [West Bank] and Gaza is determined (…) no new communities will be built and no existing communities will be detrimentally affected; 4.3 The Government will work to ensure the security of the Jewish residents in Judea, Samaria [West Bank] and Gaza, and to provide regular Government and municipal services -- equal to those offered to residents of all other communities in Israel. The Government will offer a response to the on-going development needs of existing communities. Socio-

[54] Peace Now, First petitions against the outposts. http://peacenow.org.il/eng/content/first-petitions-against-outposts

[55] Adalah Position Paper "On the Israeli Government's New Decision Classifying Communities as National Priority Areas", February 2010, Adalah - The Legal Center for the Arab Minority Rights in Israel, See also B'Tselem "By Hook and By Crook: Israeli Settlement Policy in the West Bank." July 2010, Summary

[56] Peace Now, "Hayovel and Haresha - Illegal construction" HCJ 9051/05 - September 2005 http://peacenow.org.il/eng/content/hayovel-and-haresha-illegal-construction

economic standards will be equally applied to all communities everywhere."[57] (6 July)

2001

- Israeli Prime Minister Ariel Sharon (2001-2006) presents to the Knesset his basic policy guidelines**.** The eighth national goal (out of ten) is: "To strengthen, expand, and promote settlement throughout the country." The settlement policy follows the same line of the prior Government: "2.9 During its term of office, the Government will not establish new settlements. The Government will provide for ongoing needs in the development of existing settlements."[58] (7 March).
- Fifty one new settlements with no Government authorization ("outposts") are reported to have been built between March 2001 and June 2004.[59]
- The US led Sharm El-Sheikh Fact-Finding Committee Report, known as the "Mitchell Report", is presented. It says that "[d]uring our last visit, we observed the impact of 6,400 settlers on 140,000 Palestinians in Hebron and 6,500 settlers on over 1,100,000 Palestinians in the Gaza Strip (...) we note that many of the confrontations (…) occurred at points where Palestinians, settlers, and security forces protecting the settlers, meet (...) restrictions on the movement of people and goods in the West Bank and Gaza Strip (closures) [have resulted in the] destruction by Israeli security forces and settlers of tens of thousands of olive and fruit trees and other agricultural property. The closures have had other adverse effects, such as preventing civilians from access to urgent medical treatment and preventing students from attending school.
- The report recommends that the Government of Israel "freeze all settlement activity, including the "natural growth" of existing settlements (…); lift closures, transfer to the PA all tax revenues owed, and permit Palestinians who had been employed in Israel to return to their jobs; and should ensure that security forces and settlers refrain from the destruction of homes and roads, as well as trees and other agricultural property in Palestinian areas, [and that it] take all necessary steps to prevent acts of violence by settlers."[60] (30 April)

2002

- The total reported number of settlements built with no Government authorization ("outposts") increases to 93.[61] (July).

[57] Israeli Ministry of Foreign Affairs "Guidelines of the Government of Israel, Basic Guidelines of the Government of Israel, Jerusalem, July 6, 1999" www.mfa.gov.il

[58] Israeli Ministry of Foreign Affairs "Guidelines of the Government of Israel, Basic Guidelines of the Government of Israel, Jerusalem, March 7, 2001" www.mfa.gov.il

[59] Foundation for Middle East Peace, "Settlement Outposts Continue to Thrive under Sharon Administration", Settlement Report, Vol. 14 No. 4, July-August 2004

[60] Sharm El-Sheikh Fact-Finding Committee Report "Mitchell Report" April 30, 2001. By Suleyman Demirel, Thorbjoern Jagland, Warren B. Rudman, Javier Solana and George J Mitchell (Chairman).

[61] Peace Now, First petitions against the outposts. http://peacenow.org.il/eng/content/first-petitions-against-outposts

2003

- The basic policy guidelines in the second tenure of Prime Minister Ariel Sharon (2003-2006) remain the same**.** The eighth national goal (out of ten) continues to refer to the strengthening, expansion and promotion of settlements throughout the country, with the Government support to continue developing established settlements and its aim of not establishing new settlements.[62] (28 February)

2004

- International Court of Justice issues its Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory. (9 July)

2005

- The Office of the Prime Minister's report (Sason report) on "unauthorized outposts" describes them as a "continuation of the settlement enterprise in the territories." The report documents the active participation of the Government in the promotion and expansion of settlements up to 1992 and accounts for the "unofficial" continuation of such involvement between 1992 and 2005, including land confiscation and illegal construction with the "unauthorized aid" of the Ministry of Housing and the WZO, as well as "overlooking" and "actual encouragement and support" by the political echelon. The report concludes that "unauthorized outposts violate[s] standard procedure, good governing rules (…) endanger the principal of the rule of law [and thus] urgent measures must be taken to change [this] reality".[63] (8 March)
- In accordance with the "Disengagement Plan", 9,480 Jewish settlers from 21 settlements in Gaza and four settlements in the northern West Bank are evacuated. (16 – 30 August)

2009

- Israeli media unveils the Baruch Spiegel "secret database" of Israeli settlements in the OPT, a project developed by the Israeli Ministry of Defence. The database provides details on location and population size of the settlements; status of ownership of the land including details on over 30 settlements that were to some extent built on private Palestinian land; construction violating planning regimes and building permit requirements; details on authorisation agreements between the State and those building settlements. (February)
- The Knesset enacts the "Economic Arrangements Law" with an additional section entitled the "National Priority Areas" to apply to settlements in the OPT. (14 July)
- Israel announces a ten-month moratorium on settlement activity (up to September 2010). The moratorium is in effect a partial freeze on approval of new construction.

[62] Israeli Ministry of Foreign Affairs "Basic Guidelines of the 30th Government of Israel, 28 Feb 2003" www.mfa.gov.il

[63] Talya Sason, *Summary of the Opinion Concerning Unauthorized Outposts*, Israeli Prime Minister's Office, Communications Department, 8 March 2005.

It excludes East Jerusalem and "natural growth" in existing settlements, which grow three times as fast as "natural growth" in Israel. (November)

- The Government approves Decision No. 1060 "Defining Towns and Areas with National Priority", following request of additional time to implement the Supreme Court rulings HCJ 2773/98 and HCJ 11163/0 on 1998 decision on National Priority Areas (NPAs). The new decision falls under the new "Economic Arrangements Law" and classifies various settlements in the OPT as NPAs further designating settlements under the criterion of "level of security threat." In addition, every settlement in the OPT defined as a NPA is also entitled to receive on an individual basis the associated additional budgetary grants and benefits in fields to be defined by ministers. In contrast, towns and villages located within the Green Line and also defined as NPAs receive smaller benefits at the district and regional level only.[64] (13 December)

2010

- Israel joins the Organisation for Economic Co-operation and Development (OECD). During the discussions of accession, Israel indicates that the Government applies the investment incentives under 1984 Law of Encouragement of Capital Investment (which is also reported as not covering the OPT) to certain industrial areas in the West Bank. Israel indicates that foreign-owned enterprises may be established in those areas of the West Bank and are eligible for grants under that Law.[65] (10 May)

2011

- A letter signed by 38 members of the Knesset (out of 120 members) is addressed to Israeli Prime Minister Netanyahu. The letter refers to orders to "demolish tens or hundreds of (…) outposts in Judea and Samaria [the West Bank]" and indicates that "[t]his directive must be changed". The letter further stresses that "we should openly declare that Judea and Samaria are ours".[66] (11 October)

2012

- Israeli Government retroactively legalises three outposts. (April)
- The findings of the Levy Committee, established to investigate the legal status of the unauthorized settlements in the West Bank ("outposts"), are published. The report documents that settlements built with no formal Government authorization were established with the knowledge, encouragement and tacit agreement of Government Ministers, including the Prime Minister, public authorities, the Civil Administration and the regional councils. It goes on to recommend, that given the real true will of the Israeli Government was to establish outposts, it should therefore legalise them. No in-depth analysis is made on the methods used to establish the so-called

[64] Adalah Position Paper "On the Israeli Government's New Decision Classifying Communities as National Priority Areas", February 2010, Adalah - The Legal Center for the Arab Minority Rights in Israel

[65] OECD "Accession of Israel to the OECD: Review of international investment policies" http://www.oecd.org/israel/49864025.pdf

[66] Foundation for Middle East Peace "MKs to Bibi - Keep the Outposts" Settlement Report, Vol. 21 No. 6, November-December 2011

unauthorized outposts and no reference to the 2.5 million Palestinian living in the West Bank is included.[67] (9 July)

- The Judea and Samaria Council for Higher Education grants for the first time a full-fledged University recognition to a Centre located beyond the green line, Ariel University Centre, despite opposition by the planning and budget committee of the State's Council for Higher Education[68]. The University is open to all Israeli citizens, including Arab-Israelis but closed to Palestinians residing in the West Bank.[69] (17 July)
- The UN General Assembly votes for Palestine to become a non-member state with observer status. (29 November)
- PM Netanyahu authorises the building of 3,000 new housing units in East Jerusalem and the West Bank. (30 November)
- In analysis of building in settlements for the year 2012, it was revealed that plans for 6,676 residential units were approved in 2012[70]. This represents an increase from 1,607 housing units approved for construction in 2011 and the several hundred housing units approved in 2010. Among the housing construction plans approved were 3,500 residential units intended for the E-1 corridor, 523 for the new settlement of *Gevaot* and more than 500 in *Itamar*. Construction began on 1,747 housing units in West Bank settlements last year, the Peace Now report also says. More than a third of the construction in the settlements was east of the West Bank separation fence, according to the report. Four new outposts went up in 2012: *Nahlei Tal* near the Palestinian city of Ramallah, *Tzofin Tzafon* (*Tzofin North*) near the Palestinian city of Qalqilyah, *Nahalat Yosef* near Nablus and Hill 573 as part of an expansion of the *Itamar* settlement. Altogether, 317 new housing units were built in settlement outposts without building permits, which is against the law.[71]

[67] *B'Tselem*, "Levy Committee Report: Where are the Palestinians?" 11 July 2012.

[68] *Haaretz*, "Ariel academic center recognized as first Israeli university beyond Green Line. Decision on West Bank campus made despite opposition by Israel's Council for Higher Education." By Talila Nesher, 17 July 2012

[69] http://digitaljournal.com/article/328824#ixzz2DhMH1Jcf and http://www.bbc.co.uk/news/world-middle-east-18879786

[70] Peace Now "Summary of Year 2012 in Settlements" report.

[71] *Haaretz*, "Approval for settlement plans jumped 300% in 2012, says Peace Now." By Chaim Levinson, 16 January 2013

Annex II

[English only]



United Nations A/HRC/25/38

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Agenda item 7
Human Rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

Report of the Secretary-General*

Summary

The present report is submitted pursuant to Human Rights Council resolution 22/26 on the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. The report highlights the impact of the settlement-related activities and planning policies of Israel on Palestinians' human rights. It describes instances when the Government of Israel has failed to maintain public order, and stresses the almost complete lack of accountability regarding settler violence.

* Late submission.

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I. Introduction

1. In its resolution 22/26, the Human Rights Council affirmed that Israeli settlements and activities in the Occupied Palestinian Territory, including East Jerusalem, were illegal under international law and constituted very serious violations of international humanitarian law and of the human rights of the Palestinian people therein, and undermined international efforts aimed at invigorating the peace process and the realization of a two-State solution. Furthermore, the Council expressed grave concern at the continuing Israeli settlement and related activities, including the expansion of settlements, the expropriation of land, the demolition of houses, and the confiscation and destruction of property, which changed the physical character and demographic composition of the occupied territories, including East Jerusalem and the occupied Syrian Golan. The Council called upon Israel to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions, with the aim of preventing acts of violence by Israeli settlers, and other measures to guarantee the safety and protection of Palestinian civilians and Palestinian properties in the Occupied Palestinian Territory, including East Jerusalem.

2. The present report addresses progress made in the implementation of Human Rights Council resolution 22/26 during the reporting period, from 22 March 2013 to 30 October 2013. Important information from November 2013 is included in instances where it is particularly relevant. The information contained in the report is based on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and information provided by other United Nations entities in the Occupied Palestinian Territory. The report also contains information received from Israeli and Palestinian non-governmental organizations (NGOs) and media sources. It should be read in conjunction with previous reports of the Secretary-General on Israeli settlements.[1]

3. Previous reports outlined continuing Israeli settlement activities (A/HRC/20/13) and analysed various elements of the impact of Israeli settlement activities in the Occupied Palestinian Territory and settler violence on the human rights of Palestinians. The most recent report to the General Assembly (A/68/513) focused on the leading role played by the Government of Israel in the creation and expansion of settlements and the impact of such actions and of related legislation and public policies, on Palestinians' human rights. The present report also addresses the expansion of settlements during the reporting period, as relevant to the Council's call (see para. 1 above) in resolution 22/26, with particular attention to paragraphs 3 and 5. The report further complements the analysis in the Secretary-General's report to the General Assembly on Israeli settlements (A/68/513) by focusing on Israeli planning policy in the West Bank, including East Jerusalem, and the impact thereof on the human rights of Palestinians. Moreover, the report considers the impact of Israeli settlements and settler violence on the economic and social rights of Palestinians. Finally, in relation to paragraph 6 of resolution 22/26, the report provides an update on violent acts committed by Israeli settlers against Palestinians and their property, and stresses the lack of law enforcement and accountability in relation to such acts.

II. Legal background

4. Israel, as the occupying Power in the Occupied Palestinian Territory, is bound by international human rights law and international humanitarian law, including as contained

[1] A/HRC/20/13, A/68/513, A/67/375, A/66/364, A/65/365, A/64/516 and A/63/519.

in international customary law. In particular, Israel is bound by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the Hague Regulations.[2] Article 49 of the Fourth Geneva Convention establishes that the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies. The Security Council,[3] the General Assembly,[4] the Human Rights Council[5] and the International Court of Justice[6] have all confirmed that the construction and expansion of Israeli settlements and other settlement-related activities in the Occupied Palestinian Territory are illegal under international law.

5. In the Occupied Palestinian Territory, including East Jerusalem, Israel must comply with obligations contained in the international human rights treaties that it has ratified, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Violence against Women and the Convention on the Rights of the Child. This has been confirmed by the International Court of Justice[7] and human rights treaty bodies.[8]

III. Overview

6. As stated in previous reports of the Secretary-General, Israeli settlements are an obstacle to the creation of a future Palestinian State.[9] Despite the expressed commitment of Israel to freeze all settlement activity under the Quartet road map as well as multiple calls made by the international community for Israeli settlements in the West Bank, including East Jerusalem, to be stopped, the Government of Israel has continued to play a leading role in their creation and expansion, in violation of international law. During the reporting period, Israeli settlements continued to expand and new settlements were approved. According to the Israeli NGO Peace Now, during the reporting period, plans for 8,943 new settlement units were promoted by the Government of Israel, including 6,521 in the West Bank, excluding East Jerusalem, and 2,422 in East Jerusalem.[10] The NGO estimated that this would mean housing for more than 44,000 new Israeli settlers, assuming that the average size of a settler family is 5 persons.[11] Further, it appears that new settlement construction increased by 70 per cent in the first half of 2013, with the construction of

[2] The Hague Regulations are annexed to the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV). The International Court of Justice has stated that even though Israel is not a party to this Convention, the Hague Regulations are applicable to Israel, as they have become part of customary law. See *Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004 (A/ES-10/273 and Corr. 1), paras. 89-101.

[3] Security Council resolution 465 (1980).

[4] General Assembly resolution 65/104.

[5] Human Rights Council resolution 22/26.

[6] The Court concluded that Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, have been established in breach of international law (A/ES-10/273 and Corr.1, (note 2 above), para. 120).

[7] A/ES-10/273 and Corr. 1 (note 2 above), paras. 102-113.

[8] CERD/C/ISR/CO/14-16, para. 10, CRC/C/ISR/CO/2-4, para. 3. See also A/68/513, para. 5.

[9] A/64/516, para. 12; A/67/375, para. 6.

[10] Peace Now uses the term “promote” to indicate support from the Government of Israel in advancing new settlement units in the multi-stage planning process. Information provided by Peace Now.

[11] See peacenow.org/Bibis%20Settlements%20Boom%20-%20March-November%202013%20-%20FINAL.pdf.

1,708 units, 180 of them in outposts,[12] as compared with 995 units built during the same period in 2012.[13]

7. In addition, in October 2013 the Government of Israel announced the construction of 5,000 new units in Israeli settlements located in the West Bank, including East Jerusalem.[14] According to the media, the aim of this measure was to neutralize negative reactions towards the release of Palestinian prisoners in the context of the peace talks.[15] In November 2013, the media reported that the Prime Minister of Israel, Benjamin Netanyahu, had ordered the Minister of Housing and Construction, Uri Ariel, to reconsider construction plans for more than 20,000 housing units in Israeli settlements,[16] including in the E-1 block,[17] reportedly in order not to create an unnecessary confrontation with the international community.[18] However, as of 20 November 2013, those plans had not been withdrawn.

8. The population in Israeli settlements continues to grow. According to the Israeli Central Bureau of Statistics, the growth rate of the settler population in 2012 was 5 per cent, almost three times higher than the national growth rate, which was 1.9 per cent.[19] Estimations of the current settlement population in the West Bank, including East Jerusalem, range between 500,000 and 650,000.[20]

9. Israeli settlement activity, security measures adopted to protect settlers and their movement, and the violence committed by Israeli settlers against Palestinians and their property are behind most of the human rights violations against Palestinians in the West Bank, including East Jerusalem.[21] For example, settlements have given rise to multiple restrictions imposed by Israel on Palestinian construction, in particular in Area C,[22] making it virtually impossible for Palestinians to obtain building permits for homes and infrastructure.[23] As noted below, these restrictions often leave Palestinians with no other option than to build without permits, risking eviction and the demolition of their structures and their subsequent displacement (see paras. 11-20 below). As previously reported, in many cases, the demolition of Palestinian homes lacking building permits is linked to settlement expansion.[24] According to the Office for the Coordination of Humanitarian

[12] Outposts are settlements which, although often established with some kind of Government support, are not officially recognized under Israeli law.

[13] See peacenow.org.il/eng/Jan-Jun-2013.

[14] Mainly for the expansion of the Ramat Shlomo settlement and the construction of a national park on Mount Scopus.

[15] See www.haaretz.com/news/diplomacy-defense/.premium-1.555373 www.timesofisrael.com/5000-new-settlement-units-said-to-be-in-the-works/ www.yourmiddleeast.com/news/israel-planning-another-3360-settler-homes_19078.

[16] See peacenow.org/entries/updated_new_peace_nowapn_report_bibis_settlements_boom_--_even_bigger_than_was_known#more.

[17] Area of the West Bank within the municipal boundary of Ma'ale Adumim settlement, adjacent to East Jerusalem. Plans to construct settlements in E-1 would create an urban block between Ma'ale Adumim and Jerusalem, exacerbate the isolation of East Jerusalem from the rest of the West Bank, and interrupt the territorial contiguity of the West Bank. See www.btselem.org/settlements/20121202_e1_human_rights_ramifications.

[18] See www.bbc.co.uk/news/world-middle-east-24919030.

[19] See www.jpost.com/National-News/2012-West-Bank-settler-population-growing-almost-three-times-as-fast-as-national-rate-326309.

[20] A/68/513, para. 10.

[21] A/68/513, para. 12; A/66/364.

[22] The Oslo Accords divided the West Bank into Areas A, B and C. Area C comprises approximately 61 per cent of the West Bank and is under almost full Israeli military and civilian authority.

[23] A/68/513, paras. 31-33.

[24] A/HRC/22/63, paras. 62-71; A/67/375, para. 8; A/66/364, para. 11.

Affairs of the United Nations, in the Occupied Palestinian Territory, 392 Palestinian structures were demolished in the West Bank, including East Jerusalem, during the reporting period, displacing 588 people, including 272 children.[25]

10. The situation in East Jerusalem remains an issue of concern. Between November 2012 and October 2013, 99 Palestinian structures were demolished, displacing 320 people, including 161 children.[26] In addition, new housing units in settlements situated in East Jerusalem were approved. For example, in August 2013, the Jerusalem Municipality Local Planning and Construction Committee approved the building of 58 housing units in the Pisgat Ze'ev settlement. The media reported that the Mayor of Jerusalem had voiced his support for a government plan to construct 793 new homes: including 400 in Gilo, 210 in Har Homa and 183 in Pisgat Ze'ev.[27] In November 2013, demolition orders for 10 apartment buildings in the Ras Khamis neighbourhood were issued. If implemented, they would result in the displacement of some 1,500 Palestinians.[28] Residents of Silwan have affirmed that they also received several demolition orders around the end of October.[29]

IV. Israeli planning policy in the West Bank, including East Jerusalem, and its impact on the human rights of Palestinians

Nature of planning policy, law[30] and practice

11. The establishment and expansion of Israeli settlements in the West Bank, including East Jerusalem, is associated with a complex system of policies that negatively affect the human rights of Palestinians.[31] The planning policy which regulates the construction of housing and structures in the West Bank,[32] including East Jerusalem, is extremely problematic.[33] The Secretary-General[34] and the Committee on the Elimination of Racial Discrimination[35] have previously noted the discriminatory nature of Israeli planning policy. For instance, in East Jerusalem, Israeli authorities have planned and zoned only 13 per cent of the city, most of which is already built up, for Palestinian construction. In addition,

[25] Information provided by OCHA.

[26] Ibid.

[27] See www.jpost.com/Diplomacy-and-Politics/Jerusalem-Municipality-approves-construction-in-Pisgat-Zeev-328324.

[28] Information provided by OCHA.

[29] See www.haaretz.com/news/diplomacy-defense/.premium-1.556071 and www.maannews.net/eng/ViewDetails.aspx?ID=643164.

[30] For the purpose of this report the term "law" includes regulation through military orders.

[31] A/66/364, para. 8.

[32] The planning regime in the West Bank is governed by a system of laws which were in force before 1967, when Israel occupied the West Bank. This system comprises three layers: the Ottoman, the British Mandate and the Jordanian Law. Israel has amended the system mainly through military orders. See www.yesh-din.org/postview.asp?postid=254.

[33] Planning and development in East Jerusalem is governed by Israeli national planning institutions. See "Planning to fail: the planning regime in Area C of the West Bank: an international law perspective", Diakonia International Humanitarian Law Resource Centre Legal Report, September 2013, available from: www.diakonia.se/documents/public/ihl/publications/Planning-to-fail-reportsept2013.pdf.

[34] See A/66/364.

[35] In 2012, the Committee expressed concern regarding the discriminatory planning policy of Israel and urged it to reconsider it entirely in order to guarantee Palestinian and Bedouin rights to property, access to land, access to housing and access to natural resources (CERD/C/ISR/CO/14-16, para. 25).

Palestinians undergo a long and costly process before a building permit within this area may be granted. Even if requirements to obtain a building permit in West Jerusalem are similar, underinvestment by the Municipality in public infrastructure and the inequitable allocation of budgetary resources in East Jerusalem make it very difficult for Palestinians to fulfil all requirements to obtain a permit.[36] As a result, at least 33 per cent of Palestinian homes in East Jerusalem lack Israeli-issued building permits, placing at least 93,100 residents at risk of eviction, demolition of their homes and displacement.[37]

12. In Area C of the West Bank, Palestinians are not allowed to build on approximately 70 per cent of the land mass and are subject to severe restrictions regarding construction in the remaining 30 per cent.[38] Less than 1 per cent of Area C has been planned for Palestinian urban development.[39] Palestinians are not represented in the planning process, unlike Israeli settlers.[40] The combination of these factors makes it virtually impossible for Palestinians to obtain a permit to construct homes or infrastructure in Area C. Many Palestinians therefore build without building permits, putting them at risk of eviction, demolition of their homes and displacement.[41] According to the Israeli Civil Administration (ICA), between 2009 and 2012, only 2.3 per cent of the permit applications by Palestinians in Area C were approved.[42] Between 30 November 2012 and 30 October 2013, 477 Palestinian structures were demolished in Area C, which caused the eviction and displacement of 644 people, half of them children.[43]

13. In contrast, Israeli authorities have provided settlements with detailed planning and established preferential policies, including granting incentives and benefits to settlers, allocating settlements land for expansion and connecting them to public services and infrastructure.[44] In addition, the strict application of planning laws to Palestinian communities, which causes a large number of evictions and demolitions of Palestinian structures, contrasts with the flexibility shown by the planning authorities towards Israeli settlements.[45] The widespread lack of enforcement of laws granting the power to evict and demolish structures when they are violated by Israeli settlers further highlights the differentiated application of planning policy.[46] For instance, in Area C, in the period 2010–2012, 2,418 demolition orders were issued for Palestinian buildings, while only 1,143 demolition orders were issued for Israeli settlement buildings.[47]

14. Israeli planning policy is thus discriminatory against Palestinians as compared with Israeli settlers. As illustrated above, even if the planning laws in principle do not establish different requirements for Palestinians and Israeli settlers, they impose unachievable conditions for Palestinian construction. In contrast, Israeli settlers do not face such difficulties, for instance regarding the allocation of building permits and participation in the

[36] A/66/364, paras. 13-15.

[37] See www.ochaopt.org/documents/ocha_opt_Jerusalem_FactSheet_December_2012_english.pdf.

[38] A/68/513, paras. 30-33.

[39] See www.ochaopt.org/documents/ocha_opt_area_c_factsheet_January_2013_english.pdf.

[40] A/68/513, para. 32. See also B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, "Acting the landlord: Israel's policy in Area C" (June 2013), p. 13. Available from www.btselem.org/download/201306_area_c_report_eng.pdf.

[41] A/68/513, paras. 30-33 and A/66/364, para. 19.

[42] Information provided by the Office for the Coordination of Humanitarian Affairs.

[43] Ibid.

[44] A/68/513, paras. 23-29 and 34.

[45] See *Land Grab, Israel's Settlement Policy in the West Bank, May 2002*, available from: www.btselem.org/download/200205_land_grab_eng.pdf.

[46] A/68/513, para. 34. See also: "The road to dispossession – a case study: the outpost of Adei-Ad", Yesh Din, 18 April 2013, available from www.yesh-din.org/postview.asp?postid=254.

[47] Information provided by ICA to OCHA.

planning process.[48] This is in clear contravention of the international human rights obligations of Israel, in particular the principle of non-discrimination in relation to the right to adequate housing contained in the International Covenant on Economic, Social and Cultural Rights,[49] which has been ratified by Israel. By not upholding that principle, Israel is violating an international obligation of immediate effect.[50] Furthermore, it is violating the rule of law by virtue of a discriminatory application of the law against Palestinians, in this case the planning regime. In this respect, Israel is violating articles 2 (non-discrimination and equality before the law) and 26 (equal protection of the law) of the International Covenant on Civil and Political Rights, to which it is also a party.[51]

Impact of planning policy, law and practice on the human rights of Palestinians

15. The planning policy undermines one of the most important components of the right to adequate housing, namely security of tenure. The Committee on Economic, Social and Cultural Rights has established that everyone should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.[52] The Committee has also affirmed that States must take immediate measures aimed at conferring legal security of tenure upon those persons and households lacking such protection, in genuine consultation with affected persons and groups.[53] Israel is not complying with this obligation, since it is not taking any steps to protect the security of tenure of Palestinians. On the contrary, its planning policy, law and practice expose them to constant risks of forced eviction, demolition and displacement, which interferes directly with their enjoyment of the right to adequate housing. In addition, as previously reported, Palestinians cannot participate in the planning process,[54] in violation of the right to participate in public decision-making.[55]

16. Land ownership and possession is another element of the right of Palestinians to adequate housing which is affected by Israeli planning policy and, more broadly, by Israeli settlement-related activities.[56] As stated by the former Special Rapporteur on the right to

[48] According to B'tselem, despite the fact that the same legal and institutional system is responsible for planning in Palestinian areas and in the settlements, the criteria applied are diametrically opposed. See *Land Grab, Israel's Settlement Policy in the West Bank* (note 45 above), p. 88.

[49] Article 11 consecrates the right to an adequate standard of living, which includes the right to adequate housing, food and clothing.

[50] Under the International Covenant on Economic, Social and Cultural Rights, States have the obligation to achieve progressively the rights contained in the Covenant, it being recognized that the realization of economic, social and cultural rights may take some time, owing to resource implications. However, some principles and components of such rights are of immediate effect, notably the principle of non-discrimination.

[51] While examining Israel, the Human Rights Committee expressed concern regarding "the discriminatory municipal planning systems, in particular in 'area C' of the West Bank and in East Jerusalem, disproportionately favouring the Jewish population of these areas", CCPR/C/ISR/CO/3; A/66/364, para. 7.

[52] Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions.

[53] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1992) on the right to adequate housing.

[54] A/68/513, para. 32.

[55] Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 9.

[56] While land-related rights are a fundamental element of the right to adequate housing, there is no recognition of a human right to land. See UN Habitat, "The Right to Adequate Housing", Fact Sheet

adequate housing, this element is often essential to understanding the seriousness of the violations of the right to adequate housing.[57] Israel has been using different methods to seize land for settlements amounting to almost half of the West Bank.[58]

17. Israeli control of land, and the takeover of land by Israeli settlers, often have as a consequence that Palestinians are dispossessed of their land. The case of the Israeli settlement outpost of Adei Ad illustrates the infringement of the right to adequate housing of Palestinians as a result of the takeover of land by settlers and the failure to enforce planning laws. Adei Ad was founded in 1998 by Israeli settlers who invaded a hilltop next to the villages of Turmusaya, Al-Mughayyr, Jalud and Qaryut in the West Bank. The outpost was established in contravention of Israeli planning law. It was built without a government decision to establish it, without its jurisdiction being delineated by an order of the Commanding Officer of the Central Command, without a detailed plan by virtue of which building permits can be issued and, consequently, without a building permit.[59] In spite of the illegality deriving from the violation of these laws, the outpost was and continues to be supported by government bodies, including the Settlement Division of the World Zionist Organization,[60] through funding and allocation of land, as well as by the Israel Electric Corporation and Mekorot (Israel National Water Company) through the provision of services.[61] Although it is reported that the Israeli Civil Administration issued 81 demolition orders against structures in Adei Ad, only very few have been enforced.[62]

18. It appears that various criminal and administrative offences have been committed by settlers against Palestinians in the area surrounding the outpost of Adei Ad, including fencing and cultivating land, trespassing, vandalism of Palestinian property and evicting Palestinians or preventing them from accessing their plots, sometimes through harassment and violence. In addition, the Israel Defense Forces (IDF) defined extensive non-entry zones for Palestinians, who, in many cases, are required to coordinate with IDF to gain access to agricultural areas.[63] As a result, Palestinians often have no access to agricultural lands they cultivated before the establishment of the outpost.[64] This has had an impact on their right to work, as their economies and way of life were based on agriculture.[65] Moreover, this situation has hindered their access to basic means of livelihood and services, which are essential elements of the right to housing and are linked to the fulfilment of the

No. 21 (Rev. 1), available from: www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

57 A/HRC/4/18, para. 25.

58 A/68/513, paras. 17-22.

59 "The road to dispossession" (note 46 above), pp. 7-8.

60 The Division's role is to assist the Government in establishing Israeli settlements in the West Bank. Its budget comes entirely from the State treasury. See www.mfa.gov.il/mfa/aboutisrael/state/law/pages/summary%20of%20opinion%20concerning%20unauthorized%20outposts%20-%20talya%20sason%20adv.aspx; A/68/513, para. 9.

61 "The road to dispossession" (note 46 above), pp. 44-56.

62 Ibid., p. 79.

63 www.ochaopt.org/documents/ocha_opt_al_mughayyir%20_case_study_2013_10_22_english.pdf

64 Adei Ad is built on both unregistered Palestinian land and State land. See "The road to dispossession" (note 46 above), p. 8.

65 According to the Palestinian Institute for the Study of Economic Policy (MAS), 34 per cent of Palestinian agricultural land in the West Bank is not accessible to its owners. The study indicates four main causes: settlements, the Wall, closed military zones and methods of enclosure. See MAS, *Food Security Bulletin*, Issue 7 (2012), cited in "Israeli settlers' agriculture as a means of land takeover in the West Bank", Kerem Navot, 2013.

rights to food, water, health and education and, generally, to an adequate standard of living (see paras. 21-29 and 34-36 above).[66]

19. The case of Adei Ad illustrates the impact of Israeli planning policies on the enjoyment of economic, social, civil and political rights by Palestinians.[67] The obligations of Israel under international law include the duty to respect human rights by refraining from interfering with enjoyment of these rights, for instance, by refraining from denying Palestinians security of tenure and from implementing eviction and demolition orders based on discriminatory planning policies, laws and practices. In addition, protecting human rights entails ensuring law enforcement and accountability for settler violence to prevent third parties from interfering with Palestinians' enjoyment of their rights (see paras. 42-47 below). Finally, the fulfilment of Palestinians' rights requires, for example, amendment of the planning regime in order to eliminate discriminatory practices, while guaranteeing Palestinians full participation in the definition and implementation of planning policies.

20. Similarly, Israeli planning policies do not comply with the country's obligations under international humanitarian law. Israel amended the Jordanian planning law in force at the beginning of the occupation to such an extent that it exceeded the competence afforded to it, as occupying Power, to legislate.[68] The amendment eliminated Palestinian participation in the planning process while creating special planning bodies exclusively for Israeli settlements (Local Planning Councils). Moreover, Israeli planning policies have important long-term implications for the Occupied Palestinian Territory and the Palestinian population therein, which are not reconcilable with the temporary nature of occupation.[69] In addition, the occupying Power should look after the welfare of the population in the occupied territory.[70] The large number of evictions and demolitions suffered by the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem, as well as the negative human rights impact thereof, indicate that such measures have not been aimed at ensuring the welfare of the Palestinian population.[71]

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[66] See also A/68/513, paras. 36-41.

[67] In its general comment No. 4, paragraph 9, the Committee on Economic, Social and Cultural Rights highlighted the relationship between the right to adequate housing and civil, political, economic, social and cultural rights: "the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing".

[68] A/68/513, para. 32.

[69] According to the International Committee of the Red Cross, the temporary nature of occupation is one of the most important principles governing occupation. See www.icrc.org/eng/resources/documents/misc/634kfc.htm.

[70] See, in particular, article 43 of the Hague Regulations, on the obligation to ensure public order and the safety of the occupied population, and article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention), on the obligation of protecting the rights of protected persons. According to the Israeli Supreme Court, the military commander must consider two factors in the Occupied Palestinian Territory: ensuring military or security needs and ensuring the welfare of the local population (HCJ 393/82, Jamait Askan et al. *v.* IDF Commander of Judea and Samaria et al, 37(4) PD, p. 785 (1983), in particular para. 27). See also David Kretzmer, "The law of belligerent occupation in the Supreme Court of Israel", *International Review of the Red Cross*, Vol. 94, no. 885, 2012, pp. 216-222.

[71] Diakonia, "Planning to Fail", (note 33 above) pp. 22-23.

V. Impact of Israeli settlements and settler violence on the economic and social rights of Palestinians

Access to land and water

21. Settlements occupy a sizeable part of Palestinian land, making it impossible for Palestinians to develop or maintain their natural resources in any meaningful or sustainable manner. Of the land in the West Bank, 43 per cent has been allocated to settlements.[72] This situation, coupled with the fact that Israel has responsibility for planning and zoning throughout Area C, greatly hampers the exercise by Palestinians of a wide range of economic and social rights (see paras. 15-20 above).

22. Israel controls all sources of water in the West Bank and effectively prevents Palestinians from adequately maintaining or developing water resources. Israel obtains approximately a third of the water it uses from the Jordan River,[73] while Palestinians are denied access to the riverbanks. Israel also extracts a significant portion of its water from the Mountain Aquifer, the largest water resource in the region.[74]

23. The Israel national water company, Mekorot, owns all water supply systems in the West Bank and supplies approximately 50 per cent of the water available to Palestinian communities. Mekorot reportedly significantly reduces the Palestinian water supply during the summer months, in order to meet consumption needs in Israel and in the settlements.[75] One emblematic example is that of the village of Kufr al-Deek, near Ariel, one of the largest Israeli settlements in the West Bank. When supplies of water are low in the summer months, Mekorot closes the valves that supply Kufr al-Deek so as not to affect Ariel's water supply. Ariel also discharges wastewater inappropriately, resulting in contamination of the spring wells on which residents of Kufr al-Deek rely both for drinking water and for agriculture.[76]

24. Because of these severe water cuts and the limited coverage of the water network in the Occupied Palestinian Territory, many Palestinian communities are forced to purchase water delivered by water tankers at a cost which is reportedly eight times or more what settlers are paying. This is the case even though much of the water may have originally been extracted from Palestinian sources.[77] Israeli settlers consume a daily average of 369 litres of water for domestic use, while Palestinians have access to only 70 litres per person per day.[78] According to the World Health Organization, 100 litres or more per person per day provides optimal access, whereas between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise.[79]

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[72] A/68/513, para. 36.

[73] Al Haq, Water factsheet 1: "Geography and hydrology of water Resources in the Occupied Palestinian Territory" (22 March 2013).

[74] Ibid.

[75] A/HRC/22/63, para. 84; A/61/500/Add.1, para. 29.

[76] Palestinian Hydrology Group, "Wastewater from Ariel settlement pollutes Palestinian water supply in Salfit" (2010).

[77] The water purchased from contractors costs as much as three times the highest price of water for household consumption in Tel Aviv. See www.btselem.org/water/restrictions_in_area_c.

[78] A/68/513, para. 38.

[79] See OHCHR, Human Rights Fact Sheet No. 35, "The right to water", available from www.ohchr.org/Documents/Publications/FactSheet35en.pdf .
See also World Health Organization, "Domestic water quantity, service level and health" (2003), available from: www.who.int/water_sanitation_health/diseases/WSH03.02.pdf.

25. In addition, many cases have been documented of settlers forcibly taking over Palestinian water resources, through violence, threats and intimidation. Settlers also erect physical obstacles, such as fences, preventing Palestinians from accessing wells.[80] In the case of 40 out of 56 water springs surveyed by the Office for the Coordination of Humanitarian Affairs in the course of 2011, Israeli settlers had even begun to develop the surrounding areas as a "tourist attraction", installing signs, picnic tables and other recreational infrastructure. Many of those initiatives are promoted and funded by Israeli governmental or semi-governmental institutions.[81]

Right to an adequate standard of living

26. Besides being a vital element of Palestinian culture, olive farming is a mainstay of the Palestinian economy. According to the Food and Agriculture Organization of the United Nations, olive production accounts for as much as 25 per cent of the total value of agricultural income in the Occupied Palestinian Territory, with approximately 100,000 families dependent to some extent on olive farming for their livelihoods.[82] The majority of olive trees in the West Bank are rain-fed, making olive farmers vulnerable to drought. Irrigation techniques could improve the situation significantly; however, as described above, Palestinians lack meaningful access to most water resources and must purchase water from the drinking water supply for irrigation purposes. Only 6.8 per cent of the cultivated land in the West Bank is irrigated.[83]

27. Israeli settlements, on the other hand, are supplied with ample water and many engage in cultivation of crops that require large amounts of water, such as bananas. Palestinian producers are unable to compete in these conditions, which results in settlement products dominating Palestinian markets.[84]

28. Settlers often attack Palestinian agricultural lands and destroy olive trees. During the reporting period, the Office for the Coordination of Humanitarian Affairs recorded 270 incidents in the context of settler-related violence leading to the injury of 103 Palestinians and damage to around 6,660 trees owned by Palestinians. During the same period in 2012, 249 incidents affecting Palestinians were documented, resulting in injury to 97 Palestinians and damage to 6,150 trees.[85] A damaged 50-year-old olive tree requires five years to bear fruit again, and 20 years to reach a significant level of production. For each damaged 50-year-old tree, there are associated average costs of US$ 750.[86] Settler violence is also often directed at the herds of herding communities (see para. 42 below).

29. The situations described above affect the right to work of those Palestinians whose way of life is based on agriculture. In addition they hinder their access to means of livelihood, affecting several of their human rights (see paras. 15-20 above).

[80] The Office for the Coordination of Humanitarian Affairs, "How dispossession happens: the humanitarian impact of the takeover of Palestinian water springs by Israeli settlers" (March 2012).

[81] Ibid.

[82] FAO, "Overview of the Olive Sector in the West Bank and the Gaza Strip" (October 2013).

[83] Emergency Water Sanitation and Hygiene in the occupied Palestinian territory (EWASH), Fact Sheet 14: "Water for agriculture in the West Bank" (March 2013).

[84] Ibid.

[85] Information provided by the Office for the Coordination of Humanitarian Affairs.

[86] FAO Food Security Unit 2013, cited in Protection Cluster Working Group, "Update on settler violence in the West Bank, including East Jerusalem" (October 2013).

Environmental pollution caused by settlements

30. Israeli settlements in the West Bank have exacerbated existing environmental concerns. In a joint study,[87] official Israeli sources found that 81 out of 121 Israeli settlements are connected to waste treatment facilities. Nonetheless, 5.5 million cubic meters of raw wastewater continues to flow from settlements into the West Bank.[88] Furthermore, 80 per cent of solid waste generated by settlers is dumped at dumping sites not designed as sanitary landfills, located in the West Bank.[89]

31. Israel transfers electronic waste (e-waste)[90] from Israel and Israeli settlements to areas near Palestinian communities in the West Bank.[91] For instance, many irregular e-waste workshops in Idhna, Hebron, operated by backyard recyclers, are located near water wells, resulting in toxic chemicals and toxins such as mercury leaking into the ground and contaminating the water supply. Many workshops are located in the vicinity of agricultural lands, posing a threat to the agro-biodiversity and to the quality of agricultural products. According to local physicians, there appears to be a link between e-waste and the rise in various forms of cancer affecting Palestinians.[92]

32. Human rights organizations have reported and warned of the impact of dumping industrial and chemical waste from industrial Israeli settlements, such as the Barqan Industrial Park and chemical factories[93] in the West Bank. For example, the settlement of Ariel dumps liquid waste sewage and industrial waste into a stream and on agricultural land, rendering it contaminated and unworkable.[94] Ariel's treatment plant ceased functioning in 2008 and the settlement's wastewater has been flowing into the Al Matwi stream and Salfit[95] and then west, through agricultural land to the villages of Bruqin and Kufr al-Deek,[96] passing near a domestic artesian well.[97]

33. As noted above (see sect. IV), Israel applies restrictive policies, laws and practices to Palestinian structures in the West Bank, including East Jerusalem. This also applies to

[87] By the Israel Nature and Parks Authority Environment Unit, the Water and Streams Department in the Ministry of Environmental Protection and the environmental-protection staff officer in the Civil Administration. See B'Tselem, "Foul play: neglect of wastewater treatment in the West Bank" (June 2009,) available from www.btselem.org/download/200906_foul_play_eng.pdf.

[88] The majority of the 81 settlements are connected to waste water facilities which are dysfunctional, defective and/or do not meet the standards required in Israel. See B'Tselem, "Foul play" (note 87 above).

[89] Jad Isaac and Jane Hilal (2011), "Palestinian Landscape and the Israeli-Palestinian conflict", International Journal of Environmental Studies, Vol. 68, No. 4, 413-429, August 2011, p. 426.

[90] According to EU Directive 2002a, E-waste, or waste electrical and electronic equipment (WEEE) is "electrical or electronic equipment which is waste including all components, subassemblies, and consumables, which are part of the product at the time of discarding", see United Nations Environment Programme, *E-waste Vol. 1* (2007), available from www.unep.org/ietc/Portals/136/Publications/Waste%20Management/EWasteManual_Vol1.pdf

[91] Applied Research Institute – Jerusalem (ARIJ) in cooperation with the Sunflower Association for Human and Environmental Protection, "The impacts of electronic waste disposal on the environment and public health in the occupied Palestinian territory: a case study from Idhna, Hebron Government" (2012), pp. 4-5.

[92] Ibid., pp. 9-10.

[93] Isaac and Hilal (note 89 above), pp. 426-427.

[94] Friends of the Earth International observer mission to the West Bank, "Environmental Nakba: environmental injustice and violations of the Israeli occupation of Palestine (2012), p. 11.

[95] Ibid.

[96] B'Tselem, "Foul play" (note 87 above), p. 29.

[97] Isaac and Hilal (note 89 above), pp. 413-429.

waste management infrastructure projects, which has resulted in the curbing of Palestinian projects, especially in Area C.[98] As Areas A and B are already mostly built up, the suitable locations for waste treatment sites are in Area C. The situation appears to be aggravated by delays in the Israeli approval and licensing process, which can last for over a decade.[99] In addition, Israel has also made the development of projects on serving settlements,[100] which worsens the situation, as the Palestinian Authority systematically refuses to engage with settlements, to avoid giving legal recognition to them. For instance, Israel refused a construction licence to a German-funded project in 2009 for the construction of a water treatment plant for Salfit in Area C. The rejection was premised on the interest of Israel in a joint project which would include treatment of Ariel's wastewater. The proposal entailed the untreated wastewater travelling 12 kilometres through the villages of Bruqin and Kufr al-Deek towards the Green Line, where the proposed plant would be erected.[101]

Right to education

34. Cases have been documented of groups of settlers attacking schools in Palestinian villages. For example, the United Nations Children's Fund (UNICEF) documented five incidents of attacks on schools in the village of Urif, south of Nablus, and close to the settlement of Yitzhar, from January to June 2013.[102] These attacks usually led to clashes between the settlers and the residents, followed by interventions by the Israeli Security Forces (ISF) using tear gas, rubber-coated metal bullets and live ammunition to disperse Palestinians.

35. In a case documented by OHCHR, on 24 October 2013 a group of approximately 30 settlers, most of them masked, attacked the school in Jalud village. Some threw stones at the school, while others attempted to enter the schoolyard from the main gate and through the fence. The teachers locked the door from the inside, in order to protect the children. The settlers proceeded to destroy the cars parked in and around the school, and subsequently set fire to olive groves nearby. As a result of the attack, five cars were destroyed and more than 350 olive trees burned. Jalud is surrounded by six Israeli settlements, in addition to an IDF camp, and is the target of frequent settler violence, especially during the olive harvest. According to the information available to OHCHR, the Israeli police subsequently arrested four suspects for this attack.

36. Besides attacking schools, settlers also often engage in violent attacks on children on their way to or from school, including throwing stones at school buses. In some locations on the West Bank, ISF provide escorts for children to ensure their safety; however, these escorts are often unreliable and frequently fail to show up.[103]

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98 "Building and administrative restrictions imposed by the Israeli authorities impede the establishment of new solid and sewage waste facilities to help to alleviate waste disposal issues", from "Barrier impacts on waste management", Barrier Monitoring Unit (BMU) and ARIJ, 2012.

99 On 31 October 2013, the Minister of the Palestinian Water Authority stated that delays in approval of projects entail changing the locations several times, often causing the loss of funding. For instance, in 2010, Israel approved a water treatment project for West Nablus submitted in 1997. See also B'Tselem, "Foul play" (note 87 above), pp. 19-21.

100 Barrier Impacts on Waste Management (note 98 above); and B'tselem, Foul Play (note 87 above), pp. 21-22.

101 The Current Environmental Situation in Salfit, ARIJ, 2008, p. 1, available from http://www.poica.org/editor/case_studies/salfit-environ.pdf (in Arabic).

102 Information obtained through the Monitoring and Reporting Mechanism on Grave Child Rights Violations.

103 A/HRC/22/63, para. 53.

VI. Failure to maintain public order, settler violence and lack of accountability

37. Israeli settlers continued to attack Palestinians and their property in the West Bank, including East Jerusalem, during the reporting period. The lack of effective accountability and protection from such incidents by the Israeli authorities continues to be of serious concern.[104] The enduring failure of Israel to comply with its legal obligations in this regard is part of wider systemic failures to guarantee Palestinians' human rights.[105] This has allowed settler violence to continue unabated and even, at times, to flourish (see para. 39 below).

38. Israel is obliged under international law to protect Palestinians and their property from acts of violence by settlers, to ensure accountability for crimes committed, and to provide a remedy for any violations suffered. This derives from the obligations of Israel as an occupying Power, including its obligations to protect Palestinians in the occupied territory and guarantee their rights,[106] which entails taking action to prevent individuals or groups, including settlers, from interfering with the enjoyment of rights by Palestinians.

Settler violence: figures and trends

39. Incidents of settler-related violence continue to be recorded at an alarming rate. During the reporting period, OCHA recorded 270 such incidents, leading to the injury of 103 Palestinians, an increase in comparison with the same period in 2012, when 249 incidents were registered, resulting in injury to 97 Palestinians. During the reporting period, the Office for the Coordination of Humanitarian Affairs also recorded 30 incidents of violence perpetrated by Palestinians against settlers, in which two settlers were killed and 41 others injured, which also indicates an increase in violence against Israeli settlers, compared with the same period in 2012, when 27 incidents, leading to the injury of 38 settlers, were recorded.

40. In 2013, there has also been an increase in settler or Israeli violence against Palestinians and their property in East Jerusalem. The Office for the Coordination of Humanitarian Affairs recorded 58 such incidents during the reporting period in 2013, compared with 41 in the same period in 2012. On 14 August 2013, OHCHR documented a case in which Israeli religious students from a Talmudic school in East Jerusalem attacked a Palestinian family. According to the family, more than 40 students were hiding behind a building near to the family house, and attacked them with wooden sticks, metal bars and chains. The mother and two of her sons were hospitalized as a result of their injuries.

41. On 18 August 2013, in a case monitored by OHCHR, a 47-year-old Palestinian shepherd from the village of Mikhmas, near Ramallah, was taking his sheep through a water drainage tunnel under Road 60 to graze on privately-owned Palestinian land near the partially evacuated settler outpost of Migron, built on privately-owned Palestinian land.

[104] A/66/364, A/67/375 and A/68/513; *The Karp Report: An Israeli Government Inquiry into Settler Violence against Palestinians in the West Bank* (Institute for Palestine Studies, 1984); reports of the Shamgar Commission (1994) and the committee headed by Talia Sasson (2005); Yesh Din, "Law Enforcement upon Israeli Civilians in the West Bank", Data sheet, March 2012.

[105] A/68/502, paras. 29-43.

[106] Hague Regulations, article 43; Fourth Geneva Convention, articles 4, 27 and 55; International Covenant on Civil and Political Rights, article 6; Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 15-18; ICJ: A/ES-10/273 and Corr.1 (note 2 above).

Residents of Mikhmas, who have experienced repeated violence by settlers from surrounding outposts and settlements, had only recently begun using the tunnel again, after hearing that the settlers had been made to leave Migron by the Israeli authorities – although the outpost had only been partially evacuated. As the shepherd passed through the tunnel, he encountered six male settlers, who beat him with metal pipes. The settlers also attacked his herd of sheep, killing two of them and causing five pregnant sheep to lose their lambs. The shepherd was eventually found unconscious next to the tunnel and taken to Ramallah Medical Complex, where he remained for four days, receiving 70 stitches in his head. Similar incidents of physical assault by settlers have been documented by OHCHR and other organizations.[107]

Law enforcement and accountability

42. Attacks by settlers have occurred repeatedly in the same areas and often at the same times of year, raising concerns about the effectiveness of action by the Israeli authorities to prevent such violence.[108] For example, Palestinian residents of Burin and neighbouring villages in the Nablus governorate have repeatedly faced attacks on their person and property by settlers from the nearby Yitzhar and Bracha settlements.[109]

43. These trends have been thoroughly documented by the United Nations and other organizations. However the Israeli authorities still fail to protect Palestinian communities from such incidents.[110] The large and increasing number of injuries to Palestinians caused by ISF in settler-related incidents indicates that, in the context of settler violence, security forces commonly intervene to disperse Palestinians, rather than to protect them from attacks.[111] These continuing failures heighten concerns previously expressed by the Secretary-General about the willingness of Israeli security forces to undertake law enforcement in a non-discriminatory manner.[112]

44. This situation is compounded by the persistent absence of effective accountability for attacks by settlers.[113] In practice, not much has changed since the Secretary-General's previous report to the Human Rights Council (A/HRC/20/13), with the Israeli authorities continuing to fail to investigate cases effectively as required by international law. In figures recently released by the NGO Yesh Din, a staggering 97.9 per cent of cases of damage to Palestinian trees and agricultural crops between 2005 and 2013 were closed without

[107] See www.alhaq.org/documentation/weekly-focuses/732-palestinian-shepherd-beaten-with-metal-rods-by-settlers; www.btselem.org/settler_violence/20131030_assault_on_naasan_family.

[108] The highest numbers of incidents are recorded each year in areas close to settlements, notably Nablus, Hebron and Ramallah governorates (Office for the Coordination of Humanitarian Affairs figures).

[109] See www.unrwa.org/sites/default/files/olive_harvest_continued_settler_attacks_against_refugee_livelihoods.pdf. See also A/67/375, paras. 31-33 and A/68/513, paras. 44-47; Office for the Coordination of Humanitarian Affairs map, *Palestinian villages affected by violence from Yitzhar Settlement and Outposts*, available from www.ochaopt.org/documents/ocha_opt_yitzhar_map_february_2012_map_english.pdf.

[110] For cases on 16 March, 30 April, 3 May and July 2013, see www.btselem.org/settlers_violence/20130529_sf_fail_to_protect_palestinians_from_settlers www.btselem.org/settler_violence/20131022_settlers_harras_faber_family www.btselem.org/settler_violence/20130806_settler_assault_omar_hushiyah.

[111] According to figures provided by the Office for the Coordination of Humanitarian Affairs.

[112] A/67/375, paras. 30-36.

[113] A/68/513, paras. 42-52; A/67/375, paras. 37-39; A/66/364, paras. 21-33.

indictment; in two cases the files were lost and in four cases an indictment was filed, out of an overall total of 197 cases.[114]

45. Victims interviewed by OHCHR have reported that the police have not kept them informed of any progress in investigations. For example, in a case documented by OHCHR, a man beaten unconscious by settlers and whose skull was fractured with metal piping and stones, near Silwad, Ramallah governorate, on 11 April 2013, filed a complaint on 21 April at the police station in Binyamin settlement. At the time of preparation of the present report, the police had reportedly failed to provide him with any information pertaining to his case.

46. This lack of action is in stark contrast with investigations conducted into violence against Israeli citizens in the West Bank. For example, the response to the injury of an Israeli girl in Psagot settlement on 5 October 2013 saw IDF conduct thorough search operations in the neighbouring Palestinian town of Al-Bireh, resulting in the arrest of two men on 8 October 2013.[115]

47. The Israeli authorities have announced some positive initiatives, including the formation of a special police unit to combat nationalistic hate crimes and "price tag"[116] attacks. Unfortunately, this has not been accompanied by any reduction in the number of settler-related incidents and, in fact, this type of crime is on the rise.[117] There is also a mechanism for seeking compensation for such crimes through the Ministry of Defense. However, the necessity for effective criminal accountability mechanisms remains evident. Without fundamental changes in the approach of the Israeli authorities to these types of incident, Palestinians will continue to be vulnerable to settler attacks.

VII. Settlements in the occupied Syrian Golan

48. Israel continues to occupy the Syrian Golan despite numerous resolutions of the Human Rights Council, for example, resolution 22/26, and of the Security Council calling for an end to the occupation, including resolution 497 (1981), in which the Security Council decided that the decision of Israel to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect and demanded that Israel, the occupying power, rescind forthwith its decision. In resolution 497 (1981), the Security Council also called upon Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan and in particular to desist from the establishment of settlements. In this regard, the Secretary-General has, in previous reports, expressed concern regarding the approximately 20,000 Israeli settlers who live in 33 settlements in the occupied Syrian Golan, and about the ongoing exploitation by Israel of natural resources in the occupied Syrian Golan, including gas, oil, wind and water (see A/68/513). It is noted that, during the universal periodic review of Israel on 29 October 2013, a number of stakeholders reiterated calls for an end to the construction of all Israeli settlements in the occupied Arab territories, including the occupied Syrian Golan.

[114] www.yesh-din.org/userfiles/file/datasheets/data%20sheet%20oct2013/Yesh%20Din%20-%20Netunim%2010_13%20English.pdf. See also A/68/513, para. 52.

[115] OHCHR interviews with residents of Al-Bireh. See also www.jpost.com/National-News/Nine-year-old-Israel-girl-shot-in-West-Bank-327944.

[116] Strategy whereby Israeli settlers attack Palestinians and sometimes IDF in response to events or actions affecting them, such as evacuation of outposts or killings of settlers.

[117] See www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_Update_Settler_Violence_October_2013_EN.pdf.

VIII. Conclusion and recommendations

49. **Israeli settlement-related activities and settler violence are at the core of most of the violations of human rights in the Occupied Palestinian Territory, including East Jerusalem. By virtue of the interdependence of human rights, Israeli settlements and settler violence violate Palestinians' economic, social, civil and political rights.**

50. **Israel, as the occupying Power, must abide by its international treaty and customary obligations by ensuring that the Palestinian population of the Occupied Palestinian Territory is afforded the protection provided for under international humanitarian law, and by respecting, protecting and fulfilling Palestinians' rights so as to enable them to fully enjoy their rights under international human rights law.**

51. **Israel is obligated to comply with its commitments as set out in the Quartet road map, including by immediately ceasing the transfer of its population to the Occupied Palestinian Territory and by ending and reversing all settlement activity.**

52. **Israel should cease all settlement activity and exploitation of natural resources in the occupied Syrian Golan, implement relevant United Nations resolutions, including Security Council resolution 497 (1981), and withdraw from territories occupied in 1967.**

53. **It is incumbent on Israel to cease the violations of Palestinians' human rights resulting from discriminatory and unlawful planning policies, laws and practices. Israel has to, in compliance with international law, amend the planning legislation and processes in order, in particular, to ensure the security of tenure and the full participation of Palestinians. Israel must also refrain from implementing evictions and demolition orders based on discriminatory and illegal planning policies, laws and practices.**

54. **Israel must, as a matter of urgency, enhance its efforts to combat settler violence in the West Bank, including East Jerusalem. It must take all necessary measures, including preventive measures, to protect Palestinians and their property, and to ensure that Palestinians have regular and unhindered access to their land, particularly, but not exclusively, in areas where the patterns of reported incidents show that Palestinians are especially vulnerable. Any law enforcement or protection measures must be carried out in a non-discriminatory manner.**

55. **Israel is obligated to ensure that all acts of violence committed by Israeli settlers against Palestinians and their property are investigated promptly, thoroughly, effectively, independently, impartially and in a non-discriminatory manner. Investigations should be subject to public scrutiny and allow for victims' participation. Victims should be kept regularly and promptly informed of the progress and developments in investigations. Individuals who are responsible for violations should be prosecuted and victims should be provided with an effective remedy.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan*

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 25/28 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. The report highlights new developments concerning the role of Israel in the establishment and expansion of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. It also analyses the difficulties faced by Palestinians in gaining access to their agricultural land and the impact of Israeli settlements on the economic, social and cultural rights of Palestinians. Lastly, it addresses the issues related to Israeli settlements in the occupied Syrian Golan, including exploitation of natural resources.

* Late submission.

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I. Introduction

1. In the present report, which covers the period from 1 November 2013 to 31 October 2014, the Secretary-General addresses the progress made in the implementation of Human Rights Council resolution 25/28. In that resolution, the Council demanded that Israel, as the occupying Power, cease immediately and completely all of its settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. It also condemned the continuing settlement and related activities, including the expansion of settlements, the expropriation of land, the demolition of houses, and the confiscation and destruction of property. The Council called upon Israel to end human rights violations linked to the presence of settlements and to fulfil its international obligations to provide effective remedy for victims.

2. The information presented in the present report is based on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and information provided by other United Nations entities in the Occupied Palestinian Territory. The report also contains information received from Israeli and Palestinian non-governmental organizations and media sources. It should be read in conjunction with previous reports of the Secretary-General on Israeli settlements to the Human Rights Council and the General Assembly (A/HRC/20/13, A/HRC/25/38, A/63/519, A/64/516, A/65/365, A/66/364, A/67/375/, A/68/513 and A/69/348).

3. In past reports, the various types of impact of settlements on the rights of Palestinians and the key role played by the State of Israel in the creation and expansion of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were analysed. In his previous report on settlements submitted to the Human Rights Council (A/HRC/25/38), the Secretary-General focused on the discriminatory nature of Israeli planning policy, law and practice, which is contrary to international law and has a negative impact on the human rights of Palestinians.

4. In the present report, the Secretary-General analyses the impact of Israeli settlements and settler violence on the economic, social and cultural rights of Palestinians, and provides an update on settler violence against Palestinians and their property, as well as on the general lack of law enforcement and accountability for settlers in such cases.

II. Legal background

5. International humanitarian law and international human rights law apply, inter alia, in relation to Israeli settlements in the Occupied Palestinian Territory (A/HRC/25/38, para. 4 and A/69/348, para. 4). Israel, as the occupying Power, is bound by the Fourth Geneva Convention and the Regulations respecting the Laws and Customs of War on Land (Hague Regulations).[1] Article 49 of the Fourth Geneva Convention establishes that "the occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". The construction and expansion of Israeli settlements, as well as other settlement-related activities such as the construction of the wall violate this provision, and are illegal under international law. This was confirmed by the Security Council in its

[1] In its Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1, paras. 89-101), the International Court of Justice found that, even if Israel is not a party to the Hague Regulations, they are nonetheless applicable to Israel as customary law.

resolution 465 (1980), the General Assembly in its resolution 68/82, the Human Rights Council in its resolution 25/28 and the International Court of Justice (A/ES-10/273 and Corr.1, para. 120).

6. In addition to its obligations under international humanitarian law and under customary international law, Israel, as the occupying Power, must also comply with the obligations arising from the international human rights treaties it has ratified, with respect to the Occupied Palestinian Territory, including East Jerusalem (A/HRC/25/38, para. 5). As much was confirmed by the International Court of Justice (A/ES-10/273 and Corr.1, paras. 102-113), and by the human rights treaty bodies monitoring the implementation of international human rights obligations resulting from such treaties (see CCPR/C/ISR/CO/4, para. 5, and CRC/C/ISR/CO/2-4, para. 3). The accession by the State of Palestine to several human rights treaties does not affect the obligations of Israel under international human rights law and international humanitarian law (A/69/348, para. 5).

III. Overview

7. During the period under review, Israel continued to expand existing settlements in the West Bank, including East Jerusalem, and to approve plans for new ones. According to an Israeli non-governmental organization, between 1 November 2013 and 31 October 2014, 4,554 housing units were tendered in Israeli settlements in the West Bank (2,856), including East Jerusalem (1,698), and 10,183 housing units were promoted,[2] 6,042 in the West Bank and 4,141 in East Jerusalem. As previously reported, on 4 June, the Government of Israel announced the issuing of tenders for more than 1,400 new settlement housing units in the West Bank, including East Jerusalem (A/69/348, para. 6).In September 2014, the plan to build 2,610 units in the Givat Hamatos settlement in East Jerusalem was approved by the relevant planning committee, opening the path for the issuance of tenders.[3] If constructed, it would be the first government-led new settlement in East Jerusalem since the construction of Har Homa in the late 1990s,[4] and would sever the territorial continuity between the Palestinian neighbourhoods of southern East Jerusalem and the southern West Bank.[5]

8. The Secretary-General notes the drop in the initiation of new construction in settlements in 2014 when compared to 2013,[6] a year when an exceptional amount of new construction was recorded.[7] The figures of 2014 are similar to the average number of new building projects initiated in 2011 and 2012 (250-300 housing units per quarter). The marketing of housing units in the settlements was, however, reportedly on the rise (by 866%) during the first seven months of 2014. [8]

[2] Peace Now uses the term "promote" to indicate support from the Government of Israel in advancing new settlement units in the multi-stage planning process.

[3] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, September 2014.

[4] Ir Amim, "Jerusalem 2014: the rising cost of peace", February 2014.

[5] Peace Now, "Why is Givat Amatos so significant?", 2 October 2014. See also Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, September 2014.

[6] According to the Central Bureau of Statistics of Israel, between April and June 2014, the building of 235 housing units were initiated in Israeli settlements in "Judea and Samaria" (West Bank), as against 801 housing units started during the same period in 2013.

[7] As reported by Peace Now.

[8] Marketing of housing units denotes when Israeli authorities sign an agreement with a buyer who won a bid to construct a house or building. See Peace Now, "When marketing of units increases by 866%, CBS data shows 70% drop in construction starts", 9 September 2014.

9. New outposts were also established during the period under review.[9] Following the kidnapping on 12 June of three Israeli youths, who were later found murdered (see paras. 39 - 53 below and A/HRC/28/80/Add.1), four outposts were established in the same area where the incident took place, in the southern West Bank.[10] The media reported that some Israeli right-wing groups declared that at least one of the outposts had been established in response to the kidnapping and killing of the three Israelis.[11] The creation of the outposts was reportedly supported by the municipalities of nearby settlements, which supplied trailer homes and basic electricity and water infrastructure.[12] Two of the outposts were dismantled shortly afterwards by the Israeli authorities for being "illegal" under Israeli law. At the time of writing, the other two outposts were reportedly still in place (see A/HRC/28/80/Add.1).[13]

10. New housing units also advanced in East Jerusalem. On 27 October 2014, media reported that the Israeli Prime Minister's office had advanced plans for 660 housing units in the Ramat Shlomo settlement and 400 in the Har Homa settlement.[14] According to an Israeli non-governmental organization, the construction of additional housing units in Ramat Shlomo would reduce the buffer area between the settlement and the Palestinian neighbourhood of Beit Hanina. In early November, the Jerusalem District Planning and Building Committee approved the Ramat Shlomo plan, with the number of housing units reduced from 660 to 500.[15] New housing units in Har Homa would effectively link the areas of this settlement and Givat Hamatos (see para. 7 above).[16]

11. During the night of 29 September 2014, Israeli settlers moved into six buildings in the Palestinian neighbourhood of Silwan in East Jerusalem, below the Old City. This appears to have expanded the settler presence in Silwan by about 100 new settlers, an increase of 35 per cent. It was reported that the buildings had been purchased, although OHCHR is aware that some of the Palestinian owners are taking legal action, claiming that they did not sell their property to the settlers. It is reported that Israeli security forces allowed private security guards hired by the settlers to protect their move to the buildings in the middle of the night. At the time of writing, the Israeli Police were protecting the new settlers from possible attacks from Palestinians.[17] The new influx of settlers and the additional presence of the Israeli security forces in an area where the settlement presence has been expanding in recent years contribute to general tensions between Palestinians and Israeli settlers (A/69/348, paras. 31-32).

12. During the period under review, Israel undertook significant steps to enable further expansion of settlements. Following an earlier declaration of State land west of Bethlehem in April 2014 (ibid., para. 19), on 25 August 2014, the Israeli Civil Administration announced the declaration as State land a further 3,799 dunums (930 acres) around the settlement of Gva'ot, also in the vicinity of Bethlehem.[18] According to the Israeli media, the

[9] Outposts are settlements that, although often established with some kind of government support, are not officially recognized under Israeli law.

[10] As reported by the non-governmental organization Kerem Navot.

[11] "Settlers set up new outpost in honor of murdered teens", *Times of Israel*, 1 July 2014.

[12] Peace Now, "Alarming Developments on the Ground", 7 July 2014.

[13] Kerem Navot reported that the outposts dismantled were Ramat Ha-shlosha and Tekoa E. The remaining outposts are Givat oz Vegaon and Givat Sorek, both in the Southern West Bank.

[14] Barak Ravid and Nir Hasson, "Netanyahu orders plans be advanced for 1,060 new East Jerusalem housing units", Haaretz, 27 October 2014.

[15] Nir Hasson, "Jerusalem planners approve construction of 500 settlement homes", *Haaretz*, 3 November 2014.

[16] Ir Amim, newsletter October 2014.

[17] Peace Now, "Settlers Take Over 6 Houses in Silwan", 30 September 2014.

[18] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, June – August 2014.

declaration was made in response to the killing of the three Israeli teenagers in June 2014.[19] The affected areas are adjacent to the Green Line within the boundaries of five existing Palestinian villages. Once the process is complete (see A/69/348, paras. 18-21 and A/68/513, para. 20), it is expected that the area will be incorporated into the Gush Etzion Regional Council, possibly as a new illegal settlement.[20] This action reportedly constitutes the largest appropriation of Palestinian land in 30 years.[21]

13. The settler population continued to grow during the period under review. According to the official umbrella organization representing settlements (quoting figures obtained from the Ministry of the Interior), during the first six months of 2014, the settler population grew by 2 per cent and is expected to grow to 4 per cent by the end of the year, twice the nationwide population growth rate of Israel.[22] A report issued in 2014 indicated that, over the past two decades, the population in Israeli settlements had grown by 240 per cent, outstripping growth rates within Israel.[23] Estimates of the current settlement population in the West Bank, including East Jerusalem, range between 500,000 and 650,000 (A/HRC/25/38, para. 8).

14. In past reports, the Secretary-General noted that Israel played a leading role in the construction and expansion of settlements, including through the granting of benefits and incentives to settlers (see A/68/513). During the period under review, public funds continued to be allocated to settlements. In October 2014, the Israeli cabinet reportedly approved the allocation of some $34.7 million to the settlement division of the World Zionist Organization for the purposes of "developing agricultural and rural settlement".[24] Although it was not specified which part of this amount would be invested in settlements in the West Bank, including East Jerusalem (ibid., para. 9), it might be surmised that the final amount would be considerable, given the role of the division in assisting the Government in establishing Israeli settlements in the Occupied Palestinian Territory.[25] Reportedly, in 2012, the Government invested more per capita in settlements than within Israel, mainly for education and welfare services.[26]

15. With regard to action intended to counter the growth of settlements, the European Union decided to ban dairy and other products of animal origin produced in Israeli settlements in the West Bank, including East Jerusalem, and in the occupied Syrian Golan, which reportedly was to come into force in January 2015.[27] In a statement issued on 6 June 2014, the Working Group on the issue of human rights and transnational corporations and

[19] Chaim Levinson and Jack Khoury, "Israel appropriates massive tract of West Bank land", 31 August 2014.

[20] See Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, June – August 2014. The Head of the Gush Etzion Regional Council is reported as having stated that "the announcement paves the way to establishing the new city of Gva'ot"; see Elior Levy and Itay Blumental, "Israel recognizes 4,000 dunam in gush Etzion as state land", ynetnews.com, 31 August 2014. According to Peace Now, Gva'ot was established as a military base in 1984.

[21] Peace Now, "Unprecedented land confiscation of 4,000 dunams near Bethlehem", 31 August 2014.

[22] Josef Federman, "Israel's settler group in the West Bank boast strong population grown", CTV news, 16 September 2014.

[23] Dr. Shlomo Swirski and Etty Konor-Atias, "Inequality in Central Government Transfers to Municipalities", Adva Center, 9 September 2014.

[24] Nimrod Bousso, "Israel to allocate $35m to World Zionist Organization's settlement division", Haaretz, 23 October 2014.

[25] See Talya Sason, Summary of the Opinion concerning Unauthorized Outposts, Israel Ministry of Foreign Affairs, 10 March 2005.

[26] Swirski et al., "Inequality in Central Government Transfers" (see footnote 23).

[27] Gianluca Mezzofiore, "EU bans Israeli dairy products made in occupied West Bank settlements from January", *International Business Times*, 10 October 2014.

other international enterprises reiterated that companies engaged in the Occupied Palestinian Territory should assess the human rights impact of their activities, also in the light of the heightened risks of negative human rights impact in a conflict-affected area, and take all necessary measures to ensure that they did not have an adverse impact on human rights, in conformity with international law and the Guiding Principles on Business and Human Rights (see also A/HRC/22/63, paras. 96-99 and 117).In 2012, the Secretary-General emphasized that the business and human rights agenda of the United Nations and the said Guiding Principles should be an integral part of global efforts to bridge existing governance gaps and safeguard protection and respect for human rights in the context of economic activities (A/HRC/21/21, para. 92).

IV. Impact of Israeli settlements and settler violence on the human rights of Palestinians

16. Israeli settlements and acts of violence committed by Israeli settlers against Palestinians continue to underpin a broad spectrum of human rights violations against Palestinians (see A/HRC/25/38, A/68/513 and A/69/348).

Denied or restricted access to agricultural land

17. As highlighted in previous reports, the access of Palestinians to agricultural lands is severely restricted and often completely denied for a number of reasons, including intimidation and attacks by Israeli settlers against Palestinians (A/67/375, paras. 19-21); physical obstacles erected by the settlers themselves (A/67/375, paras. 19-21); the imposition of military or security areas off limits to Palestinians, for instance, closed military zones and fenced-off areas around settlements (A/64/516, paras. 30-31; A/65/365, para. 16,); physical movement restrictions, such as the wall, in particular with respect to the farm lands located in the seam zone (A/65/365, para. 33); and settlement roads that impede access to agricultural lands (A/63/519, paras. 16 and 30-36).

18. In response to the difficulties faced by Palestinian farmers in gaining access to Palestinian-owned land located in fenced-off areas around Israeli settlements and in areas witnessing frequent incidents of settler violence, the Israeli authorities have, in recent years, applied the "prior coordination" regime. This mechanism allows registered Palestinian farmers to have access to their land for a limited number of days each year through settlement gates, or to work in the fields under the protection of Israeli security forces (A/67/375, para. 20). According to the Office for the Coordination of Humanitarian Affairs, about 90 Palestinian communities in the West Bank that have land inside or in the vicinity of 55 Israeli settlements and settlement outposts may have access to their land only through "prior coordination" with the Israeli authorities.[28]

19. "Prior coordination", which has mostly been applied during the olive harvest, does not prevent attacks on trees and crops, which can occur at any time (A/67/375, para. 20). Access to private Palestinian land at times when no "prior coordination" is available remains uncertain and dangerous for farmers, particularly in areas with recurrent incidents of settler violence. Another shortcoming of the mechanism is that it is mainly applied for the olive harvest, not for other harvests. In a case documented by the Office for the Coordination of Humanitarian Affairs, Israeli security forces officers refused to protect

[28] Office for the Coordination of Humanitarian Affairs, "The Impact of Israeli Settler Violence on the Palestinian Olive Harvest: The Case of Al Mughayyir Village", October 2013.

Palestinian farmers when they were picking almonds, asserting that the "prior coordination" was only for olives, even though the almond trees were in the same field.[29]

20. Furthermore, incidents have also been recorded in which Palestinian farmers have been denied access to their lands even during the time allowed by "prior coordination"; for example, on 20 October 2014, Palestinian farmers were reportedly denied access to their olive orchards located in the village of Deir Istiya (Governorate of Salfit) by security personnel from the settlement of Revava.[30]

21. Another way of restricting access of Palestinians to agricultural land is the permit regime established by Israeli authorities for access to farming land in the seam zone, the closed area located between the wall and the Green Line.[31] Israeli authorities often cite security reasons or claim that the portion of land is too small to qualify for a permit to deny Palestinians such permits (according to the Office for the Coordination of Humanitarian Affairs, in the past four years, the approval rate in the northern West Bank is 50 per cent).[32] For those who manage to obtain a permit, access is nonetheless frequently restricted. In 2013, there were 81 gates designated for access to agricultural lands in the seam zone; however, only nine of them were kept opened every day, while another nine were kept opened for only one or few more days per week. The majority (63) was kept opened only during the olive harvest season, which lasts approximately 45 days.[33]

22. Palestinian farmers also see access to their private land restricted and often denied by the civilian security coordinators and guards who operate in the Israeli settlements and outposts in the West Bank. These coordinators and guards are drawn from residents of settlements and outposts, and charged with guarding the settlements and outposts on behalf of the Israeli army.[34] They are trained and equipped with weapons by the Israel Defense Forces, and are subject to the Military Justice Law.[35] At the same time, they are appointed by and act as the representatives of the settlements. As such, the civilian security coordinators identify with the goals of their communities, the illegal settlements, which seek to expand their boundaries, even if construction is on Palestinian-owned land. OHCHR found that the lack of adequate supervision by the Israel Defense Forces and of clearly defined powers leads to daily friction between the security coordinators and the Palestinians.

23. Civilian security coordinators and guards have been granted police and law enforcement powers, including the powers to detain, search and arrest persons they deem, based on "reasonable grounds", pose a security threat, have committed or are about to commit an offence.[36] As a result, civilian security coordinators and guards have de facto a considerable margin of discretion in the conduct of their activities. As observed by Yesh Din, this has enabled them to obstruct arbitrarily the access of Palestinian farmers to their private land located in the vicinity of settlements and outposts. Reportedly, there have been

[29] Ibid.

[30] Information provided by Premiere Urgence – Aide Medicale Internationale.

[31] Office for the Coordination of Humanitarian Affairs, "10 Years since the International Court of Justice Advisory Opinion", 9 July 2014.

[32] Ibid.

[33] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, February 2014, p. 11.

[34] Military Order No. 432. See also Eyal Hareuveni, *The Lawless Zone: the Transfer of Policing and Security Powers to the Civilian Security Coordinators in the Settlements and Outposts* (Yesh Din, Tel Aviv, June 2014), pp. 4 and 11.

[35] OHCHR and the Protection Cluster, "Update on settler violence in the West Bank, including East Jerusalem", October 2014, p. 5.

[36] Hareuveni, "The lawless zone" (see footnote 34), pp. 12-13.

instances where civilian security coordinators and guards have denied Palestinians access to farming plots located nearby a settlement or an outpost to prevent alleged attacks. In addition, cases of Palestinians being injured or having their property confiscated by these bodies while attempting to gain access to agricultural plots have been reported.[37]

24. In 2009, a series of military orders defined the "guarding zones" areas, in which civilian security coordinators and guards operate, in the vicinity of settlements and outposts, in the West Bank.[38] The borders of these areas are wider than the municipal boundaries of the settlements, which allows civilian security coordinators and civilian guard squads to act beyond the jurisdiction of the settlements[39] and dramatically expands the impact of the settlements on the freedom of movement of Palestinians, as well as on their right to work their land and earn a living from it.[40]

25. The access of Palestinian farmers to their lands is also impeded by attacks and harassment by Israeli settlers. Documented cases of violence appear to be aimed at spreading fear among Palestinian farmers and to deter them from farming their lands, in particular in areas near settlements (A/67/375, para. 19). The phenomenon of settler violence, and the general failure of Israel to ensure accountability for Israeli settlers who break the law and to protect Palestinians against attacks to their person and property, have been thoroughly analysed by the Secretary-General in previous reports (A/69/348, paras. 36-44; A/HRC/25/38, paras. 37-47).

26. About two-thirds of the land in the West Bank, including the majority of Area C, is unregistered, mainly because of the suspension by Israel of the land registration process in the West Bank at the beginning of the occupation in 1968.[41] Combined with all of the above-mentioned factors that impede the access of Palestinians to agricultural land, this facilitates the dispossession of Palestinians of their land, in particular in Area C of the West Bank. An added factor in Area C is the application of the Ottoman Land Code, which establishes that unregistered land belongs to the ruling Power unless a legitimate private claim to the land arises. Entitlement for such a claim arises over unregistered land that has been cultivated without interruption for a 10-year period, in the absence of which the land is assigned to the ruling Power.[42] Given the multiple obstacles faced by Palestinians to cultivating their land, it is difficult to comply with the requirement of uninterrupted cultivation for 10 years, which would allow Palestinians to register the land in their name.[43] In the absence of land registration, Israel has subsequently claimed much of the

[37] Ibid., pp. 40-43.

[38] Ibid., pp.15-25.

[39] Ibid., p. 19.

[40] OHCHR, "Update on settler violence" (see footnote 35), p. 6.

[41] See B'Tselem, "Land grab, Israel settlement policy in the West Bank", May 2002, p. 54. According to Kerem Navot, another form of land registration regime also exists; the "first registration" or self-initiated land registration, established in 1964 under Jordanian rule, which in principle allows both Israeli settlers and Palestinians to register small portions of land in the West Bank. Owing to the expenses incurred in taxes, lawyers and the elaboration of maps required to use the register, few Palestinian farmers can afford to register their land, while Israeli settlers, often supported by settler organizations, are better placed to take advantage of it. See also B'Tselem, "Under the Guise of legality: Israel's Declarations of State Land in the West Bank", February 2012.

[42] Kerem Navot, "Israeli Settler Agriculture as a Means of Land Takeover in the West Bank", August 2013, annex II, p. 107. The Ottoman Land Code also establishes that the State may take possession of land (held on the basis of a land deed or *kushan*) that is not cultivated for three consecutive years. See also Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, April 2014, and B'Tselem, "Under the Guise of Legality" (see footnote 41) pp. 25-26.

[43] Under the "first registration" or self-initiated land registration (see footnote 41).

unregistered land as government property and declared it State land.[44] Once declared State land, it is often allocated to settlements (A/69/348, para. 20).[45]

27. The above circumstances create a situation of insecurity of tenure for Palestinian landowners, which in turn create the conditions for Israeli settlers to take over land by cultivating it and eventually registering it under their name.[46]

28. According to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of the Food and Agriculture Organization of the United Nations (FAO), States should remove and prohibit all forms of discrimination related to tenure rights, including registration of land.[47] Furthermore, States are to recognize informal land tenure in a manner that respects existing rights and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. The Palestinians, who have long been present on and have cultivated land in the West Bank, should have their legitimate tenure rights recognized and be protected against dispossession of their land. This is in line with the obligation of Israel, as the occupying Power, to protect the population in the occupied territory and their property.[48]

29. Attacks by Israeli settlers against Palestinians and their property, and the denial or restriction of access to agricultural land, undermine Palestinians' right to an adequate standard of living (A/HRC/25/38, paras. 26-29), as set out in article 11 of the International Covenant on Economic, Social and Cultural Rights, to which Israel is party. The right to an adequate standard of living encompasses the right of everyone to continuous improvement in living conditions; however, it is evident that, rather than improving, the living conditions of Palestinians are deteriorating as a consequence of Israeli settlement activities and settler violence, while the settlements continue to prosper (see A/HRC/25/38, A/68/513, A/69/348).

30. Before the occupation, agriculture was the main source of labour and resources for Palestinians. Palestinian agriculture has, however, been adversely affected by measures taken by Israel as the occupying Power, in particular land seizures and restrictions on access to land and water resources (A/68/513, para. 40). From 1965 to 1994, cultivated areas shrank by 30 per cent from 1965 to 1994, and Palestinian agricultural production was reduced, from 50 per cent in 1968 to 4.9 per cent of GDP in 2013.[49]

31. Agriculture constitutes the largest sector of the economy of Israeli settlements (A/68/513, para. 41). Settlers do not face the same restrictions as Palestinians in their access to agricultural land, and receive the protection and support of Israel. This generally allows them to invest in new technologies and more efficient farming methods, which is reflected in their productivity (A/HRC/22/63, paras. 22, 89-92; A/68/513, para. 28; A/69/348, paras. 28-32). Every year, Israeli settlers export some $285 million worth of agricultural products, against only $19 million by Palestinians.[50]

[44] B'Tselem, "Under the Guise of Legality" (see footnote 41), p. 33.

[45] State land is automatically placed within the settlement's regional and local councils and then allocated for settlement development or military training. Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, April 2014.

[46] Using the self-initiated registration regime. Kerem Navot, "Israeli Settler Agriculture" (see footnote 42), p. 108. See also A/69/348, paras. 29-31.

[47] See also International Covenant on Economic, Social and Cultural Rights, art. 2.2.

[48] Hague Regulations, art. 43; Fourth Geneva Convention, arts. 4, 27 and 55.

[49] Emergency Water and Sanitation/Hygiene (EWASH), Fact Sheet 14, 2013; and Palestinian Central Bureau of Statistics, "Palestine in Figures 2012", March 2013.

[50] Who Profits, "Made in Israel: Agricultural Exports from Occupied Territories", April 2014.

Case study: the olive harvest

32. Almost half of the agricultural land in the Occupied Palestinian Territory (48 per cent) is planted with 8 million olive trees, with the majority located in the West Bank. The olive oil industry accounts for 25 per cent of all agricultural income of the Occupied Palestinian Territory; it is estimated that about 100,000 families depend to some extent on the annual olive harvest for their livelihood (A/HRC/25/38, para. 26).[51] Between 90 and 95 per cent of the olive harvest is used to produce olive oil. Production of olive oil depends on the yield cycle, and accordingly fluctuates between 6,000 and 34,000 tons a year.[52]

33. The restriction or denial of access for Palestinian farmers to olive orchards has a negative impact on the production of olives, in particular in areas in the vicinity of settlements, in the seam zone (where some 40,000 dunums (9,884 acres) of olive groves are located), and in those areas where incidents of settler violence are recurrent. Olive orchards require maintenance all year round. Restrictions on and delay or prevention of performance of agricultural maintenance activities have an adverse impact on productivity and value of the harvest. According to FAO, each olive grove requires a total of 133 days of work a year to adequately maintain it, including tasks such as land clearing, fertilizing, ploughing, pest control and harvesting. Owing to the restrictions imposed, most Palestinian farmers have access to their olive orchards for just a few days a year, mainly confined, through the "prior coordination" mechanism, to the harvest period, which is far less than the 133 days required to adequately maintain the orchards.

34. Restrictions on access to olive orchards located in the seam zone have a negative impact on the production and the value of the harvest. Data collected in the northern West Bank since 2010 showed that olive trees in the seam zone had a reduction in yield of between 40 and 60 per cent when compared to equivalent trees in areas where maintenance activities could be carried out freely on a regular basis.[53]

35. Settler violence also has a negative impact on Palestinian agricultural productivity. Attacks and intimidation against Palestinian farmers and the destruction of their property take place on a regular basis, affecting their rural livelihoods. According to information from the Office for the Coordination of Humanitarian Affairs, during the period under review, 8,482 Palestinian-owned trees were damaged in the West Bank, including East Jerusalem. Although there has been a reduction in the number of trees affected in comparison with 2013, the number of trees uprooted and damaged remains high.[54]

36. Settler violence usually increases during the olive harvest (A/67/375, para. 19).[55] During the first month of the olive harvest, in October 2014, 15 incidents of settler violence, resulting in damage to 277 trees, were recorded.[56] For example, on 14 October, 21 Palestinian-owned olive trees were reportedly cut and damaged by settlers from the Bait

[51] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin Monthly Report, September 2014, p. 2.

[52] Ibid., p. 4.

[53] Ibid., February 2014, pp. 11-12.

[54] Between January and September 2014, 7,342 trees were damaged. During the same period in 2013, the number of trees affected was 8,615.

[55] See the United Nations Relief and Works Agency for Palestine Refugees in the Near East, "Olive harvest: continued settler attacks against refugee livelihoods", October 2013.

[56] In 2013, 33 incidents were reported during the whole period of the olive harvest (October – December 2013), which resulted in damage to 1,522 trees.

Ayin settlement, in the Bethlehem Governorate.[57] On 22 October, a field of olives was set alight, allegedly by Israeli settlers from the Yitzhar settlement in the Nablus Governorate.[58]

37. Statistics indicate that most attacks by Israeli settlers on Palestinian individuals and on Palestinian-owned trees reportedly go unpunished. , Of the 246 investigations opened between 2005 and 2014 monitored by Yesh Din, only four ended with an indictment and 223 were closed owing to possible investigative failures, such as a failure to identify suspects or to collect evidence.[59] The establishment of an anti-nationalistic crimes unit within the "Judea and Samaria" (West Bank) police seems to be ineffective. Out of the 35 cases of damage by settlers to Palestinian trees documented by Yesh Din in 2013, 23 cases were closed, apparently because of investigation failures, with no indictments issued.[60]

38. Physical attacks against Palestinian farmers were also recorded during the 2014 olive harvest. On 11 October, in the village of Kafr al-Labad, Tulkarem Governorate, Israeli settlers reportedly injured a 45-year-old Palestinian man and his 9-year-old son who were picking olives with their family on land that does not require prior coordination for access to it. Three Israeli settlers holding knives reportedly attacked them. The settlers allegedly stole the harvest equipment and personal belongings, and seized five sacks of olives, amounting to approximately 250 kg.[61] In another incident on the same day, a 27-year-old Palestinian woman was injured by Israeli settlers when picking olives on a grove located near the settlement of Kfar Tappuah, Salfit Governorate.[62]

V. Failure to maintain public order, settler violence and lack of accountability

A. Overview

39. The persistent and troubling phenomenon of settler violence is directly related to the continued existence, proliferation and expansion of illegal settlements inserted in and between Palestinian communities throughout the West Bank, including East Jerusalem, as described above and in previous reports of the Secretary-General (see A/69/348, paras. 36-44).

40. Settler violence is one of the clearest and most direct negative consequences of the settlements. It affects the enjoyment by Palestinians of their basic rights, including their rights to freedom of movement, an adequate standard of living, work, and education, as they face difficulty in having access to schools or their land for fear of attack by settlers (A/68/513, paras. 12-14).[63] Repeated calls by the international community for the Israeli authorities to address the problem have generally not succeeded in prompting positive action to improve the situation (CCPR/C/ISR/CO/4, para.16 and A/69/348, paras. 36-44).[64]

[57] Office for the Coordination of Humanitarian Affairs, Protection of Civilians (Weekly), 14 –20 October 2014, p. 2.

[58] Information provided by Premiere Urgence – Aide Medicale Internationale.

[59] See Yesh Din, "96.6 Percent of Investigations into Attacks on Palestinian Trees are Closed due to Police Failings. Indictments in Only Four Cases", 13 October 2014, and "Law Enforcement on Israeli Civilians in the West Bank", Yesh Din Monitoring 2005-2013, 24 July 2013.

[60] Yesh Din, "96.6 Percent of Investigations into Attacks" (see footnote 59).

[61] Information provided by Premiere Urgence – Aide Medicale Internationale.

[62] See Office for the Coordination of Humanitarian Affairs, Protection of Civilians, 30 September – 13 October, and "Settlers beat woman picking olives with her children near Salfit", Ma'an News Agency, 12 October 2014.

[63] OHCHR and the Protection Cluster, "Update on settler violence" (see footnote 35), pp. 3-4.

[64] Ibid., pp. 5-6.

Between 1 November 2013 and 27 October 2014, 207 Palestinians were recorded as injured in settler-related incidents, including 88 by settlers themselves and 119 by Israeli security forces. According to information received from OHCHR, five Palestinian fatalities were recorded in settler-related incidents, including three killed by Israeli security forces and two by Israeli settlers. During the same period, six Israelis were reportedly killed and 62 injured by Palestinians in the West Bank, including East Jerusalem (see also paras. 52-53 below).

41. In this context, Israel has repeatedly failed to prevent or halt attacks on Palestinians as it is obliged to do under international law.[65] This failure is underpinned by a long-standing lack of accountability in cases involving settlers, whether in relation to physical assaults or attacks on Palestinian property (see table below). As stated in previous reports, Israel has an obligation to bring perpetrators to justice under international human rights law (A/HRC/25/38, para. 38 and A/68/513, paras. 42-52), as a key component of ensuring protection, justice for victims and non-repetition of similar incidents.

Impact of settler violence: 2009-2014 (January to September)

	2009	*2010*	*2011*	*2012*	*2013*	*2014*
Incidents resulting in casualties	37	55	105	71	79	88
Injuries caused by settlers	106	76	144	115	121	142
Injured caused by Israeli security forces	49	204	95	42	172	79
Incidents resulting in property damage	69	145	232	183	240	166
Trees/saplings destroyed or damaged	2 075	3 910	8 033	6 565	8 615	7 342

Source: Protection Cluster in the occupied Palestinian Territory (October 2014)

B. Cases of settler violence

42. Incidents of settler violence against Palestinians and their property continued throughout the West Bank, including East Jerusalem. The kidnapping and murder of three Israeli teenagers, Naftali Fraenkel, Gilad Shaer and Eyal Yifrah, near Hebron in June 2014 sparked a wave of racist attacks by Israelis, including settlers, on Palestinians, particularly in East and West Jerusalem but also across the West Bank. This culminated in the abduction and murder by Israelis, including one settler, of Palestinian teenager Mohammad Abu Khdeir from East Jerusalem, which in turn sparked violence by Palestinians against Israelis (see A/HRC/28/80/Add.1).

43. Such cases recorded in Jerusalem included physical attacks, "price tag" hits (see A/HRC/25/38, para. 47) and damage to property. The attacks were perpetrated by both settlers and other Israelis, but were all part of an increase in attacks in Jerusalem during the period under review. In one case monitored by OHCHR, on 10 February 2014, several cars

[65] Israel has a positive obligation to protect Palestinians from settler violence and, as the occupying Power, also the obligation to maintain public order and safety in the Occupied Palestinian Territory, including by providing Palestinians with all the guarantees accorded to protected persons under international humanitarian law. Fourth Geneva Convention, in particular, arts. 4 and 27; CCPR/C/21/Rev.1/Add.13, para.8, and Hague Regulations, art. 43.

were allegedly painted with "anti-Arab" graffiti and their tyres flattened in the Palestinian neighbourhood of Silwan in East Jerusalem.

44. In another case monitored by OHCHR, on 12 April 2014, at around midnight, three Palestinians from the East Jerusalem neighbourhood of Beit Hanina went to withdraw money from an automatic teller in the adjacent Pisgat Zeev settlement. As they were leaving, they were blocked by some 25 settlers who reportedly declared that it was "a Jewish neighbourhood" and that "Arabs are not allowed in", and then severely beat them. When the settlers left, the Palestinians informed an Israeli police patrol of the incident. The police searched the area and arrested three suspects. On 13 April, the victims identified one of the alleged perpetrators among those arrested. A few days later, however, the victims, inquiring about the case, were informed that it was closed.

45. Incidents were also recorded in other areas of the West Bank. In a case monitored by OHCHR, on 23 May 2014, two Palestinians were allegedly attacked by a group of four settlers on road #457 when they stopped their car near the Ma'ale Mikhmas settlement. One was beaten with metal pipes for about 15 minutes. He suffered three fractures to his skull and spent three days in intensive care. The other Palestinian, the driver, was stabbed in the arm by one of the settlers, and wounded his hand when attempting to grab the knife. He managed to drive off to look for help. When he returned to the site accompanied by three Palestinian cars, the settlers fled the scene.

46. During the period under review, cases of Palestinians throwing stones – and in some cases Molotov cocktails – at Israeli vehicles in the West Bank, resulting in material damage and a number of injuries, were recorded. Assaults by Palestinians against Israelis, including against settlers, were also reported (see section below).

C. Failure to protect

47. The failure of Israeli forces to protect and enforce the law against settlers has been well documented (see A/HRC/25/38, paras. 42-47). While past initiatives have led to increased protection for Palestinians and their property, for the most part the violence continues unabated. Concerns persist in two primary respects: incidents in which the Israeli security forces are present at the scene of an incident involving violence by a settler, but fail to intervene to prevent or stop the attack, including by failing to make arrests; and a more general failure to provide adequate protection at known trouble spots and during periods of heightened risk.

48. Past reports included information on several cases in which Israeli soldiers appeared to stand by while settlers committed offences (A/66/364, paras. 23-25; A/67/375, paras. 30-32; A/68/348, para. 40), despite having the authority and obligation to respond in cases where the Israel Defense Forces are on the scene before the Israeli police.[66] The State Comptroller, responsible for, inter alia, auditing acts of Israeli institutions, in a report of 2013 raised similar concerns regarding the failure of the Israel Defense Forces to detain suspects and to ensure the integrity of a potential crime scene.[67]

49. Recurrent incidents of settler violence in specific geographic areas have been broadly documented.[68] Accordingly, the authorities are aware of the locations and times of year when greater protection is necessary. In 2012, the Office for the Coordination of

[66] See Yesh Din, Shadow report to the fourth periodic report of Israel, Human Rights Committee, 8 September 2014 (available from www.yesh-din.org/infoitem.asp?infocatid=628), pp. 19-20.

[67] Ibid., p. 20.

[68] See Office for the Coordination of Humanitarian Affairs, map of Palestinian communities at risk of Israeli settler violence, September 2012. See also A/69/348, paras. 38-44 and A/68/513, paras. 46-47.

Humanitarian Affairs estimated that 315,000 people in 110 communities were at high or moderate risk of settler violence.[69] They included Palestinian villages close to Yitzhar and Bracha settlements in the Nablus area where, for example, 1,974 olive trees were reportedly damaged between January 2013 and the end of September 2014.[70]

D. Accountability

50. Where there is a willingness on the part of the Israeli authorities to enforce the law, they are able to do so effectively. For example, as previously reported, following an attack by Israeli settlers on an Israel Defense Forces post on 8 April 2014 sparked by the demolition of some structures in Yitzhar settlement, the Government of Israel adopted a position of "zero tolerance" and five arrests were reportedly made (A/69/348, para. 41). The stationing of a border police company in Yitzhar appears to have led to a decrease in settler violence incidents in the surrounding Palestinian villages since May 2014.[71] Furthermore, there have been some cases of arrest of Israelis for committing "price tag" attacks,[72] an anti-nationalistic crimes unit has been created within the "Judea and Samaria" (West Bank) police, and perpetrators are now reportedly classified as belonging to "illegal associations".[73] The number of cases that actually lead to any kind of accountability is, however, negligible.[74]

51. Overall, settlers committing violent acts against Palestinians are rarely prosecuted, providing little deterrence against similar attacks. An examination of complaints of settler violence since 2005 has revealed a lack of accountability in the vast majority of cases. Indictments were served in only 72 of the 970 processed cases monitored between 2005 and 2014. A total of 887 files (or 91.4 per cent) of complaints were closed without an indictment being served, of which 593 because the "offender was unknown", 195 because of "insufficient evidence" and 76 due to the "absence of criminal culpability".[75] This reinforces a sense and culture of impunity for perpetrators, and exacerbates Palestinians' sense of insecurity and lack of confidence in the Israeli judicial system.

E. Attacks on Israelis, and differentiated standards of due process

52. According to information provided by OHCHR, between 1 November 2013 and 27 October 2014, six Israelis (including two children) were killed, and 62 were wounded in attacks committed by Palestinians - a worrying increase when compared with previous years (see A/HRC/25/38, para. 39). The means deployed to investigate such incidents appear to be greater than those for attacks against Palestinians. When the victims are Israeli, large-scale arrest and detention campaigns are typically carried out by the Israel Defense Forces throughout the West Bank, and by the Israeli police and border police in East Jerusalem, in order to apprehend the suspects (A/66/364, para. 31). By contrast,

[69] 31 per cent in the North, 34 per cent in the Centre and 35 per cent in the South of the West Bank; see Office for the Coordination of Humanitarian Affairs, Monthly Humanitarian Monitor, August 2012.

[70] OHCHR and the Protection Cluster, "Update on settler violence" (see footnote 35), p. 6.

[71] Ibid., p. 5.

[72] See "Seven Jewish teens arrested for 'price tag' attacks near Jerusalem", ynetnews.com, 5 May 2015, and Ben Hartman, "Husband and wife from Yitzhar arrested for Umm al-Fahm Price Tag attack", *Jerusalem Post*, 1 May 2014.

[73] See Tovah Lazaroff, "US: Price tag attacks against Palestinians 'largely un-prosecuted'", *Jerusalem Post*, 30 April 2014.

[74] See Daniel Estrin and Josef Federman, "In West Bank, teen offenders face different fates", AP, 20 April 2014.

[75] Yesh Din, "Law Enforcement on Israeli Civilians in the West Bank", November 2014.

investigations of attacks against Palestinians tend to raise serious questions about their effectiveness in bringing perpetrators to account.

53. The difference witnessed in the justice systems applied is also matter of concern. Most Palestinians accused of attacks against Israelis are tried by the Israeli military justice system, while Israeli civilians, including settlers, accused of crimes are tried by civilian courts.[76] The Israeli military court system imposed on Palestinians in the West Bank, including East Jerusalem, does not afford suspects some of the fundamental guarantees of the right to a fair trial, in particular the independence and impartiality of the tribunal (A/67/372, para. 27).

VI. Settlements in the occupied Syrian Golan

54. An estimated 21,000 Israeli settlers currently live in the occupied Syrian Golan in 33 settlements heavily subsidised by Israel. These settlements enjoy a number of financial incentives as well as a disproportionate allocation of water resources, which contributes to a higher agricultural yield for settlers. By contrast, approximately 20,000 Syrians, the majority from the Druze community, live in six villages dependent primarily on agricultural income, but disadvantaged by restricted water supplies at higher prices and fewer economic opportunities.[77] The exploitation of natural resources in the occupied Syrian Golan, in violation of international law, has continually been supported by the Government of Israel, and includes permits and licences granted to extractive multinational corporations involved in oil and gas mining (A/HRC/25/38, para. 48, and A/68/513, paras. 53-54). The Government's latest five-year development plan, announced in January 2014, aims to provide better water infrastructure systems and accelerate de-mining efforts to support settler farming communities in the occupied Syrian Golan (A/69/348).

55. The beneficiaries of such developments may include the Israeli wine industry. A total of 14 Israeli wineries, mostly founded in the late 1990s or early 2000s, are based in Israeli settlements in the occupied Syrian Golan, and produce their wine from grapes grown in the occupied territory. The oldest of the wineries based in several settlements in the occupied Golan, Golan Heights Wineries, founded in 1983, produces an estimated 5.4 million bottles of wine annually. Many of the wineries, which market their produce globally, reportedly do not label the origin of the grapes accurately on their bottles.[78]

56. The Government is also reportedly focusing on investing in education for the benefit of settlers in the occupied Syrian Golan. In August 2014, it was reported that an Israeli academic institution, Ohalo College, based in Katzrin settlement in the occupied Syrian Golan, was offering a wide range of financial incentives to prospective students in order to increase enrolments.[79] The Secretary-General reiterates that the Security Council, in its resolution 497 (1981), reaffirmed that the acquisition of territory by force is inadmissible, in accordance with the Charter of the United Nations, the principles of international law, and relevant Security Council resolutions, and decided that the decision of Israel to impose

[76] The Committee on the Elimination of Racial Discrimination recommended that Israel ensure equal access to justice for Palestinians and Israelis, including settlers; see CERD/C/ISR/CO/14, para. 27.

[77] Patrick O. Strickland, "Residents in occupied Golan Heights fear creeping Israeli presence", 12 February 2015.

[78] *Forbidden Fruit: the Israeli Wine Industry and the Occupation* (Tel Aviv, Who Profits, April 2011). On the labelling of products from settlements in the West Bank, see A/HRC/22/63, para. 99.

[79] "As world watched Gaza, Israel announced 1472 new settlements in West Bank", Mondoweiss, 30 August 2014.

its laws, jurisdiction and administration in the occupied Syrian Golan Heights was null and void and without international legal effect.

VII. Conclusions and recommendations

57. **During the period under review, Israel continued to play a leading role in the establishment and the expansion of Israeli settlements in the Occupied Palestinian Territory, in violation of international law, in particular article 49 of the Fourth Geneva Convention. The settlements continue to be a central source of multiple human rights violations of Palestinians. In this context, Israel still largely fails to comply with its international obligation to protect the Palestinian population from violent acts committed by Israeli settlers, and to effectively prevent, and ensure accountability for, settler violence. Israeli policies and practices regarding access to Palestinian land have a negative impact on the rights of Palestinians, in particular their rights to an adequate standard of living and to work.**

58. **Israel must stop obstructing and restricting the access of Palestinians to agricultural land in the West Bank, including East Jerusalem. Disproportionate restrictions, mostly related to settlements, are putting Palestinian livelihoods at a great risk. Effective measures should be taken to ensure that Palestinians are able to have access to and cultivate their land on a continuous basis, beyond ad hoc mechanisms such as "prior coordination". In addition, security of land tenure must be ensured, including by means of measures allowing Palestinians to register without discrimination the land they have been using for long periods of time.**

59. **Israel, as the occupying Power, is obliged to take all reasonable measures to prevent violent attacks by Israeli settlers against Palestinians. Israel must ensure that all acts of violence committed by Israeli settlers against Palestinians and their property are investigated independently, impartially, thoroughly, promptly, effectively and in a non-discriminatory manner. Investigations should be open to public scrutiny and allow for the participation of victims. Alleged perpetrators should be prosecuted and victims should be granted an effective remedy.**

60. **Israel must cease all settlement activity in the West Bank and East Jerusalem, as well as in the occupied Syrian Golan, and implement relevant United Nations resolutions, including Security Council resolution 497 (1981), and withdraw from the territories occupied in 1967. Israel must also immediately cease the exploitation of natural resources from these territories.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 28/26, provides information on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

The report addresses continued Israeli settlement activity; settler violence and lack of accountability; issues related to Palestinian detainees, including children in Israeli custody; and business and human rights in relation to the settlements.

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I. Background

1. In its resolution 28/26 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report to the Council at its thirty-first session, specifying the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63).

2. The present report, submitted pursuant to resolution 28/26, contains information gathered by the Office of the United Nations High Commissioner for Human Rights (OHCHR). In it, reference is made to reports of the Secretary-General, the Special Rapporteur on the situation of human rights in Palestinian territories occupied since 1967 and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. Reference is also made to submissions received from Member States on the status of implementation of the recommendations contained in the report of the fact-finding mission.

3. The report covers the period between November 2014 and November 2015. It should be read in conjunction with the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (A/HRC/31/43) and other recent reports of the Secretary-General and the High Commissioner on the situation of human rights in the Occupied Palestinian Territory.[1]

II. Overview of the recommendations of the fact-finding mission

4. In paragraphs 112-115 of its report, the fact-finding mission made recommendations, of which several were addressed to Israel. Recalling article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), the mission called upon the Government of Israel:

(a) To cease all settlement activities without preconditions;

(b) To immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory;

(c) To ensure adequate, effective and prompt remedy to all Palestinian victims for the harm suffered as a consequence of human rights violations resulting from settlements. In that regard, the fact-finding mission noted that, where necessary, steps should be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community;

(d) To put an end to the human rights violations linked to the presence of settlements;

(e) To ensure full accountability for all violations, including all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity;

[1] A/HRC/31/40 and Add/1, A/70/351 and A/70/421.

(f) To put an end to arbitrary arrest and detention of Palestinians, especially children, and to observe the prohibition of the transfer of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention.

5. In paragraph 116 of its report, the fact-finding mission called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law. The mission specifically urged Member States not to recognize the unlawful situation resulting from the violations by Israel.

6. Lastly, in paragraph 117 of its report, the fact-finding mission recommended that private companies must assess the human rights impact of their activities and take all necessary steps — including by terminating their business interests in the settlements — to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights. In that regard, the mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human rights throughout their operations. The mission recommended that the Working Group on and the issue of human rights and transnational corporations and other business enterprises be seized of the matter.

III. Status of implementation of the recommendations of the fact-finding mission

A. Israeli settlement activity

7. As noted in the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan submitted to the General Assembly at its seventieth session (A/70/351), a pause in settlement advancement in East Jerusalem, which started in November 2014, ended on 27 April 2015 when tenders were issued for 77 residential units in the settlements of Pisgat Ze'ev and Neve Ya'akov. Furthermore, settlement activities were under way early in May 2015, building on significant developments in relation to Ramat Shlomo, Har Homa and Givat Hamatos, reported previously, and significantly affecting the make-up of East Jerusalem (see A/HRC/28/44, paras. 7-10).

8. Between the beginning of 2015 and July of that year, tenders for 634 housing units were issued in the West Bank, including East Jerusalem. In July 2015, the Government of Israel approved plans to build 300 new homes in a settlement in the West Bank. On 29 July, the Secretary-General condemned the approval by the Prime Minister of Israel of the construction of 300 housing units in the Beit El settlement, near the Palestinian city of Ramallah, in the West Bank. The Secretary-General also condemned the planning and construction of nearly 500 housing units in a number of settlements in East Jerusalem. He reiterated that settlements are illegal under international law, an impediment to peace and cannot be reconciled with the stated intention of the Government of Israel to pursue a two-

State solution. He urged the Government to halt and reverse such decisions in the interest of peace and a just final status agreement.[2]

9. According to the Israeli non-governmental organization Yesh Din, since May 2011 approximately a quarter of the 100 unauthorized outposts in the West Bank have either been retroactively approved or are in the process of retroactive approval by the Civil Administration's Supreme Planning Committee. Following the elections in Israel, in March 2015 the new coalition Government committed to establishing an interministerial committee tasked with proposing a framework to promote the legalization of outposts (see A/70/351, para. 14).

10. As reported by the Secretary-General, the retroactive legalization of outposts is considered as another arm of settlement expansion, alongside the planning, tendering and construction process, and the support given to outposts at their outset, such as the security provided by Israel Defense Forces soldiers upon establishment of an outpost. This policy effectively rewards settlers for grabbing land in the West Bank in a process that "frequently involves violations of the rights of Palestinians". The lack of enforcement of the rule of law and the rewarding of illegal activity further encourage settlement expansion, creating additional obstacles to the objective of a negotiated two-State solution, and the right of Palestinians to self-determination, thereby undermining possibilities of peace (see A/70/351, para. 15).

11. During the reporting period, demolition of Palestinian property continued, accompanied by the forcible displacement of Palestinians, including Bedouins. Despite increased and concerted efforts and advocacy by the United Nations and the international community, the demolitions actually increased. On 18 August 2015, the Israeli Civil Administration carried out demolitions in a Palestinian Bedouin refugee community in Area C, near East Jerusalem. A total of 22 structures were demolished in four communities, located in and around the area of the planned E-1 settlement: Khan al-Ahmar Abu Falah, Wadi Sneysel, Bir Miskoob and Az Zayyem Bedouin. This led to the displacement of 78 Palestinians, including 49 children — mainly Palestine refugees. Many of those refugee families had been displaced four times in the last four years. The four communities are among 46 located in the central West Bank, which is included in Israeli plans to transfer Palestinian Bedouin communities to three designated sites.

12. On 19 August, following the demolitions, the United Nations Humanitarian Coordinator for the Occupied Palestinian Territory expressed grave concern, and called for an immediate freeze on demolitions in the West Bank.[3] He highlighted the strategic implications of those demolitions, which were occurring in parallel with settlement expansion. He also stressed that the relocation plan for those communities would effectively remove Palestinian presence in and around the planned E-1 settlement project, and warned that the project anticipated the construction of thousands of new Israeli housing units in the West Bank, on the outskirts of Jerusalem. The Humanitarian Coordinator recalled that the E-1 project had long been opposed by the international community as an obstacle to the realization of a two-State solution and a violation of international law.[4]

13. The Secretary-General has stated on several occasions that the implementation of the proposed "relocation" would amount to forcible transfers and forced evictions,

[2] "Secretary-General condemns Israeli approval of settlement building in West Bank, urges reversal of decision for sake of peace, 'just' final status agreement" (29 July 2015). During the reporting period, the Secretary-General deplored the advancement of settlement activities on several occasions, for instance on 15 May 2015 (see statement at www.un.org/sg/statements/index.asp?nid=8632).

[3] "UN officials call for an immediate demolitions freeze in the West Bank" (18 August 2015).

[4] Ibid. See also A/HRC/28/43, para. 11.

contravening the obligations of Israel as an occupying power under humanitarian and human rights law.[5]

14. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East, August 2015 saw the highest number of demolitions of Palestinian structures in a single month, since January 2013. During that month alone, Israeli authorities demolished 145 structures, including at least 54 residential units and 16 donor-funded structures. The overwhelming majority of the demolitions occurred in Area C, mainly affecting the already vulnerable Bedouin herding communities.

B. Recourse to remedy for Palestinians

15. In the 10 years since the International Court of Justice, in its advisory opinion dated 9 July 2004 (A/ES-10/273 and Corr.1), concluded that the construction of the wall in occupied territory and the settlements were illegal, the settler population in the West Bank, including East Jerusalem, has increased substantially (see A/69/348, para. 10). The Court noted that the wall had been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem (see A/ES-10/273, para. 119).

16. By way of example, in August 2015 work on construction of the wall continued in Cremisan Valley, in Beit Jala village, despite protests by the Palestinian population. Reportedly, earth movers were uprooting olive trees to break the ground for the construction of the wall. The approval to take measures to construct the wall was granted on 8 July 2015 by the High Court. The wall, when fully constructed, will separate the West Bank city of Beit Jala from the settlement of Har Gilo and the village of Walaja. The planned route runs through the Cremisan Valley on land owned by 58 Christian Palestinian families, close to a monastery and its sister convent and school.

17. In 2007 the General Assembly decided, by its resolution ES-10/17, to establish the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, which is mandated to record damage caused to all natural and legal persons concerned as a result of the construction of the wall by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.

18. The registration of damage is a technical, fact-finding process of listing or recording the fact and type of the damage caused as a result of the construction of the wall. It thus entails a detailed process that includes the submission of a statement setting out the alleged damage, eligibility for registration and the causality between the construction of the wall and the damage sustained. The Registry is not, however, a compensation commission or a claims-resolution facility, nor is it a judicial or quasi-judicial body. The act of registration of damage, as such, does not entail an evaluation or an assessment of the loss or damage (see A/ES-10/294, para. 1).

19. During the reporting period, the Registrar continued to collect, process and consider claim forms for inclusion in the Register in accordance with the rules and regulations governing the registration of claims. Since the Registry was launched in 2008, outreach efforts have covered 226 communities with a population of approximately 909,000 in the governorates of Jenin, Tubas, Tulkarem, Qalqiliya, Salfit, Ramallah, Hebron and Bethlehem, as well as in and around East Jerusalem.[6] As at 19 June 2015, more than 48,048

[5] United Nations Relief and Works Agency for Palestine Refugees in the Near East, "UN officials call for an immediate demolitions freeze" (19 August 2015).

[6] See A/ES-10/683 for details on work carried out between 20 June 2014 and 19 June 2015.

claims and over 800,000 supporting documents had been collected in the Occupied Palestinian Territory. At the time of writing, 18,845 of the collected claims had been considered by the Board of the Register and deemed valid for inclusion in the Register.[7]

C. Settler violence and lack of accountability

20. As reported by the Secretary-General, settler violence against Palestinians continued largely unchecked and without adequate protection or accountability on the part of the Israeli authorities (see A/70/351, para. 22).

21. According to data collected by the Office for the Coordination of Humanitarian Affairs, during the period between 1 January and 2 November 2015, 207 incidents of settler violence against Palestinians and/or Palestinian property occurred in the West Bank, including East Jerusalem,[8] compared with 278 incidents during the same period in 2014.[9] However, between 29 September and 26 October 2015, the number of incidents of settler violence increased significantly, with 54 cases in about one month.[10] The increase in violence coincided with the heightened tensions between Palestinians and Israeli security forces and an increased number of attacks against Israelis throughout the Occupied Palestinian Territory, particularly in East Jerusalem, since mid-September 2015.[11]

22. In October 2015, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories observed that continuing settlement expansion in the occupied West Bank and East Jerusalem was inextricably linked with a combination of restrictive planning policies for Palestinians, demolition orders on "illegal" Palestinian homes and structures built without permits and the oppressive and "coercive environment" fostered by settler violence. The Committee further noted that it was apparent from the testimonies it had received that the root cause of the escalating violence was the continuing policy of settlement expansion and the climate of impunity relating to the activities of the settlers (see A/70/406 and Corr.1, para. 11).

23. Lack of accountability for settler violence remains a major preoccupation. According to Yesh Din, most incidents of settler violence perpetrated against Palestinians and/or Palestinian property are poorly investigated and remain unpunished. During the period from 2005 to 2015, Yesh Din monitored 1,014 investigation files related to complaints about settler violence against Palestinians and their property in the West Bank. As of October 2015, an indictment had been issued in only 7.3 per cent of all cases concluded. The rest of the cases had been concluded without an indictment (91.6 per cent)

[7] See www.unrod.org.

[8] Office for the Coordination of Humanitarian Affairs, protection of civilians weekly report for 27 October-2 November 2015, available from www.ochaopt.org/poc27october-2november-2015.aspx.

[9] Office for the Coordination of Humanitarian Affairs, protection of civilians weekly report for 28 October-3 November 2014, available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_11_07_english.pdf.

[10] Office for the Coordination of Humanitarian Affairs, protection of civilians weekly reports for 29 September–5 October 2015, 6 October–12 October 2015, 13 October–19 October 2015 and 20 October–26 October 2015.

[11] Office for the Coordination of Humanitarian Affairs, "Casualties in the Occupied Palestinian Territories and Israel" (1-31 October 2015), available from https://www.ochaopt.org/documents/wb_casualties_october_2015.pdf.

or the files had been lost (11 files).[12] A total of 624 files were closed on the grounds that the offender was unknown, which indicates that the police failed to locate and identify suspected offenders even though there was evidence that a criminal offence had been committed, and 208 files were closed owing to insufficient evidence.[13]

24. One case illustrating the lack of accountability for offences against Palestinians committed by Israeli settlers relates to the attack on the home of the Dawabsha family, in the West Bank village of Duma, on 31 July 2015. In his report to General-Assembly, the Secretary-General referred to this case as the most egregious example of settler violence, which led to the murder of Ali Dawabsha, a Palestinian toddler, and severely injured members of his family. Both of Ali's parents died from wounds in the ensuing weeks. The Secretary-General also noted that the incident led to violent demonstrations, resulting in clashes between Palestinians in the West Bank and the Israel Defense Forces, as well as attacks on Israeli civilians by Palestinians (see A/70/354-S/2015/677, para 31).

25. On 22 October 2015, in his briefing to the Security Council, the Deputy Secretary-General noted that the shocking murders of the Dawabsha family and the lack of progress in arresting the perpetrators were a critical trigger of the escalation in violence in October 2015. He underscored that the incident reflected an increasing sense of critical exposure among Palestinians in the face of settler violence and reinforced their feeling of injustice.[14] He stressed that it was imperative for Israel to take action to empower Palestinian institutions to protect vulnerable communities, and stressed that Israel must vigorously address the perceived impunity for settler violence by expediting investigations and prosecutions of the Dawabsha family's killers.[15]

D. Palestinian detainees, including children in Israeli custody

26. As concluded by the fact-finding mission, the existence of the settlements has a heavy impact on a wide range of Palestinians' human rights, including their rights to equality, due process, fair trial, not to be arbitrarily detained and liberty (see A/HRC/22/63, para. 105).

27. Moreover, Palestinians are routinely subject to arbitrary arrest and detention, including administrative detention, mass arrests and incarceration. Most children are arrested at "friction points" such as villages near settlements or on roads that are used by the army or settlers and run by a Palestinian village. From the moment of arrest, Palestinians face multiple violations of their rights to liberty and security and to a fair trial through interrogation, arbitrary detention, abuse, trial and sentencing.

28. According to the Palestinian non-governmental organization Addameer, 6,700 Palestinians were in Israeli detention as at 9 November 2015. Of that total, 450 were held in administrative detention on security grounds, in other words without charge or trial, and 320 were children.[16] The total number of Palestinian prisoners and detainees held by Israel

[12] Yesh Din, "Law enforcement on Israeli civilians in the West Bank: Yesh Din monitoring update 2005-2015" (October 2015). Available from www.yesh-din.org/userfiles/Datasheet_English_Oct%202015.pdf.

[13] Ibid.

[14] "Deputy Secretary-General's briefing to the Security Council on the situation in the Middle East" (22 October 2015). Available from www.un.org/sg/dsg/statements/index.asp?nid=674.

[15] Ibid.

[16] See www.addameer.org/statistics. Some Palestinians are held in Israeli detention centres and the Ofer prison in the Occupied Palestinian Territory, while others are transferred to Israeli interrogation

was reportedly up by some 1,000 persons compared with September 2015.[17] During the escalation of tension and violence in the Occupied Palestinian Territory in October 2015, there was a spike in arrests of Palestinians. In October alone, the Israeli security forces arrested 1,195 Palestinians, including 177 children and 16 females.[18]

29. During the reporting period, several Palestinian detainees in Israeli detention went on hunger strike in protest against administrative detention and the treatment to which they were being subjected. In July 2015, the Knesset approved the "prevention of damage by hunger-strikers bill", which would allow the head of the Israel Prison Service to submit a motion to a district court and request permission to force-feed a prisoner on hunger strike. Should a judge rule that force-feeding is permitted in a particular case, medical personnel could feed persons on hunger strike against their will, and use force to do so (see A/70/406, para. 42).

30. Using threats, coercion, force or physical restraints to feed individuals who have opted to adopt the extreme measure of going on hunger strike in protest against their detention is, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment.[19] Prisoners have the right to resort to peaceful protests. The Secretary-General has consistently called for persons in administrative detention to be formally charged or released without delay (see A/HRC/28/43, para. 6). The use of administrative detention under international humanitarian law is allowed under exceptional circumstances and for short periods of time only.

31. In relation to the military detention of children, the working group on grave violations against children, which is led by the United Nations Children's Fund (UNICEF), has gathered 24 affidavits (sworn testimonies) of children aged between 14 and 17 years reporting ill-treatment by the Israel Defense Forces, the Israeli police, the Israel Border Police, the Israel Security Agency and the Israel Prison Service while in Israeli security detention in the West Bank, including East Jerusalem. Of the children who submitted affidavits, 16 boys reported being subjected to at least 10 different types of violations, including painful hand-ties, leg-ties, blindfolding, strip-searching, verbal abuse, physical violence, the absence of notification of their rights and the absence of a lawyer or parent during interrogation. Two children reported being held in solitary confinement for 6 and 14 days respectively, in Al-Jalame and Petah Tikva detention centres in Israel.

32. In addition, 17 of the 24 boys were transferred outside the West Bank to detention facilities inside Israel (Hasharon and Megiddo), in contravention of the Fourth Geneva Convention.[20] As reported by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, an estimated 60 per cent of Palestinian child detainees from the Occupied Palestinian Territory are held in prisons and detention facilities inside Israel, in violation of article 76 of the Fourth Geneva Convention (see A/HRC/28/78, para. 59).

33. Since publishing "Children in Israeli military detention: observations and recommendations" in March 2013, UNICEF has been engaged in a dialogue with the Israeli authorities on the implementation of its recommendations. UNICEF reported that, in

centres and several prisons within Israel, in contravention of the Fourth Geneva Convention (see para.4 above).

[17] See http://www.addameer.org/sites/default/files/publications/october_2015_newsletter.pdf.

[18] Ibid.

[19] Office of the United Nations High Commissioner for Human Rights, "UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention" (28 July 2015).

[20] See www.unicef.org/oPt/UNICEF_-_State_of_Palestine_-Second_quarter_of_2014_CAAC_bulletin_-_Final(1).pdf.

October 2013 the Central Command of the Israel Defense Forces announced that it would conduct a pilot test of summonses of children in lieu of night arrests. In early February 2014, the Israeli authorities started the pilot programme in Nablus and Hebron governorates, with cases now being reported throughout the West Bank. The launch of the summons pilot test is an important operational measure to halt the practice of night arrests and tackle some of the protection concerns that arise during the first 48 hours of arrest.[21]

E. Business and human rights in relation to the settlements

34. In its resolution 25/28, the Human Rights Council reiterated the call it had already made in its resolution 22/29 for the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. The international fact-finding mission recommended that the Working Group on the issue of human rights and transnational corporations and other business enterprises remain seized of the matter of corporate engagement with settlements (see A/HRC/22/63, para. 117).

35. Actions taken by the Working Group were reported in the previous report of the High Commissioner (A/HRC/28/43 and Corr.1).

36. In its report to the General Assembly at its seventieth session, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories reported on information it received that several companies were profiteering, directly or indirectly, from a wide range of illegal Israeli practices. The Special Committee noted that such activities took an enormous toll on the daily lives of Palestinians and that private companies had allegedly played a major role in funding, facilitating and supporting the Israeli occupation (see A/70/406 and Corr.1, para. 18).

37. In that same report, the Special Committee grouped the activities of corporations involved in settlements into three broad categories (para. 19): (a) Israeli industry engaged in the construction of Israeli settlements, in production in settlements or in the provision of services to settlements; (b) control of the Palestinian population by constructing the wall and checkpoints, and the provision of private security or specialized equipment, such as surveillance and crowd control weapons; and (c) economic exploitation by using Palestinian workers, Palestinian natural resources or the Palestinian captive market. In addition, it referred to corporate activities of concern from a business and human rights perspective in the Occupied Palestinian Territory and the occupied Syrian Golan.

38. To exemplify the different categories, a number of case studies were presented to the Special Committee, for instance on financing the Israeli occupation, the exploitation of natural resources, corporate interdependency and the mislabelling of settlement products (see A/70/406 and Corr.1, paras. 20-27).

39. The Special Committee stressed that corporate actors needed to be held accountable for the impact of their activities on human rights. Both Governments and businesses played a role in and were responsible for protecting and respecting the human rights of the Palestinian people. Moreover, the Special Committee stressed that third countries too

[21] Ibid.

should be held responsible for ensuring corporations' respect for human rights and that they should cease to fund or enter into commercial transactions with organizations and bodies involved in settlements or the exploitation of natural resources in the occupied territories.

40. The Special Committee recommended that the General Assembly call on the State of Israel to inform Israeli and multinational corporations working in the occupied territories of their corporate social responsibility to act with heightened due diligence and of the international legal ramifications of business activities with negative human rights impacts, and to take appropriate measures to prevent, investigate, punish and provide redress for corporate abuse and/or exploitation of resources in the occupied territories through, inter alia, effective policies, legislation, regulations and adjudication.

IV. Submissions by Member States pursuant to Human Rights Council resolution 28/26

41. On 19 October 2015, OHCHR addressed notes verbales to all Permanent Missions to the United Nations Office and other international organizations in Geneva, requesting information on any steps their Governments had taken, envisaged taking or were otherwise aware of to implement the recommendations of the fact-finding mission, in particular those contained in paragraphs 116 and 117 thereof (see also paras. 5-6 of the present report).

42. On 19 October 2015, separate notes verbales were addressed to the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine. OHCHR requested the Government of Israel to provide information on any steps that it had taken or envisaged taking to implement the recommendations of the fact-finding mission. It also requested the Government of the State of Palestine to present relevant information concerning the status of the same recommendations. At the time of the preparation of the present report, no information had been received from the Permanent Mission of Israel or the Permanent Observer Mission of the State of Palestine.

European Union

43. In a note verbale dated 1 December 2015, the Permanent Mission of the European Union to the United Nations Office and other international organizations in Geneva provided an update to its contribution of 24 November 2014, which was reflected in the report of the High Commissioner on the same subject matter, presented in March 2014 (A/HRC/25/43).

44. The European Union reaffirmed its commitment to its long-standing position not to recognize the sovereignty of Israel over territories occupied in 1967, namely, the West Bank, including East Jerusalem, the Gaza Strip and the Syrian Golan.

45. The European Union referred to the Council of Europe conclusions of 20 July 2015 on the Middle East peace process, in which the European Union recalled that settlements were illegal under international law and reiterated its strong opposition to the settlement policy of Israel and actions taken in that context, such as building the separation barrier beyond the 1967 line, demolitions and confiscation (including of assets provided through European Union-funded projects), evictions, forced transfers (including of Bedouins), illegal outposts, settler violence and restrictions of movement and access.

46. The European Union further stated that settlement activity in East Jerusalem seriously jeopardized the possibility of Jerusalem serving as the future capital of both States. The European Union reiterated that it would continue to closely monitor developments on the ground and their broader implications and that it remained ready to take further action in order to protect the viability of the two-State solution.

47. The European Union and its member States remained committed to ensuring continued, full and effective implementation of existing European Union legislation and bilateral agreements applicable to settlement products. Furthermore, it expressed its commitment to ensuring that — in line with international law — all agreements between the State of Israel and the European Union must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967.

48. The European Union noted that on 11 November 2015 the European Commission adopted an interpretative notice on the indication of origin of goods from the territories occupied by Israel since June 1967.

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 28/26 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. In the report, developments concerning the establishment and expansion of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, are highlighted. An update and analysis is also provided of the effects of related house demolitions, evictions, settlement expansion, settler violence, discriminatory zoning and planning policies on the economic, social and cultural rights of Palestinians. Lastly, in the report, the Secretary-General addresses issues related to Israeli settlements in the occupied Syrian Golan.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 28/26 and covers the period from 1 November 2014 to 31 October 2015.

2. The report is based on monitoring and other information-gathering activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information provided by other United Nations entities in the Occupied Palestinian Territory. It also contains information received from Israeli and Palestinian non-governmental organizations. It should be read in conjunction with previous reports of the Secretary-General on Israeli settlements to the Council and the General Assembly (in particular A/HRC/20/13, A/HRC/25/38, A/HRC/28/44, A/63/519, A/64/516, A/65/365, A/66/364, A/67/375, A/68/513 and A/69/348).

3. In the report, the Secretary-General provides an update on the Israeli authorities' policies and practices aimed at creating or expanding settlements in the West Bank, including East Jerusalem, and in the occupied Syrian Golan, including through retroactive legalization of unauthorized outposts under Israeli law, the declaration of "State land" and zoning and planning policies. He also examines settler violence and steps taken by the Israeli authorities to address impunity of Israeli settlers involved in violent attacks against Palestinians. Finally, he examines the impact of continued settlement expansion and related policies on Palestinian communities, through an analysis of developments in Palestinian Bedouin and herder communities at risk of displacement.

II. Legal background

4. An analysis of the applicable legal framework and the basis for the obligations of Israel in the Occupied Palestinian Territory and occupied Syrian Golan can be found in previous reports of the Secretary-General (see A/69/348, paras. 4-5, and A/HRC/25/38, paras. 4-5).

III. Settlements as a driver of violations of international human rights and humanitarian law

5. The presence and continued development of Israeli settlements lie at the root of a broad spectrum of human rights violations in the West Bank, including East Jerusalem. This has been documented extensively, including in previous reports of the Secretary-General, and by the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (see A/HRC/22/63).

6. The settlements have resulted in the gradual fragmentation of the West Bank, restricted Palestinian access to natural resources in the Occupied Palestinian Territory and the subsequent impediment to the Palestinian people's right to self-determination (see A/HRC/22/63, A/70/351 and Council resolution 25/28).

7. Current Israeli practices related to the presence and expansion of settlements, which persisted during the period under review, similarly continue to have a profound impact on land and housing rights, the right to water and sanitation and freedom of movement, and result in restrictions on the right to education (see CCPR/CO/78/ISR, A/67/372 and A/HRC/28/55).

8. Successive reports by the Secretary-General have shown that the presence of settlements results in violations of the rights to life and to security of the person. The failure to address violent acts also renders individuals' right to a remedy illusory and promotes impunity.

IV. Settlement expansion

A. Overview

9. During the reporting period, Israeli authorities continued to expand settlements, to retroactively formalize unauthorized outposts in the West Bank, including East Jerusalem, and to approve plans for new settlements. Steps were also taken to enable the expansion of settlement-controlled areas through the declaration of "State land" and allocation of land in the West Bank for farming and construction purposes. As of the end of 2014, the total population in Israeli settlements in the West Bank and East Jerusalem was approximately 570,700. Overall, the settlement population in the Occupied Palestinian Territory has continued growing at a steady rate, with the latest available data showing an average growth rate of 14,600 people per year between 2002 and 2014.

10. The construction of settlements continued despite a slowdown in the planning and tendering of new housing units in settlements in the West Bank, including East Jerusalem. The planning of infrastructure related to settlements, such as roads, was not halted. These policies persisted despite the elections and the formation of a new Government on 14 May 2015. In the new Government, the pro-settlement Jewish Home party lost control of the Ministry of Housing and the Finance Committee chairmanship, both key for settlement activities. However, it gained other positions that are useful for promoting settlements, including in the Ministry of Justice and authority over the Settlements Division of the World Zionist Organization, a body attached to the Prime Minister's Office that channels significant funding to settlement activities. Additional concessions, including budgetary allocations to bolster local settlement authorities and measures to enable retroactive legalization, under Israeli law, of unauthorized outposts, were also included in the coalition agreement with the Jewish Home party.[1]

11. Sustained monitoring and pressure from the international community has had a mitigating effect on efforts by the Israeli authorities to implement the full range of settlement expansion initiatives presented by the Government of Israel during its first months in power. Diverging agendas within the governing coalition also served to rein in aspects of the pro-settlement agenda. Joint action by members of the Kulanu party, headed by Minister for Finance, Moshe Kahlon, together with Members of the Knesset from the ultraorthodox parties, prevented the inclusion of 61 West Bank settlements under a new system regulating income tax benefits for Israeli municipalities, although as part of a compromise, Hebron settlements remained on the list.[2] Those parties also played a role in blocking several pro-settlement legislative initiatives promoted by the Jewish Home party. Similarly, the Israeli High Court of Justice continued to play a role — albeit limited — in curbing aspects of settlement activity, particularly where Palestinian private land was concerned. Since the formation of his new Government, the Prime Minister, Benjamin

[1] Coalition agreement for the establishment of the thirty-fourth Government of the State of Israel, reached on 7 May 2015, between the Likud and Jewish Home parties.

[2] Moti Bossak and Zvi Zrahiya, "Government rejects plan to give 61 West Bank settlements tax benefits", *Haaretz*, 26 October 2015.

Netanyahu, has come under increasing pressure from settlement constituencies, including from his own party, to stop what they call a "de facto settlement freeze".

12. The escalation in violence in Israel and the Occupied Palestinian Territory, starting in September 2015, led to the hardening of the government position with regard to settlement expansion. A point of particular concern has been the response by the Government to political pressure from pro-settlement lawmakers and settler organizations to increase settlement construction in retaliation for acts of violence by Palestinians: namely, settlement expansion announcements by the Prime Minister regarding the retroactive legalization of settlement outposts around Itamar[3] and the promotion of particularly controversial plans for settlement expansion in the Muslim Quarter of the Old City and in the Ramat Shlomo settlement in East Jerusalem (detailed below).

13. Previous reports of the Secretary-General have detailed the range of practices resulting in the expansion of settlement control by the Israeli authorities over land in the Occupied Palestinian Territory (see A/69/348 paras. 33-35, and A/70/351, paras. 33-36). Construction of housing units is but one way of measuring such expansion. Indeed, the control of land through agriculture, the declaration of archaeological sites, national parks, infrastructure development, and the authorities' support for informal initiatives for settlement expansion all contribute to the growth and reinforcement of the presence of settlements in the Occupied Palestinian Territory. The Government of Israel has continued to support and promote the gradual takeover of land and resources through these methods.

B. Construction, tenders and plans

14. Israeli settlement construction and administrative steps enabling further expansion of settlements in the West Bank, including East Jerusalem, continued during the period under review. While the data available from the Israeli Central Bureau of Statistics points to a slight decrease in construction being started between 2013 and 2014,[4] the rate of construction for 2014 (2,705 construction projects started) remained above the annual average of 2,303 builds started per year over the previous 10-year period.

15. In October 2015, the Israeli non-governmental organization Peace Now reported on wide-ranging plans for West Bank settlement expansion and related settlement activity based on information obtained from the Ministry of Housing. From the disclosed documents, it appears that plans were promoted and partially implemented under previous Minister for Housing, Uri Ariel, from the Jewish Home party. The Prime Minister has subsequently publicly disavowed elements of these plans.[5] However, documents obtained by Peace Now detail funding by the Ministry of residential construction, as well as infrastructure and public structures, in various settlements between 2012 and 2015. This included funding for the construction of over 4,000 housing units, public structures (including the expansion of the Beit Romano and Beit Betar settlements in Hebron) and financial support (roughly US$ 460,000) disbursed in 2014 to municipal authorities in the West Bank towards public campaigns encouraging Israelis to move to settlements.

[3] On 1 October 2015, two Israeli citizens, Eitam and Na'ama Henkin, from the settlement of Neria, were killed in a drive-by shooting attack on the road between the settlements of Itamar and Elon Moreh in the West Bank.

[4] Information from Peace Now, based on Central Bureau of Statistics data, provided to OHCHR by e-mail dated 3 November 2015.

[5] Itamar Eichner, "Netanyahu: settlement construction plan led by Uri Ariel", *Ynet*, 30 December 2015.

C. Other means of settlement control over land

(a) National parks and archaeological sites

16. The Government of Israel has continued the practice of declaring and developing archaeological sites and parks as a means to expand control over land in the West Bank, including East Jerusalem. In several cases, the sites selected for development were located in close proximity to existing settlements, enabling either the expansion of lands under settlement control, or located in such a way that contiguous areas under settlement control could be made areas of strategic significance.[6] Israeli authorities have been directly involved in this practice, either through zoning and planning processes, funding the development of sites or granting leases and management privileges to private settler organizations.

17. In July 2015, the Jerusalem municipality posted signs in the East Jerusalem neighbourhood of Issawiya, stating that the area reserved for a national park at Mount Scopus had been put under a "vacant lot landscaping order", signifying the intention of municipality leaders to landscape and build facilities. The approval of the establishment of the Mount Scopus Slopes National Park in 2013, encompassing roughly 73 hectares on the eastern side of Mount Scopus, has been opposed by residents of the adjacent Issawiya and At-Tur neighbourhoods, on the grounds that it precludes the possibility of implementing much-needed urban development plans for those two areas.[7]

18. The Secretary-General and others have voiced concerns regarding the discriminatory urban planning regime in East Jerusalem (see A/HRC/25/38, paras. 11-14, and CERD/C/ISR/CO/14-16, para. 25), and the limitation of Palestinian development in the city as a result of the takeover of land for inclusion within national parks (A/70/351, para. 42).

19. On 7 June 2015, the Appeals Subcommittee of the National Planning Council approved plans for the development of the Kedem Compound in Silwan, promoted by the Elad settler organization to construct a major tourist site in the East Jerusalem neighbourhood of Silwan, some 20 metres from the walls of the Old City. Following objections submitted by Silwan residents and civil society organizations, the Subcommittee ruled to reduce the original plans by at least half.[8] These developments took place in the context of continued settlement expansion in the area. In three incidents between May and October 2015, Israeli settlers, under police escort, evicted six Palestinian families from their homes in the heart of the Palestinian neighbourhood of Silwan, following a ruling by an Israeli court in favour of the settlers who claimed ownership over the properties. In two additional incidents in August and September 2015, Israeli settlers, under police escort, moved into five residential buildings in Silwan that were previously vacated by their Palestinian residents. The buildings occupied are believed to have been sold by the

[6] See case study on Khirbet Silhoun (A/70/351, paras. 63-66); Kedem Compound, City of David Visitors Centre and Spring House tourist centre; and Tel Rumeida excavations and ancient site (see A/69/348, paras. 34-35). Following legal proceedings led by Hebron residents and the Israeli organizations Emekh Shaveh and Breaking the Silence, the Israeli Civil Administration decided to delay the opening of the Tel Rumeida "archaeological park" in Hebron, and rescinded an agreement with a private settler organization for the transfer of management rights of the site. According to archaeologists at Emek Shaveh, "the archaeological park is expected to increase the presence of Israelis in Hebron, add a national-historic site to the Jewish part of the city, and form a key tool in the settlers' drive to influence public opinion".

[7] The park had been in planning since 2005 and was approved despite the position of then Minister for Environmental Protection, Amir Peretz. See B'Tselem, "Mount Scopus Slopes National Park and the harm it causes to al-'Esawiya and a-Tur", 20 July 2015.

[8] Ir Amim Newsletter, 10 September 2015.

Palestinian owners. The Secretary-General has previously expressed concerns that the implementation of the plans for the Kedem Compound risks accelerating settlement expansion in Silwan, with repercussions for the human rights situation in the area (see A/70/351, para. 36).

20. On 10 August 2015, Israeli planning authorities in the West Bank approved plans for the development of a major archaeological and tourism site at Khirbet Seilun, on the lands of the Palestinian village of Qaryut. The site is located inside the boundaries of the Shilo settlement and is being promoted by Israeli authorities as "Tel Shiloh".[9] The planning body stopped short of providing full approval for the original master plan, but granted the Archaeology Staff Officer, within the Israeli Civil Administration the authority to approve individual structures on a case-by-case basis, including for tourism and commercial use. In a reversal of current practice, planning authorities required that Palestinian visitors be allowed entry without permits to the ancient site. At the time of writing, Palestinians still required permits to enter the area.[10]

(b) Expansion of "State land" boundaries

21. A further indicator of the expansion of land under settlement control has been evidenced in the activities of the Israeli Civil Administration's Task Force for the Survey of State Land Boundaries (the Blue Line task force). The Blue Line team is tasked with inspecting and defining the boundaries of land designated as State property, or so-called "State land" by Israeli authorities since 1970 (see A/HRC/22/63, para. 63). The declaration of State land constitutes a crucial step in the process of allocating land to settlements. According to the task force's operating guidelines, its activities are intended to settle claims of irregularities and remedy violations of the rights of landowners whose lands were unjustly seized.[11] The Civil Administration has argued before the High Court of Justice that land demarcations conducted by the Blue Line task force did not constitute formal declarations of State land, and were mere technical corrections of surveying mistakes. However, since 2009, the revisions conducted by the Blue Line task force have resulted in the expansion of State land boundaries by some 120,000 dunams (12,000 hectares).[12]

22. Until August 2015, the Blue Line task force re-drew State land boundaries without public announcements, thereby effectively preventing Palestinian landowners from laying claim to the surveyed land and granting no right of appeal. This practice was challenged before the Israeli High Court of Justice by Israeli human rights organizations and Palestinian landowners from the villages of Zawiya, Luban Al-Sharqiya and Qaryut, in the northern West Bank, following the expansion of State land boundaries by the Blue Line task force for the settlement of Eli in 2012.

23. Upon the request of the High Court of Justice, the Civil Administration issued revised guidelines on 11 August 2015, requiring prior notification of affected villages where any revisions of State land boundaries are intended, and granting a right of appeal within 45 days. Human rights organizations advocating for Palestinian landowners have expressed concern that the level of technical capacity and prohibitive costs required to

[9] See case study in the report of the Secretary-General (A/70/351, paras. 63-66).

[10] Emek Shaveh, press release, 12 August 2015.

[11] Revised guidelines of the Task Force for the Survey of State Land Boundaries, issued by the Head of the Israeli Civil Administration on 11 August 2015.

[12] Information from Dror Etkes (founder of Kerem Navot, an Israeli non-governmental organization that monitors settlement activity), based on Israel Defense Forces data, provided to OHCHR by e-mail dated 16 November 2015.

establish a claim against a revision of boundaries render the new guidelines meaningless for most affected landowners.

D. "Legalization" of unauthorized outposts

24. In 2014, the Secretary-General expressed concerns about steps taken by the Israeli authorities to retroactively formalize some 25 outposts in the West Bank (see A/70/251). During the period under review, the Israeli authorities pursued measures to retroactively legalize illegal outposts in the West Bank. These steps mostly follow the legal rationale and set of recommendations proposed by the government-appointed "Levy Committee" of 2012,[13] and are being promoted at the executive, military and legislative levels.

25. In the context of legal proceedings before the High Court of Justice, the Government of Israel declared its intentions to retroactively formalize a string of settlement outposts adjacent to the settlement of Shilo, in the southern Nablus governorate: Adei Ad, Esh Kodesh, Ahiya and Kidah. To that end, and as per the stated policy of Israel to retroactively legalize unauthorized settlement construction erected on so-called State land, the Blue Line task force has initiated the process of examining and redrawing State land boundaries in the area. By the Israeli authorities' own admission, these outposts are a hotbed for unlawful settlement activity and settler violence.[14] The human rights and humanitarian impact of the presence and expansion of the Shilo outposts on Palestinian communities has been examined in detail by the Secretary-General (see A/70/351).

26. On 21 October 2015, the Prime Minister approved a retroactive urban building plan for the settlement of Itamar and, on 29 October, he endorsed retroactive blueprints for three other settlements — Shvut Rachel, Sansana and Yaqir.[15]

27. In July 2015, the Prime Minister appointed a professional committee tasked with formulating recommendations for the retroactive "legalization" — under Israeli law — of settlement outposts.[16] This initiative came in an apparent response to pressure from settler groups following the rulings of the Israeli High Court of Justice ordering the evacuation of outposts and settlement neighbourhoods built on privately owned Palestinian land. On 21 July 2015, the Minister of Justice, Ayelet Shaked (of the Jewish Home party), stated: "It's time to clear the legal fog and let [Israeli] residents who live in [the West Bank], most of them in communities set up by various Israeli governments, stop worrying about a constant threat to the ownership of their homes".[17] At the time of writing, the committee had not submitted its recommendations.

[13] In its July 2012 report, the "Levy Committee", established by the Government of Israel to investigate the legal status of the unauthorized settlements in the West Bank ("outposts"), recommended the legalization of the outposts. The report was not formally adopted by the Government of Israel (see A/HRC/22/63, annex I, p. 37).

[14] State's response dated 12 October 2015; High Court of Justice, case 8395/14, *Head of Turmusayya Village Council et al. v. Minister of Defense et al.* (available in Hebrew only).

[15] B'Tselem, "Retroactive 'laundering' of Itamar, Shvut Rachel, Sansana and Yaqir part of government policy to annex Palestinian land to State of Israel", 22 November 2015.

[16] The committee is tasked with the "formulation of an outline for regularizing structures and neighbourhoods in Jewish communities in [the West Bank] that were built with the involvement of the authorities". It is chaired by Cabinet Secretary, Avichai Mendelbit, and comprised of representatives of the Ministries of Agriculture and Defence. Information from a communication from the Prime Minister's Office, 19 July 2015.

[17] Revital Hovel, "New Israeli Panel Eyes Legalizing West Bank Outposts", *Haaretz*, 22 July 2015.

28. In October 2015, Likud Member of the Knesset, Yoav Kisch, proposed a bill aimed at enabling the "regulation" (retroactive legalization, under Israeli law) of settlement construction on private Palestinian land though the confiscation of land from their owners, in return for compensation.[18] According to his proposal, confiscated property would be allocated to the Settlement Division of the World Zionist Organization, which would subsequently allocate the land for the needs of retroactively "regulated" settlements. The proposals put forward in the bill circumvent the rulings of the Israeli High Court of Justice in a number of high-profile cases (see below), which ordered the demolition of illegal settlement construction on privately owned Palestinian land. A debate on the bill in the Ministerial Committee for Legislation was postponed at the last minute, apparently due to diplomatic pressure on the Government of Israel. In a comment published by the Knesset Channel website, Yoav Kisch stated that the bill had been suspended pending a review of its legality under international law. A similar bill had been rejected by the Knesset in 2012.

E. Court judgements and demolition of settlement structures

29. During the reporting period, the Israeli High Court of Justice issued rulings to uphold Palestinians' right to private property in the West Bank. This has been borne out in a number of high-profile rulings, including in the cases of Amona, Ofra, Beit El and Givat Zeev, as well as in the course of court proceedings regarding the construction on Qaryut lands in the settlement of Derekh Ha'Avot and the use of farmland by settlers in the Jordan Valley.

30. On 29 July 2015, Israeli security forces demolished two settlement apartment buildings, the "Dreinoff" buildings, which had been under construction on the outskirts of the settlement of Beit El, on privately owned land belonging to a resident of the adjacent Palestinian village of Dura al-Qara. The demolitions were carried out upon the orders of the Minister of Defence, pursuant to High Court judgments issued in September 2014 and June 2015, after lengthy legal proceedings and repeated attempts by the Israeli authorities and settlers to have the buildings retroactively approved.

31. Violent clashes erupted between hundreds of settlers and security forces in the days leading up to the scheduled demolition, as settler leaders and youth moved to occupy the buildings and confronted Israeli forces so as to prevent the demolition of the settlement structures. Unrest then spread to other areas in the West Bank. Developments in this case elicited strong reactions from factions of the Government of Israel, ultimately causing tensions within the governing coalition. Senior government officials of the Jewish Home party publically protested against the demolition, and Minister for Education, Naftali Bennett, addressed settlers and sympathizers gathered at the Dreinoff buildings, criticizing Ministry of Defence orders to deploy security forces to the site on the day before the scheduled demolition.[19] On the day of the demolitions, the Prime Minister approved the construction of 300 additional housing units in the Beit El settlement.[20]

[18] Regulation Draft Law No. P/1973/20, 2015 (authors: Yoav Kisch, Bezalel Smotrich, David Bitan, Nava Boke, Israel Eichler, Eli Cohen, Machluf Miki Zohar, Avraham Naguisa, Robert Ilatov and Sharon Gal).

[19] Ministers Uri Ariel, Ze'ev Elkin and Yariv Levin released a joint statement: "We came here to express our support for the residents of Beit El, their desire to build up their community, and their protest against the unnecessary demolition." See Chaim Levinson, "Hundreds of Young Settlers Clash Violently With Police at Beit El", *Haaretz*, 28 July 2015.

[20] Stuart Winter and Judah Gross, "As two buildings torn down at Beit El, Netanyahu approves 300 more", *Times of Israel*, 29 July 2014.

32. The Secretary-General notes with concern the repeated requests by the State for delays of court-ordered demolition deadlines. Indeed, in the few cases of evictions of settlers and demolitions or residential settlement construction in recent years, Palestinian landowners have yet to regain full access to their plots. Palestinian claimants have seen few if any improvements in terms of access to land and the protection of their private property.

V. Settler violence and failure to maintain public order

A. Overview and trends

33. Settler violence is directly related to the continued existence and expansion of illegal settlements throughout the West Bank, including East Jerusalem, and has far-reaching implications for the rights of Palestinians (see A/HRC/28/44, paras. 39-46, and A/69/348, paras. 36-44).

34. During the period under review, the Office for the Coordination of Humanitarian Affairs recorded 253 incidents of settler-related violence, of which 101 resulted in injury to Palestinians, with the remainder causing damage to Palestinian property. This compares to 207 reported cases of casualties during the previous year, including five Palestinian fatalities (two killed by settlers and three killed by Israeli security forces) in settler-related incidents. The number of violent incidents related to settlements that resulted in injury to Israelis or to their property increased during the reporting period, to 123 incidents, of which 75 resulted in injury. By contrast, 96 incidents were reported during the previous 12-month period, including 69 injuries. The Secretary-General has repeatedly condemned all attacks against civilians and their property, which further fuel the cycle of violence.

35. In a case that garnered widespread international condemnation, in the early hours of 31 July 2015, the home of the Dawabsheh family, in the Palestinian village of Duma, was set on fire in an apparent attack by Israeli settlers. An 18-month-old child was killed in the attack and his parents later died of their wounds. A 4-year-old child of the couple remained hospitalized at the time of writing. On 31 July 2015, the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestinian Liberation Organization and the Palestinian Authority stated that he was outraged by the vicious arson attack by suspected Jewish extremists in the occupied West Bank village of Duma near Nablus, which killed Palestinian toddler, Ali, critically injured his mother and father and injured his 4-year-old sibling, and called for a full and prompt investigation to bring the perpetrators of this terrorist crime to justice.

36. While OHCHR monitoring of the case indicates that efforts have been made by Israeli law enforcement authorities to conduct an investigation into the incident, no indictments had been served at the time of writing, and the investigation was ongoing. On 10 September 2015, Israeli news media reported that "Israel's defense establishment knows who is responsible for the arson attack that killed three members of [the Dawabsheh family], but has chosen to prevent legal recourse in order to protect the identity of their sources". According to the same report, three Israelis were held in administrative detention in connection with the case.[21]

37. The climate of impunity enjoyed by violent settlers, combined with reports of an overall increase in the number of settler attacks inside Palestinian villages during the period

[21] Jonathan Lis and Chaim Levinson, "Israel Has Identified Duma Arson Suspects but Won't File Charges Yet, Says Defense Minister", *Haaretz*, 10 September 2015.

under review,[22] underscores the persistent climate of fear and insecurity experienced by Palestinians living in proximity to illegal settlements in the West Bank, including East Jerusalem.

38. A spike in settler violence was recorded in October 2015 in the context the wave of violence that erupted in the Occupied Palestinian Territory. An increase in incidents took place during the first days of October, following the killing of an Israeli couple by Palestinians in the West Bank on 1 October, and generally in the City and Governorate of Hebron where, according to data from the Office for the Coordination of Humanitarian Affairs, there were at least 30 settler attacks against Palestinians and Palestinian property. The attacks took the form of stone-throwing at Palestinian houses in the areas of the Wadi al-Hussein, Jabari and Al-Rajabi Quarters located in the vicinity of the settlement of Kiryat Arba. On 29 October, restrictions in the Israeli-controlled part of Hebron were further tightened when Israeli security forces closed off the area around the Tel Rumeida settlement, pursuant to a military closure order. While the onus of restrictions falls on Palestinians, Israeli settlers are allowed to move about freely throughout the area.[23]

39. Settler attacks and intimidation targeting volunteers and the representatives of international humanitarian organizations providing a protective presence and documenting human rights violations in the Israeli-controlled part of Hebron and in the southern Nablus governorate were reported during October 2015. The Secretary-General is concerned at these deliberate attacks against human rights defenders in the area. These attacks were compounded by restrictions on movement imposed by Israeli security forces, particularly at all checkpoints and on the road to Qurtuba School in Hebron, which links two settlements.

B. Israeli measures to address settler violence: accountability and prevention

40. In an effort to address the failure to protect and enforce the law against settlers, a specialized unit within the Israel Police West Bank District was established in early 2013. The Nationalistic Crimes Unit is charged with responding to ideologically motivated crimes committed by Israeli civilians, in coordination with the Israel Security Agency, the Israel Defense Forces and the Ministry of Justice. According to the Israeli Ministry of Justice, in 2014, the operationalization of the unit resulted in an increase of 64 per cent in the number of indictments filed against Israeli suspects.[24]

41. The Secretary-General welcomes the aforementioned steps taken by the Israeli authorities to address settler violence. However, cases handled by the Nationalistic Crimes Unit include criminal offences perpetrated against Israeli security forces and Israel Defense Forces property, as well as against Palestinians. According to data released by the Israeli police in January 2015, out of 83 indictments served by the Unit, only 25 per cent related to cases where the complainant was Palestinian.[25] A concern therefore remains that efforts by the Israeli authorities have not yet translated into significant improvements in the performance of law enforcement where the victims are Palestinian.

[22] Yesh Din, "Data sheet: Law Enforcement on Israeli Civilians in the West Bank", October 2015.

[23] Protection Cluster, "Protection concerns and humanitarian impacts of settlement activity in Hebron city", April 2014.

[24] Response to Yesh Din report, "Mock Enforcement", from the Legal Counseling and Legislation Department (International Law) in the Ministry of Justice, 23 December 2014. See Yesh Din, "Mock Enforcement", May 2015, p. 148.

[25] Information released by the Israeli Police to Yesh Din following freedom of information procedures, provided to OHCHR in correspondence dated 9 December 2015.

42. Israeli authorities continue to make use of administrative measures against Israelis suspected of violent, ideologically motivated acts, in efforts to stave off such crimes. Steps included the administrative detention of three Israelis,[26] as well as the issuance of at least 36 administrative restraining orders, 16 of which were issued against minors. The latter mainly aimed at restricting movement of suspects in the West Bank.[27]

43. The use by Israel of administrative detention against Palestinians and Israelis alike has been condemned by the Secretary-General (see A/69/347, para. 29).[28] Where criminal charges cannot be brought, Israeli authorities should consider the use of alternative measures, such as restraining orders, and implement them in accordance with human rights obligations, including adequate judicial review and due process.

VI. Impact on Palestinian communities at risk of forcible transfer

(a) General overview

44. The Secretary-General voiced concerns at the deteriorating human rights and humanitarian situations facing Palestinian Bedouin and herder populations affected by home demolitions and Israeli plans for "relocation" of entire communities.[29]

45. The Secretary-General has previously noted the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law (see A/HRC/25/38, paras. 11-20). The planning system favours Israeli settlement interests over the needs of the protected population and makes it practically impossible for Palestinians living in Area C (approximately 300,000, according to the Office for the Coordination of Humanitarian Affairs) to obtain building permits. Severe restrictions on Palestinian planning in Area C further prevents the development of communities, which are effectively denied basic services and infrastructure under the current policy.

46. This impossibility of building safely creates enormous pressure on communities, particularly those targeted for relocation, as they know that within the current system there is no long-term protection from demolition and destruction of their property, creating a coercive environment that effectively drives communities off the land they have inhabited for decades.

47. According to the Office for the Coordination of Humanitarian Affairs, in a decrease compared with last year's reporting period, between 1 November 2014 and 31 October 2015, Israeli authorities demolished 554 Palestinian structures in the West Bank, including East Jerusalem, of which 137 were residential, inhabited structures. These demolitions resulted in the displacement of 712 Palestinians, and affected the livelihoods of communities throughout the West Bank.[30] During the previous year (1 November 2013 to 31 October 2014), the Office recorded demolitions of 628 Palestinian structures, which resulted in the displacement of 1,263 Palestinians.

[26] Gili Cohen, "Ya'alon: Administrative Detention Used on Jewish Extremists to Prevent Future Attacks", *Haaretz*, 10 September 2015.

[27] Based on Israeli media reports between November 2014 and October 2015.

[28] See also 9 August 2015 Security Council briefing on the situation in the Middle East including the Palestinian question by Under-Secretary-General Jeffrey Feltman."

[29] See statement by the spokesperson for the Secretary-General, New York, 8 September 2015.

[30] Information from the Office for the Coordination of Humanitarian Affairs (unpublished), provided by correspondence dated 26 November 2015.

48. August 2015 saw the highest number of demolitions of Palestinian structures in a single month since June 2010, with some 140 Palestinian structures demolished and over 200 Palestinians displaced. The overwhelming majority of the demolitions were in Area C, mainly affecting already vulnerable Bedouin herding communities.

49. At the same time, activities by the Government of Israel aimed at relocation of Bedouins and herder communities progressed during the period under review. The planned relocation of the Bedouin and herder communities in Area C gives rise to serious concerns under international law. The Secretary-General reiterates concerns that the implementation of proposed relocations may amount to individual and mass forcible transfers. Except for temporary transfers for the security of the population or for imperative military reasons in the context of hostilities, forcible transfers violate human rights law and are prohibited under international humanitarian law. Under article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, the unlawful transfer of protected persons constitutes a grave breach of its provisions, and potentially incurs the individual criminal responsibility of officials engaged in forcible transfers. In addition, the transfer of Palestinian Bedouin communities would contravene the obligations of Israel under international human rights law, particularly regarding the rights to freedom of residence and to adequate housing (see A/67/372, para. 37, and A/HRC/24/30, para. 29).

(b) Risk of forcible transfer of Susiya residents – South Hebron Hills

50. Susiya, a Palestinian community located in the Hebron governorate in the southern West Bank, is currently home to 55 Palestinian families, who have been living in this location for decades, on land they claim as their private property. The homes of half of these families and all the community's public structures are located in Area C, where Israel maintains full control over planning and zoning, and the remainder in Area B.[31] There are outstanding demolition orders for all the village's 170 structures located in Area C, which include 32 residential tents and shacks, 26 animal shelters and 66 family utility structures, 20 cisterns and 20 latrine units, 2 clinics, 1 school and 1 kindergarten, among others. Approximately half of these structures have been funded by international donors and provided as humanitarian assistance.

51. The nearby Israeli settlement of Susiya, established in 1983 in contravention of international law, has a population of nearly 1,000, some of whom live in an unauthorized outpost erected in 2002, on the original site of the Palestinian village of Susiya, on land that had been declared an archaeological site. By the end of the 1990s, the Israeli authorities had allocated over 1,500 dunams of land to the development of Susiya settlement (the "municipal boundaries"), an area that is over five times larger than its current built-up area. The Susiya settlement has been granted an outline plan that allows for the development of housing and infrastructure. While an adjacent settlement outpost was established without permits, the authorities have connected it to the water and electricity networks and refrained from enforcing pending demolition orders.

52. Owing to systematic settler violence and intimidation, Palestinian residents of Susiya village have limited or no access to over 2,000 dunams of their land, which constitute about two thirds of the community's farming and grazing area. This has a serious impact on their right to livelihood. In 2014 alone, some 800 olive trees and saplings owned

[31] In 1986, the Israeli authorities declared the main residential area of Susiya an archaeological site and evicted all of its residents. Most of those who relocated to what was later designated Area C, on plots of land adjacent to the original site of the village, were displaced again in the context of two waves of demolitions, in 2001 and in 2011, on the grounds of lack of building permits.

by Palestinian residents of Susiya were vandalized and damaged, allegedly by Israeli settlers.

53. The Israeli planning authorities have repeatedly rejected zoning and planning schemes submitted by the residents of the village of Susiya, which would allow the issuance of building permits on land that they own. On 4 May 2015, the Israeli High Court of Justice rejected the community's request for an interim injunction freezing demolitions in the village, thereby rendering 28 families vulnerable to imminent evictions and displacement.[32] In the course of legal proceedings before the High Court of Justice, the Israeli authorities further expressed their intention to "relocate" the community to a nearby site, adjacent to the Palestinian town of Yatta.

54. Over the summer of 2015, concerted efforts by the international community, including the United Nations and Member States, were successful in staving off Israeli demolition plans at the site. However, long-standing access restrictions to basic services and grazing land at Susiya, combined with systematic intimidation by Israeli settlers, has created a coercive environment, which raises concerns about forcible transfer in violation of international law.[33] In a High Court of Justice hearing on 3 August, both sides agreed to postpone the discussion in order to allow time for a negotiated solution. A mediation process between the residents and the Israeli authorities is currently ongoing.

(c) Bedouin relocation plan – central West Bank, including the Jerusalem periphery

55. During the reporting period, Israeli authorities advanced plans presented in April 2014 by Major-General Yoav Mordechai, the Coordinator of Government Activities in the Territories, for the "relocation" of some 46 Palestinian Bedouin communities in the Jerusalem periphery.[34] These plans foresee the removal of Palestinian communities in and around strategic areas earmarked for Israeli settlement infrastructure throughout the central part of the West Bank, including the planned E1 settlement project. The project has long been opposed by the international community as an obstacle to the realization of the two-State solution.[35]

56. The transfer plans of Israel place the Bedouin communities, currently residing in rural locations throughout the central West Bank in Area C, at risk of forcible transfer to three urbanized townships planned by the Israeli Civil Administration in Al-Jabal, Nweima and Fasayil. The relocation sites are being developed with the expressed purpose of "regulating Bedouins",[36] finding a "solution to the population residing in the area of the Adumim Bloc – western road No. 1"[37] and "settling permanently those Bedouin who are

[32] Office for the Coordination of Humanitarian Affairs, "Susiya: a community at imminent risk of forced displacement", fact sheet, June 2015.

[33] Ibid.

[34] On 27 April 2014, Major-General Yoav Mordecahi formally presented these plans to the Subcommittee on Judea and Samaria of the Knesset Foreign Affairs and Defense Committee, chaired by Mordhay Yogev. The plans are outlined in a Powerpoint presentation entitled, "Infrastructure and Supervisory Units" referred to in the minutes of the Subcommittee meeting.

[35] Settlement construction plans in E1 would exacerbate the isolation of East Jerusalem from the rest of the West Bank and interrupt the territorial contiguity of the West Bank (see A/HRC/25/38).

[36] Powerpoint presentation of the Coordinator of Government Activities in the Territories, slide entitled, "Regulating Bedouins" from the presentation "COGAT takes steps to advance a number of plans to regulate the Bedouin population".

[37] Powerpoint presentation of the Coordinator of Government Activities in the Territories, slide entitled, "Programmes in the area of Ma'ale Adumim-Abu Dis – for a solution to the population residing in the area of the Adumim Bloc – western Road No. 1: Western Jahalin – programme operative,

there".[38] The implementation of these plans would hence entail the transfer of approximately 7,500 Palestinian Bedouin to the planned urban townships adjacent to Jericho, near the Jerusalem municipal landfill and in the Jordan valley.

57. The Bedouin, many of whom manage livestock as a traditional means of earning a livelihood, expressly oppose transfer to the proposed townships, as this would destroy their traditional pastoral economy, social fabric and rural way of life.[39] As an occupying Power, Israel has the duty to provide for the welfare of the protected population, and must take into account the Bedouins' rights, interests and needs.

58. The construction of one of the sites, Al-Jabal West, started in February 2015 as an expansion of the existing Al-Jabal township, and groundwork was completed in September 2015. On 6 September 2015, the Israeli Subcommittee for Planning and Licensing granted the Israeli Civil Administration approval, in principle, to issue building permits for 17 of 35 plots of land.[40] The Israeli Civil Administration has also advanced plans for the development of the Nweima township. In April 2015, Bedouin communities brought a legal challenge against the steps taken in the planning process.[41] At the time of writing this report, legal proceedings were still under way, and plans for a third township in Fasayil have not yet advanced.

59. Since April 2015, the Israeli Civil Administration has specifically targeted the Abu Nwar Bedouin community for transfer to Al-Jabal West. The land of Abu Nwar is located on the southern part of the E1 settlement construction project.[42] On 28 April, 2015, a government-appointed liaison officer informed the Abu Nwar community that they would be slated for full relocation and that 34 families should sign up to the Jabal site within one month. The mediator stressed that the Israeli Civil Administration would not permit the Abu Nwar community to remain in its current location. Overall, some 200 demolition orders have been issued for Abu Nwar since 1998, many of which remain allegedly enforceable at the discretion of the authorities. Only the orders issued in 2015 are currently protected by a temporary injunction order.[43]

60. In the context of the restrictive and discriminatory zoning and planning system, demolitions and eviction, or threats thereof, contribute to a coercive environment expected to leave little genuine choice to the affected communities but to leave, potentially, to at least one of three Israeli designated sites (see A/69/348, paras. 12-15). As previously stated by the Secretary-General (A/69/348, para. 16), Israeli "relocation" plans for Bedouin

implementation tender soon. Afforested Jahalin – in process towards an environmental impact survey". The "population" referred to is the Bedouin communities.

38 Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee, the Nineteenth Knesset, 27 April, 2014. Benjamin Weil, Meeting Minutes, p. 52.

45 In April 2014, several Bedouin families of the Jahalin tribe, who have been designated for relocation by the Israeli authorities, issued a "letter to the international community" in which they expressed their absolute rejection to the relocation plans of the Israeli Civil Administration.

40 Information from Bimkom – Planners for Human Rights.

41 The final objections hearing cannot be heard until there is a decision from the High Court of Justice on the petition, now pending a response from the Israeli Civil Administration, as this decision will impact the whole of the Nweima township plan.

42 The outline plan for the E1 settlement construction project was approved by the Israeli Higher Planning Council in 1999. According to Bimkom – Planners for Human Rights, a detailed plan for the development of 1,500 settlement housing units on the 389 dunams of land where Abu Nwar currently sits is being developed.

43 A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action.

communities in Area C would constitute forcible transfer in violation of international law, except where the affected persons provide their genuine and fully informed consent.

(d) Southern Jerusalem periphery

61. Continued expansion of the Gush Etzion settlement bloc, in the Bethlehem District, and the consequent access restrictions in the area, pose a risk of increased fragmentation and isolation of nine Palestinian villages from the Bethlehem urban centre, in addition to the existing separation from East Jerusalem.[44] This continuing consolidation of extensive Bethlehem areas into the Israeli "Greater Jerusalem" in the southern periphery expands deeply into the West Bank and cuts these areas off from East Jerusalem, undermining once again the territorial contiguity of the West Bank and, therefore, the viability of a Palestinian State.

62. As a result, the Palestinian villages of Al-Walaja, Battir and Wadi Fukin, in the Bethlehem Governorate, face fragmentation, including the seizure of land for potential settlement expansion or for the construction of the wall, restrictions of movement owing to the wall, and settler violence. In August 2014, the Israeli army expropriated large land areas from the Bethlehem Governorate, including the declaration of 400 hectares of "State land"[45] earmarked for the expansion of the Gva'ot settlement. For Wadi Fukin alone, the confiscated land represents between a third and a half of the village land, including land used for agricultural purposes, as well as land in the immediate vicinity of the local school. The expropriation is expected to have an immediate negative impact on livelihoods in the village and to complicate efforts to construct additional classrooms for the local student population. In addition, groundwork recently started for the construction of 218 settlement units in the area, further isolating Wadi Fukin village, whose only remaining access road is likely to be demolished to allow for this new extension.

63. Over the past few years, repeated settler violence incidents and environmental pollution have been documented by the United Nations Relief and Works Agency for Palestine Refugees in the Near East in the Wadi Fukin area on Palestinian land, as well as regular visits of armed settlers to the irrigation pools, intimidating farmers. Israeli authorities have failed to prevent or reduce settler attacks or to hold perpetrators accountable. In addition, on 11 June 2015 the community witnessed a new instance of bulldozing and the demolition of two wells.

VII. Settlements in the occupied Syrian Golan

64. As mentioned by the Secretary-General in his report on the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (see A/HRC/28/44, para. 54), an estimated 21,000 Israeli settlers currently live in the occupied Syrian Golan in 33 settlements, heavily subsidized by Israel. These settlements enjoy a number of financial incentives, as well as a disproportionate allocation of water resources, which contributes to a higher agricultural yield for settlers. In October 2015, reports indicated that Israel intends to expand the size of its settlements over the next five

[44] In January 2015, the Israeli High Court removed petitions against the construction of the barrier in Battir from its caseload following a statement by the Israeli Government that the Barrier in these areas was no longer a priority.

[45] See statement by the Secretary-General on the matter, available from www.unmultimedia.org/radio/english/2014/09/un-chief-alarmed-by-israel-seizure-of-land-in-west-bank/#.VpardfnhBj0.

years by adding an additional 100,000 settlers to the region.[46] On the other hand, reports also refer to challenges faced by the Syrian population, which has grown from 7,000 in 1968 to approximately 25,000 people in 2015,[47] in the construction of new houses and infrastructure.[48]

65. Reportedly, major Israeli and international companies continue to exploit natural resources in the occupied Syrian Golan.[49] The Secretary-General reiterates that the Security Council, in its resolution 497 (1981), reaffirmed that the acquisition of territory by force is inadmissible, in accordance with the Charter of the United Nations, the principles of international law and relevant Security Council resolutions, and decided that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights was null and void and without international legal effect.

VIII. Conclusions and recommendations

66. **Israeli settlement activities remain at the core of many of the violations of human rights in the Occupied Palestinian Territory, including East Jerusalem. The Secretary-General reiterates that the settlement enterprise represents the most serious obstacle to a viable Palestinian State.**

67. **The Israeli authorities must halt and reverse the creation and expansion of settlements in the Occupied Palestinian Territory and in the occupied Syrian Golan. In addition, Israel must immediately cease using land control mechanisms aimed at expanding the area effectively occupied by settlements, such as the designation of firing zones, archaeological parks and agricultural land. Israel must also immediately cease the exploitation of natural resources from these territories.**

68. **Displacement and relocation to alternative residential areas, as a result of demolition orders, and a coercive environment could amount to individual and mass forcible transfer and forced evictions, contrary to the obligations of Israel under international humanitarian and human rights law.**

69. **The Government of Israel must urgently cease discriminatory and unlawful planning processes in the West Bank, including East Jerusalem, as they result in violations of Palestinians' rights, inter alia, to access water and services, including health and education.**

70. **The Secretary-General reiterates that the Israeli authorities must ensure full criminal accountability for perpetrators of acts of settler violence.**

71. **Moreover, the Government must revoke all laws and policies and halt practices that directly or indirectly lead to the forcible transfer of Bedouin and herder communities. Specifically, the authorities must cease the demolition of Palestinian homes and private property and refrain from any initiative to relocate Bedouin and other herder communities in Area C, which is in contravention of international law.**

[46] *Mint Press*, "Israel takes advantage of Syrian civil war to expand illegal Golan Heights settlements", 13 October 2015.

[47] For details on exploitation on natural resources, see A/70/36139, para. 76.

[48] Al-Marsad, Arab Human Rights Center in Golan Heights, "Landmines in the Occupied Golan and Israel's obligation under international human rights and humanitarian law".

[49] For instance, see *Mint Press*, "Israel takes advantage of Syrian civil war".

72. **The Government of Israel must implement all relevant United Nations resolutions, including Security Council resolutions pertaining to territories occupied since 1967.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*

Summary

The present report has been prepared pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. The report contains information on trends in settlement expansion, land designation for Israeli use in the West Bank and policies and practices pertaining to the Israeli settlement enterprise. It examines the human rights and international humanitarian law violations arising from the continued settlement expansion and land designation policy of Israel, including the implications of the coercive environment affecting Palestinian communities at risk of forcible transfer. The report also provides an analysis of violations relating to the production of and trade in settlement goods.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is being submitted pursuant to Human Rights Council resolution 31/36 and covers the period between 1 November 2015 and 31 October 2016. It should be read in conjunction with previous reports of the Secretary-General on Israeli settlements submitted to the General Assembly and the Council.[1]

2. The report illustrates the persistence of the Israeli settlement enterprise, which includes settlement expansion and efforts to exert control over land in the West Bank, including East Jerusalem, as Israeli occupation of Palestinian territory enters its fiftieth year and as that of the occupied Syrian Golan enters its forty-fourth year.

3. The report highlights how the policies relating to settlement activities remain at the core of a range of human rights violations in the West Bank, including East Jerusalem. It examines how such policies create a coercive environment in areas under Israeli control, placing affected Palestinian communities at risk of forcible transfer. Pursuant to Human Rights Council resolution 31/36, the report includes an analysis of the human rights and international law violations involved in the production of settlement goods and the relationship between trade in those goods and the maintenance and economic growth of settlements.

II. Legal background[2]

4. Israel bears responsibility for implementing in the Occupied Palestinian Territory the human rights obligations enshrined in the seven core human rights treaties and conventions it has ratified. International humanitarian law imposes obligations on Israel as the occupying power. It is obliged to respect the fundamental rights of the protected population in all circumstances.[3]

Transfer of the population of the occupying power to the territory it occupies

5. In its resolution 70/89, the General Assembly reaffirmed the illegality of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.

6. The same determination has been made by both the Security Council, in its relevant resolutions,[4] and the International Court of Justice, as regards settlement activities in the Occupied Palestinian Territory.[5] Settlements amount to the transfer of the population of Israel into the territory it occupies, which is prohibited under international humanitarian law. The transfer of an occupying power's population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved.[6]

Prohibition against the forcible transfer of protected persons

7. International humanitarian law prohibits "individual or mass forcible transfers" of protected persons within the occupied territory, as well as deportations outside of the

[1] See A/HRC/28/44, A/HRC/31/43 and A/71/355, which covers the first months of the period under review, and A/69/348 and A/70/351.

[2] See A/HRC/28/44, paras. 5-6, A/HRC/31/43, para. 4, A/69/348, paras. 4-5, and A/HRC/25/38, paras. 4-5.

[3] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 27.

[4] Security Council resolutions 465 (1980) and 2334 (2016).

[5] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134.

[6] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

occupied territory, regardless of their motive.[7] Such unlawful transfers constitute a grave breach of the Fourth Geneva Convention (art. 147) and potentially incur the individual criminal responsibility of officials engaged in such acts.[8] While other international humanitarian law provisions may be violated within the context of forcible transfer (e.g. the prohibition of the destruction of private and public property[9]), such transfers may imply the violation of several human rights, such as the right to adequate housing, including the prohibition of forced evictions,[10] the right to non-interference with family and home,[11] the right to freedom of movement[12] and the right to education.[13]

Private property and natural resources

8. International humanitarian law provides certain protections for private and public property in occupied territories.[14] Accordingly, Israel, as the occupying power, is prohibited from destroying public and private property except where it is rendered absolutely necessary by military operations. In addition, it is limited in how it may use public property; and the property of municipalities must be treated in the same way as private property.[15] Moreover, the water and other natural resources of the occupied territory must be administered in accordance with the applicable rules of international humanitarian law and may not be damaged or depleted.[16]

Extraterritorial application of domestic laws

9. Israel applies a substantial part of its domestic laws to Israeli settlers living in the occupied territories, while Palestinians living in the West Bank are subject to Israeli military rule.[17] The extraterritorial application of Israeli domestic law to settlers creates two different legal systems in the same territory, on the sole basis of nationality or origin. Such differentiated application is discriminatory and violates the principle of equality before the law, which is central to the right to a fair trial.[18] In addition, the occupying power is required to respect the laws in force in the occupied territory, unless it is absolutely prevented from doing so.[19]

III. Settlement enterprise: expansion, land takeover and denial of Palestinian development

10. With the Israeli occupation of the Palestinian territory now in its fiftieth year, illegal settlement activity continues to advance apace. Through continued expansion of illegal settlements and parallel efforts to consolidate Israeli control over the West Bank, successive Israeli governments since 1967 have overseen the steady growth of the settler population

[7] Fourth Geneva Convention, art. 49. International Committee of the Red Cross, "Customary law", *International Review of the Red Cross*, vol. 87, No. 857 (March 2005), rule 129.

[8] Rome Statute of the International Criminal Court, arts. 7 (1) (d), 8 (2) (a) (vii) and 8 (2) (b) (viii).

[9] Fourth Geneva Convention, art. 53, and Convention respecting the Laws and Customs of War on Land, art. 46.

[10] International Covenant on Economic, Social and Cultural Rights, art. 11. See also Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions.

[11] International Covenant on Civil and Political Rights, art. 17.

[12] Ibid., art. 12.

[13] International Covenant on Economic, Social and Cultural Rights, art. 13.

[14] Convention respecting the Laws and Customs of War on Land, arts. 46-47 and 52-56, and Fourth Geneva Convention, arts. 33, 46 and 53.

[15] Fourth Geneva Convention, arts. 43, 53, 55 and 64.

[16] Convention respecting the Laws and Customs of War on Land, art. 55.

[17] This is not relevant to East Jerusalem, which, since its illegal annexation by Israel, has been subject to the Israeli legal system. It is recalled that the Security Council, in its resolution 252 (1968), reaffirmed that acquisition of territory by military conquest was inadmissible, a position reiterated in subsequent resolutions.

[18] International Covenant on Civil and Political Rights, arts. 2 and 14.

[19] Convention respecting the Laws and Customs of War on Land, art. 43.

and the unilateral takeover of large swaths of West Bank land reserves, in violation of international law.

11. The settler population in Area C and East Jerusalem has doubled since the Oslo Accords, reaching over 594,000 people (including an estimated 208,000 in East Jerusalem) by the end of 2015[20] living in some 130 settlements and 100 outposts. That number is expected to rise further given the advancement of new construction in settlements. The existence of Israeli settlements and the designation of land for exclusive Israeli use have resulted in the gradual fragmentation of the West Bank, demographic changes and the illegal exploitation of natural resources, while restricting Palestinians' access and denying possibilities for Palestinian development.

12. In July 2016, the Middle East Quartet questioned the long-term intentions of Israel given its continued efforts to exert control over the West Bank.[21] The Quartet cited the Israeli policy of settlement construction and expansion, designating land for exclusive Israeli use and denying Palestinian development as key elements in the steady erosion of the viability of the two-State solution, which undermines hopes for peace.

13. The policies and practices of Israel detailed in the sections below raise serious concerns. The impact of the Government's settlement policy on the human rights situation of Palestinians in the West Bank, including East Jerusalem, has been devastating, as highlighted by the significant developments that occurred during the period under review.

A. Designation of land for exclusive Israeli use

14. Since Israel began its occupation of the Palestinian territory in 1967, a central feature of its settlement policy in the West Bank has been the gradual takeover and designation of land for exclusive Israeli use. This has been done through various measures, including the designation of certain areas as "State land", closed military zones, national parks and archaeological sites, State support for the informal takeover of land and the encouragement of economic activities in the settlements. As a consequence of such policies, approximately 70 per cent of Area C land is off-limits for Palestinian construction and development and the situation in East Jerusalem has been profoundly altered.[22]

Designation of "State land" and allocation of land for settlements

15. Over one third of Area C has been formally designated as public land (referred to as "State land" by Israel), following a process of land registration initiated under Jordanian rule and, since 1967, by the Israeli authorities. The vast majority of "State land" designations took place before the start of the Oslo peace process in the early 1990s. "State land" has been allocated exclusively for use by Israel and its citizens, rather than for the benefit of the local population, as required under international law.[23]

16. Land allocations to 24 Israeli regional and local settlement councils, comprising 126 settlements on approximately 63 per cent of Area C, typically encompass (in addition to built-up settlement areas) farmland, industrial zones, parks, access roads and security perimeters or buffer zones.[24] Such allocations result in a footprint that vastly exceeds built-up settlement areas, which amount to only around 2 per cent of Area C.[25]

17. During the reporting period, the Israeli authorities declared over 200 hectares south of Jericho as "State land". The Blue Line team in the Israeli Civil Administration tasked

[20] Israel, Central Bureau of Statistics.

[21] Report of the Middle East Quartet of July 2016, pp. 5-6. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[22] Area C comprises approximately 60 per cent of the West Bank and includes most of the land reserves for a future Palestinian State.

[23] B'Tselem, *By Hook and By Crook: Israeli Settlement Policy in the West Bank* (July 2010), pp. 21-35. Available from www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf.

[24] Yesh Din, "Land takeover practices employed by Israel in the West Bank" (September 2016), p. 2.

[25] Ibid.

with inspecting and amending or validating the boundaries of land previously designated as "State land" continued its activities. In a number of cases, this process has enabled the retroactive authorization of prior settlement construction carried out without the permits required under Israeli law.[26]

Impunity and support for the informal takeover of land

18. Incidents of violence against Palestinians, trespassing and the forceful takeover of land have often been conducted as part of a calculated effort by settlers to expand Israeli control beyond settlement jurisdiction areas.[27] Such actions have become effective ways of taking over land,[28] notably owing to the passivity of the Israeli authorities in addressing them.[29] Indeed, Israeli settlers in the West Bank have historically enjoyed impunity for trespassing and committing violent attacks against Palestinians, and orders against agricultural invasions, whereby settlers take over and cultivate private Palestinian land, remain almost entirely unenforced.[30]

19. The period under review witnessed the continuation of a significant decline in incidents of settler violence resulting in Palestinian casualties or damage to property, from 397 incidents in 2013 to 81 incidents between January and 31 October 2016.[31] During the reporting period, the severity of settler violence also declined compared with 2015.

20. This positive trend has been linked to preventive measures implemented by the Israeli security forces, including enhanced presence in friction areas and known hotspots for settler violence and increased issuance and enforcement of administrative measures against known violent settlers — primarily restraining orders barring them from the West Bank and, in some instances, administrative detention orders. Resort to such measures reportedly intensified following the murder of three members of the Dawabsheh family in Duma, in July 2015, for which two Israeli citizens were indicted.[32]

Designation of land for use as national parks, archaeology sites and tourism destinations as a means to entrench Israeli presence in the West Bank

21. The designation of national parks and archaeological sites and their promotion for Israeli and international tourism continues to contribute to consolidating Israeli civilian presence and control over land in the Occupied Palestinian Territory. Approximately 14 per cent of Area C land has been designated for use as national parks, and the tourism heritage site development rooted in the illegal annexation of East Jerusalem has profoundly altered the shape and character of the areas surrounding the Old City, creating footholds for residential settlement expansion in Palestinian neighbourhoods.[33] The management of such

[26] See A/HRC/31/43, paras. 21-23, and A/71/355, para. 13.

[27] See A/70/351, paras. 52-60.

[28] Talya Sason, in "Summary of the opinion concerning unauthorized outposts" (10 March 2005), writes:

> The expansion of the unauthorized outposts phenomenon began in the mid-nineties, after the building in Judea, Samaria and Gaza was frozen by the Rabin Administration in 1993. Building in settlements was still approved, but the approval rate went decreasing as the negotiations with the Palestinian representatives accelerated. The unauthorized outposts phenomenon began expanding, in light of the government's position opposing the authorizing of the building of settlements in the territories.

[29] As documented by Talya Sason in "Summary of the opinion concerning unauthorized outposts", privately led settlement expansion efforts have also received direct support from the Israeli authorities, despite an official position opposing settlement construction. See also Yesh Din, *The Road to Dispossession: a Case Study — the Outpost of Adei Ad* (February 2013).

[30] Yesh Din, "Land takeover practices employed by Israel in the West Bank". See also the following reports commissioned by the Government of Israel addressing historic law enforcement failures in the West Bank: Talya Sason, "Summary of the opinion concerning unauthorized outposts"; Meir Shamgar, "Commission of inquiry into the massacre at the tomb of the patriarchs in Hebron (26 June 1994); and Yehudit Karp, "The Karp report: investigation of suspicions against Israelis in Judea and Samaria, Jerusalem" (1982).

[31] Figures provided by the Office for the Coordination of Humanitarian Affairs of the Secretariat.

[32] See A/71/355, para. 19.

[33] See A/70/351, paras. 29-36 and 63-66.

sites restricts Palestinians' freedom of movement and prevents equal enjoyment of cultural life and heritage.[34]

22. The management of archaeological and tourism sites by private settler groups came under scrutiny following the intervention by senior officials of the Ministry of Justice on behalf of the settler group Elad. Elad successfully reinstated the original plans for Kedem Compound, a large tourist facility proposed in Silwan, East Jerusalem, after Jerusalem planning bodies had significantly reduced the scope of the plans.[35] A report of the Israeli State Comptroller highlighted the lack of poor oversight by government authorities in relation to Elad's management of tourism and ancient sites and the lack of transparency in relation to links between the organization's management and government entities.

Designation of occupied land for economic activities

23. In the report on Israeli settlements submitted to the General Assembly at its seventy-first session (see A/71/355, para. 4), it was noted that the encouragement of economic activities, including industrial and agricultural activities, within and around settlements represented an additional way for Israel to support settlement expansion besides the allocation of land for settlement homes and infrastructure.[36]

24. Through financial incentives, the Government of Israel has continued to actively encourage commercial development by Israeli and international businesses in and around the settlements. Almost all settlement industrial zones are designated as national priority areas, which carries benefits such as reductions in the price of land, grants for the development of infrastructure and tax breaks for individuals and business enterprises.[37] In its recent report on settlement businesses, Human Rights Watch noted that the physical footprint of Israeli business activity in the West Bank was larger than that of residential settlements. According to Human Rights Watch, industrial zones (1,365 hectares) and agricultural land (9,300 hectares) exploited by Israel in the West Bank occupy a surface area 1.7 times greater than the built-up area of residential settlements (6,000 hectares).[38]

B. Settlement construction and expansion

25. The Israeli policy of construction and expansion of settlements and related infrastructure, and support to privately led settlement expansion initiatives throughout the West Bank continued, and an overall acceleration in settlement expansion was observed during the reporting period. Following a period of significant slowdown in planning and tendering since mid-2014, an overall acceleration in settlement expansion was reported during 2016, as measured against the main indicators of government-led settlement activity: the number of new constructions rose compared with previous years, with the highest number of new constructions in three years recorded during the second quarter of 2016. Moreover, there was an uptick in plans advanced in both East Jerusalem and Area C.[39] Similarly, settler-led initiatives continued to enjoy State support, as evidenced by the

[34] See A/70/351.

[35] See www.haaretz.com/israel-news/.premium-1.745359.

[36] In its resolution 31/36, the Human Rights Council requested the Secretary-General to report on the human rights and international law violations involved in the production of settlement goods and the relationship between trade in these goods and the maintenance and economic growth of settlements.

[37] See https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian.

[38] Ibid.

[39] According to the Israel Central Bureau of Statistics, construction started on 1,723 housing units during the first three quarters of 2016, an increase of 25 per cent compared with the same period in 2015. In Area C, 24 settlement plans involving the construction of 2,264 housing units were put forward without reaching the final approval stage. Fourteen additional plans reached a final approval stage (710 units). The figures represent an increase over 2015 but a decrease compared with 2014. Similarly, in East Jerusalem, plans for 1,572 units were put forward during 2016 compared with 1,285 units in 2015, which represented a significant decrease compared with the 3,300 units proposed in 2014.

growth in privately led East Jerusalem settlement enclaves (see para. 31 below) and continued efforts to retroactively legalize unauthorized Area C outposts.

Housing and infrastructure

26. There were significant developments in planning and construction during the period under review, particularly in East Jerusalem, including the issuance by the Israeli authorities, in November 2015, of a tender for 438 housing units in the settlement of Ramat Shlomo, in the northern periphery of the city.[40]

27. In July 2016, the Israeli media reported on a rare, court-mandated approval of a plan for 600 housing units in the Palestinian village of Beit Safafa.[41] It also reported on advances made in the construction of 560 settlement units in Maale Adumim and of 240 such units in East Jerusalem, which were soon followed by the issuance of tenders for an additional 323 units in those settlements.[42]

28. Other key developments in East Jerusalem included advances in the planning and construction of residential buildings and infrastructure in the southern perimeter of the city by municipal planning authorities. Non-governmental organizations monitoring settlement expansion have highlighted those developments as part of broader efforts by the Israeli authorities to further the establishment of a contiguous Israeli-controlled corridor connecting the Gush Etzion settlement bloc, located in Bethlehem Governorate, to Jerusalem. In that regard, construction began on a new road facilitating access between Gush Etzion and Jerusalem;[43] proposals for housing plans and tenders continued to advance in Gilo settlement,[44] which was expected to enable the expansion of the settlement southward, towards Beit Jala; the construction of the wall resumed south of Beit Jala and west of Al Walajeh; and the construction of a visitors' centre started in an adjacent area located in Beit Jala's agricultural hinterland, which had been designated as a national park in 2013. Furthermore, the construction of a road leading to an undeveloped parcel in nearby Givat HaMatos C raised concerns as an indication of possible future construction plans in the area.[45]

29. An acceleration in the implementation of settlement-related policies and measures in the southern periphery of Jerusalem and in Bethlehem Governorate resulted in the fragmentation of the area, the shrinking of space available for Palestinian development and the separation of rural hinterlands from urban areas. Key concerns emanating from these developments include the impact on the rights of Palestinian residents of the area to freedom of movement, an adequate livelihood and the enjoyment of natural resources.[46]

Support to privately led settlement initiatives in East Jerusalem

30. Israeli civil society organizations reported on the growth of privately led settlement efforts in East Jerusalem, particularly in the city's "historic basin", which saw a 25 per cent increase in the total number of settlers between 2009 and October 2016, to approximately 2,500 settlers.[47] The initiatives are supported by government funding, including through a

[40] See www.peacenow.org.il.

[41] See www.haaretz.com/israel-news/1.728768.

[42] See https://www.un.org/sg/en/content/sg/statement/2016-07-04/un-secretary-general-israeli-decisions-regarding-new-construction.

[43] Ir Amim newsletter available from www.altro.co.il/newsletters/show/8617?key=08df354b3dd7853bae6cc333e526b2dd&value=9a3cdcd0e38da468aea5b504ce87c7a2d1ce4fef: 1260978.

[44] As part of the announcement for the tender of 323 units (see para. 27 above).

[45] While not yet approved at the time of writing, the parcel in question has been designated for 800 housing units. See Ir Amim newsletter available from www.altro.co.il/newsletters/show/9056?key=ebb7138f916d1c7391aeee8ed6e1c804&value=c2e4bb0d506603c6a015881780b407ec41d90f70: 1284691.

[46] Office for the Coordination of Humanitarian Affairs, "Bethlehem Governorate: fragmentation and humanitarian concerns", factsheet (January 2015).

[47] Ir Amim and Peace Now, *Broken Trust: State Involvement in Private Settlement in Batan Al-Hawa, Silwan* (May 2016), p. 5.

security budget allocated by the Ministry of Construction and Housing, totalling approximately US$ 25 million in 2015.[48]

31. Intensified efforts by Israeli settler groups to take control of East Jerusalem properties, often located deep within Palestinian neighbourhoods, have generated an increased risk of evictions of Palestinian families (see also para. 56 below).

Retroactive legalization of outposts in Area C

32. Successive reports to the General Assembly have detailed Israeli support to settlement outposts (erected by settlers without official approval from the Government of Israel) through the provision of funds, infrastructure and security, and through the lack of any action to remove them.

33. While no outpost has been legalized since May 2014, efforts to retroactively approve such settlements took a new form during the period under review, as a draft bill was introduced to avert the impending court-mandated 25 December 2016 deadline for the evacuation and demolition of the outpost of Amona, erected on the private lands of residents of Silwad, Ein Yabroud and Taibeh. The "regularization bill" envisaged the retroactive "regularization" of settlement houses built on private Palestinian property, which would remove key legal obstacles to the retroactive legalization of dozens of unauthorized outposts.[49]

C. Production of and trade in settlement goods

34. The production of and trade in settlement goods raises concerns about the human rights impact on Palestinians caused and exacerbated by business enterprises and States. The human rights obligations of Israel within the Occupied Palestinian Territory stem from the jurisdiction and effective control it exercises as the occupying power. That includes the obligation to protect individuals and communities from adverse human rights impacts by third parties, such as business enterprises, operating in territory under its effective control. Under article 1 common to the Geneva Conventions, States parties have to respect and ensure respect for the Conventions. Accordingly, third States are under the obligation not to recognize the unlawful situation resulting from Israeli settlements, nor to aid or assist in the violations committed by Israel.[50]

35. The European Union is the main trading partner of Israel, with trade worth over 32 billion euros in 2015. The Government of Israel has reportedly estimated that the annual value of industrial goods produced in settlements and exported to Europe is US$ 300 million. Agricultural production provides the main source of income for settlements in the Jordan Valley, with 66 per cent of their produce being exported.

36. Products that are wholly or partially produced in settlements are frequently labelled as coming from Israel, obscuring their actual origin. That allows the exports to be covered under preferential trade agreements with the European Union that exclude settlements. Some measures have been taken to address that issue. During the reporting period, the European Union issued new labelling guidelines for products coming from the West Bank, including East Jerusalem, and the Golan Heights. Under those guidelines, any product originating from a settlement must not be labelled as "Made in Israel" but must clearly be labelled as having been produced in a settlement.

37. While States have a primary duty to protect human rights, there is an independent corporate responsibility to respect human rights applicable to all business enterprises, irrespective of where they operate. That has been recognized in the Guiding Principles on

[48] Ibid, p. 12.

[49] See A/HRC/31/43 and A/71/355. See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21003&LangID=E.

[50] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 157-159, and International Committee of the Red Cross, 2016 commentary on article 1 common to the Geneva Conventions, para. 163.

Business and Human Rights, which are based on existing responsibilities under international law and have been unanimously endorsed by all the States members of the Human Rights Council (see, in particular, A/HRC/17/31, annex, principle 11).

38. The role of Israeli and foreign businesses in supporting and maintaining the existence of the settlements has already been highlighted (see A/67/379 and A/68/376). In its 2013 report, the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, concluded that business enterprises had directly and indirectly enabled, facilitated and profited from the construction and growth of the settlements and that businesses contributed to the maintenance, development and consolidation of the settlements with full knowledge of the liability risks (see A/HRC/22/63, paras. 96-97).

39. Since the fact-finding mission's report, increasing attention has been paid to the activities of business enterprises in relation to settlements. In 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises emphasized that businesses connected to Israeli settlements needed to be able to demonstrate that they neither supported the continuation of an international illegality nor were they complicit in human rights abuses; that they could effectively prevent or mitigate human rights risks; and that they were able to account for their efforts in that regard. The Working Group added that where companies could not prevent or mitigate the risks of being involved in human rights violations through their operations and business relationships, they might need to consider terminating their operations.[51]

IV. Coercive environment resulting from settlement policies and consequent risk of forcible transfer

40. The impact of settlement policies on the living conditions of Palestinians, including their increased risks of individual and mass forcible transfer, continues to be a concern.

41. Moreover, Israel, as the occupying power, may be increasing pressure on Palestinians to move out of their areas of residence through practices and policies that contribute to the creation of a coercive environment in areas under full Israeli control. In previous reports, the Secretary-General has outlined the existence of a coercive environment in parts of Area C and Hebron's H2 and highlighted factors constituting a coercive environment with respect to East Jerusalem.[52] He has also raised concerns about cases where forcible transfer appears to have taken place.[53]

42. The impact of a coercive environment on individuals and communities depends on their specific circumstances and experience. A coercive factor alone or in combination with others may be sufficient to determine the existence of a coercive environment in a given case and its connection with the grave breach of forcible transfer. The list of coercive factors below is not exhaustive.

A. Factors contributing to a coercive environment in the West Bank

43. The factors below contribute to the creation of a coercive environment in areas of the West Bank under full Israeli control.

[51] See www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf.

[52] See A/HRC/24/30, para. 27, A/HRC/31, paras. 46 and 68, A/70/421, para. 36, A/69/348, paras. 12-16, A/HRC/28/80, para. 24, A/HRC/31/43, para. 54, A/69/348, paras. 12-16, A/HRC/25/40, para. 22, and A/71/355, paras. 24-33.

[53] See A/67/372, para. 39, A/HRC/25/40, paras. 18-20, A/69/347, para. 26, and A/71/355, paras. 61-64.

“Relocation” plans and evictions

44. The publicly stated intention of the Government of Israel to relocate or evict thousands of Palestinians currently residing in Area C is a principal source of pressure and coercion for the communities and individuals concerned. In previous reports it was highlighted that the implementation of such plans would entail forcible transfers, except where the individuals affected expressed genuine consent to move.[54] This relates in particular to Israeli plans to relocate some 7,500 Palestinian Bedouin and herders to between three and nine centralized sites[55] and to evict some 1,000 Palestinians living in eight villages in the Massafar Yatta area for the enforcement of a firing zone.[56] It also applies to other eviction and relocation plans affecting 55 Palestinian families in Susya[57] and other communities targeted for relocation outside their areas or residence, such as Dkaika,[58] in southern Hebron Governorate.

45. A history of forced evictions and transfers of entire communities by Israeli authorities places additional pressure on the individuals and communities targeted by these plans.[59]

46. The Secretary-General, the United Nations High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 have pointed to the seizure of Palestinian homes and forced evictions (and the risk of such seizures and evictions taking place) to make way for settlers to move in, as factors suggesting a coercive environment in East Jerusalem.[60] According to the

[54] See A/HRC/25/40, paras. 18-21 and 78, A/67/372, para. 36-37, and A/HRC/24/30, para. 29.

[55] See A/HRC/31/43, paras. 56-60. On 14 June 2016, the Deputy Head of the Israeli Civil Administration, Col. Uri Mendez, referred to nine relocation sites during the “Judea and Samaria” subcommittee meeting.

[56] See A/HRC/24/30, para. 28.

[57] See A/HRC/31/43, paras. 50-54.

[58] The Bedouin community of Dkaika has a population of approximately 450, most of whom are Palestine refugees. The Israeli Civil Administration has proposed relocating the community to one of the nearby villages, in line with the State’s official position expressed on 13 May 2009 and 23 March 2016 in response to a petition submitted to the High Court of Justice by Dkaika residents demanding planning and zoning rights for the community. On 2 November 2016, the High Court ordered that Dkaika residents and the State enter into discussions for 90 days to find a solution regarding planning for the village residents. A temporary protection order against demolitions is in place. While it remains unclear whether planning in that location will be an option for the State, the High Court criticized the State’s proposed relocation plan on the grounds that there was no public need or benefit to transfer residents. See http://rhr.org.il/eng/2016/11/update.

[59] Between 1997 and 2007, the Israeli authorities transferred in three waves some 150 Bedouin families in Jerusalem Governorate to the Al Jabal site despite their opposition to the relocation. See United Nations Relief and Works Agency for Palestine Refugees in the Near East, “Al Jabal: a study on the transfer of Bedouin Palestine refugees” (2013). Experts have assessed that these three waves of displacement amounted to forcible transfer under international humanitarian law. See Théo Boutruche and Marco Sassoli, “Expert opinion on the displacements of Bedouin communities from the central West Bank under international humanitarian law” (September 2014). In 1999, the Israel Defense Forces moved some 700 Palestinian herders out of 12 villages in the Massafer Yatta area, in Hebron Governorate, on the grounds that the area had been designated as a military firing zone. Affected Palestinians were reportedly placed in trucks and removed by force out of the area. See www.acri.org.il/en/2013/03/07/918-whats-the-deal-2. See also A/HRC/24/30, para. 28, and Office for the Coordination of Humanitarian Affairs, “Life in a firing zone: the Massafer Yatta communities” (May 2013). In 1986, 25 families were expelled from the residential area at Susya in southern Hebron Governorate on the grounds that the land had been designated an archaeological site. A second transfer took place from the new site in 2001. See Office for the Coordination of Humanitarian Affairs, “Susiya: a community at imminent risk of forced displacement” (June 2015), Rabbis for Human Rights (http://rhr.org.il/eng) and B’Tselem, “Khirbet Susiya: a village under threat of demolition” (7 August 2016).

[60] See A/70/351, paras. 25-51, and A/HRC/16/71, paras. 20-22. See also the letter dated 30 April 2015 from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in

Israeli non-governmental organizations Ir Amin and Peace Now, at least 55 families were evicted from their homes in 2015 and 2016, and some 300 Palestinian families are under threat of eviction or imminent house demolition in the "historic basin" of the Old City of East Jerusalem.[61] In most cases, the evictions have been initiated by Israeli settler organizations on the basis of landownership claims, as well as claims that the residents are no longer "protected tenants". As a result, 818 Palestinians, including 372 children, are at risk of displacement.[62]

Demolitions

47. Demolitions,[63] the threat of demolitions[64] and the lack of long-term protection against demolitions have been identified as key elements contributing to a coercive environment in the West Bank. Demolitions have been identified as a key coercive factor, in particular for Area C communities targeted for relocation,[65] communities in closed military zones[66] and communities located near Israeli settlements.[67]

48. During the reporting period, the highest number of demolitions of Palestinian homes and structures was recorded in the West Bank, with 874 structures demolished in Area C in 2016, compared with 456 in 2015, and 190 demolitions taking place in East Jerusalem, compared with 79 in 2015, the highest demolitions rate on record.[68] Between 1988 and 2016, the Israeli Civil Administration issued 14,929 orders to demolish around 16,000 Palestinian-owned structures in the West Bank, excluding East Jerusalem, which had been built without permits from the Israeli authorities.

49. The pace of demolitions in East Jerusalem also accelerated to an alarming rate, reaching 190 between 1 January and 31 October 2016, compared with 79 in 2015.[69]

Pressure from government officials

50. Pressure, including threats and harassment during repeated visits from Israeli Civil Administration and other government officials, including members of the Israeli security forces, continued to be documented as an ongoing form of coercion.[70] During visits, in

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the Palestinian territories occupied since 1967 (https://spdb.ohchr.org/hrdb/30th/public_-_UA_Israel_30.04.15_(1.2015)_pro.pdf).

61 Ir Amim newsletter available from www.altro.co.il/newsletters/show/9436?key=d50319441ca2cdde8d7e87ceb1028269&value=c2e4bb0d506603c6a015881780b407ec41d90f70:1284691.

62 Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Palestinians at risk of evictions", 3 November 2016.

63 See A/68/513, paras. 30-34, A/HRC/25/38, paras. 11-20, and A/HRC/31/43, para. 44.

64 See A/HRC/28/80, para. 24, and A/69/348, para. 13.

65 See A/HRC/31/43, paras. 46 and 68, A/67/ 372, para. 55, A/HRC/24/30, A/69/348, para. 13, A/HRC/25/40, paras. 18-20, and A/HRC/28/45, para. 53.

66 Approximately 18 per cent of Area C has been designated by the Israeli authorities as "firing zones"; 38 Palestinian communities are located in such zones. Because the Israeli Civil Administration prohibits construction in firing zones, wide-scale demolitions frequently take place. During 2016, at least five communities located in areas designated as firing zones experienced demolitions, including Halaweh and Jinba, in the Massafer Yatta area of Hebron, and are at risk of being forcibly transferred to allow implementation of firing zone 918; Ein ar Rashash (Ramallah, firing zone 906); Al Jiftlik-abu al Ajaj (Jericho Governorate) and Khirbet Tana in the northern Jordan Valley (firing zone 904). Office for the Coordination of Humanitarian Affairs, "Wide-scale demolitions in Khirbet Tana", 4 March 2016.

67 See A/HRC/28/45, para. 45, A/HRC/22/63, paras 32-38, and A/HRC/67/375, paras. 10-11.

68 The Office for the Coordination of Humanitarian Affairs began collecting data on demolitions in 2009.

69 Ir Amim newsletter available from www.altro.co.il/newsletters/show/9502?key=86ffe4a161ed2848474b99ff41b71bac&value=c2e4bb0d506603c6a015881780b407ec41d90f70:1284691.

70 In Khirbet Tell el-Himma (northern Jordan Valley), the Office for the Coordination of Humanitarian Affairs has documented regular harassment by officials of the Israeli security forces and settlers during visits to the community following the demolition of homes and other structures in September

particular following demolitions, officials have reportedly solicited the relocation or removal of the affected individuals outside their area of residence and have threatened to transfer them out forcibly.[71]

51. Even where individuals may express consent to relocate, including formal expressions of consent, the transfer would be forcible, and in violation of international law, unless the affected individuals express genuine consent.[72]

Impact of military operations and settler violence

52. In Hebron's H2, the general sense of insecurity caused by the heavy military presence and security operations, which often involve the use of force by Israeli security forces, as well as harassment and arbitrary arrests, contribute to the creation of a coercive environment.[73] Meanwhile, Area C communities located inside and around areas defined by Israel as "firing zones" continued to experience a coercive environment, notably as a result of military training exercises, including with live fire. The Office for the Coordination of Humanitarian Affairs has documented such training exercises causing displacement during the reporting period.[74]

53. For communities located in close proximity to settlements and known hotspots of settler violence, violence and harassment by settlers exacerbate the coercive nature of the environment. Nonetheless, the frequency of reports of such incidents dropped notably during the reporting period.[75]

Restrictions on freedom of movement and access to essential services

54. As noted by the Middle East Quartet, the policy of denial of Palestinian development has extended to the "complex system of physical and administrative restrictions on the movement of people and goods, which Israel justifies as necessary for security", including closures, checkpoints, limits to access to natural resources and agricultural land, and impediments to accessing basic services, including medical care and education.[76]

55. Those restrictions and their impact have previously been identified as directly contributing to the coercive environment that exists in areas under full Israeli control.[77] Similarly, interference by Israeli authorities in the provision of humanitarian assistance and

2016. See Office for the Coordination of Humanitarian Affairs, Monthly Humanitarian Bulletin (October 2016). In January 2016, the Office of the United Nations High Commissioner for Human Rights recorded the testimonies of Abu Nwar residents referring to threats received from Israel Civil Administration officials and a liaison officer following the demolition of five residential and other structures on 6 January 2016, leaving 26 refugees, including 17 children, of whom 4 were living with disabilities, displaced and without a home in the middle of winter. In the following days, on 10 and 14 January, humanitarian materials donated by the international community as part of the post-demolition response were confiscated by the Administration.

[71] For further reports on intimidation and threats related to communities in the outskirts of Jerusalem, see A/70/421, para. 46, and A/HRC/31/43, para. 59. See also www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families.

[72] See A/67/372, para. 37.

[73] See A/71/355, paras. 25-50.

[74] Al-'Aqaba community in the northern Jordan Valley was exposed to sustained live fire inside the residential area for two days while an Israeli military training exercise was being conducted in the vicinity. Residents of the nearby community of Humsa al-Bqai'a were also temporarily displaced as a result. See Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin — Occupied Palestinian Territory (October 2016).

[75] Systematic intimidation by Israeli settlers has created a coercive environment in Susiya. See A/HRC/31/43, para. 54, and footnote 79 above. Incidents of intimidation and physical violence by settlers and Israeli security forces against Bedouins in Umm al-Khair have been documented (see A/68/513, para. 37).

[76] Report of the Middle East Quartet of July 2016, p. 6. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[77] See A/71/355 and A/HRC/31/43.

the destruction of such assistance in Area C has heightened the risk that affected communities will be forcibly transferred.[78]

Additional factors contributing to a coercive environment

56. Other factors contributing to a coercive environment include the strict residency regime for East Jerusalem residents and restrictions on family unification between residents of East Jerusalem and other parts of the West Bank.[79]

57. Similarly, policies and practices in the context of the five-decade-long Israeli occupation can contribute to a coercive environment, notably the confiscation by the Government of Israel of Palestinian land and restrictions on access to and control over natural resources, including water, which impede the development of the Palestinian economy; restrictions on the freedom of movement of Palestinians in the West Bank, including East Jerusalem; the lack of access to effective legal remedies; and the implementation of collective punishment measures such as punitive demolitions.

V. Settlements in the occupied Syrian Golan

58. Settlement expansion and land appropriation by the Government of Israel in the occupied Syrian Golan continued in direct violation of international law. In October 2016, the Government reportedly approved the construction of 1,600 new homes in the illegal settlement of Katzrin.[80] As noted in previous reports, Israeli settlements in the Golan are encouraged through financial incentives and a disproportionate allocation of water resources, contributing to a higher agricultural yield for settlers.[81] The Government is also reportedly seeking to appropriate approximately 20,000 acres of occupied land to create Hermon national park. The land in question is currently used for agriculture and housing by the inhabitants of the nearby Syrian towns of Majdal Shams and Ein Qynia.[82] The appropriation of the land would severely restrict the development and expansion of the town of Majdal Shams.[83]

59. The Israeli authorities reportedly demolished a home in the Syrian Golan for the first time on 7 September 2016. The house was in the village of Majdal Shams and it was demolished on the basis that it had been built without the necessary permit.[84] Discriminatory land, housing and development policies established by the Israeli authorities have made it difficult for Syrians to obtain building permits, with the result that Syrian towns and villages are increasingly overcrowded.[85] The human rights organization Al-Marsad reported that a number of Syrian homeowners had received demolition notices; the organization expressed concern that the first demolition could mark the beginning of a new policy of home demolitions.[86]

60. Of further concern are reiterations by senior Israeli government officials, including the Prime Minister, during 2016 that Israel would never give up its claim to the Golan Heights. The Secretary-General has repeatedly reaffirmed the continuing validity of Security Council resolution 497 (1981), in which the Council decided that the Israeli

[78] Approximately 170 European Union humanitarian structures were demolished between 2009 and mid-2016, of which 91 were demolished in the first six months of 2016. See www.haaretz.com/israel-news/1.733729 and www.unrwa.org/newsroom/official-statements/un-officials-call-immediate-revocation-plans-transfer-palestinian.

[79] See www.btselem.org/jerusalem/revocation_of_residency.

[80] See www.timesofisrael.com/liveblog_entry/israel-okays-1600-new-homes-in-golan-heights.

[81] See A/HRC/28/44, para. 54, and A/HRC/31/43, para. 64.

[82] See http://golan-marsad.org/al-marsad-calls-on-international-community-to-act.

[83] See http://golan-marsad.org/press-release-al-marsad-submits-objection-to-hermon-national-park-plan.

[84] See http://golan-marsad.org/press-release-israeli-authorities-demolish-home-in-majdal-shams-in-the-occupied-syrian-golan/

[85] Ibid.

[86] Ibid.

decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights was null and void and without international legal effect.

VI. Conclusions and recommendations

61. **Israeli settlement activity is incompatible with the obligations of Israel under international law. Settlement activity is a key driver of need for humanitarian assistance in the West Bank, including East Jerusalem, and lies at the core of a range of human rights violations. Israeli settlement activity further constitutes one of the main obstacles to a viable Palestinian State. The significant role that the production of and trade in settlement goods plays in helping to support and maintain settlements is also of concern.**

62. **Israel must implement all relevant United Nations resolutions, including Security Council resolution 497 (1981), and withdraw from territory it has occupied since 1967. To meet its obligations under international law, Israel must stop building settlements, reverse any settlement development activity and make full reparations to the individuals and communities concerned.**[87]

63. **Within the scope of its obligation to respect and ensure respect for human rights within the Occupied Palestinian Territory, the Government of Israel has the duty to protect the Palestinian population against human rights abuses by third parties, including business enterprises. It should implement the Guiding Principles on Business and Human Rights and, in particular, take the legislative, administrative policy and remedial actions necessary to prevent, investigate, punish and redress abuses. The Israeli authorities must rescind all policies and practices that, directly or indirectly, are likely to lead to the forcible transfer of Palestinians, including policies and practices that contribute to the creation of a coercive environment that forces people to leave their communities. Specifically, the Israeli authorities must:**

(a) **Refrain from any initiative to relocate communities from Area C in contravention of international law;**

(b) **Cease the implementation of a planning and zoning regime that is discriminatory and restrictive and that facilitates the construction and expansion of settlements and the wall, in violation of international law;**

(c) **Cease the demolition of the homes and private property of Palestinians and take all measures to prevent violence and other coercive measures perpetrated by public officials or settlers;**

(d) **Ensure that any incident of violence by private actors, including settlers, against Palestinians and their property are investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies in accordance with international standards.**[88]

64. **Third States should provide guidance on implementing the Guiding Principles on Business and Human Rights to business enterprises domiciled in their territory or within their jurisdiction that operate in conflict-affected areas, including in the context of military occupation, such as in the Occupied Palestinian Territory.**

65. **Business enterprises should undertake human rights due diligence in order to identify, prevent, mitigate and account for how they address any adverse human rights impact on Palestinians they may cause or contribute to, or which may be directly linked to their operations, products or services.**

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[87] Draft articles 30 and 31 of the draft articles on responsibility of States for internationally wrongful acts, see *Yearbook of the International Law Commission 2001*, vol. II (Part Two), p. 28.

[88] See CCPR/C/ISR/CO/4, para. 16.

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Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan

Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, the United Nations High Commissioner for Human Rights describes the expansion of the settlement enterprise of Israel, examines the existence of a coercive environment in occupied East Jerusalem, and addresses issues relating to Israeli settlements in the occupied Syrian Golan. The report covers the period from 1 November 2016 to 31 October 2017.

* The present report was submitted after the deadline in order to reflect the latest developments.

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I. Introduction

1. The present report, submitted to the Human Rights Council pursuant to its resolution 34/31, provides an update on the implementation of that resolution from 1 November 2016 to 31 October 2017. It is based on monitoring and other information-gathering activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information provided by other United Nations entities in the Occupied Palestinian Territory, and from Israeli and Palestinian non-governmental organizations and civil society in the Occupied Syrian Golan. It should be read in conjunction with recent relevant reports of the Secretary-General and of the High Commissioner to the General Assembly and to the Council (A/72/564, A/72/565, A/HRC/37/38 and A/HRC/37/42). The quarterly updates of the Secretary-General presented to the Security Council on the implementation of Council resolution 2334 (2016) also provide relevant information.[1]

2. During the period under review, the Israeli settlement enterprise continued unabated in the West Bank, including East Jerusalem, with significant new developments. Settlement expansion accelerated, doubling the settlement housing advancement in Area C and East Jerusalem when compared with the previous reporting period, despite a slowdown in the commencement of new construction. The Government of Israel declared that establishing settlements in the West Bank was a natural right of Israeli citizens.[2] Conditions contributing to a coercive environment, including a large number of demolitions, forced evictions and acts of settler violence, remained a serious concern. The High Commissioner examines the developments on settlement expansion and the creation of a coercive environment in occupied East Jerusalem.

II. Legal background

3. International human rights law and international humanitarian law are concurrently applicable in the occupied Palestinian territory, namely Gaza and the West Bank, including East Jerusalem. In particular, Israel is bound by the obligations of an occupying Power as set out by international humanitarian law. A detailed analysis of the legal framework in relation to the Occupied Palestinian Territory and the occupied Syrian Golan is contained in recent reports of the Secretary-General (A/HRC/34/38 and A/HRC/34/39).

III. Activities related to settlements

4. During the period under review, a sharp increase in settlement planning was witnessed, despite a slowdown in the actual commencement of new construction. Significant political proposals, including draft laws aimed at "regularizing" settlement outposts and changing the boundaries of Jerusalem, were presented, advanced or adopted. Demolitions and evictions of Palestinians in Area C continued.

A. Settlement expansion

1. Land designation, planning, zoning and tenders

5. Settlement planning accelerated, with plans for almost 10,000 housing units advanced for construction in Area C and East Jerusalem – more than double the number during the previous reporting period. Also included in the plans were some 6,500 housing units in

[1] Available from the webpage of the Office of the United Nations Special Coordinator for the Middle-East Peace Process at https://unsco.unmissions.org/security-council-briefings-0.

[2] The preliminary response of the Government of Israel submitted to the High Court of Justice on 21 August 2017 to the petition against the "Regularization" Law is available from https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/חוק+ההסדרה/Govenment+response+to+regulation+law+petition.pdf (in Hebrew).

Area C, about 300 of them reaching the final stage of approval. In East Jerusalem, some 3,100 housing units were advanced, about 800 of which reached the final stage of approval.

6. According to information obtained from the Office of the United Nations Special Coordinator in the Occupied Territories, during the period under review, 18 tenders for a total of 3,166 housing units in West Bank settlements were announced, as against only five tenders for 673 housing units during the previous reporting period. As at December 2017, only two of the tenders for a total of 49 units had been published and opened for bidding. No tenders were issued for East Jerusalem settlements. Ir Amim, a non-governmental organization, informed OHCHR that Israeli authorities conditionally approved building permits for 176 housing units in Nof Tzion, in the heart of the East Jerusalem neighbourhood Jabal Al Mukkaber, pending documentation proving land ownership. If approved, the expansion would make Nof Tzion the largest settlement within a Palestinian neighbourhood in East Jerusalem.

7. On 28 May 2017, the Government of Israel established a new settlement, Amihai, advancing hundred housing units for 41 families evicted from the Amona outpost (A/72/564, para. 6). The Government is expected to spend 160 million shekels on the project, including 40 million in compensation to the evicted settlers.[3]

8. In October, media sources reported that Israel had approved building plans for 31 settlement units in the Beit Romano settlement in Hebron old city. If realized, it would be the first time Israeli settlements are built within the city area in 15 years. Also in October, the Israeli Civil Administration approved the construction of a new settlement of 86 housing units outside Kochav Yaacov settlement, for the settlers of Migron, an evacuated outpost.[4]

2. Settlement construction

9. According to data obtained from the Israeli Bureau of Statistics, the rate of construction starts in Area C settlements witnessed a decline of more than 50 per cent during the first three quarters of 2017 (1,120 units in nine months) as against 2016 (3,027 units in 12 months). In East Jerusalem, building permits were issued for the construction of 770 housing units in Gilo and for constructions in Ramat Shlomo, Pisgat Ze'ev and Ramot.[5]

B. Consolidation of settlements

1. Unilateral changes to the boundaries of the Municipality of Jerusalem

10. In addition to the consolidation and expansion of settlements in the West Bank, which undermine the future implementation of a two-State solution (A/HRC/34/38, para. 15), Israeli lawmakers continued to promote legislative steps to change the boundaries of the Municipality of Jerusalem. An amendment to the Basic Law: Jerusalem, Capital of Israel passed a first reading in the Knesset on 27 July 2017.[6] The bill further constrains territorial concessions of any part of Jerusalem to a "foreign entity" by requiring a qualified majority of two thirds in the Knesset. At the same time, the bill encompasses further amendments to the Basic Law that would, inter alia, allow future changes to the municipal borders of Jerusalem, including the placing of Palestinian neighbourhoods under separate municipal authorities.

11. Another legislative initiative with direct implications for the boundaries of Jerusalem is the "Jerusalem and its Daughters" bill,[7] which aims at including the settlements of Ma'aleh Adumim, Beitar Illit, Gush Etzion, Efrat and Givat Ze'ev under the

[3] Yotam Berger, "Israel's PM seeks huge budget hike for relocation of West Bank settlement", *Haaretz*, 18 August 2017.

[4] Ibid.

[5] Office of the United Nations Special Coordinator for the Middle-East Peace Process, Security Council briefing 20 June 2017 (2334).

[6] On 2 January 2018, a modified version of amendment No. 2 to the Basic Law passed the second and third readings.

[7] As at November 2017, the bill was pending a vote before the Ministerial Committee for Legislation.

jurisdiction of Jerusalem Municipality as "sub-municipalities". The bill would also extend the status of sub-municipalities to the Palestinian neighbourhoods of Shu'fat Refugee Camp, Anata and Kufr Aqab, all part of the Jerusalem Municipality but located beyond the wall. Discussion of the bill by the Government was blocked by the Prime Minister in October 2017, citing the need to maintain "coordination" with the United States of America.[8] If passed into law, it would not only effectively change the demographic balance in the Municipality of Jerusalem in favour of a Jewish majority, but also amount to a de facto annexation of some of the largest settlements in the West Bank.[9]

2. Hebron

12. On 31 August 2017, Israel issued military order No. 1789 establishing a "civil services administration" for settlements in the area of Hebron under Israeli control, H2. By upgrading the status of settlements, the order confers legal personality to the new administration and specific powers, such as the power to purchase and renovate property, provide municipal services, and legally represent the settlers. This amounts to a consolidation of the settler presence in Hebron, in violation of international humanitarian law.[10]

13. Impediments to Palestinians' freedom of movement were further consolidated in the H2 area of Hebron with the addition of new closures and the fortification of existing checkpoints. This has led to a sharp deterioration in the living conditions and an increased coercive environment for affected Palestinians in the H2 area of Hebron (A/71/355, para. 25). According to information gathered by OHCHR, at least three families (18 people) have left since May 2017 because of the coercive factors in the area (A/71/355, paras. 60-64).

14. On 26 July 2017, settlers moved into the second and third floors of a house belonging to the Abu Rajab family, in the H2 area of Hebron. In 2012 and 2013, other settlers had taken over parts of the house, claiming that a settler-run estate company had purchased them. At the time, the High Court of Justice had ordered the prompt evacuation of the settlers, on the grounds that ownership deliberations were ongoing. On 27 August 2017, the Court decided that the presence of the settlers in the house was illegal and that they should be evicted. On 3 September 2017, however, the Supreme Court suspended the eviction order until further notice. Since the house has been occupied by settlers, the area witnessed an intensification in the presence of Israeli security forces and settlers, and of related violence (see para. 22 below).

3. Regularization of outposts

15. On 22 October 2017, the High Court of Justice confirmed a 2016 ruling that 15 settlement units in the outpost of Netiv Ha'avot in Gush Etzion, built on private Palestinian land, had to be demolished. The State of Israel intends to legalize under national law 43 units in the outpost, built without the State's approval but on State land (see para. 22 below). A new outpost was created outside Halamish settlement a few days after a Palestinian killed three Israelis in the settlement, on 21 July 2017, but it was later dismantled.[11]

16. No outposts were legalized during the period under review. Israel last legalized an outpost in May 2014. In February 2017, however, the Knesset adopted the so-called "regularization law", which could allow for the retroactive legalization of outposts built on private Palestinian land. If implemented, the law would apply to more than half of existing Israeli outposts and approximately 3,000 additional housing units built illegally within existing settlements (A/72/564, paras.14-15). As at November 2017, the law had yet to be

[8] Becca Noy, "Pressure from Washington behind Greater Jerusalem bill vote delay", *Jerusalem on Line*, 29 October 2017.

[9] See also Nir Hasson and Jonathan Lis. "Israeli minister to push plan aimed at reducing number of Arabs in Jerusalem", *Haaretz*, 29 October 2017.

[10] Fourth Geneva Convention, art. 49.

[11] Jacob Magid, "Work starts on new outpost outside Halamish after deadly terror attack", *Times of Israel*, 23 July 2017.

implemented following petitions filed against it with the High Court of Justice and a temporary injunction issued by the Court on 17 August 2017.[12]

17. The Israeli Attorney General has publicly opposed the regularization law and requested the court to suspend its application pending a final decision. At the same time, however, he confirmed an alternative way to expropriate privately owned Palestinian land.[13] In a legal opinion issued on 7 November 2016, the Attorney General approved the use of Military Order No. 29 (1967) to legalize settlement constructions built on private Palestinian land, when built in good faith, based on the assumption that it was on State land, and with adequate compensation to the lawful landowners.[14] The regularization law might therefore not be necessary for Israel to achieve the retroactive legalization under national law of a large number of houses in settlements and of many outposts built on privately owned Palestinian land.[15]

C. Settlement infrastructure

18. On 25 October 2017, the Prime Minister of Israel vowed to promote an 800 million shekel plan for bypass roads in the West Bank. According to the non-governmental organization Peace Now, the purpose is to connect settlements in the West Bank with Israel and the main West Bank traffic arteries, while reducing the need for settlers to drive through Palestinian towns and villages. The organization warns that projects of this kind have entailed the confiscation of private Palestinian land.[16]

19. Construction of the East Jerusalem ring road between the Palestinian communities of Al-Za'ayyim and Anata commenced in September 2017. The road is separated by a wall, with a road for Palestinians on one side and a road for Israelis on the other. Once completed, it will play a significant role in the development of the E1 settlement infrastructure (A/70/351, para. 18). Construction of the wall continued south of Jerusalem, through the Cremisan Valley – at imminent threat of being cut off from the West Bank – and around the village Al-Walaja, further isolating this Palestinian village situated near the settlements of Gilo and Har Gilo.

D. Settler violence

20. Settler violence has increased since the previous reporting period, reaching a peak during the first half of 2017. During the period under review, the Office for the Coordination of Humanitarian Affairs documented 147 incidents of settler violence, as against 104 in the previous reporting period. The incidents resulted in Palestinian casualties (three killed and 75 injured, including 19 children), and 110 of the incidents led to damage to Palestinian property.

21. On 6 September, 16-year-old Usama Daghlas was, according to the victim, attacked 500 m from his house, in Burqa village, by 10 to 20 settlers who beat him unconscious.

[12] Besides delaying the application of the law, the injunction halts the enforcement of demolition orders on illegal settlement construction on private Palestinian land in the West Bank.

[13] In his response to the High Court of Justice to the petitions against the law submitted on 22 November 2017, the Attorney General, while opposing the law, explained that other more proportionate tools could be used to achieve the same goals, referring to his legal opinion of 8 November 2017, where he asserted that, on the basis of a recent decision of the High Court of Justice, privately owned Palestinian land could be expropriated for public purposes in settlements where only the settlers can benefit from it. See http://peacenow.org.il/wp-content/uploads/2017/11/AG-response-expropriation-law.pdf (in Hebrew).

[14] On 19 November 2017, the Government of Israel relied on the opinion in a petition pending before the High Court of Justice to justify the expropriation of 45 dunams of private Palestinian land.

[15] See *Haaretz*, Yotam Berger, "Israel's Attorney General paves way for legalization of at least 13 West Bank outposts", 19 November 2017; and "Israeli attempt to 'legalize' settler homes built on private Palestinian land gets legal backing", 23 November 2017.

[16] Peace Now, "800 million shekel plan for bypass roads in the West Bank approved by Netanyahu", 26 October 2017.

Over the course of approximately an hour, the settlers stripped him naked and dragged him over a hillside. A shepherd found him two hours later, unconscious and bruised. Even though a complaint was filed, the investigation was soon closed by the police given that the perpetrators remained unidentified.

E. Discriminatory law enforcement

22. Since the Abu Rajab house was occupied in the H2 area of Hebron on 25 July 2017, the area has witnessed an increase in settler presence and specific incidents of settler violence. According to monitoring by OHCHR, the week after the settlers took over the house, 12 Palestinians were injured by settlers. On 4 August 2017, OHCHR documented a group of settlers throwing stones at Palestinians along the road between Kiryat Arba settlement and the Abu Rajab house; two Palestinians sustained head injuries, and one had a broken hand. According to witnesses, Israeli Security Forces did not intervene to protect the two injured Palestinians, but arrested them, without first ensuring their access to medical assistance. The Palestinians were released an hour later, then transferred to a Palestinian ambulance. According to monitoring by OHCHR, on 9 September 2017, settlers attacked a 55-year-old Palestinian woman living in the Abu Rajab house while she was in the courtyard. Witnesses stated that settlers threw stones from the roof of the three-story building, hitting the woman twice on the head; she was subsequently hospitalized. Although the family filed a complaint with the police, as at November 2017, OHCHR was not aware of any developments in the case.

23. As the occupying Power, Israel has the obligation to uphold public order and safety in the Occupied Palestinian Territory and to protect the Palestinian population from all acts of violence.[17] Israel also has the obligation to exercise due diligence to prevent, investigate, prosecute, punish and remedy any harm caused to Palestinians (A/HRC/34/38, paras.13, 36-37). It is common, however, for the Israeli Security Forces neither to prevent incidents nor to react to attacks occurring in their presence (A/72/564, paras. 20-22). Israel has also repeatedly failed in its obligation to do its utmost to investigate cases of settler violence and prosecute perpetrators. Settler violence impedes the enjoyment of numerous human rights by the Palestinian population affected (A/71/355, para. 50; A/HRC/34/38, para. 36).

F. Impact of settlements on Palestinian communities at risk of forcible transfer

24. The publicly stated intention of the Government of Israel to relocate thousands of Palestinians residing in Area C remains a key concern, as well as a source of pressure contributing to a coercive environment (A/HRC/34/39, para. 44; A/72/564, paras. 36-57). Some 7,500 persons belonging to 46 Bedouin communities, mostly refugees, are at particular risk. According to the Office for the Coordination of Humanitarian Affairs, during the period under review, 488 Palestinian-owned structures were demolished, including 319 in Area C, in the West Bank, causing the displacement of 684 people (including 414 in Area C), including 383 children (236 children in Area C).

25. On 24 September 2017, the Israeli Civil Administration informed the community of Khan al Ahmar that it would be relocated by mid-2018. Around 140 Palestinians live in this severely underserviced village in the Jerusalem periphery and are at risk of forcible transfer. In September, the Minister of Defence of Israel warned that plans to demolish Susya, a Palestinian village located in Area C and the target of multiple demolitions in the past, were proceeding.[18]

[17] Regulations respecting the Laws and Customs of War on Land (Hague Regulations), arts.43 and 46; Fourth Geneva Convention, art. 27.

[18] Yotam Berger, "After heavy diplomatic pressure, Israel moves to delay demolition of Palestinian village of Sussia", *Haaretz*, 2 November 2017.

IV. Impact of settlements: a case study of the coercive environment in East Jerusalem

26. Since the occupation of East Jerusalem by Israel in 1967, more than one third of the territory of East Jerusalem has been expropriated for the construction of Israeli settlements (A/66/364, para. 13). Jerusalem has 323,700 Palestinian residents, accounting for 37 per cent of the population of the city. According to sources, in East Jerusalem, 210,000 Israeli settlers live in large settlement blocs, while another 2,000 to 3,000 live in small enclaves in the heart of Palestinian neighbourhoods.[19] Unlike settlements in the West Bank, those in East Jerusalem are located within densely populated Palestinian neighbourhoods, causing significant friction and violence.

27. The Secretary-General has previously voiced concerns about the impact of settlement policies on the living conditions of Palestinians, including the increased risk of individual and mass forcible transfer (A/HRC/34/38, para. 23; A/HRC/34/39, para. 40; A/72/564, para. 27). There is a concern that Israel, as the occupying Power, is increasing pressure on Palestinians living in areas under full Israeli control through practices and policies that contribute to a coercive environment, compelling them to move out of their areas of residence (A/HRC/34/39, paras. 40-42).

28. International humanitarian law prohibits the transfer of a population by an occupying State into an occupied territory, and individual or mass forcible transfer or deportation of the population of an occupied territory, regardless of the motive.[20] Such a transfer amounts to a grave breach of the Fourth Geneva Convention and is therefore a war crime.[21] Forcible transfer does not necessarily require the use of physical force by authorities; it may be triggered by specific factors that give individuals or communities no choice but to leave, amounting to what is known as a "coercive environment". Any transfer without the genuine and fully informed consent of those affected is considered forcible. Genuine consent to a transfer cannot, however, be presumed in an environment marked by the use or threat of physical force, coercion, fear of violence, or duress (A/HRC/34/38, para. 28; A/HRC/34/39 para. 41). Human rights, such as the rights to freedom of movement, privacy and family life,[22] in addition toeconomic, social and cultural rights (A/HRC/16/71, para. 24), are usually violated within the context of forcible transfer.

A. Discriminatory planning and zoning

29. Municipal planning practices differ in the case of Israelis in West Jerusalem, Palestinians in East Jerusalem and Israeli settlers in East Jerusalem. As reiterated in previous reports of the Secretary-General and the Committee on the Elimination of Racial Discrimination, the planning regime adopted by Israel is discriminatory and incompatible with requirements under international law (A/HRC/25/38, paras. 11-14; A/HRC/31/43 paras. 18 and 45; A/HRC/34/38, para. 25; CERD/C/ISR/CO/14-16, para. 25). Its planning policies and processes in East Jerusalem and Area C contravene the principle of non-discrimination in relation to the right to an adequate standard of living, including the right to housing.[23]

30. Israeli authorities have allowed for the planning and zoning of only 13 per cent of East Jerusalem for Palestinian residential construction, most of which is already built up. According to the Association for Civil Rights in Israel (ACRI), for more than a decade, local and district planning authorities have not advanced a single outline plan in the Palestinian neighbourhoods despite the fact that, over the same period, the Palestinian population in East Jerusalem increased by more than 25 per cent.[24] In areas where

[19] Daniel Seidemann, *The Israeli Settlement Enterprise in East Jerusalem, 1967-2017* (Jerusalem, 2017), p. 15. [20] See Fourth Geneva Convention, art. 49.

[20] See Fourth Geneva Convention, art. 49.

[21] Fourth Geneva Convention, art. 147; Rome Statute, art. 8 (2) (b) (viii).

[22] International Covenant on Civil and Political Rights, arts. 12 and 17.

[23] International Covenant on Economic, Social and Cultural Rights, art. 11. See also A/72/564, para. 25.

[24] See http://jerusaleminstitute.org.il/.upload/yearbook/2007_8/shnaton%20C0106.pdf.

construction is permitted, the application process for building permits is prohibitive for many Palestinians owing to, inter alia, the high costs involved, the difficulty of providing proof of land ownership, and the criteria of requisite access roads and other infrastructure often missing in Palestinian neighbourhoods. The process can take several years, and the actual prospects of a permit being granted are low.[25] According to the non-governmental organization Bimkom, there are approximately 32,000 legal housing units for the 323,700 Palestinians in Jerusalem, a result of the municipality having issued only 5,000 construction permits since 1967 and built little public housing for Palestinians. Consequently, a third of Palestinian homes in East Jerusalem have been built without the required Israeli permit, a fact that Makes them subject to demolition orders, putting at least 100,000 Palestinians at risk of displacement.[26]

31. The planning, zoning and settlement policies in East Jerusalem prevent the normal development and natural growth expansion of Palestinian families, sometimes forcing people to move to other neighbourhoods or to leave Jerusalem owing to the lack of available housing. The shrinking physical space for Palestinians to live in East Jerusalem is compounded by the contraction of public and cultural public space. According to the Jerusalem Legal and Human Rights Centre, 24 Palestinian civil society organizations and cultural institutions have been closed by the Israeli authorities since 2001 on the basis of allegations of relations with political parties or the Palestinian Authority. During the period under review, at least eight cultural or political Palestinian events were prohibited in East Jerusalem.

32. While the planning and construction laws are enforced on Palestinian communities, illegal construction by settlers in the same neighbourhoods has been tolerated by the municipality. One example is Beit Yonatan, an illegally built six-story building in Silwan. Proceedings by the legal adviser of Jerusalem municipality led to an order to evacuate the building, upheld by the High Court. The mayor of Jerusalem has, however, refused to implement the ruling.[27]

B. Home demolitions and forced evictions, or the threat thereof

33. The Secretary-General and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 previously noted that the seizure of Palestinian homes and forced evictions, and the risk thereof, often to allow settlers to move in, contributed to a coercive environment in East Jerusalem (A/HRC/16/71, paras. 20-22; A/HRC/34/39, para. 46; A/70/351, paras. 25-51). Demolitions leading to forced evictions also violate the right to an adequate standard of living, including the right to housing (A/72/564, para. 26).[28] Demolitions carried out by the Israeli authorities in the context of discriminatory planning or for punitive purposes are unlawful under international law, given that they lead to forced evictions. They also violate international humanitarian law, which expressly prohibits the destruction or confiscation of private property (see A/HRC/34/38, paras. 21-22).[29] If not justified by military necessity, and carried out unlawfully and wantonly, the extensive destruction and appropriation of property amounts to a grave breach of article 147 of the Fourth Geneva Convention and constitutes a war crime.[30] According to the Office for the Coordination of Humanitarian Affairs, during the

[25] Aviv Tatarsky and Architect Efrat Conhen-Bar, *Deliberately Planned: A Policy to Thwart Planning in Palestinian Neighborhoods of Jerusalem*, Ir Amim and Bimkom, February 2017, p. 9.

[26] Office for the Coordination of Humanitarian Affairs, "Significant increase in risk of displacement in East Jerusalem". *Monthly Humanitarian Bulletin*, August 2017.

[27] Seidemann, *The Israeli Settlement Enterprise* (see footnote 19), p. 103. See also Ronen Medzini, "Barkat delays Beit Yonatan eviction", ynetnews.com, 26 December 2010.

[28] International Covenant on Economic, Social and Cultural Rights, art. 11. See also Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions.

[28] International Covenant on Economic, Social and Cultural Rights, art. 11. See also Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions.

[29] See Hague Regulations, art. 46; and Fourth Geneva Convention, arts. 53 and 56.

[30] See also the statute of the International Criminal Court, art. 8 (2) (a) (iv).

period under review, 157 constructions were demolished in East Jerusalem, leading to the displacement of 241 people, including 138 children.

34. OHCHR followed the case of East Jerusalem residents Saleh Ibrahim Turk and his family, who were displaced twice owing to demolitions, and relocated to Shuafat refugee camp, an area beyond the wall, within the Jerusalem municipal border. The family's first house in 'Anata, East Jerusalem, was demolished in 2007 because it was on the route of the wall. After buying land in Isawiya, East Jerusalem, the family built a house without a permit, as they were unable to secure one. They received a demolition order in 2013; despite their efforts to postpone the demolition and the payment of heavy fines, the house was demolished on 14 February 2017, without further warning. The family of 10 currently lives on the ninth floor of an unfinished building, in Shuafat refugee camp. Owing to the insecurity of the building and the many stairs, the mother and several of her children rarely leave the house. Their livelihood has been considerably affected, given that they previously relied on farming and livestock, and their movement is restricted because of the checkpoint and the frequent closures linked to clashes.

35. OHCHR monitored the situation of another family that moved from East Jerusalem to another part of the West Bank after the demolition of their house in early 2017. Although their house was located in a zone designated for construction, the area did not have a zoning plan and the house was therefore built without a permit. After the demolition of their house, the family moved to Area C in the West Bank, also owing to the lack of other housing options. The children have to commute an additional hour, including through a checkpoint, to reach their school in Jerusalem. The family now risks the revocation of its Jerusalem residency status as it lives outside the municipal border, which would lead to their permanent displacement from Jerusalem.

36. Both cases of displacement due to house demolition are the direct consequence of the implementation by Israel of a discriminatory planning and zoning regime in East Jerusalem, notably in violation of the right to an adequate standard of living, including the right to housing. Such cases of displacement may also amount to forcible transfer.

37. According to the Office for the Coordination of Humanitarian Affairs, the majority of families whose homes were demolished in East Jerusalem between 2012 and 2016 stayed in the same community; 20 per cent of the families moved from the East Jerusalem side of the wall to the other side; of these, 65 per cent moved to Jerusalem municipality areas, while the rest moved to other parts of the West Bank. Palestinian residents of East Jerusalem who relocate outside the municipality of Jerusalem risk the definitive loss of their East Jerusalem residency, which is afforded on the condition that the centre of their life is effectively there (see para. 56 below).

38. An Israeli local government audit found that some 140,000 residents live in the eight Palestinian neighbourhoods that lie within the Jerusalem municipality border defined by the Israeli authorities but in areas separated from the rest of East Jerusalem by the wall.[31] The neighbourhoods severely lack basic infrastructure, municipal services and law enforcement, and suffer from poor living conditions,[32] although the communities themselves are under the authority of the municipality of Jerusalem and pay municipal taxes.

39. As at 31 October 2017, eviction cases had been filed against at least 180 families (about 800 people) in East Jerusalem, including 21 households in the Old City. Most cases were initiated by settler organizations aiming at gaining control of Palestinian properties by claiming ownership prior to 1948 or challenging the "protected tenant" status of some families.[33] As previously reported, private settler initiatives have significantly increased in East Jerusalem since 2009, particularly in the neighbourhoods surrounding the Old City,

[31] See Association for Civil Rights in Israel, East Jerusalem: Facts and Figures 2017, 21 May 2017. The areas comprise Qalandia, Kufr Aqab, Shuafat refugee camp and surrounding area (including Ras Khamis and Ras Sheheda) and parts of Im Shirayat, Abu Emgheyreh, Al Shayyah, Ber Owna and As Sawariya.

[32] UNDP, *Jerusalem Communities behind the Wall: "Area X"*, Resilience Series, March 2017, p. 7.

[33] Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Palestinians at risk of eviction", 3 November 2016. The status of "protected tenants" was granted to Palestinians who were renting properties in East Jerusalem as administered by Jordan after 1948.

where 2,500 settlers are located. Such initiatives are supported by funding of the Government of Israel (A/HRC/34/39, para. 30). The Absentee Property Law has been often evoked to transfer properties to settler organizations in East Jerusalem, mainly to Elad and Ateret Cohanim (A/70/351, paras. 29-36).

40. Lawsuits based on a claim of previous Jewish ownership have been a frequent strategy for settler organizations to acquire properties in East Jerusalem. Since 2014, there has been an increase in settler takeovers in the neighbourhoods surrounding the Old City, primarily through purchase and claims of prior ownership before 1948.[34] The combination of three laws enacted by Israel since 1948 allows Jews to claim ownership rights to properties on the basis of alleged pre-1948 Jewish ownership; Palestinians who owned land or property in areas before 1948 that are now part of the State of Israel are not, however, granted any reciprocal right (A/71/355, para. 7).[35]

41. Tourism heritage development in East Jerusalem has also profoundly changed the shape and character of Palestinian neighbourhoods, creating footholds for further residential settler expansion (A/HRC/34/39, para. 21; A/70/351, para. 33); according to a report issued by the State Comptroller (annual report 67A) in 2016, archaeological tourism sites in East Jerusalem are managed by private settler groups, with little transparency or government oversight.

42. Settlers have apparently managed to purchase properties from Palestinians, often through Palestinian middlemen, in neighbourhoods where the coercive environment is strongest, such as the Old City and Silwan.[34] Information about such sales is very limited, given that they are illegal under Palestinian law and are strongly condemned by Palestinian society.

43. Since the early 1970s, the Palestinian refugee community in Sheikh Jarrah has been the target of forced evictions raised in Israeli courts by settler organizations that claim pre-1948 ownership. In November 2017, 66 families were facing eviction proceedings.[36] On 5 September, the Shamasneh family (eight members, including a child) was forcibly evicted from its home in Sheikh Jarrah, which was handed over to Israeli settlers; the first eviction in the neighbourhood in eight years. Although the family had lived in the house since 1964, it had become the subject of eviction proceedings after the house was transferred to settlers claiming to represent the original owners.

44. Forced evictions resulting from demolitions are a violation of human rights, including the rights to adequate housing, water, sanitation, health and education (A/72/564, para. 49). The most direct impact of house demolitions is homelessness, in violation of the right to adequate housing as protected by article 11 of the International Covenant on Economic, Social and Cultural Rights. Demolitions generally have a disproportionate impact on women, who are often the primary caregivers for extended families and manage household livelihoods.[37]

C. Right to life, liberty and security of person

45. To ensure the security of settlers, armed private security guards, Israeli police, border police and temporary checkpoints are deployed. The friction caused by the heavy presence of settlers, Israeli security guards and police in densely populated Palestinian

[34] Seidemann, *The Israeli Settlement Enterprise* (see footnote 19), p. 71. [35] Eyal Raz and Aviv Tatarsky, Broken Trust: *State Involvement in Private Settlement in Batan al-Hawa, Silwan*, Ir Amim and Peace Now, May 2016, p. 8.

[35] Eyal Raz and Aviv Tatarsky, Broken Trust: *State Involvement in Private Settlement in Batan al-Hawa, Silwan*, Ir Amim and Peace Now, May 2016, p. 8.

[36] Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Palestinians at risk of eviction", available from www.ochaopt.org/sites/default/files/evictions_community_sum_ej_2016_final_1_11_2016.pdf.

[37] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *International Legal Accountability Mechanisms: Palestinian Women Living under Occupation*, December 2016.

neighbourhoods frequently leads to clashes, which in turn serve as a justification for police raids and arrests.

46. During the unrest in Jerusalem in July 2017, following the killing of two Israeli policemen near the Al-Aqsa mosque compound and the subsequent measures taken by Israeli police at the entrances to the holy site, OHCHR and the Office for the Coordination of Humanitarian Affairs documented a spike in excessive use of force, during which 13 Palestinians were injured by live ammunition and two were killed in clashes in East Jerusalem.

47. The heavy security measures taken by Israeli authorities in these crowded neighbourhoods often have an impact on bystanders; children are especially vulnerable. For instance, according to monitoring by OHCHR, on 9 July 2017, 13-year-old Nour Ayman Hamdan was standing on the balcony of his house in Isawiya as Israeli Security Forces entered his neighbourhood, called to intervene in a dispute between Palestinians. He was struck with a sponge-tipped bullet in his left eye, causing permanent loss of sight.

48. In East Jerusalem settlements, the Ministry of Defence of Israel contracts private security companies to protect settlers. According to the Association for Civil Rights in Israel, the security guards are de facto private police forces at the exclusive service of Jewish residents, unlike the regular police which, in principle, must serve all inhabitants without discrimination and is subject to public accountability.[38]

49. OHCHR monitored two cases that demonstrated how the settler takeover of houses in the East Jerusalem neighbourhood of Batan al Hawa in Silwan has increased tensions and violence. On 17 December 2016, Mousa Ali Qarra'een was attempting to de-escalate an argument between Palestinian youths and Israeli security guards outside a settler's house in Batan al Hawa when a private guard drew his weapon and opened fire, shooting Qarra'een in the leg. When he arrived at the hospital, Israeli Security Forces delayed his treatment for 40 minutes to interrogate him. While Qarra'een was charged with assault, OHCHR is not aware of any investigation or charges raised against the guard.

50. On 9 September, 61-year-old Fayez al Rajabi, who lives 15 m from houses occupied by settlers in Batn al Hava, was looking for his son and granddaughter when he heard that tear gas grenades were being shot during scuffles. When he reached the street, Israeli Security Forces threw three sound grenades at him from a distance of 10 m, the explosions hitting his legs and face. His hearing was affected and he was hospitalized for 10 days with internal brain bleeding.

51. Residents of Batan al Hawa in Silwan reported to OHCHR that the neighbourhood was quieter before the first of the two houses was taken over by settlers in 2014. Since then, there has been a heavy presence of Israeli Security Forces and frequent clashes, at times on a daily basis. Al Rajabi and his wife Ayda are worried about the impact on their family, especially their three sons, aged between 15 and 22 years. One of their sons has been imprisoned for stone-throwing and another arrested for allegedly insulting police officers. Batan al Hawa is considered one of the most vulnerable neighbourhoods in East Jerusalem, with 62 households at risk of eviction and 309 persons risking displacement because of ownership claims.

52. Human rights organizations have continued to raise concern at the arrest of Palestinian children in East Jerusalem (A/70/351, para. 48).[39] According to the Office for the Coordination of Humanitarian Affairs, 1,092 Palestinians, including 409 children, were arrested in East Jerusalem during the period under review. Palestinian children are mainly arrested in areas with a high settler presence, especially in the Old City, Silwan and Ras al Amud.

[38] See www.acri.org.il/en/wp-content/uploads/2011/10/E-Jlem-Petition-Security-guards-ENG.pdf.

[39] B'Tselem and HaMoked, *Unprotected: Detention of Palestinian Teenagers in East Jerusalem*, October 2017.

D. Collective punishment

53. Collective punishment is expressly prohibited by international humanitarian law and has a negative impact on several human rights (A/HRC/34/38, para. 33).[40] It is also a coercive factor (A/HRC/34/39, para. 57). In East Jerusalem, OHCHR has monitored and documented practices that raise concern with regard to collective punishment, including the punitive sealing of houses and demolitions, the revocation of residency status and the withholding of bodies; for instance, as documented by OHCHR, the family home of Fadi al Qunbar, who killed four Israeli soldiers when he rammed a truck into them on 8 January 2017, was punitively sealed on 22 March 2017, leading to the forcible eviction of his wife and four children in the East Jerusalem neighbourhood of Jabal Al Mukkaber (A/72/565, para. 19). After the attack, approximately 240 households in that neighbourhood received a notice of planning or zoning violations, exposing them to the risk of demolition and forced eviction (para. 23). The Office for the Coordination of Humanitarian Affairs, during the period under review, counted 13 cases of punitive demolition and the sealing of houses in the Occupied Palestinian Territory, including four in East Jerusalem, affecting 39 Palestinians, including 18 children.

54. In January 2017, Israel resumed its practice of punitive revocation of East Jerusalem residency status as a form of collective punishment (A/72/565, paras. 21-25). Even when not carried out as a punitive measure, this would be a violation of the right to liberty of movement and freedom to choose residence (A/HRC/34/38, paras. 62-66).[41] Following the above-mentioned attack on 8 January 2017, 11 members of the Qunbar family had their residency status in East Jerusalem revoked, on 25 January 2017 (A/72/565, paras. 21-22).

E. Residency regime

55. The strict residency regime for East Jerusalem residents and restrictions on family unification between residents of East Jerusalem and of other parts of the West Bank is another factor contributing to the coercive environment (A/HRC/34/39, para. 56). In Jerusalem, while Palestinians may apply for Israeli citizenship, the overwhelming majority reject that option and therefore only have "permanent residency", which can be revoked – unlike Palestinians in Israel who have Israeli citizenship. Since 1967, Israel has revoked the residency status of 14,595 Palestinian residents of Jerusalem.[42] Since 1995, Palestinian residents of East Jerusalem are required by Israel to continuously prove that Jerusalem is their "centre of life" to keep their residency status (A/HRC/31/44, para. 29). Residency is not automatically passed on to children, but has to be proven by their parents. If residents lose their residency permits, they become effectively stateless and have no legal status to reside in Jerusalem, thereby risking displacement to the West Bank. OHCHR monitored the case of Shifa Shalludi who, after living 19 years in Jerusalem, lost her permit to live in the city following her divorce. She had no choice but to move with her children to Kafr Aqab, an area on the other side of the wall, but within the Jerusalem municipal boundary, so that her children could retain their eligibility for Jerusalem residency. She lost her job and network in Jerusalem, and now struggles to secure an income and care for the children in a severely underserviced area. Besides being discriminatory, the residency permit regime in Jerusalem violates the right to liberty of movement and freedom to choose residence.[43] It also has a profound impact on the exercise of economic, social and cultural rights, such as the rights to work, to health and to education (A/HRC/31/44, para. 6).

[40] Hague Regulations, art. 50; Fourth Geneva Convention, art. 33.

[41] See International Covenant on Civil and Political Rights, art. 12. In September 2017, the Israeli High Court of Justice ruled against the revocation of the East Jerusalem residency status of four members of the Palestinian Legislative Council on the grounds of "breach of loyalty"; see Adalah, "After 10 years of litigation, Israeli Supreme Court rules interior minister cannot revoke Palestinian parliamentarians' Jerusalem residency for 'breach of loyalty'", 13 September 2017.

[42] Human Rights Watch, "Israel: Jerusalem Palestinians stripped of status", 8 August 2017.

[43] International Covenant on Civil and Political Rights, art. 12.

F. Access to services

56. East Jerusalem faces a lack of essential services, such as health care, welfare services, educational facilities and basic infrastructure. According to the Association for Civil Rights in Israel, only 59 per cent of residents are connected legally and properly to the water grid.[44] The public education system is underfunded and neglected, with a shortage of around 2,000 classrooms. The Municipality estimates the cumulative dropout rate at 32 per cent.[45]

57. The lack of access to services, often compounded by restrictions on the freedom of movement, contribute directly to the coercive environment in areas under full Israeli control (A/HRC/34/39, paras. 55-57).[46] According to Ir Amim, approximately 8 to 10 per cent of the budget of the Jerusalem Municipality is allocated to Palestinians in East Jerusalem, even though they account for 37 per cent of the city's population. In recent years, while municipal officials have claimed in media reports that there was an increase in budget allocation to Palestinians neighbourhoods, no comprehensive data have been released to substantiate these claims.[47] The discriminatory service provision and resource allocation that favours West Jerusalem and settlers in East Jerusalem severely affects the quality of life of the Palestinians residing in East Jerusalem (A/HRC/31/43, para. 18). According to a poverty report prepared in 2016 by the National Insurance Institute, 73 per cent of the residents of East Jerusalem lived below the poverty level. The average poverty rate in Israel is 22 per cent.[48]

58. The wall severely impedes freedom of movement and access to municipal services in neighbourhoods that are part of Jerusalem municipality but on the other side of the wall. Many students who attend learning facilities on the other side of the wall endure delays and difficulties in reaching these facilities.[49] Similarly, access to health care is impeded by the crossing of checkpoints, causing delays that can prove fatal in cases of emergency. According to the United Nations Development Programme (UNDP), Israeli ambulances are unwilling to enter the areas of East Jerusalem lying beyond the wall, and Palestinian ambulances are not allowed to cross the wall.[50]

59. With regard to services, the situation is even worse in the areas of East Jerusalem situated beyond the wall, where there is a lack of schools, medical facilities and waste collection, and road infrastructure is of poor quality. A decision by the Government of Israel of 28 May 2017, allocating nearly 180,000 NIS ($50,000) for improving waste collection and sewage infrastructures in Palestinian neighbourhoods in East Jerusalem, explicitly excluded the areas beyond the wall, citing "ongoing interministerial" discussions on addressing the challenges in those areas.[51]

60. Since the construction of the wall, Israeli law enforcement has almost completely withdrawn from the areas, while the Palestinian police does not have jurisdiction there, creating a severe gap in law enforcement that encourages high rates of crime and violence.[52] Construction in these areas is rampant, with a lack of enforcement of building safety regulations. The consequence is that many buildings could be unsafe, especially in

[44] See www.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017.pdf.

[45] Ibid. See http://m.knesset.gov.il/Activity/committees/Education/Pages/CommitteeProtocols.aspx (in Hebrew).

[46] Middle East Quartet Report, July 2016 (see http://fmep.org/wp/wp-content/uploads/2016/07/Quartet-Report-2016.pdf), p. 6.

[47] According to one source, the development budget of Palestinian neighbourhoods grew almost tenfold between 2004 and 2015; see Elhanan Miller, "City Hall almost done mapping East Jerusalem", *Times of Israel*, 20 February 2015.

[48] See www.btl.gov.il/Publications/oni_report/Documents/oni2016.pdf (in Hebrew). See also Association for Civil Rights in Israel, East Jerusalem (see footnote 31).

[49] UNDP, *Jerusalem Communities behind the Wall* (see footnote 32), p. 16.

[50] Ibid.

[51] See www.pmo.gov.il/MediaCenter/SecretaryAnnouncements/Pages/govmes280517.aspx (in Hebrew).

[52] UNDP, *Jerusalem Communities behind the Wall* (see footnote 32), p. 8.

the event of natural disaster.[53] In May 2017, the first of six planned police stations in Palestinian neighbourhoods of East Jerusalem was opened in the Shuafat refugee camp, as part of a $287 million government initiative to improve law enforcement and security in East Jerusalem.[54]

61. In addition to its obligations under international human rights law, including concerning the rights to an adequate standard of living and to the highest attainable standard of physical and mental health,[55] Israel has the responsibility, as an occupying Power, to ensure proper access to health-care facilities and services to the Palestinian population of the Occupied Palestinian Territory, without discrimination.[56]

62. The persistence of settlement expansion, settler violence, demolition of homes and livelihood structures and the restrictions on freedom of movement have high costs for Palestinian women, including in East Jerusalem (E/CN.6/2016/6). Furthermore, the impact of the restrictive residency regime and denial of family unification requests, such as separation from family members, has a disproportionate impact on women.[57]

G. Forced to leave

63. All the above-mentioned factors in East Jerusalem create a coercive environment that places Palestinians under pressure to leave. Like in other areas of the West Bank, namely Area C or the H2 area of Hebron, Palestinians may have no other choice than to leave the very area where they have been living for decades or generations. As described above, a number of Palestinians have felt pressured to move, mainly by forced evictions or the revocation of residency status. Continuing discriminatory practices by the Israeli authorities put hundreds of Palestinians at risk of forcible transfer in East Jerusalem.

64. Such displacement is also evidenced by the growing population of East Jerusalem neighbourhoods situated behind the wall. Residents of East Jerusalem displaced by a demolition or other factors contributing to the coercive environment, often relocate to these areas. According to UNDP, migration trends show that poorer Palestinians move out of central Jerusalem to areas where rent is lower and there are fewer restrictions on housing expansion.[58] It is also the only place where Palestinians with residency status in Jerusalem can live with spouses from the West Bank without losing their status. This is an extremely worrisome trend, particular given the lack of services and law enforcement, and the numerous hazardous and unsupervised constructions rising in these neighbourhoods.

V. Settlements in the occupied Syrian Golan

65. Illegal settlement expansion and land appropriation by the Government of Israel in the occupied Syrian Golan continued during the period under review, in violation of the State's obligations under international law.[59] According to the civil society organization Al-Marsad, the 34 Israeli settlements in the occupied Syrian Golan have a population of about 26,000.[60] The estimated 25,000 Syrian residents of the Golan are restricted to living in five overcrowded villages.[61] Owing to discriminatory land, housing, and building and permit

[53] Ir Amim, *Displaced in their own city: the impact of Israeli policy in East Jerusalem on the Palestinian neighborhoods of the city beyond the separation barrier*, June 2015, p. 45. In stark contrast to other East Jerusalem neighbourhoods, according to the Office for the Coordination of Humanitarian Affairs, few house demolitions are carried out in the areas Jerusalem beyond the wall, accounting for only 9 per cent of all buildings demolished by Jerusalem Municipality.

[54] Daniel K. Eisenbud, "First police station opens in East Jerusalem's Shuafat refugee camp", Jerusalem Post, 7 May 2017.

[55] International Covenant on Economic, Social and Cultural Rights, arts. 11 and 12.

[56] Fourth Geneva Convention, art. 56.

[57] UN-Women, *International Legal Accountability Mechanisms* (see footnote 37), p. 14.

[58] UNDP, *Jerusalem Communities behind the Wall* (see footnote 32), p. 6.

[59] General Assembly resolution 72/86, para. 1.

[60] See http://golan-marsad.org/january-2018-universal-periodic-review-of-israel/.

[61] See http://golan-marsad.org/wp-content/uploads/Al-Marsad-UPR-submission-for-Israel.pdf, para. 2.

requirements, the Syrian villages are increasingly overcrowded, infrastructure is strained, and no expansion to accommodate the needs of the population is possible. Since the first demolition was reported in the occupied Syrian Golan in September 2016, there are concerns that the demolition of homes may become common (A/HRC/34/39, para. 59).[62]

66. In August 2017, the non-governmental organizations Adalah and Al-Marsad stressed the continued presence of mines around the village Majdal Shams that poses a serious danger to an estimated 11,000 people. They called upon the Israeli authorities to remove the mines and the related military outposts reportedly directly adjacent to residential homes, and situated on land belonging to the residents of Majdal Shams. Both organizations noted that the mines often drift beyond the marked minefields, and that some had exploded in the heat of the summer. They estimated that, since 1967, 69 civilian residents of the Golan Heights had been wounded by land mines and that 18 had consequently died, including nine children. [63]

67. The High Commissioner reaffirms the continuing validity of Security Council resolution 497 (1981), in which the Council stated that the decision by the Government of Israel to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights was null and void and without international legal effect.

VI. Conclusions

68. During the period under review, a significant increase in settlement activity, including in East Jerusalem and Hebron, was witnessed. In Hebron, several factors led to a deterioration in the living conditions and to an increased coercive environment.

69. The establishment and expansion of settlements in the Occupied Palestinian Territory by Israel, including the legal and administrative measures that it has taken to provide socioeconomic incentives, security, infrastructure and social services to citizens of Israel residing in the West Bank, including East Jerusalem, amount to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law.[64] The transfer of the population by an occupying State into an occupied territory is a grave breach of article 147 of the Fourth Geneva Convention and therefore a war crime.[65] Several international bodies have confirmed the illegality of Israeli settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.[66]

70. Palestinians in Area C, the H2 area of Hebron, and East Jerusalem are subject to discriminatory practices, as well as reduced living space, increased tensions, violence and arrests due to the existence and growth of settlements.

71. Palestinians in East Jerusalem face a restrictive planning, permit and construction regime, a lack of public services and shrinking public space. The lack of housing permits leads to the constant threat of demolition and displacement. These factors violate several rights and contribute to a coercive environment in East Jerusalem. Palestinians living in such a coercive environment may have no other choice but to leave, as previously documented in Area C and the H2 area of Hebron

[62] See http://golan-marsad.org/press-release-israeli-authorities-demolish-home-in-majdal-shams-in-the-occupied-syrian-golan/.

[63] Adalah, "Adalah, Al-Marsad demand Israel remove army outposts and minefields from occupied Syrian town on Golan Heights", 2 August 2017.

[64] Fourth Geneva Convention, art. 49 (6).

[65] See also the Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[66] International Court of Justice, *Legal consequences of the construction of a wall in the Occupied Palestinian Territory*, advisory opinion of 9 July 2004, para. 120; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

(A/HRC/31/43, para. 60; A/71/355, paras. 61-64), in contravention of the international prohibition of forcible transfer.

VII. Recommendations

72. On the basis of his findings, the United Nations High Commissioner for Human Rights recommends that the Israeli authorities:

(a) Halt immediately and reverse all settlement development and related activities in the Occupied Palestinian Territory, including occupied East Jerusalem, and the occupied Syrian Golan, including through the discontinuation of support for private settler organizations' initiatives aimed at the seizure of Palestinian properties and the forced eviction of their residents, in compliance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);

(b) End immediately all activity contributing to the creation of a coercive environment and/or increasing the risk of forcible transfer;

(c) Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights and international humanitarian law;

(d) Refrain from implementing evictions and demolition orders on the basis of discriminatory and illegal planning policies and practices that may lead to forcible transfer, including of Bedouin and herder communities;

(e) Take all steps necessary to ensure that Palestinians in East Jerusalem and Area C of the occupied West Bank are not denied access to, or discriminated against in the provision of, essential services, including electricity, water and sanitation, and natural resources, including land for agricultural purposes;

(f) Remove immediately all mines and minefields in the occupied Syrian Golan, which pose a risk to the local civilian population.

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, the United Nations High Commissioner for Human Rights describes the expansion of the settlement enterprise of Israel and its negative impact on the human rights of Palestinians. The focus of the report is on the effects of settler violence on Palestinians' access to land and freedom of movement. It also addresses issues relating to Israeli settlements in the occupied Syrian Golan. The report covers the period from 1 November 2017 to 31 October 2018.

* The present report was submitted after the deadline in order to reflect the most recent information.

I. Introduction

1. The present report, submitted to the Human Rights Council pursuant to its resolution 37/36, provides an update on the implementation of that resolution from 1 November 2017 to 31 October 2018. It is based on monitoring and other information-gathering activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information provided by other United Nations entities in the Occupied Palestinian Territory, Israeli and Palestinian non-governmental organizations (NGOs) and civil society in the occupied Syrian Golan. It should be read in conjunction with recent relevant reports of the Secretary-General and of the United Nations High Commissioner for Human Rights to the General Assembly and to the Human Rights Council.[1] The quarterly updates and reports of the Secretary-General presented to the Security Council on the implementation of Council resolution 2334 (2016) also provide relevant information.[2]

2. During the period under review, the Israeli settlement enterprise continued unabated in the West Bank, including East Jerusalem. Settlement housing advancement in Area C and East Jerusalem declined compared with the high numbers of the previous reporting period (1 November 2016 to 31 October 2017). Since the beginning of 2018, settler violence has been at a concerning high.

II. Legal framework

3. International human rights law and international humanitarian law are concurrently applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. In particular, Israel is bound by the obligations of an occupying Power as set out by international humanitarian law. A detailed analysis of the legal framework in relation to the Occupied Palestinian Territory and the occupied Syrian Golan is contained in reports of the Secretary-General.[3]

III. Activities related to settlements

4. During the period under review, planning for settlements continued, while the actual commencement of construction decreased. Conditions and acts contributing to a coercive environment, including demolitions and forced evictions, remained a serious concern and acts of settler violence reached the highest level since 2015. In the present report, the High Commissioner examines general developments related to settlements, including outposts,[4] with a specific focus on settler violence and its effect on the human rights of Palestinians living in the Occupied Palestinian Territory. It also addresses issues relating to Israeli settlements in the occupied Syrian Golan.

A. Settlement expansion

Land designation, planning and tenders

5. Advancement of plans for settlement construction continued at a high rate, with plans for 6,300 housing units advanced for construction in Area C and East Jerusalem, following some 10,000 housing units in the previous reporting period. Included in the plans for this reporting period were some 5,300 housing units in Area C, about 2,300 of them

[1] A/73/410, A/73/420, A/HRC/37/38, A/HRC/37/42 and A/HRC/37/43.

[2] Available from the web page of the Office of the United Nations Special Coordinator for the Middle East Peace Process at https://unsco.unmissions.org/security-council-briefings-0.

[3] A/HRC/34/38 and A/HRC/34/39.

[4] Outposts are unauthorized settlements illegal even under Israeli law. Both outposts and settlements are illegal under international law.

reaching final stages of approval. In East Jerusalem, some 1,000 housing units were advanced, about 200 of which reached the final stage of approval.

6. Tenders were issued by the State for 3,500 units in Area C settlements, compared with 3,200 during the previous period. In East Jerusalem, one tender was announced for 600 units in Ramat Shlomo – the first tender announced in East Jerusalem settlements in over two years.[5]

7. Official data on settlement construction starts in Area C indicate a decline compared with the previous reporting period.[6]

8. During the reporting period, one outpost was legalized (see para. 15) and there were no declarations of State land. Settlers established seven new outposts, three in the southern West Bank and four in the central West Bank,[7] compared with five established in the previous reporting period.[8] In January 2018, the Israeli Minister of Defence called for the legalization of the outpost of Havat Gilad/Gilad Farm in response to the killing of an Israeli inhabitant of the outpost by a Palestinian.[9] The legalization process has not moved forward. According to a media investigation published during the reporting period, the World Zionist Organization,[10] a non-State entity which receives funding from the Israeli State, provided dozens of loans over two decades to fund the establishment of 26 unauthorized outposts and other illegal structures in authorized settlements across the West Bank.[11]

Consolidation of settlements

9. On 14 October 2018, the Government of Israel allocated NIS 21.6 million for the construction of 31 settlement housing units in the Israeli-controlled area of Hebron, Hebron H2.[12] The new construction will replace an Israeli military base called Plugat Hamitkanim located on a Palestinian bus station off Shohada Street. This will be the first time Israeli settlements are built in H2 in 16 years.[13] On 31 October 2018, the Minister of Defence ordered other plans for a new settlement compound in H2 as an expansion of the Avraham Avinu settlement to move ahead.[14]

10. On 16 October 2018, the Israeli authorities inaugurated the Tel Rumeida archaeological site in H2. According to Peace Now, the archaeological excavations undertaken by the Israeli Antiquities Authority and the University of Ariel settlement at the site are used to promote an exclusively Jewish narrative of the city's history.[15] As in East Jerusalem, tourism development in H2 is one of the tools used to change the character of Palestinian neighbourhoods and ensure continued settlement expansion.[16]

11. On 9 October 2018, the Israeli High Court of Justice rejected two petitions submitted by an Israeli NGO against the establishment of the Amihai settlement (the settlement established for inhabitants of the Amona outpost evacuated in 2017) partly on private Palestinian land. While the Court did not rule on whether the establishment of the settlement had been illegal in the first place, it did consider the petitioners' claim that the

[5] Office of the United Nations Special Coordinator for the Middle East Peace Process.

[6] Data are available only for the period 1 November 2017–1 October 2018 (1,659 units) and 1 November 2016–1 October 2017 (2,269 units).

[7] Givat Eitam, Mishol Hamaayan Farm, Negohot Farm, Ras Karkar Farm, Kochav Hashahar East, Pnei Hever, South and Gadi Base.

[8] Peace Now, data on file.

[9] Yotam Berger, "Israel's Defence Minister aims to legalize outpost near where settler killed last week", *Haaretz*, 15 January 2018.

[10] See www.wzo.org.il/world-zionist-organization.

[11] Yotam Berger, "Revealed: Israeli taxpayers helped bankroll illegal West Bank outposts for decades", *Haaretz*, 25 October 2018.

[12] A/71/355, paras. 25–64.

[13] A/HRC/37/43, para. 8.

[14] Yotam Berger, "New residential building for Jewish settlement in Hebron gets go-ahead", *Haaretz*, 1 November 2018.

[15] Peace Now, "A new touristic settlement opens in Tel Remeida in Hebron", 16 October 2018.

[16] A/73/410, para. 8.

State had not provided adequate notice of the Blue Line task force finding that their land fell within the boundaries of declared "State land", which would have allowed for a genuine opportunity to object.[17] It is of concern that the Court considered that the methods of publication provided, without a notice delivered to the owners, were sufficient. In addition to the implied violations as regards private property,[18] the Court's decision is a further measure to allow the establishment of illegal settlements in the Occupied Palestinian Territory.

B. Legislative developments

12. During the reporting period, a number of additional legislative steps pertaining to settlements were advanced, further contributing to the de facto annexation of the West Bank. The amendment to the Basic Law: Jerusalem, Capital of Israel, adopted on 2 January 2018, eases the process for the modification of Jerusalem's municipal boundaries, facilitating the possible inclusion of some of the largest settlements within the municipality of Jerusalem.[19] The extension of the jurisdiction of some Israeli authorities to the West Bank, such as the Council of Higher Education in February 2018, as well as of the Jerusalem Administrative Court in July 2018,[20] represent additional steps blurring the distinction between Israel and the Occupied Palestinian Territory. In addition, the Attorney General issued a directive requesting that all legislative bills systematically address the question of their applicability to settlements.[21]

13. In qualifying "the complete and undivided city of Jerusalem" as the capital of Israel, the Nation State Law adopted on 19 July 2018 reaffirms the illegal annexation of East Jerusalem, in violation of various Security Council resolutions.[22] In stating that "the State of Israel considers the development of Jewish settlement to be a national value and will act to further encourage and promote its establishment and consolidation", the law appears to justify the expansion of Israeli settlements in East Jerusalem, considered by Israel as part of its territory.[23] It remains to be seen whether this provision will be used to further justify illegal settlement expansion in the rest of the West Bank.[24]

Regularization of outposts

14. Israel has been promoting the retroactive authorization of outposts built without official approval since 2011. So far, 13 outposts have been retroactively approved and 20 are in different stages of the approval process (out of 116 outposts).[25] During the reporting period, steps were taken within the Government to implement the recommendations of the committee that was set up to resolve issues of landownership related to Israeli settlements in the West Bank. Created in 2017, the committee submitted its report, which includes recommendations to legalize thousands of unauthorized Israeli structures in the West Bank, including those built on private Palestinian land, in February 2018.[26]

[17] Case Nos. HCJ 5470/17 and 8055/17, *Basma Haj Mohammad et al. v. Minister of Defence et al.*, Judgment of 9 October 2018.

[18] Hague Regulations respecting the Laws and Customs of War on Land, arts. 46 and 56; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 53; and International Committee of the Red Cross, Customary International Humanitarian Law, rule 51.

[19] A/HRC/37/43, paras. 10–11.

[20] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_20_september_2018_2334.pdf.

[21] A/73/410, paras. 9–11.

[22] See, e.g., Security Council resolutions 252 (1968), 476 (1980) and 478 (1980).

[23] A/HRC/34/38, para. 10.

[24] There is no indication of the geographical scope of the quoted provision in the law.

[25] Yesh Din and The Rights Forum, *Under the Radar: Israel's Silent Policy of Transforming Unauthorized Outposts into Official Settlements* (2015).

[26] A/73/410, para. 13.

15. On 28 August 2018, the Jerusalem District Court applied Military Order No. 59 (1967)[27] to legalize the outpost of Mitzpeh Kramim, which was built on private Palestinian land, based on the alleged good faith assumption that it was located on State land.[28] This decision is the first use of the military order and seems to confirm the existence of alternatives to the controversial "Regularization Law", which aims to retroactively legalize outposts built on private Palestinian land and housing units built illegally in existing settlements.[29] There are hence strong concerns that this ruling would serve as a precedent to regularize more than a thousand illegal housing units within outposts and settlements.

16. During the reporting period, the Government of Israel promoted a bill that would give the World Zionist Organization the authority to manage land in the West Bank.[30] If adopted, the bill would validate a long-standing practice of management by the Settlement Division of the World Zionist Organization of most of the State land in the West Bank, which has proven problematic for its lack of both transparency and governmental supervision. The Settlement Division is reported to have previously allocated private Palestinian land as State land for settler use, including in Mitzpeh Kramim.[31]

C. Impact of settlements on Palestinian communities at risk of forcible transfer

17. The publicly stated intention of the Government of Israel to relocate thousands of Palestinians residing in Area C remains a key concern, and contributes to a coercive environment.[32] According to the Office for the Coordination of Humanitarian Affairs, during the reporting period, 402 Palestinian-owned structures were demolished in the West Bank, displacing 453 people including 216 children and 111 women. Approximately 60 per cent of the structures demolished were in Area C and 40 per cent in East Jerusalem. Four schools in Area C were demolished or confiscated. In Area C and East Jerusalem, 48 schools were under threat of demolition as of 31 October 2018.

18. Some 7,500 Palestinian Bedouins and herders, mostly refugees, belonging to 46 communities are at particular risk of forced eviction. This includes the Bedouin community of Khan al-Ahmar-Abu al-Helu, composed of some 180 individuals, half of whom are children.[33] On 24 May 2018, the Israeli High Court of Justice issued a ruling which allowed for the demolition of the community's structures, putting the residents at risk of forcible transfer and setting a dangerous precedent for many other communities under similar threat. On 5 September 2018, the Court issued a final ruling, in which it upheld its previous decision and rejected all petitions made by the community. On 23 September 2018, the Israeli Civil Administration requested the residents to carry out self-demolitions of their homes by 1 October 2018, which they refused to do. On 20 October 2018, the Office of the Prime Minister announced the suspension of the demolitions until further notice, allegedly in order to exhaust negotiations and proposals received from various sources. As at the end of the reporting period, the demolitions had not taken place. The constant threats of demolition issued by Israeli authorities exacerbated the pressure on the community to move, adding to the coercive environment.

19. In November 2017, the Israel Defense Forces ordered the "removal of all properties" from specific zones in Area C inhabited by Palestinian herding communities, including Ein al-Hilwe and Um al-Jamal in the northern Jordan Valley and Jabal al-Baba in the Jerusalem Governorate. The latter falls within the area slated for the E1 settlement plan, designed to

[27] A/HRC/37/43, para. 17.

[28] An appeal against the decision is pending before the Israeli Supreme Court.

[29] Adopted in February 2017, the law remains unimplemented to date, following petitions to the High Court of Justice; see A/73/410, para. 12.

[30] The amendment (Administration and Allocation of Land in the Judea and Samaria Area by the Settlement Division) was brought before the Constitution, Law and Justice Committee of the Knesset for preparation for first reading on 29 October 2018.

[31] Peace Now, "Preliminary approval for settlement division bill", 16 June 2018.

[32] A/HRC/34/39, para. 44; and A/72/564, paras. 36–57.

[33] A/HRC/37/43, para. 25; and A/73/410, para. 22.

link Ma'ale Adumim with Jerusalem. A total of 520 structures, a quarter of which are donor funded, are at risk of demolition or confiscation and 419 people, about half of them children, are at heightened risk of forcible transfer.[34]

20. During the reporting period, the Bedouin community of Abu Nuwar located in the E1 settlement plan area was subject to several demolitions. In December 2017, Israeli authorities demolished two European Union-funded classrooms in Abu Nuwar, which served 26 students. The European Union had partly replaced the seven structures of the community primary school that were demolished in 2016.[35] On 4 July 2018, the authorities demolished another 19 structures, displacing 51 people, including 33 children.[36] Such confiscations and demolitions result in violations of the right to an adequate standard of living, the right to adequate housing and the right to education. Furthermore, demolitions carried out by the Israeli authorities in the context of discriminatory planning structures are unlawful under international law and constitute forced evictions.[37] The compounded effects of these ongoing violations, along with the constant threat of additional demolitions,[38] contribute to a coercive environment that puts the community at risk of forcible transfer.[39]

21. Thirty-four Palestinian residents of four buildings were evicted by settlers in East Jerusalem, compared with 24 Palestinians evicted from three buildings in East Jerusalem in the previous reporting period.[40] In April 2018, the Israeli police evicted residents of three apartments in two buildings in Silwan in East Jerusalem, affecting 15 members of an extended family. One of the owners of the buildings had been killed in an unsolved murder three years previously, leaving accumulated debts. According to his lawyer and members of his family, the general custodian (responsible for, inter alia, managing property that belongs to persons who went into bankruptcy) transferred the deceased owner's property to the settler organization Elad, which obtained a court ruling to evict the residents of the three apartments despite the deceased being one of several heirs to the buildings among his siblings and cousins. A court case was ongoing at the time of the eviction, in which the family was protesting the legality of the transfer of ownership. The court cancelled the eviction, but it was nevertheless carried out by the police. The family is not allowed to return to its apartments while the case is pending.

22. While settlers vacated the occupied Abu Rajab house in H2 in March 2018, in the same month settlers took over the al-Zaateri house, also in H2, which is also the subject of a pending legal case regarding its ownership.[41] On 29 October 2018, settlers escorted by the Israeli security forces occupied two other houses in the H2 area of Hebron. The houses, which belong to two Palestinian families from Hebron, were closed by military orders in 2000, after which the security forces installed a military base on the rooftops.

23. Settlement expansion, restrictions on freedom of movement and the continued threat of demolitions add to the coercive environment of Al-Walaja, a community of 2,671 individuals. In 2018, new plans were proposed that, if approved,[42] would double the size of the settlement of Har Gilo, encircling the village. This would further isolate Al-Walaja residents from both Jerusalem and Bethlehem.[43] In March 2018, sewage emanating from this settlement flowed into the village, near its only health centre.[44] In January 2018, an Israeli national park visitor centre was opened at the Ein Haniya spring, central to the community life of Al-Walaja.

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[34] Office for the Coordination of Humanitarian Affairs, *West Bank Demolitions and Displacement: An Overview*, November 2017, on file.

[35] Ibid., February 2018.

[36] Ibid., July 2018.

[37] A/72/564, paras. 26 and 49.

[38] Including through weekly inspections in the community by the Israeli Civil Administration.

[39] A/HRC/34/39, para. 47.

[40] Office for the Coordination of Humanitarian Affairs.

[41] A/73/410, para. 7.

[42] The proposal is pending approval by the Industrial Cooperation Authority. Yotam Berger, "Israel pushing plan to expand settlement toward Bethlehem", *Haaretz*, 26 June 2018.

[43] A/HRC/37/43, para. 19.

[44] United Nations Relief and Works Agency for Palestine Refugees in the Near East.

IV. Impact of settler violence on human rights

24. Settler violence adversely affects Palestinian society, violating a range of rights, including the rights to security of person, freedom of movement, an adequate standard of living, work and education.[45] Furthermore, settlers often use violence as part of a calculated effort to expand Israeli control beyond the settlement jurisdiction areas.[46] Settler presence and violence have reduced Palestinians' access to land, resulting in a de facto settlement expansion.[47] Settler violence is also a factor of the coercive environment that may leave some Palestinians no other choice than to leave their places of residence. Such involuntary moves would increase the risk of forcible transfer, a grave breach of the Fourth Geneva Convention and a war crime.[48]

A. Right to life, liberty and security of person

25. In the reporting period, 4 Palestinians were killed by settlers in the West Bank (2 in the context of alleged stabbing attacks) and 98 were injured. There were 176 incidents of property damage by settlers. At least 7,360 Palestinian-owned fruit trees were destroyed, marking a 22 per cent increase compared with the previous reporting period. The average number of incidents of settler violence per month rose in 2018, representing a 57 and 175 per cent increase compared with 2017 and 2016 respectively. Approximately 40 per cent of the recorded incidents in the West Bank took place in the Nablus area. Most of the physical attacks targeted farmers and herders and a number of attacks were in the presence of Israeli security forces, who did not uphold their obligations to protect the Palestinian population.

26. During the reporting period, there were 37 incidents of settlers entering and/or attacking Palestinian communities, accompanied by Israeli security forces and triggering clashes between Palestinians and Israeli security forces. These incidents resulted in 2 Palestinians killed and 446 injured. The majority of these clashes occurred in communities in the Nablus Governorate. The number of clashes with Israeli forces following settlers entering Palestinian communities increased significantly this year compared with previous years.[49]

27. Seven Israeli civilians were killed and 37 were injured by Palestinians in the West Bank, compared with 3 killed and 64 injured in the previous reporting period.[50]

28. On 14 February 2018, some 15 Israeli civilians physically assaulted a 20-year-old Palestinian man near his house in the Old City in East Jerusalem, causing him serious injuries. According to the victim and video footage, the attack was in the presence of Israeli police who prevented other Palestinians from providing first aid to the victim. According to the victim's lawyer and based on surveillance camera footage, the police arrested three Israeli suspects and opened an investigation. As at 31 October 2018, the lawyer of the victim had not been informed of any progress in the investigation.

29. Settler violence in the H2 area of Hebron was a growing concern in the reporting period, with 35 incidents of attacks injuring 24 Palestinians, including 10 children. This is a noticeable increase compared with 18 incidents and 14 injured Palestinians in the previous reporting period.[51] For example on 29 July 2018, four settlers attacked a Palestinian man as he was walking in H2 with his wife and nephew, spraying him with pepper spray in the presence of the Israeli security forces. When the man picked up a stone to fend off the

[45] A/68/513, paras. 12–14; A/71/355, para. 50; A/HRC/28/44, para. 40; A/HRC/34/38, para. 36; and A/HRC/37/43, para. 23.

[46] A/HRC/31/43, para. 33; and A/HRC/34/39, para. 18.

[47] Office for the Coordination of Humanitarian Affairs, Three case studies of the humanitarian impact of de facto settlement expansion, 2016–2017, on file; and A/70/351, para. 58.

[48] Fourth Geneva Convention, art. 147; and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[49] Office for the Coordination of Humanitarian Affairs.

[50] Ibid.

[51] Ibid.

attackers, Israeli security forces intervened by pointing their guns at him, at which time the settlers left. On 12 September 2018, two settlers in their teens attacked two Palestinian boys aged 10 and 12 with pepper spray. The Israeli police apprehended the assailants and the families of the boys filed a complaint with the police. As at the end of the reporting period, none of the victims had been informed whether investigations had been opened.

30. Some of the peaks in settler violence against Palestinians recorded this year occurred within two or three days after the killing of settlers by Palestinians and were presumably perpetrated in retaliation.[52] Other incidents have been attributed to a practice known as "price tag", aimed at punishing Palestinians for the removal, by the Israeli authorities, of structures in settlement outposts. Since the beginning of 2018, a number of such removals were reported in small settlement outposts associated with radicalized settler youths in Nablus Governorate.[53]

B. Freedom of movement and access to land and confiscation of private property

31. A range of factors restrict Palestinians' access to and use of their land and property and facilitate gradual takeover of land, such as violence or threats by settlers or civilian security coordinators, settler agriculture and herding on Palestinian land and Israeli security force restrictions on access to areas near settlements.

32. In August 2018, the Government announced its intention to triple the size of the jurisdiction of the new settlement of Amihai[54] to include the outpost of Adei Ad as a way of retroactive authorization.[55] Adei Ad is a part of the "Shiloh corridor" in the northern West Bank, composed of several settlements and outposts from which Palestinians were driven away through settler violence, intimidation and unlawful activity that resulted in multiple human rights violations.[56] Should the corridor be completed, it will further prevent Palestinian farmers from accessing their lands, restrict their freedom of movement and obstruct territorial continuity of the West Bank.[57]

33. Adei Ad, placed partially on private Palestinian land, has been a centre of settler violence in the area for many years.[58] In the reporting period, the Office for the Coordination of Humanitarian Affairs and Yesh Din combined reported 12 incidents of settler violence against property or Palestinians in the villages of Turmusaya, Jalud and Mughayir, all of which are close to the outpost. In October 2018, settlers destroyed 280 olive trees in three different areas, which Palestinians can only access after "prior coordination" with Israeli authorities (see para. 36), due to their proximity to Adei Ad. Yesh Din documented how settlers unofficially annexed land around Adei Ad in 28 instances by fencing plots, preventing access or expelling Palestinian farmers from their land, and cultivating plots while trespassing without the knowledge or agreement of the owners. This took place over a number of years on land that Palestinian owners could no longer access due to Israeli security forces restrictions or for fear of settler attacks.[59] Consequently, some Palestinians had to move away. According to the Jalud village council, 60 people left the village after the Shiloh settlement and surrounding outposts progressively

[52] Ibid., *Humanitarian Bulletin: Occupied Palestinian Territory*, October 2018.

[53] Removals of structures took place in Ma'oz Ester, Havat Ma'on, Geulat Zion and Rosh Yosef. Ibid, note 33.

[54] Amihai was established for the settlers evacuated from the illegal settlement of Amona in the northern West Bank. See para. 11.

[55] Yotam Berger, "Israel seeks to triple size of isolated West Bank settlement in order to legalize outpost", *Haaretz*, 8 August 2018.

[56] A/70/351, paras. 52–69.

[57] Yesh Din, *The Road to Dispossession: A Case Study – The Outpost of Adei Ad* (2013), p. 45.

[58] Monitoring by the Office for the Coordination of Humanitarian Affairs and OHCHR; and Yesh Din, ibid. Adei Ad outpost is placed partially on lands belonging to the villages of Turmusaya, Qaryut, Al Mughayir and Jalud.

[59] Yesh Din, ibid., p. 58.

took over most of their lands in 2010. The legalization of Adei Ad outpost would send a concerning signal of rewarding violent behaviour.

34. In January 2018, the Israeli Minister of Defence declared his intention to legalize the outpost of Havat Gilad/Gilad Farm,[60] established on some 450 dunams of land belonging to Palestinians from the villages of Far'ata, Tal and Jit. According to residents and human rights organizations, the settlers expanded their outpost through violence and vandalism, with no demolitions of the illegal structures since 2003.[61] A Palestinian man from Far'ata recounted how the outpost gradually expanded onto his land and how settlers made access to his land more difficult, including by attacks, the construction of two structures on his land and destruction of trees. Eventually, the Israeli Civil Administration imposed rules allowing him to access his land only twice a year. This greatly reduced his ability to protect his land from vandalism and theft, and to rehabilitate the land and damaged trees.[62] According to the farmer, settlers destroyed trees and stole the fruit, so that there was nothing to harvest when he was granted access.[63] As of 31 October 2018, the legalization of Havat Gilad had not moved forward.

35. The Israeli military began closing off Palestinian farmlands and denying Palestinian farmers access to their own lands around 2000, purportedly to maintain public order and to protect them from frictions caused by settlers in such areas. Despite an Israeli Supreme Court ruling of 2006 stating that military commanders should refrain from closing areas in a manner that prevented Palestinian inhabitants from accessing their land for their own protection,[64] the military continues to close these farmlands, under the pretext of establishing a "coordination mechanism".[65] In practice, the "coordination mechanism" acts as a tool for placing restrictions on the Palestinian farmers, severely violating their rights to property, food and freedom of movement.[66] Palestinian farmers are forced to plant crops that do not require constant tending and are unable to maximize the economic potential of their land. Moreover, the lack of access throughout most of the year and the absence of continuous cultivation impede the farmers' capacity to minimize potential damage caused by extreme weather, fires or vandalism.

36. Approximately 90 Palestinian communities own land within or near 56 Israeli settlements and settlement outposts where "prior coordination" is now required to access the land. The coordination mechanism, run by the district coordination offices, is purportedly designed to allow Palestinian farmers to cultivate their lands that are located near settlements, or where settlements are built on their grounds. In reality, Palestinians are usually allowed to access their land only twice a year, during the harvest and ploughing seasons, for a limited and pre-set number of days. Although these procedures have the stated aim of protecting Palestinian farmers and their property, 26 settler attacks resulting in injuries or property damage were recorded in coordination areas in 2018.[67] Furthermore, the military often denies Palestinians even the limited access afforded by the coordination mechanism.[68]

37. Palestinian farmers' access to their private land near settlements is also restricted and denied by the civilian security coordinators who operate in the Israeli settlements and outposts in the West Bank. These coordinators are usually residents of settlements and

[60] The decision was reportedly in response to a murder of a resident of the outpost. Peace Now, "Why Israel must not authorize the Havat Gilad outpost", 1 February 2018.

[61] B'Tselem, "Adding insult to injury: Israel officially recognized Gilad Farm settlement outpost", 27 February 2018.

[62] In 2006, he was banned from having an international protective presence during his visits to the land.

[63] For olive harvest-related human rights violations, see A/HRC/28/44, paras. 32– 38; and Office for the Coordination of Humanitarian Affairs, *Occupied Palestinian Territory*, 15 December 2017.

[64] Case No. HCJ 9593/04, *Morar v. IDF Commander in Judea and Samaria*, Judgment of 26 June 2006.

[65] These procedures have the stated aim of protecting Palestinians farmers and their property. See Office for the Coordination of Humanitarian Affairs, *Humanitarian Bulletin: Occupied Palestinian Territory*, October 2018, p. 11.

[66] A/HRC/22/63, paras. 73–74.

[67] *Humanitarian Bulletin: Occupied Palestinian Territory*, October 2018.

[68] Yesh Din, *Yitzhar – A Case Study* (2018), p. 17.

outposts trained and armed by the Israel Defense Forces and funded by the Ministry of Defence to guard the settlements and outposts on behalf of the Israel Defense Forces. Civilian security coordinators have policing powers, which include the power to detain, search and arrest.[69] A lack of adequate supervision by the Israel Defense Forces and of clearly defined powers contribute to daily friction between the civilian security coordinators and Palestinians.[70] According to Yesh Din, guards have participated in settler attacks themselves or escorted settlers who were attacking Palestinians or Palestinian property. They have also prevented Palestinians from accessing lands, including grazing lands. During the reporting period, Yesh Din documented an incident of a civilian security coordinator from Mehola settlement taking part in violence against Palestinians and three incidents in which the Yitzhar civilian security coordinator was present during violence or vandalism against Palestinians.

38. In June 2018, a civilian security coordinator obstructed the access of a Palestinian family from the village of Kifl Haris to their agricultural land that had been included within the boundary of the adjacent Ariel settlement in the northern West Bank. The family had been able to access their land through Ariel's main entrance since the establishment of the settlement in 1978 but in June 2018, a new civilian security coordinator obstructed the family's access. On 15 August 2018, during a peaceful protest by several family members outside their land, a Palestinian was attacked and injured by the civilian security coordinator. After this incident, the family managed to negotiate coordinated access for a few members until the end of the olive harvest; however, they missed the harvest time for other fruit trees on the land. The family's future access to the land is uncertain, as they were again barred access at the end of October 2018.

39. During the reporting period, settlers established seven new outposts, six of them farms[71] where settlers' sheep or cattle take over large areas of land and prevent Palestinians from accessing it by means of threats, attacks, fencing and cultivation. This appears to be part of an official policy whereby the Government has encouraged takeovers of land by settlers through agricultural projects.[72] According to Peace Now, agricultural outposts are funded by local authorities of the settlements and the Gush Emunim settler organization.[73]

40. The constraints faced by Palestinians in accessing their agricultural land put them at great risk of seeing their land declared State land and used for the expansion of settlements. Indeed, according to the Israeli interpretation of the Ottoman land laws that are still in effect in the West Bank, cessation of cultivation for extended periods could result in loss of title to the land.[74] Israel uses this to unilaterally declare "State land", which has been allocated exclusively for settlements use by Israel and its citizens rather than for the benefit of the local population, as required under international law.[75] In effectively preventing Palestinians from accessing their land, settler violence serves as a tool for the expansion of Israeli settlements in the West Bank.[76]

41. The denial of Palestinians' access to land by settlers through violence or intimidation, or by the Israeli security forces to "protect" Palestinians from areas with settler and settlement presence, violates Palestinians' freedom of movement. Such a violation in turn affects other rights, such as the right to work and property.[77] Furthermore, official or unofficial confiscation of land and limiting access through coordination measures violate the prohibition on confiscation of private property enshrined in international

[69] A/HRC/28/44, paras. 22–23.

[70] A/HRC/28/44, para. 22.

[71] Out of 25 outposts established since 2012, 15 are agricultural farms. Peace Now, source on file.

[72] A/69/348, para. 28.

[73] Peace Now; see also Amira Hass, "How settlers use flocks of sheep to take over Palestinian Land", *Haaretz*, 13 October 2018.

[74] A/HRC/28/44, paras. 26–27. See also B'Tselem, *Under the Guise of Legality: Israel's Declarations of State Land in the West Bank* (2012), p. 28.

[75] A/HRC/34/39, para. 15.

[76] Yesh Din, *Yitzhar*, p. 13.

[77] A/69/348, para. 11; A/HRC/25/38, para. 29; and A/HRC/28/44, para. 40.

humanitarian law.[78] Limitations on freedom of movement and constraints on access to natural resources and agricultural land have been identified as coercive factors that ultimately may force people to leave.[79] In the cases presented in the present report, the Israeli security forces failed to uphold their obligation to protect the Palestinian population and property, as well as to keep public order and safety.[80] Such failure allows the Israeli State and private settlers to take over more Palestinian land in the West Bank, in violation of the law of occupation.

C. Access to health and education

42. Israeli settlements and settler violence continued to violate a range of Palestinians' human rights, including economic, social and cultural rights such as the rights to health and education.[81] In Hebron H2 and the nearby access-restricted areas, some 7,000 Palestinians rely on medical services available in H1 and on Palestinian Red Crescent Society ambulances for urgent cases. The Secretary-General has previously reported incidents of ambulances not being allowed into the area, forcing Palestinian patients to cross checkpoints on foot, which can cause life-threatening delays.[82]

43. During the reporting period, there were at least three cases of settler attacks against Palestinian ambulances in H2 in the presence of Israeli security forces. For instance, on 11 August 2018, settlers in H2 blocked a Palestinian Red Crescent Society ambulance transporting an elderly Palestinian woman injured by settlers. Despite the arrival of Israeli security forces at the scene, the settlers were not dispersed. Instead, after an hour, the Israeli security forces forced the ambulance crew to turn back and use another road, which the settlers then tried to block, causing further delay. Eventually the ambulance managed to pass. The inability of the Israeli security forces to guarantee the ambulance access to the H2 area, which results in the lack of access to health-care facilities and services for the persons living in this area, constitutes a violation of the right to health. The Palestinian Red Crescent Society submitted some 100 complaints to the Israeli authorities during 2018 related to access issues, including settler attacks, but as at the end of the reporting period no action had been taken.

44. Violence and harassment by settlers targeting schools often results in injuring children and teachers and disrupting classes. This affects access to education, quality of education, student well-being, and performance and completion rates.[83] Moreover, it results in increased school dropout rates and the decision of families to keep their children at home.[84] Fear of settler-related violence has been reported as one of the reasons why some families prevent girls from going to school, particularly in Area C.[85]

45. The secondary boys' school in Urif has over the past two years been subjected to increasing settler attacks due to its proximity to Yitzhar settlement, from where many settler attacks originate. The school reported three settler attacks on the school on 14, 17 and 18 October 2018 respectively, causing the school to suspend teaching. Settlers hit teachers with stones while they were evacuating the children. The school staff reported visible psychological effects on the children. During the school year 2017/18, 24 out of 230 students dropped out of school, the majority of them because of the parents' fear for the

[78] Hague Regulations, arts. 46 and 56; Fourth Geneva Convention, art. 53; and Customary International Humanitarian Law, rule 51.

[79] For more information on the coercive environment, see A/71/355, paras. 60–64; A/72/564, paras. 36–57; A/73/410, paras. 26–58; A/HRC/34/39, paras. 44 and 54–55; and A/HRC/37/43, paras. 26–64.

[80] Hague Regulations, art. 43; and Fourth Geneva Convention, art. 27 (1)

[81] For more information on settlements' impact on economic, social and cultural rights, see A/68/513, paras. 36–41; A/HRC/25/38, paras. 21–36; and A/HRC/28/44, paras. 16–38.

[82] A/71/355, para. 57.

[83] A/HRC/25/38, paras. 34–36.

[84] A/71/355, para. 51.

[85] OHCHR, "Update on settler violence in the West Bank, including East Jerusalem", October 2013, p. 4.

safety of their children due to the settler attacks. It was reported that families with resources moved their children to schools in nearby villages, while others kept the children home.

46. In some rural areas, Palestinian children's commute to school exposes them to the risk of settler attacks. For example, in the southern West Bank, students in the Tuba area have since 2002 faced repeated settler attacks on their way to/from their school, located in the nearby village of Tuwani, as they use a road that borders the settlement of Ma'on and its associated outpost Havot Ma'on. In 2004, after settler attacks on children and protective presence observers deployed by NGOs, the Israeli District Coordination Office issued a verbal order to the Israel Defense Forces to provide a daily escort to the schoolchildren of Tuba[86] – the only known case of the Israel Defense Forces escorting Palestinian children for their protection. However, local residents reported that the Israel Defense Forces sometimes arrive late or not at all, leaving the children vulnerable. For instance, on 9 September 2018, as the escort did not arrive, the children travelled accompanied only by an international protective presence. On their way, a settler attempted to prevent the group from passing by blocking their passage and scaring them, until the Israel Defense Forces reached the scene and let the group through.

47. The situation of threats against schoolchildren has persisted in the area for at least 12 years, with the full awareness of Israeli authorities, indicating that the authorities have not sufficiently addressed the settler violence in the area.[87] A similar case was previously reported in the rural Jordan Valley, where the threat of settler violence was one factor contributing to families sending their children to a bigger city to avoid the commute.[88]

48. Settler violence, and the climate of fear and intimidation created by repeated violence and harassment, has a serious psychological impact on victims of and witnesses to violent attacks and affects the psychosocial well-being of everyone in affected communities. Organizations providing mental health responses to victims of settler violence reported effects such as strong feelings of frustration (particularly for men), constant feelings of fear and insecurity, eating disorders, sleep disturbances (particularly for children), anxiety (particularly for women), depression and behavioural problems. These symptoms lead to aggressiveness, violence, social withdrawal, and academic deterioration and poor school performance for children.[89]

49. While men and boys are more directly exposed to settler violence, it also directly and indirectly affects the lives of women and girls. Continued exposure to settler violence has a psychological impact on women, who report suffering from anxiety and constant fear for themselves and their children. The increased pressure adds further stress and tensions to family life. Moreover, women and girls may be restricted from working or studying outside the home because of the threat of settler violence. The experiences of men are exacerbated by a perceived failure to provide a safe haven for their families in accordance with traditional gender roles.[90]

D. Settler violence and displacement

50. Settler violence can be a significant factor contributing to a coercive environment[91] and a decisive factor forcing Palestinians to leave their place of residence.[92] According to a

[86] The Knesset Committee for Children's Rights later confirmed this order.

[87] A/73/410, para. 16.

[88] Ibid., para. 41.

[89] OHCHR, "Update on settler violence", p. 3; and Médecins du monde, "Burin case study", 5 June 2018, on file.

[90] OHCHR, "Update on settler violence"; and Women's Centre for Legal Aid and Counselling, *Women's Voices: In the Shadow of Settlements* (2010). See also the Centre's submission to the Special Rapporteur on violence against women, its causes and consequences on Israeli settler violence in the West Bank and East Jerusalem, 16 September 2013.

[91] A/70/351, paras. 25–51; A/71/355, paras. 46–50; A/73/410, paras. 40–43; A/HRC/31/43, para. 54; A/HRC/34/39, para. 52; and A/HRC/37/43, para. 45.

[92] A/73/410, para. 55.

survey by the Protection Cluster, 21 communities affected by settler violence, often along with other coercive factors, experienced a decrease in population in the course of 2017.[93] Première urgence internationale, an NGO, identified three cases during the reporting period of people moving from Burin and Urif due to recurrent settler violence, either to other villages or within their village.[94]

51. In August 2018, a Palestinian family of four was forcibly evicted by settlers and had their houses demolished in the Beit al-Baraka compound, south of Bethlehem. The family had lived in small houses within the compound premises since the 1970s as they worked for previous owners, an American Christian association. In 2010, the compound was reportedly sold to settlers through a shell company posing as a Scandinavian church. Settlers moved into the compound in 2015 and began harassing the family, and prevented two sons from living there. The family submitted seven complaints of harassment to the Israeli police, who reportedly did not take any action. The family also appealed to the Jerusalem Magistrate Court. In 2016, the court ruled in favour of the family, stating that it was allowed to live in the compound and that the settlers could not restrict their access.

52. However, on 6 August 2018, settlers tricked the father into leaving his house by claiming that their dogs had attacked his sheep, refused to allow him to return and removed his daughter from the house by force. The settlers then demolished their two houses without allowing them to retrieve their possessions. The Israeli police arrived just after the eviction, but the only action they took was to arrest the daughter following the settlers' claim that she had attacked them. She was detained for three days and eventually released without charges. The family members now live in nearby Arroub refugee camp. Due to the Israeli State's failure to take all appropriate action to provide legal protection to the family, including against demolition and forced eviction, there appear to be violations of the rights to housing and security of tenure. Furthermore, the arrest of the daughter raises concerns of arbitrary arrest and detention.

E. Failure to protect and lack of accountability

53. As previously documented, the Israeli security forces, in numerous instances which appear to indicate a pattern, have failed to prevent settler attacks and repeatedly failed to protect Palestinians when attacks occurred in their presence.[95] For instance, the village of Burin in the Nablus area is among the most affected by settler violence in the West Bank, as it is surrounded by the settlements of Har Bracha and Yitzhar and six outposts,[96] known as sources of serious settler violence. Burin residents and human rights defenders reported attacks on Palestinians and their property every Saturday, and sometimes also on Fridays, in the presence of Israeli security forces.

54. During clashes between Palestinians and settlers around Burin, the Israeli security forces only targeted Palestinians with crowd dispersal methods and arrests.[97] Video material of several incidents during the reporting period shows Israeli security forces failing to interfere with stone-throwing settlers and, in some instances, using crowd dispersal means towards Palestinians while settlers threw stones. Adding to the climate of impunity, the frequency of settler harassment seems to have become normalized among some Palestinian communities: such incidents have reportedly become so much a part of Palestinians' daily lives in Burin that they rarely report them anymore.[98]

55. As the occupying Power, Israel has the obligation to uphold public order and safety in the Occupied Palestinian Territory and to protect the Palestinian population from all acts

[93] Source on file.

[94] Première urgence internationale and Médecins du monde, *The Case of Burin*: *Escalation of Settler Violence in the West Bank* (2018), p. 3.

[95] A/72/564, paras. 20–22; and A/73/410, para. 18.

[96] Shalhevet Farm, Hill 725, Lehavat Yitzhar, Mizpeh Yitzhar, Bracha A and Sneh Ya'akov.

[97] A/72/564, para. 22. See also Yesh Din, *Yitzhar*, p. 23.

[98] Première urgence internationale, *The Case of Burin*, p. 3.

of violence.[99] Israel also has the obligation to exercise due diligence to prevent, investigate, prosecute, punish and remedy any harm caused to Palestinians.[100] OHCHR has on many occasions reported on the climate of impunity enjoyed by violent settlers, as well as those taking over private Palestinian land.[101] In a report issued in October 2018, the Israeli Ministry of Justice stated that Israeli authorities had made considerable efforts to enhance law enforcement in the West Bank in recent years. According to the report, between January and July 2018, the Israeli police opened 35 investigations related to settler violence against Palestinians, of which 4 led to the indictment of suspects, 4 were closed and the rest were still ongoing.[102] During the same period, the Office for the Coordination of Humanitarian Affairs recorded 219 incidents of settler violence. Despite these steps, it appears that in a number of cases Israel has failed to take necessary action to investigate cases of settler violence and to prosecute perpetrators. The repeated failure to investigate cases of settler violence and prosecute perpetrators[103] also discourages Palestinian victims of settler violence from filing complaints.[104]

V. Settlements in the occupied Syrian Golan

56. Syrian residents of the occupied Syrian Golan continued to face challenges due to discriminatory planning and zoning policies that favour illegal Israeli settlements. These policies make it nearly impossible for Syrian residents to build, plan or expand their homes and village infrastructure. The more than 25,000 Syrian residents live in 4 villages, while the estimated 23,000 Israeli settlers live in 34 Israeli settlements. Israeli settlers and the Israeli military reportedly control 95 per cent of the land in the occupied Syrian Golan.[105]

57. On 30 October 2018, Israel for the first time held municipal elections for the local village councils in the occupied Syrian Golan. Syrian residents were given the right to vote, but not to run for office unless they held Israeli nationality. This indicates that Israel appears to be increasing pressure on residents to obtain Israeli citizenship. The International Labour Organization noted that these elections, among other measures, constitute an emerging threat to Syrian identity in the occupied Syrian Golan.[106] At present, an estimated 10 per cent of the Syrian population in the Golan have taken Israeli nationality.[107] Residents and local organizations have reportedly raised concerns that Israel was using the elections to strengthen its claim to, and influence in, the occupied Syrian Golan, and announced their intention to boycott the elections.[108]

58. In the lead-up to the elections, a number of Syrian candidates with Israeli nationality who had decided to run for office withdrew. On the eve of the election, Druze community elders reportedly announced a prohibition against standing for election or voting. On the day of the election, hundreds of Syrian residents of Majdal Shams, the largest Syrian village in the occupied Syrian Golan, reportedly protested in front of the local polling place. Israeli police cleared the area, including by using tear gas.[109]

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99 Hague Regulations, arts. 43 and 46; and Fourth Geneva Convention, art. 27.

100 A/HRC/34/38, paras. 13 and 36–37.

101 A/HRC/31/43, para. 37; and A/HRC/34/39, para. 18.

102 Israeli Ministry of Justice, "Israel's investigation and prosecution of ideologically motivated offences against Palestinians in the West Bank", October 2018, p. 1.

103 A/71/355, para. 50; A/HRC/34/38, para. 33; and A/HRC/37/43, para. 23.

104 A/73/410, para. 18.

105 International Labour Office, *The Situation of Workers of the Occupied Arab Territories*, document ILC.107/DG/APP (2018), para. 147.

106 Ibid., para. 151.

107 Ibid., para. 148.

108 See https://golan-marsad.org/al-marsad-warns-of-the-political-agenda-behind-israels-elections-in-the-occupied-syrian-golan/; and Nour Samaha, "Syrians in Golan Heights to boycott municipal election by Israel", Al Jazeera, 21 June 2018.

109 Stephen Farrell and Suleiman Al-Khalidi, "Druze on Golan Heights protest against Israeli municipal election", Reuters, 30 October 2018; and Jack Khoury and Noa Shpigel, "Hundreds of Druze protest municipal elections in Israel's Golan Heights", *Haaretz*, 30 October 2018.

59. Concerns have previously been raised about the presence of mines in the occupied Syrian Golan.[110] In July 2018, Israeli authorities reportedly began to clear a minefield around an Israeli army post near Majdal Shams.[111]

60. In May 2018, the Israeli Minister of Intelligence told Reuters that his Government was expecting the United States of America to recognize Israeli sovereignty over the occupied Syrian Golan in the coming months.[112]

VI. Conclusions and recommendations

61. **The establishment and expansion of settlements in the Occupied Palestinian Territory by Israel amount to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law.**[113] **The transfer of an occupying Power's population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved.**[114] **Several international bodies have confirmed the illegality of Israeli settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.**[115]

62. **The advancement of plans for further housing units in settlements continued unabated, while the rate of construction starts decreased.**

63. **Palestinians remained subject to a restrictive planning, permit and construction regime, placing many of them under threat of demolition of structures and displacement. It also limits access to their land and to the public services. Access to land is further impeded by incidents of settler harassment and Israeli security forces behaviour. These factors contribute to a coercive environment and individually amount to violations of human rights, including economic, social and cultural rights.**

64. **The exacerbation of a coercive environment had a highly detrimental impact on the human rights of Palestinians. There was a significant increase in settler violence during the reporting period. In Hebron, Area C and East Jerusalem, several factors led to a deterioration in the living conditions of Palestinians.**

65. **Settler violence had adverse effects on Palestinian society, violating a range of rights. Furthermore, such violence, as well as settler cultivation of land, Israeli security forces practices, coordination areas and civilian security coordinator violence, may gradually prevent Palestinians from accessing their lands, which then risk becoming part of settlement perimeters, effectively constituting unofficial settlement expansion.**

66. **The High Commissioner recalls Security Council resolution 497 (1981), in which the Council decided that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect.**

67. **On the basis of her findings, the High Commissioner recommends that the Israeli authorities:**

(a) **Halt immediately and reverse all settlement development and related activities in the Occupied Palestinian Territory, including occupied East Jerusalem,**

[110] A/HRC/37/42, para. 66.

[111] See https://golan-marsad.org/israeli-authorities-finally-start-mine-clearance-in-majdal-shams/.

[112] See www.reuters.com/article/us-mideast-crisis-syria-israel-usa-exclu/exclusive-israeli-minister-says-us-may-soon-recognize-israels-hold-on-golan-idUSKCN1IO2YU.

[113] Fourth Geneva Convention, art. 49 (6).

[114] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[115] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 120; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

and in the occupied Syrian Golan, including through the discontinuation of support for private settler organizations' initiatives aimed at the seizure of Palestinian properties and the forced eviction of their residents, in compliance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);

(b) **End immediately all activity contributing to the creation of a coercive environment and/or increasing the risk of forcible transfer;**

(c) **Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights and international humanitarian law;**

(d) **Refrain from implementing evictions and demolition orders on the basis of discriminatory and illegal planning policies and practices that may lead to forcible transfer, including of Bedouin and herder communities;**

(e) **Take all steps necessary to protect the Palestinian population, including preventing attacks by settlers, and ensure accountability in cases of settler violence against Palestinians and their property;**

(f) **End policies and practices within the occupied Syrian Golan that may lead to discrimination against the Syrian population.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 40/24, the United Nations High Commissioner for Human Rights provides an update on the implementation of resolution 40/24 from 1 November 2018 to 31 October 2019. She describes the expansion of the settlement activities of Israel and its negative impact on the human rights of Palestinians. The report focuses on the developments that have exacerbated the prevailing coercive environment in parts of the Occupied Palestinian Territory to the extent that it may have led to forcible transfer. The High Commissioner also addresses issues relating to Israeli settlements in the occupied Syrian Golan.

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I. Introduction

1. In its resolution 40/24, the Human Rights Council requested the United Nations High Commissioner for Human Rights to report on the implementation of resolution 40/24 at its forty-third session, with particular emphasis on the policies and practices linked to the settlement enterprise that discriminate against the Palestinian population in the Occupied Palestinian Territory, including East Jerusalem. The report, which covers the period from 1 November 2018 to 31 October 2019, and also addresses issues relating to Israeli settlements in the occupied Syrian Golan, is submitted to the Council pursuant to that request.

2. The report is based on monitoring and other information-gathering activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information provided by other United Nations entities in the Occupied Palestinian Territory, Israeli and Palestinian non-governmental organizations and civil society in the occupied Syrian Golan. It should be read in conjunction with recent relevant reports submitted by the Secretary-General and the High Commissioner to the General Assembly and to the Human Rights Council (A/74/357, A/HRC/40/39, A/HRC/40/42 and A/HRC/40/43). The quarterly updates and reports of the Secretary-General presented to the Security Council on the implementation of Security Council resolution 2334 (2016) also provide relevant information.[1]

3. During the period under review, the Israeli settlement expansion accelerated in the West Bank, including East Jerusalem. Settlement housing advancement in Area C of the West Bank doubled, while in East Jerusalem the numbers remained approximately the same compared to the previous reporting period (1 November 2017 to 31 October 2018). The construction of outposts, [2] the demolition of Palestinian property and the resulting displacement continued at a rapid rate, as did settler violence and the lack of accountability for them.

II. Legal framework

4. International human rights law and international humanitarian law are concurrently applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. In particular, Israel is bound by the obligations of an occupying Power as set out by international humanitarian law. A detailed analysis of the legal framework in relation to the Occupied Palestinian Territory and the occupied Syrian Golan is contained in reports of the Secretary-General (A/HRC/34/38 and 39).

5. References to discriminatory Israeli policies and practices further to Human Rights Council resolution 40/24 do not affect the legally separate issues of the status of occupied territory or its population, the applicability and scope of international humanitarian law, nor the rights of and protections afforded to protected persons and the obligations of the occupying Power as defined in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

III. Activities related to settlements

6. During the period under review, advancements of plans for settlements more than doubled, while tenders for settlement construction and the actual commencement of construction both decreased. The rapid pace of establishment of outposts witnessed during the previous period under review continued. Conditions and acts contributing to a coercive environment, such as demolitions and forced evictions, increased, and acts of settler violence reached the highest level seen since 2013. On 28 January 2019, the Government of Israel announced its decision not to

[1] Available from https://unsco.unmissions.org/security-council-briefings-0.

[2] Outposts are unauthorized settlements that are illegal even under Israeli law. Both outposts and settlements are illegal under international law.

renew the mandate of the Temporary International Presence in Hebron as of 30 January 2019 (see A/74/357, para. 54).

A. Settlement expansion: land designation, planning and tenders

7. Advancement of plans for settlement construction more than doubled; plans for some 13,600 housing units in the West Bank advanced or approved by the Israeli authorities, compared to 6,300 in the previous period. Of the units, 11,600 were located in Area C and 2,000 in East Jerusalem.[3]

8. Israeli authorities issued tenders for some 1,300 units in Area C settlements, as against 3,500 issued during the previous period. In East Jerusalem, tenders for some 600 units were issued, approximately the same number as in the previous reporting period.[4]

9. The official data available for November 2018 to September 2019indicate a decrease in the commencement of new settlement construction in Area C (1,504 units as against 2,014 during the previous period).

10. On 15 September 2019, the Israeli cabinet retroactively legalized a new settlement, Mevo'ot Yericho, an outpost located in the Jordan Valley, 650 metres from Area A of Jericho. The decision entailed the legalization of existing housing units and the construction of more.[5] In the past two years, outpost construction has escalated drastically; settlers established 12 new outposts in current period under review,[6] and 11 in the previous period (by comparison, in the 10 previous years, 1.7 outposts were established on average per year).[7] The majority of the outposts established during the current period under review, as in previous years, were of a herding or farming nature. The establishment of outposts appear to be part of an official policy whereby the Israeli authorities encourage the takeover of land by settlers through agricultural projects (A/69/348, para. 28; A/HRC/40/42, paras. 31 and 39).

11. On 30 July 2019, the Israeli Security Cabinet discussed the advancement of 6,000 units in Israeli settlements.[8] In a rare development, 715 housing units for Palestinians in Area C were also discussed. On 27 August 2019, the Prime Minister of Israel gave instructions to submit a plan for 300 housing units for the Dolev settlement after a bomb allegedly detonated by Palestinians killed a 17-year-old Israeli girl and injured her father and brother at a spring near the settlement four days earlier.[9]

12. In September 2019, settlers established a new outpost, Keidar East, east of Jerusalem. In protest, Palestinians set up a tent a dozen metres from the outpost. In a seemingly discriminatory enforcement of Israeli law, Israeli authorities demolished the tent two days later, but did not dismantle the outpost.[10] Even when demolition orders targeting Palestinian and settler populations are comparable in percentages, Palestinians seem to be disproportionally affected, given the discrepancy in the amount of land allocated to Palestinian and settlement construction.[11]

[3] Information provided by the Office of the United Nations Special Coordinator for the Middle East Peace Process.

[4] Ibid.

[5] "Cabinet Approves Mevo'ot Yericho, the 6th New Official Settlement since Oslo", Peacenow, 15 September 2019.

[6] Asael West, Tkoa E, Nofei Prat South B324, Susiya East, Mitzpe Hatora, Rimonim North, Maskiyor South, Nili West, Makhrour Outpost, Halamish East, Mitzpe Kramim East, Keidar East Jabal Muntar.

[7] Peace Now, data on file.

[8] https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_27_august_2019_0.pdf.

[9] Tovah Lazaroff, Anna Ahronheim. "Netanyahu approves 300 new housing units in Dolev in response to attack", *Jerusalem Post*, 27 August 2019.

[10] "While Israelis Went to the Polls, Settlers Built a New Outpost near Ma'ale Adumin", Peace Now, 26 September 2019.

[11] "In the Spotlight. Under Threat: Demolition Orders in Area C of the West Bank", September 2015, Office for the Coordination of Humanitarian Affairs, pp. 12–13.

B. Consolidation of settlements

13. According to the statistics of the Israeli Central Bureau of Statistics, there were more than 600,000 settlers in the West Bank, including East Jerusalem, at the end of the period under review.[12] As part of national election campaigns in April and September 2019, the Prime Minister of Israel vowed on several occasions to declare sovereignty over settlements and to annex the Jordan Valley[13] and other parts of the West Bank.[14] Moreover, several government officials called for applying Israeli law and "sovereignty" in Area C.[15]

14. For decades, settlers have received economic and other incentives to relocate to the West Bank (A/HRC/28/44, para. 14; A/HRC/34/39, para. 24),[16] which amounts to the transfer by Israel of its population into the Occupied Palestinian Territory (A/67/375, para. 10). While the Government of Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, the movement of Palestinians in the West Bank has been restricted in a manner that severely infringes upon their freedom of movement and access to services and livelihoods (A/73/410, paras. 39–43; A/HRC/37/43, paras. 38, 56–58; A/HRC/40/42, para. 35).

Legal developments, including regularization of outposts

15. On 13 December 2018, the Attorney General of Israel issued an opinion allowing the Government to initiate steps to retroactively legalize settlement units built "in good faith", including on private Palestinian property that, at the time of construction, was mistakenly believed to be "State land" under Israeli law (A/74/357, para. 17).

16. On 30 June 2019, the High Court of Justice of Israel approved Military Order No. 1789 establishing a "civil services administration" for settlers in the H2 area of Hebron, which is under Israeli control. The new administration has, inter alia, the power to purchase property and thereby to consolidate the settler presence in Hebron (A/HRC/37/43, para. 12). On 26 August 2019, the Legal Adviser General of the Ministry of Defense issued a legal opinion permitting the construction of a new settlement in the wholesale market complex in H2.[17]

C. Impact of settlements on human rights

1. Settlement-related violence

17. During the period under review, incidents of settler violence continued at a high level, with an increase in the severity of attacks on and injuries to Palestinians. According to the Office for the Coordination of Humanitarian Affairs, the number of incidents of settler violence reached its highest level since 2013, rising to 352 incidents from the 254 reported during the previous period, and 147 during the period before that. OHCHR has previously reported on the gendered impact of settler violence (A/HRC/40/42, para.49).

[12] See https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem and https://peacenow.org.il/en/settlements-watch/settlements-data/population.

[13] Noa Landau and Yotam Berger, "Netanyahu says Israel will annex Jordan Valley if reelected", *Haaretz*, 10 September 2019; Toi Staff, "Netanyahu: If I'm re-elected, I'll extend sovereignty to West Bank settlements", *Times of Israel*, 6 April 2019.

[14] Toi Staff, "Netanyahu: After Jordan Valley and settlements, I'll annex other 'vital areas'", *Times of Israel*, 16 September 2019.

[15] Omri Nahmias, "Hotovely: Time to apply Israeli law in Area C", *Jerusalem Post*, 18 June 2019; Gil Hoffman, "Gilad Erdan: Time for Abbas to go", *Jerusalem Post*, 18 June 2019; https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_20_september_2019_2334_0.pdf.

[16] *By Hook and by Crook: Israeli Settlement Policy in the West Bank*, B'Tselem, July 2010; *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, Association for Civil Rights in Israel (ACRI), October 2014.

[17] http://peacenow.org.il/wp-content/uploads/2019/08/MOD_opinion_wholesale_market_Hebron_2018.pdf (in Hebrew).

18. Lethal incidents in this context have slightly dropped, even as general levels of violence have increased. Two Palestinians were killed by settlers in the West Bank, compared to four during the previous period under review (A/74/357, paras. 22 and 46). Three Israeli civilians, including one child, were killed by Palestinians in the West Bank, compared to seven during the previous period. According to the Office for the Coordination of Humanitarian Affairs, the number of Palestinians injured by settlers increased from 96 during the previous period to 121, including at least 11 by live ammunition (three during the previous period). A total of 46 Israeli civilians were injured by Palestinians in the West Bank, as against 38 during the previous period under review.

19. Attempts by settlers to enter and/or attack Palestinian communities also continued to cause friction between Israeli security forces and Palestinians, leading to clashes that resulted in two Palestinians being killed and 255 injured.

20. On 30 June 2019, a 70-year-old Palestinian man was attacked by three young settler men close to his house, near Ein al Jadida water spring, in the H2 area of Hebron. The man was working on his land when settlers surrounded him and wounded him in the arm with a sharp object. His son arrived and fended off the settlers, followed by the Israeli police and army arriving at the location. The victim was hospitalized. Three Israeli settlers were arrested, as was the victim's son, who was released around 24 hours later with no charge. He reported that the settlers' daily use of the spring close to his house prevented Palestinians from using it, and resulted in restrictions to his family's movements, especially those of women and children, who would leave the house only when accompanied by male family members. As at the end of the period under review, the man had not heard from the police concerning the complaint he filed.

21. The Office for the Coordination of Humanitarian Affairs, documented 7,275 trees damaged or vandalized by settlers (7,360 during the previous period), including by fire. For example, video footage dated June 2019 shows Israeli settlers attacking a school in the Palestinian village of Jalud, in the area of Nablus. It was also reported that, minutes after the attack, and raising concerns of arson, a fire began in the same location, which spread over 300 dunums. Around 900 olive trees belonging to 21 Palestinian families were burned.[18]

22. Settler violence often peaks during the olive harvest (A/HRC/28/44, paras. 32–38). On 19 October 2019, a group of 30 to 40 settlers attacked Palestinians picking olives in the outskirts of Burin village (Nablus). The settlers, some of them armed, threw stones at and attacked the Palestinians with clubs, injuring at least four, including the landowner, who had to be hospitalized. Clashes between Palestinians and settlers ensued, with settlers setting fire to trees, shooting at Palestinians and stealing bags of olives before Israeli security forces dispersed the settlers and Palestinians.

23. Early in 2019, settlers set up Halamish East outpost A on the lands of Jibya village, north of Ramallah, after establishing their presence by herding cows in the area,. Through violent attacks, they made some 550 dunums inaccessible to their Palestinian owners from Jibya and restricted the use of one of the rare recreational spaces for Palestinians in the area.

24. In February 2019, settlers from Beit al Barake compound twice attacked Palestinians in their homes near Arroub refugee camp in an attempt to forcefully evict them. According to the information received, Israeli security forces escorted the settlers and took part in the attacks. The second time, settlers confronted a man at his house, after which around 10 soldiers beat him, and sprayed his mother with pepper spray. After kicking, punching and hitting the man with rifle butts in front of his family, the soldiers detained him, accusing him of trying to take their weapons. The man was released five days later without having been brought before a court or had charges brought against him. At the end of the period under review, the victim had not been informed about any investigation by Israeli security forces into the incident.

[18] Amira Hass, "A fire racks a Palestinian village. Israeli firefighters act only when it nears a settlement", *Haaretz*, 15 June 2019.See also www.btselem.org/video/20190807_routine_settler_violence_fully_backed_by_military_in_june_2019#full.

25. As the occupying Power, Israel has the obligation to take all measures in its power to restore and ensure, as far as possible, public order in the Occupied Palestinian Territory and to protect the Palestinian population from all acts or threats of violence.[19] Israel also has the obligation to respect, protect and fulfil the human rights of the Palestinian population, including their right to life and security of person (A/HRC/34/38, paras. 13, 36 and 37).

2. Discriminatory law enforcement

26. In numerous cases during the period under review, Israeli security forces was present during settler harassment of or attacks against Palestinians, but appeared to take no action to protect them. Instead, in some cases, Israeli security forces reportedly took active part in settler attacks against Palestinians. In other cases, Israeli security forces arrested Palestinians during or following settler attacks for reacting to attacks, for example by throwing stones.

27. Apart from isolated cases of steps taken towards accountability, violent settlers and those taking over private Palestinian land enjoyed a general climate of impunity (A/74/357, para. 27). In a report issued in August 2019, the Ministry of Justice of Israel listed 118 investigations into alleged crimes by settlers against Palestinians for the period from January 2017 to June 2019. While 11 indictments were filed, including for cases opened in previous years, and two cases reached trial, none of them resulted in a conviction.[20] During the same period, 559 incidents of settler attacks against Palestinians were reported to the Office for the Coordination of Humanitarian Affairs. No information was available on the number of complaints filed by Palestinians. In October 2019, an Israeli suspect in a case of arson in 2015 that killed a Palestinian family in Duma was convicted for "membership in a terror group" in addition to the charge of "conspiracy to commit a crime motivated by a racist motive", previously accepted in a plea deal. The conviction did not, however, add any time to the maximum sentence of five and a half years agreed to in the plea deal (see A/74/357, para. 27).

28. During the period under review, action was taken on settler violence directed at Israeli security forces. In October 2019, the Prime Minister of Israel and other Israeli officials condemned attacks by settlers from Yitzhar settlement against Israeli security forces.[21] In October 2019, the Israel Defense Forces issued an administrative order banning a settler from Yitzhar from access to the northern West Bank for three months because of his alleged participation in attacks against Palestinians and Israeli security forces. No criminal process was initiated against the settler.[22]

29. As noted in past reports, Israeli settlers are tried under Israeli criminal law in civilian courts in Israel, while Palestinians are generally prosecuted in military courts under Israeli military law for security offences and other crimes as defined by military orders. Israeli domestic law, applicable to settlers, provides suspects with more substantive and procedural guarantees, while the military law applicable to Palestinians does not include adequate fair trial guarantees (A/HRC/37/42, para. 8). The application of two different legal systems in the same territory, on the sole basis of nationality or origin, is inherently discriminatory. It also violates the principle of equality before the law, which is central to the right to a fair trial (A/HRC/34/38, para. 40).

3. Demolitions, forced evictions and displacement

30. Israeli zoning and planning policies in Area C and East Jerusalem are discriminatory and considered incompatible with requirements under international law, and render it almost impossible for Palestinians to obtain building permits (ibid., para. 26). In addition, the

[19] Regulations respecting the Laws and Customs of War on Land (Hague Regulations), arts. 43 and 46; Fourth Geneva Convention, art. 27.

[20] See https://mfa.gov.il/ProtectiveEdge/Documents/IdeologicalOffencesAgainstPalestinians.pdf, p. 8.

[21] See Michael Bachner and Jacob Magid, "Netanyahu, Gantz condemn settler violence against IDF soldiers" and Judah Ari Gross and Jacob Magid, "ISF, Shin Bet, police to work together to find settlers who attacked troops", *Times of Israel*, 20 October 2019.

[22] See Elisha Ben Kimon, "Israel bans 'dangerous' settler from northern West Bank home", Ynet, 9 November 2019, and "Yitzhar resident served with administrative order", Honenu, 2 October 2019.

imposition of Israeli law in East Jerusalem and the modifications brought to the previous planning and zoning regime in Area C are incompatible with the obligation of the occupying Power to respect the laws in force in the occupied territory (ibid., para. 40; A/68/513 para. 32).[23] Palestinians therefore virtually have no choice but to build without permits and thereby expose themselves to the risk of demolition, which represents a significant coercive environment factor (A/74/357, para. 28).

31. According to the Office for the Coordination of Humanitarian Affairs, during the period under review, 599 Palestinian-owned structures were demolished in the West Bank, including East Jerusalem, leading to the displacement of 756 people, including 357 children and 208 women, as against the 403 structures demolished during the previous period that led to the displacement of 453 people. Approximately 58 per cent of the structures demolished were in Area C and 38 per cent in East Jerusalem.[24]

32. In July 2019, Military Order No. 1797 regarding Removal of New Structures came into effect. The order applies to structures in Area C deemed as new, and expands the authority of the Israeli Civil Administration to remove such structures within 96 hours of the issuance of a removal order. The order has been implemented in nine recorded incidents since it came into effect.[25] In October 2019, an amendment to the planning and building law came into effect, enabling expedited demolitions in East Jerusalem.[26] There is serious concern that these measures may accelerate demolitions on the basis of the discriminatory Israeli zoning and planning regime, and further limit opportunities for legal recourse.

33. The publicly stated intention of the Government of Israel to relocate thousands of Palestinians residing in Area C remains a key concern and contributes to a coercive environment (A/HRC/34/39, para. 44; A/72/564, paras. 36–57). Some 18 communities in and around East Jerusalem are at particular risk of forced eviction, including the Bedouin community of Khan al-Ahmar-Abu al-Helu, comprising some 190 individuals (A/73/410, para. 22; A/74/357, para. 36; A/HRC/37/43, para. 25).

34. On 22 July 2019, Israeli authorities demolished 10 buildings comprising approximately 70 housing units in Sur Baher, citing security concerns deriving from their proximity to the wall.[27] Seven of the buildings demolished were in Areas A and B of the West Bank under civil control of the Palestinian Authority, although on the Jerusalem side of the wall. The demolition caused the displacement of 24 people and affected 220 more. The destruction of private property in occupied territory is only permissible where rendered absolutely necessary for military operations, which did not appear applicable in this case.[28]

35. In East Jerusalem, 877 Palestinians were at risk of eviction by the end of 2019. Most evictions are initiated by settler organizations, which invoke Israeli laws that discriminate against Palestinians to gain control of Palestinian properties, by claiming ownership prior to 1948 or challenging the "protected tenant" status of some families (A/37/43, paras. 39-40). According to information provided by the Office for the Coordination of Humanitarian Affairs, during the period under review, such cases raised by settlers led to the eviction of 15 Palestinian residents of three buildings in East Jerusalem.

36. Silwan, one of the communities in the Old City basin heavily affected by demolitions, came under increasing pressure from forced evictions and tourist development projects initiated by Israeli authorities in coordination with settler organizations (see A/HRC/34/39, para. 22 and A/HRC/37/43, para. 41). On 30 June 2019, the so-called "Path of the Pilgrims",

[23] Hague Regulations, art. 43.

[24] The remaining demolitions were in Areas A and B.

[25] As at October 2019, four structures had been demolished and demolition orders had been issued regarding five others.

[26] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin: occupied Palestinian territory, September 2019, p. 5.

[27] Demolitions were expedited on the basis of a 2011 military order citing security concerns and prohibiting construction within 300 metres on either side of the wall. On 11 June 2019, the High Court of Justice rejected a petition challenging the order.

[28] Thus amounting to forced evictions contrary to international law; see www.ochaopt.org/content/un-officials-statement-demolitions-sur-bahir.

a tunnel excavated under Palestinians' homes at the initiative of a settler organization, was inaugurated.[29] At least five Palestinian families were reported to have left their houses owing to the damage caused during excavation of the tunnel.[30] On 3 June 2019, the Israeli National Infrastructure Committee rejected a series of objections against a controversial plan to construct a cable car connecting West Jerusalem to the Kerem Compound, and submitted the plan to the Government for approval.[31] Building the cable car over houses in Silwan will involve further confiscation and demolition of Palestinian property, and will intensify the coercive environment.

IV. Coercive environment resulting from settlement policies and consequent risk of forcible transfer

A. Prohibition of forcible transfer of protected persons

37. International humanitarian law prohibits "individual or mass forcible transfers" of protected persons within an occupied territory, as well as their deportations outside of the occupied territory, regardless of motives, although an occupying Power may undertake the total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.[32] Unlawful transfer constitutes a grave breach of article 147 of the Fourth Geneva Convention, thus amounting to a war crime.[33] Forcible transfer may also entail the violation of other provisions of international humanitarian law (for example, the prohibition of the destruction of private and public property), and may involve violations of international human rights law, such as the right to adequate housing, the right to family life and the right to freedom of movement.

38. According to the jurisprudence of international criminal tribunals, the prohibition of forcible transfer, which aims at preventing the forced removal of protected persons,[34] is to be interpreted broadly, taking into account the vulnerability of the civilian population. Forcible transfer does not necessarily require the direct use of physical force, as it may result from indirect measures creating a coercive environment, where people are forced to leave against their genuine will.[35] Forcible transfer can stem from "the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power or by taking advantage of a coercive environment".[36] The International Criminal Tribunal for the former Yugoslavia has exemplified measures, such as "dismissals from employment, house searches, and the cutting off of water, electricity, and telephone services" and

[29] Nir Hasson, "U.S. Envoys Break Open Tunnel Running Under Palestinian Village in East Jerusalem", *Haaretz*, 30 June 2019.

[30] https://peacenow.org.il/en/the-disputed-tunnel-in-silwan-inaugurated-with-american-support.

[31] https://alt-arch.org/en/jm_cable_car_en/.

[32] Fourth Geneva Convention, art. 49, and Rule 129 of Customary International Humanitarian Law, International Committee of the Red Cross.

[33] See also Rome Statute, art. 8 (2) (b) (viii).

[34] See PCNICC/2000/1/Add.2. According to the International Criminal Tribunal for the former Yugoslavia, the legal values protected by deportation and forcible transfer are the "right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location". Therefore, "the location to which the victim is forcibly displaced is sufficiently distant if the victim is prevented from effectively exercising these rights". International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Simić et al.*, Case No. IT-95-9-T, "Judgement", 17 October 2003, para. 130.

[35] International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Naletilić (aka "Tuta") and Martinović (aka "Stela")*, Case No. IT-98-34-T, Trial Chamber, 2003, para. 519; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Trial Chamber, 2006, para. 724.

[36] PCNICC/2000/1/Add. 2, Article 6 €, para. 1, footnote 5. See also references made extensively in the case law of the International Criminal Tribunal for the former Yugoslavia, such as *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Appeal Chamber, 2009, para. 319; *Prosecutor v. Stakić*, Case No. IT-97-24-T, Appeals Chamber, 2006, para. 281; and *Prosecutor v. Krnojelac*, Case No. IT-97-25, Appeals Chamber, 2003, paras. 229 and 233.

"widespread discrimination", creating "severe living conditions" where it is "practically impossible […] to remain".[37]

39. In previous reports and the first part of the present report, the severe impact of continued settlement expansion on the living conditions of Palestinians has been described, with the creation of a coercive environment that forces Palestinians in several areas of the West Bank, including East Jerusalem, to leave (see A/HRC/34/39). Concern over cases where Palestinians appear to have been forcibly transferred has also been raised by the Secretary-General and the High Commissioner in previous reports (A/67/372, para. 39, A/HRC/25/40 and Corr.1, paras. 18-20, A/69/347, para. 26 and A/71/355, paras. 61–64).

40. The impact of a coercive environment on individuals and communities is specific to their own circumstances and experience (A/HRC/34/39, para. 42). In the sections below, the High Commissioner highlight how different Israeli policies and measures adopted in East Jerusalem, the H2 area of Hebron and Area C of the West Bank have continued to drive Palestinians out of their homes and communities, in parallel with settlement expansion.

1. East Jerusalem

41. The Israeli zoning and planning policy in East Jerusalem is inherently discriminatory and constitutes a key factor of a coercive environment (A/HRC/40/42, para. 20), forcing Palestinians to leave communities they have lived in for generations (A/HRC/25/40, paras.18-20; A/HRC/37/43, paras. 34–35; A/73/410, para. 20).

42. Israeli authorities have zoned only 15 per cent of the area illegally annexed in 1967 for the housing needs of Palestinians,[38] compared to 38 per cent allocated to settlement construction.[39] Data provided by the Jerusalem Municipality show that while Palestinian residents account for 38 per cent of the overall population of Jerusalem, between 1991 and 2018 only 16.5 per cent of building permits were issued for construction in Palestinian neighbourhoods, mainly for small-scale private projects. By contrast, 37.8 per cent of permits were issued for settlement construction in East Jerusalem. Discriminatory planning, coupled with costly and complicated procedures, make it almost impossible for Palestinian residents to obtain building permits. As a result, at least one third of all Palestinian homes in Jerusalem were built without an Israeli-issued permit.[40]

43. According to the Office for the Coordination of Humanitarian Affairs, increased settlement expansion (A/HRC/34/39, para. 25; A/HRC/37/43, para. 5; A/74/357, para. 5) was mirrored by a sharp rise in demolitions in East Jerusalem (A/72/564, para. 23). The record number of demolitions witnessed in 2019 (see para. 30 above) - the largest number in the past 15 years[41] – led to the displacement of 330 Palestinians, including 88 girls and 84 boys. The number of self-demolitions to avoid heavy fines by the Jerusalem Municipality continued to rise (59 during the period under review, as against 31 during the previous period).[42]

44. Demolitions conducted in the context of the discriminatory planning system are unlawful and amount to forced evictions (A/HRC/42/40, para. 20; A/72/564, paras. 26 and 49). They may also result in violations of the rights to an adequate standard of living, to adequate housing and to education. Women and children suffer disproportionately from the practice of demolitions and other forced evictions, which can also make them vulnerable to acts of violence and sexual abuse when they are rendered homeless.[43] In one case monitored

[37] *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, 2006, para. 729–730.

[38] Aviv Tatarsky and Architect Efrat Cohen-Bar, *Deliberately Planned: A Policy to Thwart Planning tin the Palestinian Neighborhoods of Jerusalem*, Ir Amim and Bimkom, February 2017.

[39] Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory, Occupied Palestinian Territory: Humanitarian Facts and Figures, 2017 (available from www.ochaopt.org/sites/default/files/factsheet_booklet_final_21_12_2017.pdf), p. 14.

[40] Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory, Humanitarian Bulletin, occupied Palestinian territory, May 2019.

[41] www.btselem.org/planning_and_building/east_jerusalem_statistics.

[42] See also A/74/357, para. 31.

[43] Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 10.

by OHCHR, a female head of household reported being exposed to gender-based violence while seeking alternative accommodation following the demolition of her home. In other cases, women reported an adverse impact on their private life, including having to be veiled at all times after moving into the homes of extended families.

45. OHCHR monitored the case of a family of six, including four children, who, following the demolition of their house in Beit Hanina, Al Ashqarieh neighbourhood, were forced to relocate to Shu'fat refugee camp, on the West Bank side of the wall, within the Municipality of Jerusalem. On 24 September 2019, citing the lack of a building permit, Israeli authorities demolished the house, reportedly without prior notice and at a time where the whole family was not present and could not therefore retrieve belongings prior to the demolition. After their home was destroyed, the family, given the financial constraints they faced and the high cost of renting a house in East Jerusalem, moved with the father's parents to Shu'fat refugee camp, an area that is severely underserviced and plagued by a high criminality rate. Since being displaced, the father has not been able to maintain his work attendance due to the need to accompany his children through the checkpoint to and from their school in Shu'fat.

2. H2 area of Hebron

46. Since 1994,after an Israeli settler opened fire in the Ibrahimi Mosque (Tomb of the Patriarchs), killing 29 Palestinians and injuring 125 others, Israeli authorities have imposed a range of restrictions and discriminatory measures on Palestinians in Hebron, particularly the H2 area, where 35,000 Palestinians live.[44] As at December 2019, there were five settlement compounds and approximately 700 settlers in H2. Israeli authorities have cited the need to prevent security incidents to justify extensive restrictions, which only apply to Palestinians and not to settlers living in the area. Israeli security forces are heavily present (estimated at 6,000 soldiers) to enforce restrictions and provide for the security of settlers.

47. The settlements and related Israeli policies have had a serious negative impact on the human rights of Palestinians, including their personal security, freedom of movement, access to livelihood, education, health and justice services, as well as their right to family life. These conditions have created a distinctively coercive environment, which has caused many Palestinians to leave (see A/71/355). Surveys conducted in the so-called "restricted areas" of H2, adjacent to settlements, and partially or totally closed to Palestinian vehicular and/or pedestrian traffic, found that more than 1,000 housing units – between one third and 41 per cent of Palestinian homes[45] – in these areas had been vacated since 2000.

48. Palestinians who remain in H2 face very difficult and insecure living conditions. According to the Office for the Coordination of Humanitarian Affairs, 30 Palestinians (including two girls and six boys) were killed by Israeli security forces between October 2015 and October 2019 in H2,[46] including one man during the period under review (A/74/357, para. 64). Most Palestinians were killed by Israeli security forces in the context of attacks or alleged attacks. OHCHR documented many of these cases and identified situations of unnecessary and disproportionate use of force, in some cases possibly amounting to extrajudicial executions (A/71/355, paras. 36–43; A/71/364, paras. 8–9; A/72/565, para. 9). The sense of insecurity caused by the presence of Israeli security forces and security operations, including frequent house raids, harassment and arbitrary arrests, constituted a core element of the coercive environment in H2 (A/HRC/34/39, para. 52; A/71/355 paras. 25–50), which particularly affected children's safety and education (A/74/357, paras. 64-68). Between 1

[44] In 1997, under the Protocol concerning redeployment in Hebron, the city was divided into H2 (20 per cent of the city), placed under full Israeli control, and largely coinciding with the Old City, while the remaining H1 was placed under Palestinian control. See A/71/355, para. 26.

[45] See B'Tselem, *Ghost Town: Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron*, May 2007, p.14. A survey conducted in 2015 by the Hebron Rehabilitation Committee found that out of 3,369 housing units surveyed in the area, almost a third (1,079 housing units) were empty; see Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory, The Humanitarian Situation in the H2 Area of Hebron City: Findings of Needs Assessment, April 2019, p. 16.

[46] According to the Office for the Coordination of Humanitarian Affairs, a male Israeli settler was also killed in the same period.

November 2018 and 30 September 2019, there were 66 incidents of interference in education by Israeli security forces in H2, including one incident of the military use of a school, which affected 9,526 children (including 461 girls).[47] In the same period, Israeli security forces detained 23 boys who were commuting to or from school, mostly on allegations of stone throwing.

49. Daily acts of violence and harassment of Palestinians by settlers, most often carried out with impunity (see A/74/357, paras. 55–57), compound a coercive environment. While the number of incidents had decreased in previous years, settler violence intensified following the removal of Temporary International Presence in Hebron observers in January 2019 (ibid., para. 54). According to the Office for the Coordination of Humanitarian Affairs, the number of settler attacks causing Palestinian casualties and/or property damage in the doubled to 40 during the period under review.

50. Since late 2015, heightened movement restrictions have further isolated H2. As at April 2019, there were 121 physical obstacles and 21 permanently staffed checkpoints in an area of approximately four square kilometres. Six of them, controlling Palestinian access to the "restricted areas", were fortified with towers, turnstiles, revolving doors and metal detectors.[48] According to a survey conducted in 2019 by the Office for the Coordination of Humanitarian Affairs, 5,600 Palestinians living in H2 restricted areas must cross one of these checkpoints on foot to reach their homes. Approximately 6,200 (89 per cent of the residents) cannot reach their home by vehicle.[49] Movement and access restrictions are particularly taxing for Palestinians in Tel Rumeida and Ash-Shuhada streets. Since they were designated a "closed military area" in November 2015, only residents registered with Israeli authorities have access to the area. The designation was officially lifted in May 2016, and the checkpoints leading to Tel Rumeida have since been equipped with facial recognition cameras, purportedly to expedite the passage of residents who have an ID registration number. However, residents informed OHCHR that procedures at checkpoints remain uncertain, and that, depending on the Israeli security brigade operating the checkpoint, they may be let through by only showing their ID or may be additionally requested to pass through a metal detector, or be subjected to a humiliating body search.[50]Access procedures are often applied arbitrarily by Israeli security forces to non-residents.

51. Representatives of a women's organization operating in H2 informed OHCHR that movement restrictions and risk of harassment at checkpoints and at the hands of settlers have limited women's access to education, work opportunities and health care, compounding negative aspects of traditional gender roles. Girls are often pressured into early marriage as a means of "protection", including by leaving H2. In cases monitored by OHCHR, female residents reported they would not leave their homes unless accompanied by men, particularly on Jewish Shabbat, fearing attacks by settlers. In other cases, women reported having to miss medical appointments to avoid crossing checkpoints to and from H1, where most services have relocated.

52. The compounded effect of factors described above creates a coercive environment in H2, where Palestinians are forced to leave their homes and community in the old city. In such circumstances, their decision to leave cannot be considered genuinely "free", thus raising concerns of forcible transfer.

53. OHCHR and other organizations have previously documented cases of Palestinians leaving their homes in H2, including Tel Rumeida (A/71/355, para. 62; A/73/410, para. 19).[51] It gathered information according to which at least 6 Palestinians families moved from Tel

[47] Data verified by United Nations entities monitoring children affected by armed conflict.

[48] Office for the Coordination of Humanitarian Affairs, The Humanitarian Situation in the H2 Area of Hebron City, p. 5.

[49] Ibid.

[50] See also Badil Resource Center for Palestinian Residency and Refugee Rights, Brief – Forced Population Transfer: the Case of the Old City of Hebron, October 2016, pp. 30–31.

[51] See also Eyal Hareuveni, Playing the Security Card: Israeli Policy in Hebron as a Means to Effect Forcible Transfer of Local Palestinians, B'Tselem, September 2019, p. 23; and Simon Reynolds, *Coercive Environments: Israel's Forcible Transfer of Palestinians in the Occupied Territory*, Badil Resource Center for Palestinian Residency and Refugee Rights, February 2017, p. 15.

Rumeida between October 2018 and August 2019 owing to coercive factors. This was the case of Fawaz Abu Eisheh who, on 8 December 2019, moved with his spouse and three children (aged 2, 8, and 10 years) to the H1 area of Hebron. He told OHCHR that the long-standing movement restrictions and, above all, the fear for the safety of his children, had forced him to leave H2.

54. Fawaz was born in Tel Rumeida. Upon marriage, he convinced his wife, from H1, to join him in Tel Rumeida. He owned a house located at the opposite end of the street leading to the Ramat Yishai settlement, where several Palestinians have been killed by Israeli security forces. Israeli security forces are permanently stationed only 10 metres from his house to ensure safe passage of settlers. The checkpoints and the inability to reach his home by car affected all aspects of the family's life. In 2015, after Fawaz witnessed the killing by Israeli security forces of 18-year old Hadeel Hashlamoun (A/71/355, para. 36)[52] and other Palestinians in Tel Rumeida, he and his family decided to leave. He stated that his wife had started to suffer from insomnia, his children had begun to soil their beds, and there was shooting at night. The family sold all it could and began to build a house in H1, with current debts of 150,000 shekels.

3. Communities in Area C and other communities bordering settlements in the West Bank

55. Previous reports have identified factors that have created a coercive environment in Area C of the West Bank and areas adjacent to Israeli settlements, including demolitions in the context of the unlawful and discriminatory zoning and planning regime, and the threat of demolitions (A/HRC/34/39, para. 47; A/74/357, para. 28; A/HRC/40/42, paras. 17-20, A/68/513 para. 32), Israeli plans to relocate entire Palestinian communities (coupled with history of past evictions of entire communities by Israeli authorities) (A/HRC/34/39, paras. 44–45; A/HRC/40/42, para. 17; A/72/564, paras. 36–57), exposure to military training in and around Israeli-defined firing zones (A/HRC/34/39, para. 52), intimidation and harassment from Israeli security forces and government officials (ibid., para. 50), and settler violence committed with impunity (ibid., para. 24; A/74/357, para. 38). It has also been noted that one factor alone can be sufficient to create a coercive environment (A/HRC/34/39, para. 42) and to trigger concerns of forcible transfer.

56. As in East Jerusalem, the implementation of discriminatory zoning and planning policies has led to extensive destruction of Palestinian property, placing individuals and communities at risk of forcible transfer. Israeli authorities fully control planning and construction in Area C, which covers more than 60 per cent of the West Bank. Through measures such as the designation of "State land" and "firing zones", Israeli authorities have allocated 70 per cent of Area C to exclusive Israeli use (ibid., para. 14.),[53] including the construction and expansion of settlements, and made building permits in remaining areas nearly impossible for Palestinians to obtain.[54] According to the Office for the Coordination of Humanitarian Affairs, during the current period under review, seizures or demolitions in Area C led to the displacement of 361 people, including 171 children.

57. Settler violence and harassment can also put pressure on people living in communities in proximity to settlements to move (A/HRC/40/42, para. 50), including in Areas A and B, where settler violence, seemingly often tolerated by State officials, is used as a tool to take over additional land and further expand Israeli control beyond the jurisdiction of settlements

[52] An enquiry conducted by the Israeli security forces found that her death was unnecessary and avoidable. The incident led to incidents during which Palestinians were killed in attacks, or alleged attacks.

[53] See also Yael Stein, *Fake Justice: The Responsibility Israel's High Court Justices Bear for the Demolition of Palestinian Homes and the Dispossession of Palestinians*, B'Tselem, February 2019, pp. 7–9.

[54] Less than one per cent of Area C is planned for Palestinian construction. Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territory, Humanitarian Facts and Figures, 2017, p. 8.

into areas under Palestinian control (A/HRC/34/39, para. 18).[55] A flashpoint for settler violence remained the Nablus Governorate, which alone recorded 60 per cent of all Palestinian casualties from settlers' attacks in 2019.[56] Six Palestinian villages surrounding Yitzhar settlement continued to be targeted by repeated and apparently organized settler violence, prompting several Palestinian families to leave their homes and relocate.[57]

58. OHCHR documented the cases of two families forced to leave their homes on the outskirts of Urif village, in 2019, under the pressure of continued incursions by settlers from Yitzhar settlement. In one case, a divorced woman decided to leave her house, located 600 metres from Yitzhar, to protect her nine children from repeated settler attacks. She and her former husband had endured several settler attacks in previous years.[58] She decided to leave after two consecutive attacks, on 5 and 9 May 2019, and after her ex-husband had moved out of the house. During both incidents, a group of settlers stormed the house with stones while the children were inside. On 9 May, the incursion of settlers was followed by the intervention of Israeli security forces and a settler security guard, who fired a tear-gas canister then live ammunition at neighbours who had intervened to protect the children. The woman left her house the day after the attack and moved into a tent with her children outside the village. In a separate case, in June 2019, after settlers repeatedly targeted their property with stones, a couple and their three small children sold their house in the outskirts of Urif and relocated to the opposite end of town.

59. In previous reports, the Secretary-General and the High Commissioner have stressed that, contrary to the obligations of Israel as the occupying Power to ensure the safety and security of the occupied population, settlers largely enjoy impunity for attacks against Palestinians (see A/HRC/31/43, para. 37; A/HRC/34/39, para. 18; and A/HRC/40/42, para. 55).

V. Settlements in the occupied Syrian Golan

60. On 25 March 2019, the President of the United States of America issued a proclamation recognizing Israeli sovereignty over the occupied Syrian Golan. Within a week of the proclamation, reports emerged that Israel was planning to transfer 250,000 people to the occupied Syrian Golan by 2048, to build 30,000 new homes and to create 45,000 new jobs.[59] Shortly after the proclamation, the Government of Israel announced the establishment of a new settlement town in the northern part of the occupied Syrian Golan.[60] At a meeting of the Security Council on 27 March 2019, the Under-Secretary-General for Political and Peacebuilding Affairs reiterated the position of the United Nations on the occupied Syrian Golan, as reflected in the relevant Security Council and General Assembly resolutions, notably Security Council resolutions 242 (1967) and 497 (1981).[61]

61. In parallel to these plans for the expansion of settlements, Israel continued to maintain extremely restrictive zoning and building policies, with an impact on the Syrian population. These include the issuance of demolition orders and a recent process aimed at zoning some of the only viable land for expansion of Syrian villages as a national park.

62. The occupied Syrian Golan continues to be used for Israeli renewable and non-renewable energy industry expansion. In a submission to the Committee on Economic, Social and Cultural Rights in relation to the periodic report of Israel, Al-Marsad, a non-governmental human rights organization active in the area, asserted that the Israeli energy

[55] See also Yonatan Yanonich, "Yitzhar, A Case Study: Settler violence as a vehicle for taking over Palestinian land with state and military backing", Yesh Din, August 2018.

[56] Information provided by the West Bank Inter-Cluster Coordination Group; data on file.

[57] At least three families moved from Burin and Urif villages in 2018; see A/HRC/40/42, para. 50.

[58] OHCHR documented two attacks, on 25 and 29 April 2017. In one attack, the woman's ex-husband was injured with multiple fractures.

[59] "Al-Marsad Rejects New Illegal Settlement Plan for the Occupied Syrian Golan", Al-Marsad, 3 April 2019.

[60] "Golan Heights: Israel unveils 'Trump Heights' settlement", BBC News, 16 June 2019.

[61] S/PV.8495, p.2.

industry was involved in the exploitation of natural resources, while residents of the occupied Syrian Golan were unable to develop their own energy industries owing to Israeli restrictions.[62]

63. Developments affecting the Syrian population of the occupied Syrian Golan were noted during the period under review in relation to the "Clean Wind Energy Project"; a renewable energy project, which is expected to have a significant impact on the livelihoods, culture, health and environment of Syrian residents.[63] Reportedly, the 31 wind turbines planned, which can reach a height of 220 metres, will be built on Syrian agricultural lands and in proximity to Syrian population centres. It is expected to occupy some 4,300 dunums of land, almost a quarter of the agricultural land remaining in the possession of the residents of the occupied Syrian Golan. Al-Marsad estimated that Syrian landowners would receive about 1 per cent of the total profits of the project once it is operational.[64] It also noted that the project could have a severe impact on health and the environment, while further limiting the possibility for Syrian village expansion and undercutting the important cultural ties that residents of the occupied Syrian Golan maintain to the land.[65] The project was reportedly advanced without the free, prior and informed consent of Syrian residents, who have filed a local petition with 5,000 signatures opposing the project.[66]

64. During the period under review, Al-Marsad was repeatedly targeted by a smear campaign for its activities opposing the energy project. The energy company filed under the anti-boycott law of Israel a lawsuit against Al-Marsad for a report it had published outlining the implications of the project for the Syrian community. The company demands that Al-Marsad retract and apologize for allegedly slanderous material it has published on the project. This is the first time that a non-profit human rights organization registered in Israel[67] has been sued under the anti-boycott law, and could set a concerning precedent that would have a widespread impact on civil society in Israel.

VI. Conclusions and recommendations

65. **The establishment and expansion of settlements in the Occupied Palestinian Territory amounts to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law.**[68] **The transfer of an occupying Power's population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved.**[69] **A number of international bodies have confirmed the illegality of Israeli settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.**[70]

66. **Plans for further housing units in settlements increased, while the announcement of tenders and the rate of construction starts of settlement housing decreased. Incidents of settler violence continued at a high rate and the severity of attacks and injuries to Palestinians increased, without any decisive action by Israeli authorities to protect the Palestinian population in accordance with their obligations as the occupying Power.**

[62] http://golan-marsad.org/wp-content/uploads/AM-AH_Joint-Parallel-Report-to-the-CESCR-Israel-2019.pdf, para. 23.

[63] Ibid., para. 26.

[64] Ibid., para. 27.

[65] Ibid., para. 28.

[66] http://golan-marsad.org/wp-content/uploads/Al-Marsad_Urgent-Appeal-to-UN-Experts.pdf.

[67] Israel applies its domestic law also within the occupied Syrian Golan, and therefore requires local non-governmental organizations to be registered with the Government of Israel.

[68] Fourth Geneva Convention, art. 49 (6).

[69] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[70] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

Cases in which the Israeli security forces appeared to have used force against the protected population instead of protecting it are of utmost concern.

67. **Settler violence continued to adversely affect Palestinian society, violating a range of rights. Such violence, coupled with settler cultivation of land, and the practices of Israeli security forces, may gradually prevent Palestinians from having access to their lands, which then risk becoming part of the unofficial expansion of settlement perimeters.**

68. **Palestinians in Area C, the H2 area of Hebron and East Jerusalem continue to be subjected to restrictive and discriminatory policies and practices, and to increased tension and violence due to the existence and growth of settlements. These policies and practices violate several rights and contribute to a coercive environment. Palestinians living in such an environment may have no practical choice but to leave their places of residence. Displacement and relocation to alternative residential areas as a result of a coercive environment could amount to forms of forcible transfer, contrary to the obligations of Israel under international humanitarian and human rights law.**

69. **The High Commissioner recalls Security Council resolution 497 (1981), in which the Council decided that the decision of Israel to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void, and without international legal effect.**

70. **On the basis of the findings presented in the present and in previous reports, the High Commissioner recommends that the Israeli authorities:**

(a) **Halt immediately and reverse all settlement development and related activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, in compliance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);**

(b) **Rescind all policies and practices contributing to the creation of a coercive environment and/or increasing the risk of forcible transfer;**

(c) **Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights and international humanitarian law;**

(d) **Refrain from implementing evictions and demolition orders on the basis of discriminatory and illegal planning policies and practices that may lead to forcible transfer, including of Bedouin and herder communities;**

(e) **Take all steps necessary to protect the Palestinian population, including to prevent attacks by settlers, and to ensure accountability in cases of settler violence against Palestinians and their property;**

(f) **End policies and practices within the occupied Syrian Golan that may lead to discrimination against protected persons.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 43/31, the United Nations High Commissioner for Human Rights provides an update on the implementation of resolution 43/31 from 1 November 2019 to 31 October 2020. The High Commissioner describes the expansion of Israeli settlement activities and their negative impact on the rights of Palestinian people and on the contiguity of the Occupied Palestinian Territory, particularly in and around East Jerusalem. The High Commissioner also addresses issues relating to Israeli settlements in the occupied Syrian Golan.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 43/31, in which the Council requested the United Nations High Commissioner for Human Rights to report on the implementation of the resolution at its forty-sixth session, with particular emphasis on the consequences of the intensification of settlement activity and other steps taken towards formal annexation in the Occupied Palestinian Territory, particularly in and around East Jerusalem and the so-called E1 area, for the contiguity of the Occupied Palestinian Territory, and their implications for the civil, political, economic, social and cultural rights of the Palestinian people. In the report, which covers the period from 1 November 2019 to 31 October 2020, the High Commissioner also addresses issues relating to Israeli settlements in the occupied Syrian Golan.

2. The report is based on monitoring and other information-gathering activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information provided by governmental sources, other United Nations entities in the Occupied Palestinian Territory, Israeli and Palestinian non-governmental organizations, and civil society in the occupied Syrian Golan. It should be read in conjunction with recent relevant reports submitted by the Secretary-General and the High Commissioner to the General Assembly and to the Human Rights Council.[1] The quarterly updates and reports of the Secretary-General presented to the Security Council on the implementation of Security Council resolution 2334 (2016) also provide relevant information.[2]

3. During the period under review, Israeli settlement expansion continued at a rapid pace in the West Bank, including East Jerusalem. Policies and acts contributing to a coercive environment, including demolition of Palestinian property and resulting displacement, reached the highest levels since 2016 despite the coronavirus disease (COVID-19) pandemic. High levels of settler violence persisted, as well as a significant lack of accountability for such acts.

4. These developments took place against a backdrop of intensified political rhetoric of annexation.[3] Following the announcement of the United States of America Peace to Prosperity Vision in January 2020, the Prime Minister of Israel stated that "Israel will apply its laws to the Jordan Valley, to all the Jewish communities in Judea and Samaria, and to other areas that the plan [of the Government of the United States] designates as part of Israel and which the United States has agreed to recognize as part of Israel."[4] On 20 April 2020, the new coalition Government of Israel agreed to put forward to the Knesset the proposal to annex parts of the occupied West Bank from 1 July 2020. On 22 April 2020, the President of the State of Palestine rejected any annexation and on 19 May 2020, he announced that the State of Palestine was no longer bound by its political agreements with Israel.[5] On 13 August 2020, a joint announcement by Israel, the United Arab Emirates and the United States stated that "Israel will suspend declaring sovereignty" over the West Bank, as part of the normalization deal with the United Arab Emirates.[6]

5. If implemented, annexation of any part of the West Bank would constitute a most serious violation of international law, including the Charter of the United Nations.[7] It would also severely impede the exercise by the Palestinian people of their right to self-determination.[8] Such a step, which has no legal validity and constitutes a flagrant violation

[1] A/74/357, A/75/376, A/HRC/40/39, A/HRC/40/42, A/HRC/40/43 and A/HRC/43/67.
[2] See https://unsco.unmissions.org/security-council-briefings-0.
[3] A/74/357, paras. 12–13.
[4] See https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-prime-minister-netanyahu-state-israel-joint-statements.
[5] See www.timesofisrael.com/abbas-threatens-to-rip-up-accords-with-israel-us-if-annexation-plans-proceed and www.theguardian.com/world/2020/may/20/palestinian-leader-mahmoud-abbas-ends-security-agreement-with-israel-and-us.
[6] See https://il.usembassy.gov/joint-statement-of-the-united-states-the-state-of-israel-and-the-united-arab-emirates.
[7] S/2020/596, annex I; and A/75/376, para. 13.
[8] A/75/376, para. 13.

under international law, would entrench the establishment of settlements in the Occupied Palestinian Territory, including East Jerusalem.[9]

II. Legal framework

6. International human rights law and international humanitarian law are concurrently applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. In particular, Israel is bound by the obligations of an occupying Power as set out in international humanitarian law. A detailed analysis of the legal framework in relation to the Occupied Palestinian Territory is contained in two reports of the Secretary-General, A/HRC/34/38 and A/HRC/34/39.

III. Activities related to settlements

7. During the period under review, tenders for settlement construction accelerated, while the advancement of plans and construction starts for settlements slowed. There were 4 new outposts established during the period under review, down from 12 in the previous reporting period.[10] Policies and acts contributing to a coercive environment, such as demolitions and forced evictions, increased and acts of settler violence continued at a high rate.

A. Settlement expansion: land designation, planning and tenders

8. Plans for some 9,300 housing units were advanced or approved in West Bank settlements, including approximately 400 in East Jerusalem.[11] During the previous reporting period, some 13,600 housing units in the West Bank, including, 2,000 in East Jerusalem, were advanced or approved by the Israeli authorities and 6,300 in the period before that.[12]

9. On 27 February 2020, the Higher Planning Council of the Israeli Civil Administration approved 12 plans in 11 settlements with 1,737 housing units. The plans include a new industrial park south of Qalqilya.[13] On 14 and 15 October, in one of the largest collective advancements in recent years, Israeli authorities advanced some 5,000 housing units in Area C, approximately 80 per cent of which are planned in settlements in outlying locations, deep inside the occupied West Bank.[14] On 25 October 2020, Israeli authorities informed the Jerusalem District Court of the imminent issuance of a building permit for the construction of 31 settlement units in Hebron H2.[15]

10. Israeli authorities announced tenders for a total of 3,200 units, compared with 1,900 units during the previous reporting period, more than half of them in East Jerusalem. They include tenders related to two plans in the strategic area of E1, which would significantly disrupt the contiguity of territory between East Jerusalem and the West Bank and disconnect

[9] Security Council resolution 2334 (2016), para. 1.

[10] Peace Now, on file. The new outposts are Amihai South, Har Eival, Um Zaitun and Asfar South. See https://peacenow.org.il/en/settlements-watch/settlements-data/population.

[11] Information provided by the Office of the United Nations Special Coordinator for the Middle East Peace Process.

[12] A/HRC/43/67, para. 7.

[13] See https://peacenow.org.il/en/1739-settlement-units-promoted-eli-settlement-housing-legalized-new-industrial-park.

[14] See https://peacenow.org.il/en/4948-settlement-units-advanced-at-october-2020-higher-planning-council-sessions. The advancements are in: Mishor Adumim Industrial Area, Maale Adumim, Alfei Menashe, Karnei Shomron, Efrat, Shimaa, Patzael Motor Park, Maale Efrayim, Beit El, Har Gilo, Telem, Einav, Barkan, Pduel, Yakir, Maale Shomron, Yizhar, Eli, Kfar Adumim, Maale Michmash, Geva Binyamin (Adam), Kochav Yaacov, Shilo, Nili, Psagot, Pnei Kedem, Ariel, Bracha, Rimonim, Kfar Eldad, Asfar, Kerem Reim and New Givon.

[15] See http://peacenow.org.il/wp-content/uploads/2020/10/state_update_permit_Hebron_251020.pdf (in Hebrew only).

Ramallah and the northern West Bank from Bethlehem and the southern West Bank (see sect. IV).[16]

11. The official data available for the period from 1 November 2019 to 31 September 2020 indicate a decrease in the commencement of new settlement construction in Area C (837 units compared with 1,504 during the previous period).

12. With regard to land designations, for the first time in 35 years, the Israeli Civil Administration issued expropriation orders on 4 September 2020 for two archaeological sites in the West Bank, which are on privately owned Palestinian property in Deir Sam'an and Deir Kala' adjacent to the Leshem and Peduel settlements.[17] Under international humanitarian law, cultural property must be protected and its misappropriation is prohibited.[18] Furthermore, private property must be respected and cannot be confiscated, unless the seizure is required by imperative military necessity.[19]

B. Consolidation of settlements

13. According to the latest data available from the Central Bureau of Statistics of Israel, there were 220,000 settlers in East Jerusalem as at 31 December 2018 and 441,600 settlers in the rest of the West Bank as at 31 December 2019.[20] For decades, Israel has granted benefits and incentives to settlers,[21] which amounts to the transfer by Israel of its population into the Occupied Palestinian Territory.[22] While the Government of Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, the movement of Palestinians in the West Bank has been restricted in a manner that severely infringes upon their freedom of movement and access to services and livelihoods.[23] Furthermore, during the reporting period, there were significant political developments pertaining to plans to annex occupied territory (see para. 4 above).

14. In September 2020, Israeli media reported that the Government of Israel had allocated 20 million new shekels to survey and map unauthorized Palestinian construction in Area C.[24] The budget was allocated to the newly founded Ministry of Settlement Affairs rather than the Israeli Civil Administration.

15. On 29 September 2020, following objections from the Hebron Municipality to issue a permit, the planning and licensing subcommittee of the Israeli Civil Administration approved the construction of a lift at the Ibrahimi Mosque (Tomb of the Patriarchs) for the stated reason of facilitating access for persons with disabilities. In addition to being based on an unlawful planning and zoning regime,[25] this decision seizes the municipal planning authority over the ancient site from the Palestinian Hebron Municipality and it will allow the Israeli Civil Administration to expropriate land that belongs to the Islamic Waqf. The occupying Power is obligated to respect the laws in force in the occupied territory,[26] and shall

[16] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf and https://peacenow.org.il/en/netanyahu-promotes-the-construction-in-e1#inbox/_blank.

[17] See https://alt-arch.org/en/expropriation-orders-west-bank.

[18] Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4.

[19] Convention respecting the Laws and Customs of War on Land, annex: Regulations respecting the Laws and Customs of War on Land (The Hague Regulations), arts. 46 and 56. See also International Committee of the Red Cross (ICRC), Customary International Humanitarian database, rules 40 and 51 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule40 and https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule51).

[20] See https://peacenow.org.il/en/settlements-watch/settlements-data/population.

[21] A/HRC/28/44, para. 14; Eyal Hareuveni, *By Hook and by Crook: Israeli Settlement Policy in the West Bank* (Jerusalem, B'Tselem, 2010); and Limor Yehuda and others, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (Tel Aviv, Association for Civil Rights in Israel, 2014).

[22] A/67/375, para. 10.

[23] A/73/410, paras. 39–43; A/HRC/37/43, paras. 38 and 56–62; and A/HRC/40/42, para. 35.

[24] See www.haaretz.com/israel-news/.premium-israel-settlement-ministry-gets-6m-to-survey-unauthorized-palestinian-construction-1.9147627?Lts=1600066433905.

[25] A/HRC/31/43, paras. 45 and 60.

[26] The Hague Regulations, art. 43.

be regarded only as administrator and usufructuary of public buildings situated in the occupied country and abstain from introducing irreversible changes, particularly if detrimental to the rights and prerogatives of the occupied population.[27]

C Legal developments, including regularization of outposts

16. On 9 June 2020, the High Court of Justice of Israel struck down as unconstitutional the Judea and Samaria Settlement Regulation Law (the "Regularization Law"), which would have allowed legalization of outposts and settlements on private Palestinian land. The Court found that the law infringed on the right to property, equality and dignity of Palestinians.[28] Despite this positive decision, serious concerns remain due to the existing alternative legal mechanisms available to legalize outposts and settlements, some of which the Attorney General of Israel has promoted during and after the legal process.[29] In a legal opinion issued on 7 November 2016, the Attorney General approved the use of Military Order No. 59 (1967) to legalize settlement constructions built on private Palestinian land, when built in good faith, based on the assumption that it was on State land, and with adequate compensation to the lawful landowners.[30]

17. On 27 August 2020, the Supreme Court of Israel ruled to overturn the decision of the Jerusalem District Court to apply Military Order No. 59 (1967) to legalize the outpost of Mitzpe Kramim that was built on private Palestinian land. This decision overturns the first use of Military Order No. 59 (1967) as interpreted in the Attorney General's legal opinion of November 2016 to bypass the striking down of the Regularization Law.[31] The Court ruled that, within 36 months, the land must be vacated and returned to its Palestinian owners, after the State finds proper and appropriate alternative solutions for the settlers. On 28 August 2020, Israeli media reported that the Prime Minister of Israel had stated that "all avenues will be explored to keep the residents where they are and we are convinced that we will succeed in this".[32]

18. In October 2020, as part of the 4,948 units advanced by the Higher Planning Council, 253 units in outposts became retroactively legal under Israeli law – 133 units in Tapuach West, south of Nablus, and 120 units in Pnei Kedem, north east of Hebron, by recognizing the outpost as a "neighbourhood" of the Asfar (Metzad) settlement, despite the two areas of construction being non-contiguous.[33] This is an example of the alternative mechanisms used to retroactively legalize outposts.

D Impact of settlements on human rights

1. Settlement-related violence

19. Incidents of settler violence continued at the high level of the previous reporting period. According to the Office for the Coordination of Humanitarian Affairs (OCHA), there were 339 incidents of settler violence,[34] compared with 325 incidents reported during the

[27] Ibid., arts. 43 and 55; and Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 47. See also High Court of Justice, *Dwaikat et al. v. Government of Israel*, HCJ 390/79, PD 34 (1), Judgment, 22 October 1979, 428. See also Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 5.

[28] High Court of Justice, *Silwad Municipality et al. v. Knesset et al.*, HCJ 1308/17, Judgment, 9 June 2020.

[29] See www.haaretz.com/israel-news/.premium-gantz-nissenkorn-tell-staff-to-find-way-to-legalize-buildings-on-palestinian-land-1.8917013.

[30] A/73/410, para. 12; and A/HRC/37/43, paras. 16–17.

[31] Adopted in February 2017, the Law remains unimplemented to date, following petitions to the High Court of Justice (A/73/410, para. 12).

[32] See www.jpost.com/israel-news/court-orders-evacuation-of-homes-in-mitzpe-kramim-outpost-640240.

[33] See https://peacenow.org.il/en/4948-settlement-units-advanced-at-october-2020-higher-planning-council-sessions.

[34] Incidents of settler violence resulting in casualties, damage to property or both.

previous period and 254 during the period before that. A total of 142 Palestinians were injured during such incidents, including 25 children and 6 women. Moreover, a total of 8,700 trees and 477 vehicles were vandalized. The most affected areas were in and around Nablus, Hebron and Ramallah. Notably, the violence occurred while Israeli and Palestinian authorities had imposed significant restrictions on movement, including full lockdown measures due to the COVID-19 pandemic, starting in March 2020. According to an Israeli source, 58 Israeli civilians were injured by Palestinians in the West Bank.[35]

20. OHCHR has previously reported on the gendered impact of settler violence.[36] During the reporting period, there were worrying incidents of settler violence targeting persons in vulnerable situations, including children, persons with disabilities and older persons (also documented in A/75/376). Settler violence targeting children is not a new phenomenon and OHCHR has previously reported on its impact on the right to education.[37]

21. Numerous settler attacks against children monitored by OHCHR occurred in the presence of Israeli security forces. In the period under review, there were at least seven such attacks targeting children in the H2 area of Hebron. For example, on 23 November 2019, in Wadi al-Hussein, four adult settlers pepper sprayed, kicked and slapped a 9-year-old boy. The boy suffered bruises, burns and psychological distress. Israeli security forces stationed nearby did not take action to prevent the attack. On 11 March 2020, settlers physically assaulted a 15-year-old Palestinian boy and his 25-year-old sister on Shuhada Street. Two adult settlers drove their vehicle towards the boy at close range. The driver pulled over, stepped out of the car and kicked, pushed and punched the boy, while the other settler repeatedly pushed the boy's sister. A soldier in the Israeli security forces stationed nearby had been watching the incident from a military cabin at Checkpoint 55. The young woman approached the Israeli soldier and asked him to intervene. As she returned to defend her brother, who in the meantime had started to fight off the settlers, she was pushed and kicked by a settler. The soldier rushed to the scene and violently pulled the boy away, while allowing the assailants to drive away. On 5 September 2020, more than 50 settlers armed with batons and pepper spray repeatedly threw stones at and physically assaulted residents of three Palestinian houses in Tel Rumeida for several hours. An elderly woman and a 14-year-old girl sustained deep bruises from stones thrown at them. Although present in the area, Israeli security forces failed to provide security for the Palestinian residents. The conduct of Israeli security forces in the cases above raises concerns that they failed to ensure public order and, in particular, the safety and security of the protected population as required by international humanitarian law.[38]

22. Incidents of settler violence targeting young children were also reported in other parts of the West Bank, including East Jerusalem. For example, on 10 March 2020, Israeli settlers entered the outskirts of Turmusaiya and asked a Palestinian family to show their identification. The family refused and a quarrel ensued, during which a settler snatched a 2-year-old Palestinian toddler from the arms of his grandfather. The settlers physically assaulted the family and damaged their vehicle, but the toddler's father and grandfather were able to get the toddler back and leave.

23. As in previous years, settler violence increased during the olive harvest.[39] In a large number of incidents, groves were damaged and crops stolen. On 13 October 2020, a group of settlers threw stones at six Palestinians (four children aged between 8 and 12, one man aged 72 and one woman aged 35) while in their olive groves in Ni'lin. Settlers physically assaulted the man, who lost consciousness while bleeding from the head and was hospitalized with bleeding in the brain, two cuts 5–10 cm long on his head and bruising on his back and

[35] Source: Rescuers without Borders Israel. This figure has not been verified by the United Nations.

[36] A/75/376, paras. 19–21; and A/HRC/40/42, para. 49.

[37] A/HRC/40/42, paras. 44–47.

[38] The Hague Regulations, art. 43; and Fourth Geneva Convention, art. 27.

[39] A/HRC/28/44, paras. 32–38; and A/HRC/43/67, para. 22. In the first three weeks of the harvest, between 5 and 24 October 2020, Yesh Din reported to the Protection Cluster (under the Humanitarian Coordination Structure in the Occupied Palestinian Territory) 32 incidents leading to injury or damage to property.

arm. The family and a witness reported that some settlers used pepper spray against other Palestinians who were approaching. The family filed a complaint with the Israel Police.

24. Severe restrictions imposed by Israeli authorities on access to land for Palestinians seeking to harvest remained in place,[40] exacerbated by the halt in coordination between the Palestinian and Israeli authorities and the absence of international protection actors due to the restrictions on travel due to COVID-19. On 17 September 2020, just before the beginning of the olive harvest, 162 military orders were issued declaring 18,048 dunums of agricultural lands in the Governorates of Bethlehem, Hebron, Nablus, Qalqilya and Ramallah as closed military areas until the end of 2020.[41] In a positive development, on 25 October 2020, the Government of Israel revoked regulations issued in November 2019, which had restricted the number of times each year that Palestinian farmers could access their lands in the seam zone, located between the wall and Israel.[42]

2. Accountability for settler violence

25. Despite a few high-profile convictions and some steps taken towards accountability, violent settlers and those taking over private Palestinian land enjoyed a general climate of impunity.[43] In a report issued in August 2020, the Ministry of Justice of Israel listed 93 investigations into alleged crimes by settlers against Palestinians for the period between January 2019 and July 2020 (compared with 118 in the previous 18-month period). Two indictments were filed, including for cases opened in previous years, and five defendants were convicted, all for incidents that had taken place in 2014 and 2015.[44] Between January 2019 and July 2020, OCHA recorded 341 incidents of settler attacks against Palestinians,[45] including 2 killings and 113 injuries. In the report, the Ministry of Justice did not provide information on the number of complaints submitted by Palestinians, therefore there is no indication of the number of investigations opened compared with the number of complaints.

26. In January 2020, Yesh Din published a data sheet on law enforcement regarding ideologically motivated crimes against Palestinians in the West Bank based on data provided by Israeli authorities.[46] Yesh Din's monitoring of investigation files opened by the Judea and Samaria District Police (the Israel Police district for the West Bank) between 2005 and 2019 shows that 91 per cent had been closed without indictments and that the Israel Police had failed in the investigation[47] of 82 per cent of the files opened. As demonstrated by data from 2017–2019, the establishment of the Nationalistic-Motivated Crimes Unit within the Israel Police in 2013 does not appear to have produced significant improvements in the quality and outcomes of police investigations. Only 4 per cent of all files investigated between 2017 and 2019 resulted in indictments, while the failure rate in these investigations was 77 per cent. These findings raise serious concerns with regard to the effectiveness of law enforcement and accountability for settler violence in the West Bank.

27. On 2 May 2020, Israeli media reported that Lod District Court in Israel had ruled to allow a child suspected of killing a Palestinian woman, Aysha Arabi, in October 2018, to return to his home in the West Bank settlement of Kokhav Hashahar, pending his trial. The Israel Security Agency (Shin Bet) and State prosecutors objected to the decision, expressing

[40] A/75/376, para. 23.

[41] According to information provided by the Palestinian Land Research Center.

[42] See www.haaretz.com/israel-news/.premium-israel-says-revoked-limits-on-palestinian-farmers-access-to-lands-near-green-line-1.9266801.

[43] A/74/357, para. 27.

[44] Israel, Ministry of Justice, "Investigation and prosecution of ideologically motivated offences against Palestinians in the West Bank" (August 2020). See also https://mfa.gov.il/ProtectiveEdge/Documents/IdeologicalOffencesAgainstPalestinians.pdf.

[45] For data on incidents of settler violence resulting in casualties, damage to property or both, see OCHA, Protection of Civilians database. Available at www.ochaopt.org/data/casualties.

[46] See www.yesh-din.org/en/data-sheet-december-2019-law-enforcement-on-israeli-civilians-in-the-west-bank.

[47] Ibid. Investigation failure includes: insufficient evidence (241 cases), offender unknown (736 cases) and files lost and never investigated (8 cases).

concerns that he would be further radicalized. On 20 October 2020, the trial for manslaughter at the Lod District Court began behind closed doors.[48]

28. On 18 May 2020, Amiram Ben-Uliel was convicted by the Lod District Court of three counts of murder and two counts of attempted murder for the killing of the Dawabsheh family in their home, in the West Bank town of Duma, south of Nablus, in 2015. The Court acquitted him of being a member of a terrorist organization, and sentenced him on 14 September 2020 to 3 cumulative life sentences, in addition to 17 years in prison for attempted murder and 10 years for arson, and ordered him to pay 994,000 new shekels as compensation for the victims. The defence indicated that it would appeal the convictions to the Supreme Court. On 16 September 2020, the second accused, who was 17 years old at the time of the attack, was convicted for being a member of a terrorist organization and for conspiring to set fire to the home of the Dawabsheh family for racist motives, as well as for his involvement in other hate crimes not linked to the Duma incident. He was sentenced to 3 1/2 years in prison, followed by 18 months of probation, and ordered to pay 25,000 new shekels as compensation for the victims.

3. Demolitions, forced evictions and displacement

29. According to OCHA, during the period under review, 726 Palestinian-owned structures were demolished, including 131 donor-funded structures and 70 water and sanitation structures in the West Bank, including East Jerusalem. These demolitions led to the displacement of 1,028 persons – 523 children, 255 women and 250 men – which is a significant increase from the 599 structures demolished and the displacement of 756 persons during the previous period. Approximately 75 per cent of the structures demolished were in Area C and 23 per cent in East Jerusalem.[49]

30. Demolitions of Palestinian-owned structures increased by 27 per cent during the reporting period, despite a state of emergency having been declared across the West Bank since March 2020 due to the COVID-19 pandemic. The demolition of residential homes, water, sanitation and hygiene facilities, as well as health facilities, during a public health crisis further exposed many Palestinians to risks associated with the pandemic. On 26 March 2020, Israeli security forces dismantled and confiscated structures in Ibziq, Tubas, including a clinic and residential shelters. On 21 July 2020, during a period of significant daily increases of COVID-19 cases across the West Bank, with 80 per cent of active cases in Hebron,[50] Israeli authorities demolished a building that was being prepared as a COVID-19 screening and sample-collection centre in the city.[51] In addition to violating the clear prohibition of destruction of property,[52] these incidents could amount to a violation by the occupying Power of its obligation to ensure and maintain public health under international humanitarian law and international human rights law.[53]

31. The impact of demolitions extends beyond the affected households. The operations of Israeli security forces to enforce demolitions led in some cases to clashes in which they responded by using force. For example, on 18 August 2020, Israeli security forces entered Jabal al-Mukabber in East Jerusalem and demolished a building under construction. Locals threw stones at Israeli security forces who responded by firing live ammunition, sponge-tipped bullets, stun grenades and tear gas. A 24-year-old man who was standing in a street about 100 metres away from the demolition site, who was not involved in any violence, was shot by Israeli security forces in the abdomen with live ammunition. He was taken to Al Makassed Islamic Charitable Society Hospital by ambulance. Shortly afterwards, Israeli security forces raided the hospital in which he was undergoing surgery in an attempt to arrest him. The man was discharged after 19 days and was summoned by Israeli security forces and interrogated about stone throwing. He was released on the questionable basis of five days'

[48] See also www.haaretz.com/israel-news/.premium-trial-of-israeli-minor-accused-of-killing-of-palestinian-woman-begins-1.9248062.

[49] See OCHA, Database of West Bank Demolitions. Available at www.ochaopt.org/data/demolition.

[50] Data of the Palestinian Ministry of Health.

[51] OCHA, Database of West Bank Demolitions.

[52] Fourth Geneva Convention, art. 53.

[53] Ibid., art. 56; and International Covenant on Economic, Social and Cultural Rights, art. 12.

house arrest and made to pay 3,000 new shekels. He suffers from pain and reduced mobility and has not been able to work since the incident.

32. The acceleration of demolitions of newly built Palestinian structures appears to be linked to two legislative amendments.[54] On 14 April 2020, the commander of the Israel Defense Forces amended Military Order No. 1797 to extend its enforcement period until 30 April 2021.[55] Military Order No. 1797 authorizes the Israeli Civil Administration to remove new structures in Area C within 96 hours of notice being issued; residential structures are considered new if these have been inhabited for less than 30 days. On 4 August 2020, Military Order No. 1252 regarding the removal of mobile structures was amended to allow the Israeli Civil Administration to seize, without prior notice, mobile structures in Area C within 90 days of construction, instead of 60 days.[56] Both military orders were extended and broadened, limiting opportunities for legal recourse. The Israeli Civil Administration itself, reporting to the Knesset Foreign Affairs and Defense Committee[57] on "government activities to prevent the Palestinian Authority from taking over Area C", touted the success of those amendments. For example, the head of the Israeli Civil Administration noted that Military Order No. 1797 had allowed them to remove 242 Palestinian structures in the first eight months of 2020.[58]

33. On 30 April 2020, a new amendment to the procedure for submitting building permit applications in Area C was approved.[59] The amendment seeks to enable the outright rejection, on technical grounds, of applications, by claiming that they do not meet the new criteria, namely the requirement that every single inheritor of a plot of land must sign an application.[60]

4. Communities at risk of forcible transfer

34. Palestinian communities across Area C remain at risk of forcible transfer as a result of a coercive environment, as reflected in the publicly stated intention of the Government of Israel to relocate thousands of Palestinians residing in Area C.[61] At particular risk are Bedouin and herder communities, including 18 communities in and around East Jerusalem, [62] communities in the Jordan Valley and those located in lands designated by Israel as closed military zones.

35. Settler organizations play a significant role in generating political and legal pressure on the Government of Israel to implement demolition orders. The head of the Israeli Civil Administration noted that coordination among various groups, including settlers that report immediately on Palestinian construction, has improved greatly. The former head of the Knesset Subcommittee for Civil and Security Issues in Judea and Samaria of the Foreign Affairs and Defense Committee described, at the time it was still head of the Subcommittee, one of the settler organizations, Regavim, as an "intelligence officer" of the Subcommittee.[63]

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[54] See www.haaretz.com/israel-news/.premium-knesset-committee-39-of-west-bank-suffices-for-palestinian-construction-1.9147990.

[55] Military Order No. 1846.

[56] Order regarding the transfer of goods (Judea and Samaria) (No. 1252), 5748-1998, Regulations regarding the transfer of goods (transportation of portable structures) (Amendment No. 4, 5720-2020).

[57] On 29 July and 13 August 2020.

[58] See www.haaretz.com/israel-news/.premium-knesset-committee-39-of-west-bank-suffices-for-palestinian-construction-1.9147990.

[59] Cities, Villages and Buildings Planning Regulations (Request for Permit and Conditions) (Judea and Samaria), 5760-2020.

[60] After a military order issued in 1968, the land registration process was halted, leaving 60 per cent of land in the West Bank unregistered. Documentation regarding the ownership of land is incomplete in many cases, and there are often a large number of possible inheritors, of whom not all are involved in the current attempts to register land. This makes it extremely difficult to submit a complete application.

[61] A/72/564, paras. 36–58; and A/HRC/34/39, para. 44. Regarding Khan al-Ahmar/Abu al-Helu, also A/74/357, paras. 12 and 36.

[62] A/73/410, para. 22; A/74/357, para. 36; A/HRC/37/43, paras. 24–25; and A/HRC/43/67, para. 33.

[63] Knesset Foreign Affairs and Defense Committee, "The Palestinian takeover of Area C", minutes of the meeting of 13 August 2020. Available at https://fs.knesset.gov.il/23/Committees/23_ptv_581852.doc (in Hebrew only). See also www.haaretz.com/israel-news/.premium-knesset-committee-39-of-west-bank-suffices-for-palestinian-construction-1.9147990.

Since June 2019, Regavim has been requesting the High Court of Justice of Israel to order the implementation of the demolition order for Khan al-Ahmar/Abu al-Helu, which comprises some 190 residents, pending since the Court approved the demolition on 5 September 2018. The ruling sets a precedent that may put dozens of other Bedouin communities at risk of demolition and possible forcible transfer across the West Bank.[64]

36. Communities in Massafer Yatta, located in an area designated by Israel as closed for military training, continue to be at risk of demolition and possible forcible transfer. In June 2020, the High Court of Justice of Israel decided to exclude seven structures from an interim injunction that protects many community structures from demolition. In the same month, following the court decision, the Israeli Civil Administration demolished two structures in Jinba and, on 28 October 2020, Israeli authorities cut a donor-funded pipe supplying water to 14 herding communities in the Massafer Yatta, home to about 1,400 persons. During the pandemic, depriving these communities of water significantly worsens the pre-existing coercive environment in the area and could have particularly grave health consequences.

IV. Settlement expansion, its impact on the contiguity of the Occupied Palestinian Territory and implications for human rights of the Palestinian people, particularly in and around East Jerusalem

A. Settlement expansion and its impact on contiguity of the Occupied Palestinian Territory

37. Settlement expansion accelerated in East Jerusalem and surrounding areas following the announcement of the Peace to Prosperity plan by the United States, in January 2020, and calls from members of the Government of Israel to annex parts of the occupied West Bank. Around 5,600 units were advanced in East Jerusalem and surrounding areas. Some of the advancements were in the most sensitive areas, such as the E1 area for which plans have been frozen since 2012. The Secretary-General has previously expressed grave concern[65] and stated that the plans for settlements in East Jerusalem and surrounding areas, including in the E1 area, are of particular concern as they would isolate East Jerusalem from the rest of the West Bank and threaten to fragment the contiguity of the West Bank.[66]

38. On 27 November 2019, construction work commenced on 176 new housing units in the East Jerusalem settlement of Nof Tzion, located in the centre of Jabal al-Mukabber. Upon completion, Nof Tzion will become the largest settlement located in the midst of a Palestinian neighbourhood in Jerusalem.[67]

39. On 19 November 2019, the Jerusalem District Planning and Building Committee approved a plan outlining the construction of 290 housing units within the settlement of Gilo. The Committee rejected objections submitted by a Palestinian family who claimed ownership of the land and was currently residing in a home located on a portion of the land in question. The Committee refused to discuss the dispute over land ownership on the basis that it was beyond its purview and authority.[68]

40. On 9 February 2020, a plan to create a new large settlement of 9,000 units in the area of the old Qalandiya/Atarot airport, north of Jerusalem, was submitted for initial approval.[69] The construction would disrupt the contiguity of territory between East Jerusalem and the Ramallah area. On 24 February 2020, tenders were announced for 1,077 housing units in a

[64] A/74/357, para. 36.
[65] See A/67/738.
[66] A/75/376, para. 61.
[67] See www.haaretz.com/israel-news/.premium-israel-begins-work-on-what-will-become-largest-settlement-in-east-jerusalem-1.8192737.
[68] See www.ir-amim.org.il/en/node/2373.
[69] See https://peacenow.org.il/en/plan-advanced-for-a-new-settlement-in-atarot-in-the-heart-of-palestinian-east-jerusalem.

new settlement in Givat Hamatos, in the southern part of East Jerusalem.[70] Settlement advancements in Givat Hamatos and Gilo and the ongoing work to broaden Road 60 could completely isolate Beit Safafa from the rest of East Jerusalem, enclaving the Palestinian village of approximately 12,000 inhabitants.

41. On 9 March 2020, two plans for settlements were advanced at the Higher Planning Council for the construction of more than 3,412 housing units in the E1 area, which measures 12 km^2 and is adjacent to the Maale Adumim settlement, between East Jerusalem and Jericho.[71] If advanced, as many as 3,000 Palestinians living in the area would be at risk of forced eviction and possible forcible transfer. Settlement plans advanced in February 2020 would create a contiguous, Israeli built-up area extending from Jerusalem through E1 to the Maale Adumim settlement, 11 km beyond the Green Line. This would significantly disrupt the contiguity of territory between East Jerusalem and the West Bank and disconnect Ramallah and the northern West Bank from Bethlehem and the southern West Bank.[72] On the same day, the Minister of Defence of Israel announced his approval of a planned Palestinian-only road to allow movement between the two parts of the West Bank that would be severed by the construction of E1. The road would bypass the E1 area and thereby bar Palestinians from entering the area.[73]

42. Settlement plans advanced by the planning and building authorities in East Jerusalem and E1 during the first half of 2020 also include the advancement of master plans for adding 6,100 housing units in the settlements of Har Homa and Givat Hamatos, the approval of two detailed outline plans for a total of 144 housing units in two settlement compounds in the Palestinian neighbourhood of Beit Hanina, a dormitory for dozens of yeshiva students in Sheikh Jarrah, and the advancement of nine detailed outline plans for a total of 2,870 housing units inside the built-up area of East Jerusalem settlements.[74]

43. On 28 October 2020, the Jerusalem District Planning and Building Committee approved plans to construct a high-tech area in the Wadi al-Joz area of East Jerusalem. According to the municipality, approximately 200 Palestinian-owned industrial buildings would be demolished if the plan were to be implemented and tenants would be moved to complexes in Al-Issawiya and Umm Tuba in East Jerusalem.[75]

44. Settlement advancements aimed at further consolidating a ring of settlements around Jerusalem not only sever East Jerusalem from the rest of the West Bank, but also result in further fragmentation of the West Bank. Fragmentation by large settlement blocs and their network of bypass roads and the wall has in effect segmented Salfit Governorate into three enclaves of village clusters.[76] Other examples include Wadi al-Khazark, Umm al-Rihan and Barta'a ash Sharqiya in Jenin,[77] Kafr Thulth and Azzun Atma in Qalqilya,[78] as well as around Bethlehem, including the isolation of multiple villages near Bethlehem.

45. On 6 May 2020, the Minister of Defence of Israel announced the advancement of 7,000 units in Bethlehem, in the area known as E2, as part of the Efrat settlement.[79] If built, they would effectively cut off 14 southern West Bank villages from their natural connection with Bethlehem and further cut off the city from Road 60, the main road connection to the

[70] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf. This tender was originally published in February 2020 and delayed twice, in May and August 2020, before finally opening with 1,257 units on 15 November 2020. See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf and https://peacenow.org.il/en/a-new-opening-date-to-givat-hamatos-tender.

[71] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf and https://peacenow.org.il/en/netanyahu-promotes-the-construction-in-e1#inbox/_blank.

[72] Ibid.

[73] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_30_march_2020_2334.pdf and https://peacenow.org.il/en/road-allow-e1-construction-is-being-promoted.

[74] See www.ir-amim.org.il/en/node/2505.

[75] See www.jpost.com/israel-news/silicon-wadi-hi-tech-park-approved-in-east-jerusalem-647655.

[76] See www.jlac.ps/userfiles/Salfit-%20JLAC_pub.pdf.

[77] See www.jlac.ps/userfiles/Dhar%20Al%20Maleh%20Appeal.pdf.

[78] See www.jlac.ps/userfiles/Qalqiliya-%20JLAC-%20EU%20feb%202020.pdf.

[79] A/75/376, para. 44.

southern West Bank, including Hebron. They would also prevent Bethlehem's development southward – the only direction that is not yet blocked by Israeli settlements or infrastructure.[80]

46. The expansion of Har Gilo settlement is planned on the lands of the Palestinian village of Al-Walaja, covering 199 dunums and 560 housing units. Har Gilo has already all but severed the territorial connection between Bethlehem and the village of Al-Walaja. The 560 new housing units will form a new neighbourhood larger than the existing settlement. The expansion will use the land cut off by the wall to further fragment western Bethlehem, including the land connecting Al-Walaja and the town of Battir, as well as Battir and Bethlehem. The same land is some of the only uninhabited fertile land around Bethlehem. The expansion forms part of a larger plan that would extend the borders of Har Gilo to the Israeli-established Jerusalem municipal boundary and leave dozens of Palestinian homes under threat of demolition.[81] Har Gilo West, a new settlement bloc within the planned expansion, would complete the encircling of Al-Walaja from all directions, effectively isolating the village of about 2,800 inhabitants.[82] During this reporting period, 13 structures were demolished in Al-Walaja, including 1 donor-funded structure, displacing 10 Palestinians. On 27 May 2020, the High Court of Justice of Israel issued a decision to halt the demolition of 38 houses in the neighbourhood of Ein Jweizeh of Al-Walaja until the Jerusalem District Planning and Building Committee considers a master plan for Al-Walaja submitted by village residents in an effort to legalize buildings slated for demolition.[83] Nevertheless, 56 demolition orders have been issued for buildings in Al-Walaja, all of which have interim injunctions in place.

47. On 22 October 2020, the Israeli Civil Administration deposited for public review two plans[84] for the construction of roads connecting settlements around Jerusalem to the city. The planned expansion of Road 385 would link the settlement of Har Gilo to Jerusalem and link Jerusalem to the settlements of the Gush Etsion Regional Council in the Bethlehem area and eventually the settlement of Har Gilo West.

B. Impact on the rights of the Palestinian people

48. International humanitarian law prohibits the occupying Power from deporting or transferring parts of its own population into the territory it occupies. The settlements and related Israeli policies have had a serious negative impact on the human rights of Palestinians, including their personal security, freedom of movement, access to livelihood, education, health and justice, as well as their right to family life. These conditions have created an environment for many Palestinians that coerces them to leave their homes. The present section will focus on the right to housing due to the alarmingly high rate of demolitions in and around East Jerusalem.

49. During the reporting period, Israeli authorities undertook or ordered 165 demolitions in East Jerusalem, resulting in the displacement of 415 Palestinians, including 214 children, 94 women and 96 men, compared with the 230 structures demolished during the previous period that resulted in 323 Palestinians being displaced. Notably, while the overall number of demolitions decreased, the number of inhabited structures demolished increased.[85] The number of self-demolitions almost doubled to 46 per cent from 26 per cent during the previous reporting period.

[80] See https://peacenow.org.il/en/peace-now-submits-petition-to-block-allocation-of-a-nahla-e2-land-to-build-settlement.

[81] See https://fmep.org/resource/settlement-annexation-report-october-16-2020/#harhoma and www.timesofisrael.com/israel-to-advance-plans-for-over-4400-new-settlement-homes.

[82] See https://mailchi.mp/ir-amim/one-week-after-advancement-of-settlement-plans-in-greater-jerusalem-plans-for-road-infrastructure-in-the-area-are-deposited?E=91ae84f2f2.

[83] See www.wafa.ps/ar_page.aspx?Id=kfiyuua876796740732akfiyuu (in Arabic) and www.haaretz.com/israel-news/.premium-jerusalem-illegally-razes-four-palestinian-buildings-clearing-way-for-a-new-park-1.8910272.

[84] TPS YOSH-938 and TPS YOSH-926-1.

[85] OCHA, Database of West Bank Demolitions.

50. Palestinians in East Jerusalem are forced to carry out self-demolitions, as it is almost impossible for them to obtain building permits due to the discriminatory Israeli zoning and planning regime[86] and the imposition of large fines and charges should the municipality carry out the demolition instead.[87] The amendment to the Planning and Building Law enacted in 2017, which started to apply to all structures as of October 2019, limits the possibility of freezing demolition orders to one year, and only in exceptional circumstances, making the retroactive legalization of construction impossible. The amendment further limits legal recourse against demolitions, reinforcing the discriminatory nature of the zoning and planning regime.[88] Such an amendment exceeded the competence of Israel, as the occupying Power, to legislate, according to article 43 of The Hague Regulations.

51. One of the many human rights implications of this situation is that it severely limits the ability of households in East Jerusalem to adapt to the specific needs of persons with disabilities. For example, in August 2020, a family self-demolished extensions to their home in Sur Baher, East Jerusalem, built to accommodate the needs of a family member with severe physical and psychosocial disabilities. The extensions included a wheelchair-accessible room and shower and two paved pathways to allow persons with reduced mobility to enter and exit the home. The family received a "stop work" order during construction in 2006. Following advice from their lawyer that they had a valid justification, the family restarted construction and completed the extensions. In 2007, the family was fined 25,000 new shekels for building without a permit and was required to obtain a building permit within a year. Despite recruiting a specialized engineer for assistance in obtaining a building permit, the family was unsuccessful as the extensions were close to an existing road. The family received a final demolition order in 2014. In mid-January 2015, they removed the roof of the room extension as the family member with disabilities had passed away. On 28 July 2020, municipality staff ordered the family to self-demolish the room extension and two paved pathways. As the family could not afford the cost of demolition by the municipality or additional fines, they self-demolished the room extension. The pathways were left intact as they remain crucial for another family member with limited mobility. The family fears additional penalties from not demolishing these pathways.

52. Demolitions of private property in the Palestinian Occupied Territory in the context mentioned above, including those conducted in the context of an ultra vires and discriminatory planning system, are unlawful[89] and amount to forced evictions. They may also result in violations of the rights to an adequate standard of living and to adequate housing and have a negative impact on the enjoyment of the right to education.[90]

53. Approximately 200 Palestinian households in East Jerusalem, comprising 877 persons, including 391 children, face a similar risk of forced eviction due to cases filed in Israeli courts, primarily by Israeli settler organizations.[91] As highlighted in previous reports, settler organizations have primarily used the Absentee Property Law[92] and the Legal and Administrative Matters Law[93] as a basis to evict Palestinians from their properties in East Jerusalem.[94] Nearly 100 families, comprising around 700 Palestinians residing near the Old City of East Jerusalem, in Silwan, are embroiled in similar legal processes with the settler organization Ateret Cohanim. It was revealed, through a lawsuit filed on 11 October 2020, that the Jewish National Fund's 30-year-long eviction lawsuit against the Sumarin family in

[86] A/68/513, para. 32; and A/HRC/34/38, para. 26.

[87] According to the regulations, fines may reach up to 300,000 new shekels. The owners may be charged extra sums for any additional days of use, as well as the cost of the demolition itself, if this is carried out by the municipality.

[88] See the concerns raised by the High Commissioner in A/HRC/43/67, para. 32.

[89] Fourth Geneva Convention, art. 53.

[90] A/72/564, para. 49; and A/HRC/37/43, para. 44.

[91] A/75/376, para. 55.

[92] Unofficial English translation available at www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/04-Absentees-Property-Law-1950.pdf.

[93] A/75/376, paras. 51–52 and 64.

[94] Ibid., paras. 51–55.

Silwan has been funded and managed by Elad.[95] Elad has attempted to take over the property since the early 1990s through four litigations,[96] three of which were dismissed by the Jerusalem District Court as partially based on falsified documents.[97] Demolitions and forced evictions violate the rights to adequate housing and to privacy, and other human rights; they are a key element of a coercive environment that may lead to forcible transfer, which is a grave breach of the Fourth Geneva Convention.[98]

V. Settlements in the occupied Syrian Golan

54. In March 2019, the President of the United States signed an order recognizing the sovereignty of Israel over the occupied Syrian Golan, fundamentally shifting what was seen as the country's 52-year-old consistent policy on the issue – namely, to consider the Golan as occupied territory.[99] Members of the Security Council criticized this decision, stating that they did not recognize Israeli sovereignty over the Syrian Golan occupied since 1967 and formally annexed in 1981.[100] On 25 March 2019, the Secretary-General reiterated, through his spokesperson, that the status of the Golan had not changed and that the policy of the United Nations on the Golan was reflected in the relevant resolutions of the Security Council, and that policy, again, had not changed.[101] On 27 March 2019, the Under-Secretary-General for Political and Peacebuilding Affairs reiterated the position of the United Nations on the occupied Syrian Golan, as reflected in the relevant resolutions of the Security Council and General Assembly, notably Security Council resolutions 242 (1967) and 497 (1981).[102] On 19 November 2020, the United States Secretary of State visited a number of settlements in the West Bank and the occupied Syrian Golan. During his visit, he declared that the "Golan Heights were a central part of Israel".[103]

55. Restrictive zoning policies continued to be imposed on the population in the occupied Syrian Golan, particularly on lands that are fertile and vital for the population's urban expansion. During the reporting period, plans in relation to a clean wind energy project have continued: in January 2020, the Government of Israel gave its approval for the construction of 24 wind turbines on farmland in close proximity to the three remaining Syrian villages in the occupied Syrian Golan. The project, if implemented, would further encroach on the limited farmland available to those Syrian villages and occupy more than a quarter of arable land available to Syrian residents. It would also have serious effects on their environment and livelihoods. The project was reportedly advanced without the prior approval of residents, whom it will most likely affect.[104]

56. Al-Marsad – The Arab Centre for Human Rights in the Golan Heights, the only human rights organization operating from the occupied Syrian Golan, reported that it continued to face threats in relation to its opposition to the clean wind energy project. The energy company had filed a lawsuit, under the anti-boycott law of Israel, against Al-Marsad because of its active opposition to the project.[105] Due to the COVID-19 pandemic, the case has been postponed numerous times since February, but there are serious concerns that the threats aim to limit or halt the organization's activities.

[95] According to the agreement between the Jewish National Fund and Elad, the latter finances and manages the eviction proceedings and, in return, it receives the property after the Palestinian family is evicted. See https://peacenow.org.il/en/a-new-proceeding-reveals-that-elad-is-using-the-jnfs-name-to-conduct-the-eviction-proceedings-of-the-sumarin-family.

[96] A/75/376, para. 52.

[97] Jerusalem District Court, cases HC 325/96, TA 1185/96 and TA 1544-09.

[98] A/74/357, paras. 35 and 77; and A/HRC/34/39, para. 46, with references.

[99] See www.theguardian.com/us-news/2019/mar/21/trump-us-golan-heights-israel-sovereignty.

[100] See www.dw.com/en/trumps-golan-proclamation-gathers-international-condemnation/a-48070628.

[101] See www.un.org/press/en/2019/db190325.doc.htm.

[102] S/PV.8495, p. 2.

[103] See www.bbc.com/news/av/world-middle-east-55009178.

[104] See https://golan-marsad.org/amid-new-threats-against-project-opponents-energix-continues-to-develop-its-illegal-windfarm-in-the-occupied-golan.

[105] Ibid.

VI. Conclusions and recommendations

57. **The establishment and expansion of settlements in the Occupied Palestinian Territory amounts to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law.**[106] **The transfer of an occupying Power's population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved.**[107] **A number of international bodies have confirmed the illegality of Israeli settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.**[108]

58. **Plans for further housing units in settlements advanced at a rapid pace, the announcement of tenders accelerated, including in the strategic E1 area, which is of particular concern as this would isolate East Jerusalem from the rest of the West Bank and threaten to fragment the contiguity of the West Bank. While the rate of construction starts of settlement housing decreased, demolitions of Palestinian-owned structures increased significantly, despite the COVID-19 pandemic.**

59. **Incidents of settler violence continued at a high rate without any decisive action by Israeli authorities to protect the Palestinian population in accordance with their obligations as the occupying Power. Cases in which the Israeli security forces appeared to have used force against the protected population instead of protecting it are of utmost concern.**

60. **Settler violence continued to adversely affect Palestinian society and a wide range of human rights. Such violence, coupled with settler cultivation of land, damage to Palestinian farmland and property, and the practices of Israeli security forces, may gradually prevent Palestinians from having access to their lands, which then risk becoming part of the unofficial expansion of settlement perimeters.**

61. **Palestinians in Area C, the H2 area of Hebron and East Jerusalem continue to be subjected to restrictive and discriminatory policies and practices, and to increased tension and violence due to the existence and growth of settlements. Palestinian villages isolated due to settlement expansion are also disproportionately affected. These policies and practices violate several rights and contribute to a coercive environment. Displacement and relocation to alternative residential areas as a result of a coercive environment could amount to forms of forcible transfer, contrary to the obligations of Israel under international humanitarian law and international human rights law.**

62. **The High Commissioner recalls Security Council resolution 497 (1981), in which the Council decided that the decision of Israel to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void, and without international legal effect.**

63. **On the basis of the findings presented in the present and in previous reports, the High Commissioner recommends that the Israeli authorities:**

(a) **Halt immediately and reverse all settlement development and related activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, in accordance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);**

(b) **Rescind all policies and practices contributing to the creation of a coercive environment and/or increasing the risk of forcible transfer;**

[106] Fourth Geneva Convention, art. 49 (6).

[107] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[108] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

(c) **Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights law and international humanitarian law;**

(d) **Refrain from implementing evictions and demolition orders on the basis of discriminatory and unlawful planning policies and practices that may lead to forcible transfer, including of Bedouin and herder communities;**

(e) **Take all steps necessary to protect the Palestinian population, including to prevent attacks by settlers, and ensure accountability in cases of settler violence against Palestinians and their property;**

(f) **End policies and practices within the occupied Syrian Golan that may lead to discrimination against protected persons.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 46/26 and provides an update on the implementation of the resolution from 1 November 2020 to 31 October 2021.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 46/26. It is based on direct monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory and on information provided by governmental sources and by other United Nations entities and non-governmental organizations in the Occupied Palestinian Territory. It should be read in conjunction with recent relevant reports of the Secretary-General and the United Nations High Commissioner for Human Rights to the General Assembly and to the Human Rights Council.[1] The quarterly updates and reports of the Secretary-General presented to the Security Council on the implementation of Security Council resolution 2334 (2016) also provide relevant information.[2]

2. The present report, which covers the period from 1 November 2020 to 31 October 2021, contains an update on settlement activities, illegal under international law, and their impact on the human rights of Palestinians. Section IV focuses on restrictions imposed by Israel, including through use of force, on the rights to freedom of expression and peaceful assembly of Palestinians protesting against the settlement-related activities and the wider context of the occupation. The report also addresses issues relating to Israeli settlements in the occupied Syrian Golan.

3. During the reporting period, Israeli settlement expansion continued at a rapid pace in the occupied West Bank, including East Jerusalem. Settlers established 13 new outposts, continuing a decade-long trend of increase. Demolitions of Palestinian property and incidents of settler violence reached the highest levels ever recorded by the United Nations and settler violence became more severe. In most settler violence incidents monitored, the Israeli security forces failed to protect the Palestinian population, and in many cases used excessive force[3] against Palestinians. Furthermore, in many instances, the Israeli security forces used excessive force when Palestinians protested against settlement expansion and outposts. Widespread impunity for settler violence and for the excessive use of force by the Israeli security forces remained a serious concern. These developments further exacerbated the coercive environment in many Palestinian communities described in previous reports and increased the risk of forcible transfer.[4]

II. Legal framework

4. International human rights law and international humanitarian law apply concurrently in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem. In particular, Israel is bound by the obligations of an occupying Power as set out in international humanitarian law. A detailed analysis of the relevant legal framework is contained in two reports of the Secretary-General.[5]

[1] A/76/333, A/76/336, A/HRC/49/25 and A/HRC/49/83.

[2] See https://unsco.unmissions.org/security-council-briefings-0.

[3] The term “excessive use of force” is used in the present report to refer to incidents in the context of law enforcement operations in which force was not used in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Such incidents may entail situations in which force was used unnecessarily and/or disproportionately, and/or in pursuit of an illegal law enforcement objective and/or in a discriminatory manner.

[4] A/76/336, sect. IV; A/HRC/46/65, para. 48; and A/HRC/46/22, para. 4.

[5] A/HRC/34/38 and A/HRC/34/39.

III. Activities related to settlements

A. Settlement expansion

Land designation, planning and tenders

5. During the reporting period, the number of new tenders and construction starts increased, while the advancement or approval of new plans decreased. Israeli authorities issued tenders for a total of 3,600 units in West Bank settlements, including almost 300 in East Jerusalem, compared with 3,200 units during the previous reporting period. Plans for some 7,100 housing units in West Bank settlements, including approximately 500 in East Jerusalem,[6] were advanced or approved, compared with some 9,300 units during the previous reporting period.[7] Official data on settlement construction starts indicated a 40 per cent increase, with an average monthly rate of 142 units, compared with 101 units during the previous reporting period.[8]

6. Settlement advancements continued with the aim of further consolidating a ring of settlements around occupied East Jerusalem continued. On 20 May, the Jerusalem District Planning Committee approved the Har Homa E plan for 540 additional housing units, which would connect the existing Gilo and Har Homa settlements. On 13 October, the Jerusalem Local Planning Committee approved the designation of land for Gi'vat Hamatos, which would be the first new settlement built over the Green Line in Jerusalem in over two decades. On 4 and 18 October, the Israeli Civil Administration held hearings on objections to plans for nearly 3,500 units in the strategic E1 area.[9] This area is home to Palestinian Bedouin communities, including some 7,500 residents whom Israeli authorities had already expressed an intention to forcibly displace under previously attempted relocation plans.[10] The completion of the plans for Givat Hamatos, Har Homa E and the E1 area would create a contiguous built-up area of Israeli settlements along the southern and eastern perimeters of East Jerusalem, sever the connection between the northern and southern West Bank and detach East Jerusalem from the rest of the West Bank, thereby seriously undermining the possibility of a viable and contiguous Palestinian State.[11]

7. In mid-October, construction of a new residential compound in the Jewish settlement in Hebron began. On 24 October, the Israel Land Authority announced tenders for some 1,350 settlement housing units, half of them in the settlement of Ariel, in the middle of the northern West Bank, with serious implications for future Palestinian development in the area.[12] On 27 October, the High Planning Committee of Israel advanced plans for some 3,100 housing units in Area C.

8. On 29 November 2020, in a potential precedent for several other pending cases, the High Court of Justice of Israel "legalized" 224 dunums of land for the settlement of Kokhav Ya'aqov,[13] which is built on private and traditional village lands of the Palestinian town of Kafr Aqab. On 17 January 2021, Israel declared as "State land" 286 dunums between the

[6] Information provided by the Office of the United Nations Special Coordinator for the Middle East Peace Process.

[7] A/HRC/46/65, para. 8.

[8] Information provided by the Office of the United Nations Special Coordinator for the Middle East Peace Process.

[9] A/75/376, para. 43; https://www.ir-amim.org.il/en; and https://unsco.unmissions.org/security-council-briefing-19-october-2021.

[10] A/HRC/31/43, paras. 46 and 68; and A/67/372, para. 55. See also A/70/421, para. 43.

[11] A/75/376, para. 61.

[12] S/2021/1047, para. 5.

[13] See https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\17\260\054\r42&fileName=17054260.R42&type=4 (in Hebrew); and https://www.haaretz.com/israel-news/.premium-israeli-high-court-rejects-petition-against-declaring-west-bank-area-state-land-1.9338816.

settlements of Modi'in Illit and Kfar Haoranim, and 71 dunums near the settlement of Na'aleh,[14] apparently with the intention to allocate land for settlement expansion.[15]

9. Settlers established 13 new outposts,[16] illegal also under Israeli domestic law, continuing a decade-long trend of increase.[17] Of the total, nine were unauthorized agricultural farms, which have a devastating impact on surrounding Palestinian communities.[18] Israeli authorities demolished one outpost and evacuated another, pending an Israeli land survey to determine the status of the land (see para. 43).[19] On 11 May, the Israeli High Court of Justice ordered the eviction of Israeli settlers from 170 dunums of land in Shiloh Valley, near the settlement of Shevot Rahel, by 1 October, but later postponed the eviction until 1 February 2023.[20] Four plans retroactively regularizing outposts were advanced.[21] On 16 December 2020 and 10 May 2021, the Knesset advanced, in preliminary votes, bills aimed at legalizing approximately 65 outposts and mandating that they should be treated as authorized settlements in the interim, with their residents receiving all municipal services.[22] On 18 July, the Israeli High Court of Justice dismissed a 2019 petition to stop the transfer of State funds to the Amana settler organization, which finances settlement activity, including unauthorized outposts.[23]

Consolidation of settlements

10. Israel continued to unlawfully consolidate settlement blocs with networks of bypass roads and the Wall, endangering the viability of a two-State solution and having a severe impact on the rights of Palestinians. While Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, the movement of Palestinians in the West Bank continued to be restricted, severely infringing upon their freedom of movement and access to services and livelihoods.[24] Construction began on the Qalandiya underpass highway,[25] which would connect Jerusalem to a cluster of settlements deep inside the West Bank. Private Palestinian land would be seized to construct the highway.[26] Four other plans for roads in the West Bank were advanced.[27]

11. A key current issue in settlements and human rights is land registration. In May 2018, the Government of Israel decided that 50 per cent of land ownership in occupied East Jerusalem should be registered by the fourth quarter of 2021 and the rest by the end of 2025.[28] As at 31 October, the registration had begun for 70 plots of land throughout occupied East Jerusalem, including Beit Hanina, Sur Baher, Sheikh Jarrah, Issawiya, Hizma and At-Tur.[29] As the occupying Power, Israel is prohibited from applying its domestic laws in occupied

[14] Information provided by Peace Now.
[15] A/76/336, para. 41. See also https://f35bf8a1-b11c-4b7a-ba04-05c1ffae0108.filesusr.com/ugd/cdb1a7_04c9fe5f2c954d17953d9c5114041962.pdf.
[16] Information provided by Peace Now.
[17] A/76/336, para. 9.
[18] Ibid., sect. IV; A/75/376, para. 10; and A/HRC/40/42, para. 39.
[19] Information provided by Peace Now.
[20] See https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-israel-s-top-court-delays-settler-evacuation-until-after-jewish-farming-sabbatical-1.10302191.
[21] Information provided by Peace Now.
[22] See https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_21_december_2020_2334.pdf.
[23] See https://www.haaretz.com/israel-news/.premium-high-court-rejects-petition-to-halt-public-funds-to-settlement-movement-1.10012528.
[24] A/HRC/46/65, para. 13.
[25] See https://mailchi.mp/ir-amim/civil-administration-advances-huge-road-construction-plans-pushing-forward-the-de-facto-annexation-of-greater-jerusalem?e=f7e1245427 and https://peacenow.org.il/en/works-begun-on-paving-the-qalandiya-underpass.
[26] See https://mailchi.mp/ir-amim/civil-administration-advances-huge-road-construction-plans-pushing-forward-the-de-facto-annexation-of-greater-jerusalem?e=f7e1245427.
[27] Information provided by Peace Now.
[28] See https://www.gov.il/he/departments/policies/dec3790_2018. For further information, see https://www.ir-amim.org.il/sites/default/files/3790%20Monitor%20Report_May%202021_English_0.pdf.
[29] Information provided by the Norwegian Refugee Council.

East Jerusalem, being occupied territory, and may not extend its sovereignty to, or acquire permanent ownership over, land it occupies there.[30] The settlement of titles constitutes an irreversible act of sovereignty by a permanent regime, and so subverts the principle that occupation is inherently temporary.[31] The recent action taken in this regard in occupied East Jerusalem is illegal under international law.[32] It also increases the risk of illegal appropriation of property and of forcible transfer.[33]

12. The establishment and expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, have no legal validity and are flagrant violations of international law. In addition, outposts are considered illegal under Israeli domestic law. Such establishment and expansion of settlements amount to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law.[34] Such transfers amount to a war crime that may engage the individual criminal responsibility of those involved.[35]

B. Impact of settlements on human rights

Settlement-related violence

13. Settler violence reached the highest level since the United Nations began publicly reporting statistics on it in 2017.[36] There were 502 incidents of settler violence in the West Bank, including East Jerusalem, resulting in injury, death and/or property damage[37] compared with 339 incidents during the previous reporting period. The severity of attacks also intensified: of particular concern were incidents of armed settlers carrying out attacks inside Palestinian communities, sometimes in the proximity of the Israeli security forces, and of the Israeli security forces attacking Palestinians alongside settlers. Six Palestinians (four men and two women) were killed in such attacks – four by settlers and two by either settlers or accompanying Israeli security forces. Settlers also injured 170 others, including at least 83 men, 32 children and 11 women. Settlers vandalized 12,800 trees and 242 vehicles. According to Israeli sources, two Israelis known or believed to be settlers were killed and 98 were injured by Palestinians.[38]

14. In December, settler violence surged across the West Bank following the deaths of two settlers in violent incidents.[39] There was a further serious surge starting in April, seemingly driven by the threat of evictions in Sheikh Jarrah and Silwan for the benefit of settler organizations (see sect. IV below). Confrontations and nationalistically motivated incitement and violence spread across East Jerusalem and, in the course of May, to the entire Occupied Palestinian Territory and Israel, and triggered the largest escalation in hostilities between Israel and Palestinian armed groups in Gaza since 2014.[40]

15. In several cases documented during the reporting period, the Israeli security forces were recorded attacking Palestinians alongside settlers, including with firearms. On 14 May, about 20 to 30 settlers and at least 6 Israeli security forces personnel raided Urif village near Nablus. Young Palestinians threw stones at them and, in clashes that followed, settlers and

[30] Regulations respecting the Laws and Customs of War on Land, arts. 43 and 55; and https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf, rule 51.

[31] A/76/336, para. 13. See also the Regulations respecting the Laws and Customs of War on Land, arts. 43 and 55.

[32] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

[33] See A/75/376, sect. IV; A/HRC/46/65, sect. IV; and A/HRC/37/43, para. 36.

[34] A/HRC/46/65, para. 57; and Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 49 (6).

[35] A/HRC/46/65, para. 57; and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[36] Information provided by the Office for the Coordination of Humanitarian Affairs.

[37] Ibid. The figure excludes the number of Palestinians injured by the Israeli security forces in the context of settler related incidents.

[38] Information provided by the Office for the Coordination of Humanitarian Affairs.

[39] A/76/336, para. 21.

[40] Ibid., para. 22.

the Israeli security forces fired live ammunition. A 32-year-old Palestinian man was hit with two bullets to his chest and abdomen and died of his injuries. Eyewitnesses identified a guard of Yitzhar settlement as the shooter, and he was photographed shooting alongside the Israeli security forces. At least three other Palestinians were injured with live ammunition.

16. Settlement guards also appeared to play an active role in violent attacks. Settlement guards are usually settlers, often trained and armed by the Israeli security forces, and have the authority to detain and search, including without a warrant, using any reasonable means, until the military or police arrive.[41] On 28 April, a settlement guard physically assaulted a Palestinian man with disability in the Wadi Hilweh neighbourhood of Silwan, causing injuries and bruises to his head and face. Surveillance cameras showed the guard using pepper spray against the victim directly in the face, pushing him to the ground, strangling him and punching him repeatedly in the head. Palestinian neighbours called the police, who never arrived.

17. Settler violence increased again during the olive harvest in October. Between 4 and 31 October, the Office for the Coordination of Humanitarian Affairs recorded 52 incidents of settler violence, including 2,956 trees and 37 cars vandalized or destroyed.[42] Palestinians faced restrictions in accessing olive groves by settlement guards, the Israeli security forces and settlers. Nablus and Ramallah Governorates were the most affected. In many cases documented by OHCHR, the Israeli security forces did not respect their duty to protect Palestinians.[43] On 13 October, the Israeli security forces were responding to settlers uprooting olive trees in Al-Mughayyir, when a number of settlers, some masked, used pepper spray on their military vehicle, slightly injuring two soldiers, and attempted to hit a Palestinian man with a metal rod. On 14 October, the Israeli Minister of Defence called on the Israel Defense Forces to "act systemically, aggressively and uncompromisingly … against all forms of violence, against Palestinians, Jews and of course against security forces".[44] Yet, on 23 October, when approximately 20 masked settlers attacked Palestinian farmers picking olives with their families in Turmus'ayya, the Israeli security forces instead responded by shooting tear gas and rubber-coated metal bullets towards the Palestinians.

18. On 28 September, some 70 masked settlers carrying stones, batons and pistols attacked the Palestinian villages of Umm Fagarah, Ar Rakeez and At Tuwani. In Umm Fagarah, the settlers injured eight Palestinians in the presence of the Israeli security forces, including a 3-year-old boy who was hit in the head with a large rock and severely injured. The settlers also killed five sheep, damaged 10 homes, 13 vehicles, two tractors, and several solar panels, water pipes and tanks. According to eyewitnesses, Palestinian residents threw stones, attempting to keep the settlers away. The Israeli security forces, present at the scene from the beginning, did not intervene. Instead, they responded by firing tear gas and stun grenades at the residents. In related clashes, 20 Palestinians were injured by the Israeli security forces and 1 Israeli soldier was injured.

19. As the occupying Power, Israel has the obligation to take all measures in its power to restore and ensure, as far as possible, public order and life in the Occupied Palestinian Territory and, in all circumstances, to protect the Palestinian population against all acts or threats of violence.[45] Israel also has the obligation to respect and ensure the human rights of the Palestinian population, including their rights to life and security of person.[46] It is required to protect the life of persons in the Occupied Palestinian Territory, including East Jerusalem, from all reasonable foreseeable threats, including from threats emanating from private

[41] See https://www.yesh-din.org/en/the-lawless-zone-the-transfer-of-policing-and-security-to-the-civilian-security-coordinators-in-the-settlements-and-outposts/.

[42] Information provided by the Office for the Coordination of Humanitarian Affairs.

[43] See https://mailchi.mp/c106b3db21b6/state-re-opens-investigation-into-2010-severe-injury-of-unarmed-civilian-demonstrator-4841926?e=c3c0aff43a.

[44] See https://www.timesofisrael.com/liveblog_entry/gantz-instructs-idf-to-act-uncompromisingly-against-settler-violence/.

[45] Regulations respecting the Laws and Customs of War on Land, arts. 43 and 46; and Fourth Geneva Convention, art. 27.

[46] See International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*. See also A/HRC/34/38, paras. 6–9.

persons and entities.[47] Instead, systematic and increasingly severe settler violence – with the acquiescence or, on occasion, practical support of the Israeli security forces – is contributing to the worsening of the coercive environment for Palestinians.[48]

Accountability for settler violence

20. The Secretary-General and the United Nations High Commissioner for Human Rights have repeatedly reported on the prevailing climate of impunity with regard to settler violence.[49] The climate of impunity continued[50] despite the increased severity of attacks and public calls for accountability by Israeli officials. For example, following the attack on 28 September in Umm Fagarah, the Minister for Foreign Affairs of Israel condemned the attack and said that Israel had a responsibility to bring the attackers to justice. Israeli authorities arrested seven Israelis.[51] While five of them were released, two settler children, aged 15 and 17 years, were indicted on 21 October for participating in the attack, but neither of them for the actual assault of Palestinians.[52]

21. On 19 November, three Israelis, including two children, were indicted for attacking Palestinians harvesting their olives a month earlier.[53] On 29 December, the Attorney General of Israel filed an indictment against two Israelis, one of them a child, in relation to planning a "price tag" operation.[54] On 23 February, Israeli authorities indicted a 17-year-old Israeli boy for throwing stun grenades into Palestinian homes in Sartah.[55] On 1 September, the juvenile court in Jerusalem acquitted five Israeli children of charges of violence and terrorism relating to their participation in a so-called hate wedding in 2015.[56] One was convicted of wilful property damage. On 14 October, the Attorney General appealed.[57]

22. Accountability measures remained gravely deficient in cases where settlers, or the Israeli security forces alongside settlers, killed Palestinians.[58] There was no information publicly available about any investigation into the killing on 5 January of a 25-year-old Palestinian man by a settler in Gush Etzion. In respect of a settler killing a 32-year-old Palestinian man in Ras Karkar on 5 February, Israeli police decided not to launch a criminal investigation into the killing.[59] Regarding the killing of a 32-year-old Palestinian man in Urif on 14 May,[60] a military police investigation was announced on 16 July.[61] However, on 7 October, media reported that the Israel Defense Forces had failed to take steps against the masked person suspected of the killing. The Israel Defense Forces spokesperson said that he

[47] Human Rights Committee, general comment No. 36 (2019), para. 18.
[48] A/76/336, para. 19.
[49] Ibid., para. 26; and A/74/357, para. 27.
[50] A/76/336, para. 27. See also https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/מאי+2021+ניר+עמדה+בתוך+יישובים/inside+Palestinian+communities_EN.pdf.
[51] See https://www.haaretz.co.il/news/law/.premium-1.10314884 (in Hebrew).
[52] See https://www.haaretz.com/israel-news/.premium-jewish-teens-from-west-bank-charged-with-rioting-in-palestinian-village-1.10315594.
[53] See https://www.timesofisrael.com/three-israelis-indicted-for-assaulting-palestinians-during-olive-harvest/.
[54] See https://www.srugim.co.il/521483-%D7%9B%D7%AA%D7%91-%D7%90%D7%99%D7%A9%D7%95%D7%9D-%D7%A0%D7%92%D7%93-%D7%A9%D7%A0%D7%99-%D7%A6%D7%A2%D7%99%D7%A8%D7%99%D7%9D-%D7%A9%D7%AA%D7%9B%D7%A0%D7%A0%D7%95-%D7%AA%D7%92-%D7%9E%D7%97%D7%99%D7%A8 (in Hebrew). See also A/HRC/40/42, para. 30.
[55] See https://unsco.unmissions.org/security-council-briefing-25-march-2021-unscr-2334. See also https://www.timesofisrael.com/israeli-17-indicted-for-stun-grenade-attack-on-palestinians-vandalism/.
[56] See https://www.haaretz.co.il/news/law/1.10171777 (in Hebrew).
[57] See https://www.haaretz.co.il/news/law/1.10294297 (in Hebrew).
[58] See https://www.haaretz.com/israel-news/.premium-settlermasked-person-filmed-shooting-at-palestinians-as-israeli-soldiers-watch-1.10006087 and https://www.972mag.com/joint-attacks-israeli-settlers-soldiers/.
[59] See https://www.timesofisrael.com/man-said-to-have-shot-infiltrator-dead-already-on-trial-for-shooting-palestinian/ and A/76/336, para. 30.
[60] See https://www.haaretz.com/israel-news/.premium-settler-masked-person-filmed-shooting-at-palestinians-as-israeli-soldiers-watch-1.10006087.
[61] See https://www.972mag.com/joint-attacks-israeli-settlers-soldiers/.

was an off-duty soldier who lived in the area and that no complaint had been submitted against him.[62] Regarding a Palestinian man killed on 14 May by settlers in Ar-Rihiyah, on 23 July Israeli media reported that the victim's family had filed a complaint. As at 31 October, the Israeli police had not opened an investigation.[63] In respect of a 27-year-old man killed in Iskaka on 14 May and a 37-year-old woman killed near Kiryat Arba on 19 May in circumstances where both settlers and the Israeli security forces had used force, no information on any accountability steps was available. Regarding the events on 26 June where a settler was recorded shooting at Palestinians with live ammunition with a weapon of an Israeli soldier near the Havat Maon outpost, Israeli police opened an investigation in September. However, the settler was not summoned for questioning and the army decided not to file an official complaint against him.[64] On 17 October, the Israel Defense Forces announced that a deputy battalion commander who was recorded physically attacking Palestinians and Israeli activists twice in September would, as a consequence, not be promoted for the next three years.[65]

23. Failure to protect Palestinians and deficiencies in the justice system to hold settlers accountable for violence against Palestinians include: the application of different legal systems to settlers and Palestinians; the persistent and prevailing lack of thorough and impartial investigations; the low rate of indictments and convictions; frequently delayed processes; and lenient charges. Overall, these deficiencies exacerbate a climate of impunity for settler violence, encouraging attacks to continue.[66]

Demolitions, forced evictions and displacement

24. In the highest number since the Office for the Coordination of Humanitarian Affairs started recording demolitions in 2009, Israeli authorities demolished 967 Palestinian-owned structures[67] in the West Bank (83 per cent), including East Jerusalem (17 per cent), displacing 1,190 Palestinians (656 children, 261 women and 273 men). The structures demolished by Israeli authorities included 243 donor-funded structures provided as humanitarian aid, 86 water, sanitation and hygiene structures, despite the coronavirus disease (COVID-19) pandemic,[68] and two schools, affecting 643 children.[69] Israeli authorities demolished 70 structures by applying Military Order No. 1797, which authorizes the removal of new structures in Area C within 96 hours of notice.[70] In occupied East Jerusalem, Palestinians were increasingly forced to carry out self-demolitions, as it is almost impossible for them to obtain building permits due to the discriminatory Israeli zoning and planning regime and the imposition of large fines and charges should the municipality carry out the demolition instead.[71] Self-demolitions accounted for 98 demolitions, compared with 74 during the previous reporting period.[72]

25. At least 218 Palestinian households in East Jerusalem, comprising 970 persons, including 424 children, remained at imminent risk of forced eviction owing to cases filed in Israeli courts, primarily by Israeli settler organizations, at the end of the reporting period.[73] In February, Jerusalem Municipality rejected a master plan for the Al Bustan area of the Silwan neighbourhood in East Jerusalem, submitted as part of ongoing negotiations to create

[62] See https://www.haaretz.com/israel-news/.premium-the-israeli-military-spotted-a-settler-shooting-at-palestinians-but-did-nothing-1.10273450.

[63] See https://www.haaretz.com/israel-news/.premium-two-weeks-on-police-haven-t-begun-probing-alleged-settler-killing-of-palestinian-1.9931965.

[64] See https://www.haaretz.com/israel-news/.premium-israel-police-stall-in-probe-of-settler-who-fired-soldier-s-weapon-at-palestinians-1.10331978?lts=1640245559380.

[65] See https://www.haaretz.com/israel-news/.premium.HIGHLIGHT-idf-officer-barred-from-promotion-for-3-years-after-attacking-leftists-palestinians-1.10301506.

[66] A/76/336, para. 31.

[67] Israeli authorities demolished 964 structures during the previous reporting period.

[68] Information provided by the Office for the Coordination of Humanitarian Affairs.

[69] Information provided by the United Nations Children's Fund (UNICEF).

[70] Information provided by the Office for the Coordination of Humanitarian Affairs.

[71] A/76/336, para. 34. See also https://www.alhaq.org/cached_uploads/download/2021/09/14/weekly-focus-ola-ag-final2-sp-1631603444.pdf.

[72] Information provided by the Office for the Coordination of Humanitarian Affairs.

[73] A/76/336, para. 34. See also S/2021/584.

a housing solution for the residents.[74] The Municipality also opposed a request to extend a demolition freeze to 68 homes. In March and August, the Jerusalem Local Affairs Court granted extensions to 52 freezes, currently until 10 February 2022, pending the planning process with the Municipality. It leaves out 16 homes in Al Bustan, which are at an imminent risk of demolition.[75] In the Batan Al Hawa section of Silwan, as many as 85 families remain at risk of eviction pending a ruling of the Supreme Court of Israel in appeals against eviction rulings of lower courts.

26. Palestinian communities in Masafer Yatta, south of Hebron, have been subjected to several waves of demolitions and have demolition and eviction cases pending with Israeli courts, affecting some 1,300 Palestinians.[76] The Norwegian Refugee Council provided legal representation to the families with pending demolition orders and on 24 December secured an interim injunction until 60 days after the ruling of the High Court of Justice on the eviction case. The Rural Council of Masafer Yatta requested to join the proceedings in the eviction case to present evidence that the residents had been living in the area before its declaration as a firing zone, and a hearing is scheduled for March 2022. Another location where up to 300 Palestinians are at imminent risk of displacement is Al Walajeh, on the southern border of Jerusalem, where 36 residential and 9 uninhabited structures have pending demolition orders against them. An interim injunction protecting 38 homes from demolition was still in effect at the end of October.[77] On 31 October, the District Court issued a decision allowing the community to submit a new plan.

27. These demolitions and forced evictions entail numerous human rights violations, exacerbate the coercive environment and may lead to forcible transfer, a grave breach of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Pursuant to international humanitarian law, private property in occupied territory must be respected and cannot be confiscated by the occupying Power,[78] which is also prohibited from destroying property and institutions dedicated to education.[79]

Communities at risk of forcible transfer

28. Palestinians across Area C, in East Jerusalem and in the H2 area of Hebron remain at risk of forcible transfer as a result of a coercive environment.[80] At particular risk are Bedouin and herder communities, including 18 communities in and around East Jerusalem, among them Khan al-Ahmar/Abu al-Helu[81] and communities in the Jordan Valley and on lands designated by Israel as military firing zones.[82] On 29 September, the High Court of Justice of Israel granted a request by the State of Israel to postpone until March 2022 its response to a petition to implement eviction orders against Khan al-Ahmar/Abu al-Helu. In its request, the Government cited the COVID-19 pandemic and the "current diplomatic-security situation", adding that there had been "significant progress" towards an agreement to avoid mass demolition.[83]

29. The homes and livelihood structures of the Bedouin community of Humsa al Bqai'a located in the Israeli designated military firing zone 903 were subjected to eight mass demolition and seizure operations during the reporting period.[84] Decade-long petitions and appeals by the community against the demolitions ended without a final verdict from the

[74] See https://www.ir-amim.org.il/en/node/2627. Information provided by the Norwegian Refugee Council.

[75] Information provided by the Norwegian Refugee Council. See also https://www.ochaopt.org/content/west-bank-demolitions-and-displacement-august-2021.

[76] A/76/336, para. 51.

[77] See https://mailchi.mp/ir-amim/al-walajeh-under-heightened-risk-of-mass-demolition-after-state-files-motion-to-dismiss-appeal?e=%5bUNIQID%5d.

[78] Regulations respecting the Laws and Customs of War on Land, art. 46.

[79] Fourth Geneva Convention, arts. 49 and 147; and Regulations respecting the Laws and Customs of War on Land, arts. 46 and 56. See also A/HRC/34/38, paras. 21 and 33.

[80] A/76/336, para. 37. See also A/72/564, paras. 36–58.

[81] A/73/410, para. 22; A/74/357, para. 36; A/HRC/37/43, para. 25; and A/HRC/43/67, para. 33.

[82] A/76/336, paras. 37–57.

[83] S/2021/1047, para. 11.

[84] Information provided by the Office for the Coordination of Humanitarian Affairs.

High Court of Justice when, in early November 2020, Israeli authorities verbally ordered the community to leave the area, and the demolitions and confiscations were carried out without time for any further legal action.[85] Between November and July, Israeli authorities demolished 196 structures, including 112 donor-funded structures, some of which had been provided as humanitarian assistance in response to previous demolitions, displacing 365 Palestinians, including 209 children. Israeli authorities also confiscated personal belongings, including food, milk for children, clothes, hygiene materials and toys. Livestock, which constitutes the community's main source of income, was left without food, water or shelter.[86] Reportedly, two families (12 persons) left their homes in Humsa al Bqai'a after the demolitions in November 2020 and moved to Froush Beit Dajan, near Nablus, where they remained as at 31 October. Other families moved just outside the firing zone and, on 21 February, the High Court of Justice of Israel issued a temporary order against the demolition of their structures at this location, which was at a distance of about 1,400 metres from their previous homes within the firing zone. As at 31 October, nine families (86 persons) reportedly remained at this location, and two families (11 persons) remained in the firing zone. The actions by Israel placed the community under extreme pressure to move and appear to have led to at least 11 families (98 persons) leaving their homes. In testimonies given to OHCHR on 12 July, residents stated their unwillingness to relocate to the Israeli designated relocation sites. Forcible transfer is a grave breach of the Fourth Geneva Convention and thus amounts to a war crime.

IV. Israeli suppression of Palestinian protests against settlement activities

30. In a significant spike, the Israeli security forces killed 70 Palestinians (51 men, 3 women and 16 boys) and injured 14,090 in the West Bank, including East Jerusalem, during the reporting period. Of them, 10 (4 boys and 6 men) were killed and 10,867 injured (including 795 with live ammunition) in the context of mainly peaceful protests against settlements and settlement-related issues and the wider context of the occupation. Particular tensions occurred in East Jerusalem, where Palestinians protested against the threat of evictions in Sheikh Jarrah and Silwan for the benefit of settler organizations, and in Nablus Governorate, where Palestinians protested against settler presence and the establishment of illegal outposts. In both contexts, examined further below, OHCHR documented numerous cases of discriminatory law enforcement, intimidation of protesters and journalists, mass arrests and use of excessive force against mainly peaceful protesters, including use of lethal force as a crowd control measure. This raised serious concerns of human rights violations by the Israeli security forces, including against the rights of Palestinians to freedom of expression and peaceful assembly, and their rights to life and security of person.[87]

Sheikh Jarrah, East Jerusalem

31. During the reporting period, Israeli police injured at least 265 Palestinians in East Jerusalem in the context of demonstrations, including 5 with live ammunition.[88] The Israeli security forces used force against entirely peaceful demonstrators, human rights activists and journalists in violation of international norms and standards. Law enforcement appeared to be carried out in a discriminatory manner and several arrests, including of journalists, raised concerns of arbitrary arrest and of hindering the work of journalists.

32. In East Jerusalem, over 200 Palestinian households had eviction cases pending in Israeli courts at the end of the reporting period, affecting almost a thousand Palestinians. The

[85] A/76/336, para. 39.

[86] Information provided by the Office for the Coordination of Humanitarian Affairs. Following a mass demolition on 7 July, humanitarian organizations were denied access to the site until 14 July, in contravention of article 59 of the Fourth Geneva Convention.

[87] Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 6 (1), 9 (1), 19 and 22; Regulations respecting the Laws and Customs of War on Land, art. 46; and Fourth Geneva Convention, art. 27.

[88] Information provided by the Office for the Coordination of Humanitarian Affairs.

cases are based on the application of the Absentee Property Law and the Legal and Administrative Matters Law, which allow Jewish Israelis who owned properties in East Jerusalem prior to 1948 to reclaim their property.[89] The application of these laws in East Jerusalem is inconsistent with the obligations of Israel under international humanitarian law.[90] There are no similar laws allowing Palestinians to reclaim their property, rendering them inherently discriminatory.[91] In the East Jerusalem neighbourhood of Sheikh Jarrah, a total of eight families – approximately 75 persons – faced the threat of eviction for the benefit of settler organizations at the end of the reporting period. In this case, the Nahalat Shimon settler organization claims ownership of the land following their acquisition of the properties and has filed eviction lawsuits against the Palestinian families. These claims are disputed by the Palestinian families, some of whom have resided in these homes for nearly 70 years, and they have appealed against the eviction orders. On 10 February, the District Court dismissed the appeals of four of these families, upholding their eviction, and ordering them to vacate their properties by 2 May 2021, placing them at imminent risk of eviction and igniting tensions (see para. 14).

33. For years, Palestinians, supported by Israeli and other activists, have demonstrated against evictions in Sheikh Jarrah. During April the protest movement grew. Palestinian, Israeli and other human rights activists initiated widespread sit-ins in the streets of Sheikh Jarrah and staged near daily protests. The community mobilized actively on social media, documenting events with the hashtag #SaveSheikhJarrah, which gained international attention. A recording of a settler telling one of the families under threat of forced eviction "if I don't steal it [their house] someone else will steal it" circulated widely and became a symbol of the settlement activities.[92] In an apparent bias in the moderation of online expression, content by Palestinian users about Sheikh Jarrah was increasingly restricted and taken down at the behest of the Israeli authorities.[93] On 14 September, Facebook's Oversight Board recommended an examination into the moderation of Palestinian and pro-Palestinian content.[94]

34. The protests spread from Sheikh Jarrah to other parts of Jerusalem, coinciding with the start of Ramadan and several Israeli holidays. Ethnically and nationalistically motivated tension and violence grew and, with it, significant movement restrictions and use of force against Palestinians. In some cases, Israeli police used unnecessary force, including at the Al-Aqsa compound, against peaceful protesters. For example, on 7 May, the Palestine Red Crescent Society reported 205 Palestinian injuries, the majority at the Al-Aqsa compound, including from an incident where Israeli police shot stun grenades into a crowd of Palestinians in the Bab Al-Rahma chapel with limited possibility to escape. The events in Jerusalem ignited, on 11 May, the worst escalation in hostilities between Israel and Palestinian armed groups in Gaza since 2014, and significant violence spread across the West Bank and Israel.[95]

35. Israeli police imposed movement restrictions and set up ad hoc checkpoints at main entry points to Sheikh Jarrah. Palestinians not residing in the area were banned access and residents were ordered to remain indoors. In several documented cases, Israeli police allowed Israelis, some of them armed, to access and protest in Sheikh Jarrah beyond the checkpoints, thus fuelling confrontation or even directly inciting violence.[96] On 6 May, a member of the Knesset from the Otzma Yehudit party set up a "field office" in Sheikh Jarrah, reportedly to help to ensure that the Israeli police provided proper protection to Israelis in the

[89] A/75/376, paras. 51–55.
[90] Ibid., para. 54.
[91] Ibid.
[92] See https://www.youtube.com/watch?v=KNqozQ8uaV8.
[93] See A/HRC/49/83, para. 32. See also https://7amleh.org/2021/05/21/7amleh-issues-report-documenting-the-attacks-on-palestinian-digital-rights and https://www.hrw.org/news/2021/10/08/israel/palestine-facebook-censors-discussion-rights-issues.
[94] See https://www.oversightboard.com/decision/FB-P93JPX02.
[95] See A/HRC/49/83 and A/HRC/49/25.
[96] See also https://twitter.com/i/status/1389469783247163398.

neighbourhood[97] and, on 8 May, he called for the police to be given more powers to use firearms to confront Palestinians. On 8 May, at least 23 Palestinians active in civic and political activities in Jerusalem were arrested. All were released within the range of a few hours to a couple of days, most on the condition of staying away from Sheikh Jarrah or Jerusalem.

36. On 18 May, Israeli police arbitrarily shot a kinetic impact projectile at the back of a 16-year-old girl from a distance of a few metres as she was obeying orders of the Israeli police to enter her house in Sheikh Jarrah with her father. She fell to the ground severely injured. The police fired another bullet that hit her father in the leg and threw a stun grenade through the bars of their front gate, which exploded between them. Both were hospitalized. Footage of the incident was widely circulated by media[98] and the Israeli Police Internal Investigations Department opened an investigation. The officer who shot the girl was suspended, while four other officers were reportedly under investigation as at the end of the reporting period.

37. On 4 June, Palestinians held a solidarity marathon from Sheikh Jarrah to Silwan as a form of peaceful protest. As runners – including women, children and older persons – were gathered, singing and dancing, at the finish line in Batn Al-Hawa in Silwan, Israeli police violently dispersed them by firing stun grenades and kinetic impact projectiles. Footage shows Israeli police raiding the event tent and physically assaulting those inside, including with police clubs.[99] The Palestine Red Crescent Society treated 23 persons injured.[100] Israeli police violently arrested four Palestinians, including a 15-year-old boy. They also physically assaulted a group of journalists and damaged their cameras[101] and hit an ambulance with a kinetic impact projectile, shattering its windshield.[102]

38. Israeli police appeared to prevent, intentionally and sometimes with force, journalists from documenting the events. On 5 June, they arrested a female journalist with the Al-Jazeera media network who was reporting on protests in Sheikh Jarrah.[103] Israeli police asked for her press card and as she was walking to get it from her car, a female officer pushed her against a wall and kicked her, fracturing her arm. The journalist was arrested – accused of assaulting an Israeli officer – but released in the evening following the release of footage of the arrest, which contradicted the allegation. She was, however, required to stay away from Sheikh Jarrah for 15 days and the charge was changed to "non-compliance with the orders of a police officer".[104] Several other female journalists were physically assaulted and arrested during the tensions in East Jerusalem[105] and, in several other documented cases, journalists were denied access.[106]

39. Amid the tension, on 9 May, the Supreme Court issued a stay order against the eviction of the four families, following the expressed readiness of the Attorney General of Israel to consider intervening in the pending leave to appeal at the Supreme Court. On 4 October, the Supreme Court proposed a settlement that would give the four families first- or second-generation protected tenancy status, while recognizing the Israeli settler organization's ownership of the land and paying nominal annual rent to the settlers.[107] On 27 October, the four families and the Nahalat Shimon organization both rejected the proposed

[97] See https://www.haaretz.com/israel-news/.premium-kahanist-lawmaker-closes-makeshift-office-in-east-jerusalem-at-netanyahu-s-behest-1.9783069?lts=1639435045666.

[98] See https://www.haaretz.com/israel-news/.premium-jerusalem-police-officer-who-shot-palestinian-girl-suspended-after-footage-emerges-1.9845088.

[99] See https://twitter.com/JalalAK_jojo/status/1400849842855976969.

[100] See https://www.aljazeera.com/news/2021/6/4/israeli-police-attack-palestinians-running-to-protest-expulsions.

[101] See https://www.wattan.net/ar/news/342475.html.

[102] Information provided by the Wadi Hilweh Information Center.

[103] See https://www.aljazeera.com/gallery/2021/6/6/the-moment-when-al-jazeera-journalist-was-arrested.

[104] See https://www.aljazeera.net/news/politics/2021/6/5/سلطات-الاحتلال-الإسرائيلية-تعتقل.

[105] See, for example, https://www.aljazeera.com/news/2021/6/2/palestinian-journalists-on-the-front-line.

[106] See https://twitter.com/m7mdkurd/status/1401978033976786950?s=20.

[107] See https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\21\010\024\e19&fileName=21024010.E19&type=4 (in Hebrew).

settlement. Protests in East Jerusalem continued, though at a lower intensity, through the end of the reporting period.

Beita, Nablus Governorate

40. Most settler-related violence in the West Bank occurs in the vicinity of outposts and there appears to be a correlation between the expansion of outposts and settler attacks against Palestinians.[108] Nablus Governorate has long been a hotspot for settler violence and it was the area the most affected also during the reporting period, with a total of 178 incidents recorded,[109] including of physical violence and shooting live ammunition. The violence occurred particularly within the 25 km² constituting the area surrounding the Yitzhar settlement and its adjacent outposts, along Road 60 and near the ring of outposts from the Itamar settlement west of firing zone 904A.[110]

41. Two new outposts were established – on Mount Masyaf in Beit Dajan in late 2020 and on Jabal Sabih near Beita in May 2021. Palestinians mobilized in protest and demonstrated in Beita, Beit Dajan, Kafr Qaddum and Ni'lin. The demonstrations were met with harsh means by the Israeli security forces, including lethal force, suppressing freedoms of expression and peaceful assembly of Palestinians, and raising serious concerns of excessive use of force, including arbitrary killings. During the reporting period, the Israeli security forces killed 8 Palestinians, including 2 boys, and injured 6,742 (including 454 children), 348 of whom with live ammunition,[111] in the context of demonstrations and other protest activities in Nablus Governorate.

42. On 3 May, Israeli settlers re-established the so-called Evyatar outpost on land of the Palestinian villages of Beita, Qabalan and Yatma[112] on Jabal Sabih in Area C. In the 1980s, Israeli authorities had temporarily seized this Palestinian-owned land for military purposes. In 2013, 2016 and 2018, settlers attempted to erect an outpost on the land but, each time, Israeli authorities demolished the structures.[113] On 3 May, a day after the killing of a 19-year-old settler in a drive-by shooting by a Palestinian, settlers with support from the Israeli security forces[114] rapidly rebuilt the Evyatar outpost. By 31 May, it included some 40 structures housing over 200 settlers.[115] According to Israeli media, the reconstruction was carried out at the initiative of the Nahala settlement movement, which provided financial and logistical assistance, along with the Samaria Regional Council.[116] According to the settlers, the outpost "prevents the creation of a connection between the villages of Qabalan, Yatma and Beita" and is "a strategic point that strengthens the Jewish presence in the region".[117]

43. On 9 June, Israel declared the land a closed military zone and ordered the outpost evacuated. On 2 July, settlers left the outpost following an agreement with the Government of Israel that the Israel Defense Forces would re-establish a presence at the site and an Israeli land survey would be conducted to determine the land status.[118] Settlers erected a 13-metre-high iron Star of David facing Beita village with the phrase "we will return" inscribed next to it.[119] On 12 August, the Supreme Court of Israel rejected a petition filed on behalf of the

[108] See http://peacenow.org.il/wp-content/uploads/2021/12/sattlers_report_eng.pdf.
[109] Information provided by the Office for the Coordination of Humanitarian Affairs.
[110] See A/74/357, sect. IV; and A/76/336, paras. 45–49.
[111] Information provided by the Office for the Coordination of Humanitarian Affairs.
[112] A/76/336, para. 9.
[113] See https://www.haaretz.com/israel-news/.premium-in-just-a-month-illegal-settler-outpost-sprouts-up-on-palestinian-lands-1.9882850.
[114] See https://www.haaretz.com/israel-news/.premium-isra eli-soldiers-photographed-helping-build-illegal-west-bank-outpost-1.9897082.
[115] A/76/336, para. 9.
[116] See https://www.haaretz.com/israel-news/.premium-in-just-a-month-illegal-settler-outpost-sprouts-up-on-palestinian-lands-1.9882850.
[117] See https://www.haaretz.com/israel-news/.premium-in-just-a-month-illegal-settler-outpost-sprouts-up-on-palestinian-lands-1.9882850?lts=1647864046472.
[118] See https://www.timesofisrael.com/settlers-vacate-illegal-outpost-as-deal-to-keep-it-intact-goes-into-effect/.
[119] Ibid.

residents, pending the result of the land survey.[120] The petitioners requested a revocation of the agreement, and the petition included legal documents, inheritance deeds and photographs attesting to ownership by Palestinians.[121] As at the end of the reporting period, the outpost structures remained on site and the Israeli security forces continued to occupy the area.

44. From 3 May, weekly and in some periods daily protests took place in Beita against the Evyatar outpost, the Israeli occupation and settlement activities in general. Protest measures included collective Friday prayers near the outpost, demonstrations and so-called night-confusion activities. Palestinians carried flags, played loud music, blew horns, burned tyres and shot fireworks. Some demonstrators pointed lasers towards the outpost, including at night, and threw stones, including with slingshots, and in some cases Molotov cocktails towards the Israeli security forces. The Israeli security forces responded with live ammunition, rubber-coated metal bullets, tear gas and stun grenades. Between 3 May and 31 October, the Israeli security forces killed 6 Palestinians, including 2 boys in Beita in the context of protests, and injured at least 4,623 Palestinians (of whom 588 were children), including 177 with live ammunition.[122]

45. On 14 May, as Palestinians held Friday prayers near the Evyatar outpost, the Israeli security forces positioned on the hills fired tear gas towards Palestinians about 100 metres away on lower ground. The Israeli security forces marched towards the Palestinians, who scattered to avoid the tear gas. After 15 minutes, the Israeli security forces began shooting rubber-coated metal bullets and live ammunition towards the young Palestinians who were still on lower ground 100 metres away. The Israeli security forces injured at least 10 Palestinians with live ammunition. One young Palestinian was shot in his shoulder with live ammunition as he was handing out water bottles. Among a group of 20 Palestinians protesting 70–100 metres away from the closest soldiers, some of them throwing stones, a 40-year-old Palestinian man was shot dead with live ammunition in his stomach. As at 31 October, no information was available about any investigation into the killing. The Palestine Red Crescent Society treated 231 other Palestinians injured by the Israeli security forces that day (45 from live ammunition, 40 from rubber-coated metal bullets, 140 from tear gas inhalation and 6 from physical assaults).

46. On 28 May, the Israeli security forces shot and killed a 25-year-old Palestinian man in Beita. According to eyewitnesses, he was standing under a tree with 10 other Palestinians, eating sandwiches. Two armed settlers opened fire at them, injuring two Palestinians. As the group fled the settlers, the Israeli security forces positioned on higher ground approximately 60 metres away shot at them and hit the 25-year-old Palestinian with live ammunition in the chest. The Israeli security forces continued to fire live ammunition at the group as they were evacuating the victim, injuring two other Palestinians with live ammunition in the legs. As at 31 October, there was no information of an investigation into the killing or the use of live ammunition against unarmed individuals. The Palestine Red Crescent Society treated 69 Palestinians injured by the Israeli security forces that day (9 with live ammunition, 17 with rubber-coated metal bullets, 38 from tear gas inhalation and 5 from physical assaults).

47. On 11 June, the Israeli security forces shot in the chest and killed a 16-year-old Palestinian boy during protests in Beita. Several hundred Palestinians had joined the protests after the Friday prayers when the Israeli security forces dispersed the crowd with tear gas. Groups of young Palestinians burned tyres and threw stones, including with slingshots. The boy was with a group of about 10 other young people 500 metres from the outpost. Five soldiers were located 50–100 metres from them, on higher ground, pointing their rifles. After throwing stones, the 16-year-old and his cousin were under a tree facing the soldiers, while other young people continued throwing stones. The Israeli security forces shot and injured the 16-year-old boy and his cousin, who were both hit by live ammunition in the chest while seemingly not posing any threat. The Israeli security forces shot tear gas canisters as villagers

[120] See https://www.facebook.com/JLACps/posts/10158351432886989 (in Arabic).

[121] See http://www.jlac.ps/details.php?id=r3wziqa2256ylfc7xtdjf. See also https://www.haaretz.com/israel-news/.premium-palestinians-claiming-ownership-of-evyatar-ask-attorney-general-to-block-settler-dea-1.9952576.

[122] According to the Office for the Coordination of Humanitarian Affairs, the number of injuries was likely to have been much higher than the figure recorded.

attempted to evacuate the boy to an ambulance. The boy had been hit in the heart and died in the hospital. On 23 June, media reported that a criminal investigation had been launched.[123] Three other young people were injured with live ammunition in the chest. On that day, the Palestine Red Crescent Society treated 11 Palestinians injured by the Israeli security forces with live ammunition, 16 with rubber-coated metal bullets, 62 from tear gas inhalation and 20 from physical assaults or falls.

48. On 6 June, the Israeli security forces sealed the main entrance to Beita village with cement blocks, raising concerns of collective punishment measures. On several occasions, the Israeli security forces closed agricultural roads leading to the Evyatar outpost, thereby obstructing the movement of ambulances, and used force against ambulances and medics. For example, on 3 September, the Israeli security forces injured a Palestine Red Crescent Society medic with a rubber-coated metal bullet and damaged four ambulances. On 29 October, the Israeli security forces injured one paramedic and shot at an ambulance.

49. The protests against the occupation, settlement activities and outposts were ongoing as at the end of the reporting period. On 10 August, the chief of staff of the Israel Defense Forces asked senior Central Command officers to take action to reduce the considerable number of shootings of Palestinians by soldiers in the West Bank.[124] In the following months, the use of live ammunition against Palestinian protesters appeared to decrease, yet there were additional killings and a large number of severely injured Palestinians. The unjustified and illegal recourse to firearms by law enforcement officials against protected persons resulting in their death may constitute a war crime when occurring in the context of a military occupation.[125]

V. Settlements in the occupied Syrian Golan

50. On 11 October 2021, the Prime Minister of Israel announced that the Government intended to significantly increase the number of people living in the occupied Syrian Golan, citing the continued recognition by the United States of America of the northern plateau as Israeli territory. The Prime Minister asserted that the eventual goal would be to increase the Israeli settlers in the occupied Syrian Golan to 100,000 residents, almost four times the current population of approximately 27,000.[126] According to the proposal, 7,000 housing units would be added to the town of Katzrin by 2026. The proposal is part of a programme, slated for approval in December 2021, to double the population of the Syrian Golan by the end of the decade. In addition to calling for the increase in the number of people living in the Syrian Golan, the plan calls for the creation of two new settlements in current open spaces, new solar energy projects, and industrial, commercial and tourism zones.[127] Syrians in the occupied Syrian Golan voiced their opposition to the plan through protests held in October 2021.[128] The Society for the Protection of Nature in Israel also opposed the plan, calling it an exceptional and unreasonable measure.[129]

VI. Conclusions and recommendations

51. **The establishment and expansion of settlements in the Occupied Palestinian Territory and the occupied Syrian Golan amount to the transfer by Israel of its own**

[123] See https://www.haaretz.com/israel-news/.premium.MAGAZINE-reality-of-a-west-bank-outpost-four-dead-palestinians-and-drone-spraying-tear-gas-1.9933446.

[124] See https://www.haaretz.com/israel-news/.premium-idf-chief-of-staff-asks-senior-officers-to-reduce-shootings-of-palestinians-1.10102726.

[125] A/HRC/29/CRP.4, para. 546; and A/HRC/49/25, para. 23.

[126] See https://www.timesofisrael.com/bennett-announces-major-drive-to-quadruple-population-of-golan-heights/.

[127] See https://www.haaretz.com/israel-news/.premium-bennett-pushing-unelected-zoning-board-in-golan-heights-in-bid-to-double-population-1.10458132.

[128] See https://www.middleeasteye.net/news/israel-golan-heights-settlements-quadruple-population.

[129] See https://www.haaretz.com/israel-news/.premium-bennett-pushing-unelected-zoning-board-in-golan-heights-in-bid-to-double-population-1.10458132.

civilian population into the territories it occupies, which is prohibited under international humanitarian law.[130] **Such transfers amount to a war crime that may engage the individual criminal responsibility of those involved.** [131] **A number of international bodies have confirmed the illegality of Israeli settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, including the International Court of Justice, the General Assembly, the Security Council and the Human Rights Council.**[132]

52. **Settlements have significant adverse effects on the rights of Palestinians, including their rights to life and security of person, freedom of movement, privacy, family life, an adequate standard of living, work and education, and the exercise of their right to self-determination, and they threaten to fragment the contiguity of the West Bank.**

53. **Discriminatory planning policies and practices, demolitions and forced evictions in the Occupied Palestinian Territory, including for the benefit of settler organizations, entail numerous human rights violations and are a key factor in the coercive environment that exists. Displacement and relocation to alternative residential areas as a result of such an environment could amount to forms of forcible transfer, contrary to the obligations of Israel under international humanitarian law and international human rights law.**[133]

54. **Settler violence intensified, with the acquiescence or, on occasion, practical support of the Israeli security forces. Israel repeatedly failed in its responsibility as the occupying Power to protect Palestinians and their property,**[134] **while in numerous cases the Israeli security forces used excessive force against Palestinians. This contributed to the worsening of the coercive environment for Palestinians, with a climate of impunity prevailing for settler violence and for use of such force by the Israeli security forces.**

55. **Israel suppressed Palestinians demonstrating against settlements and settlement-related activities. Documented cases of discriminatory law enforcement, intimidation of protesters and journalists, mass arrests and excessive use of force raised serious concerns that Israel committed human rights violations, including against the rights of Palestinians to freedom of expression and peaceful assembly, and their right to life and security of person.**[135]

56. **The United Nations High Commissioner for Human Rights recalls Security Council resolution 497 (1981), in which the Council decided that the decision of Israel to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect.**

57. **On the basis of the findings presented in the present report and in previous reports, the High Commissioner recommends that the Israeli authorities:**

(a) **Immediately and completely cease and reverse all settlement development and related activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, in accordance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);**

[130] Fourth Geneva Convention, art. 49 (6).

[131] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[132] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004,* p. 136; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

[133] Fourth Geneva Convention, art. 49 (6); Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[134] Regulations respecting the Laws and Customs of War on Land, arts. 43 and 46; and Fourth Geneva Convention, art. 27.

[135] Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 6 (1), 9 (1), 19 and 22; Regulations respecting the Laws and Customs of War on Land, art. 46; and Fourth Geneva Convention, art. 27.

(b) **Rescind all policies and practices contributing to a coercive environment and/or increasing the risk of forcible transfer;**

(c) **Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights law and international humanitarian law;**

(d) **Refrain from implementing evictions and demolition orders on the basis of discriminatory and unlawful planning policies and practices that may lead to forcible transfer, including of Bedouin and herder communities;**

(e) **Take all steps necessary to protect the Palestinian population and their property from settler violence, and ensure that all incidents of violence by settlers against Palestinians and damage to their property are promptly, effectively, thoroughly and transparently investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies, including adequate compensation, in accordance with international standards;**

(f) **Protect the rights to freedom of expression and peaceful assembly of Palestinians, refrain from all undue restrictions, including use of force, and create an enabling environment for peaceful protests;**

(g) **End policies and practices within the occupied Syrian Golan that may lead to discrimination against protected persons.**

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report, submitted pursuant to Human Rights Council resolution 49/29, provides an update on the implementation of the provisions of the resolution during the period from 1 November 2021 to 31 October 2022.

* The present report was submitted after the deadline so as to include the most recent information.

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I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 49/29, provides an update on the implementation of the provisions of the resolution during the period from 1 November 2021 to 31 October 2022. The report takes stock of developments during the 10 years since the adoption of Council resolution 19/17, by which the Council established the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.[1] It also contains an update on Israeli settlements in the occupied Syrian Golan.

2. The advancement of settlements in the West Bank, including East Jerusalem, and the transfer by Israel of its civilian population to the occupied territory, in contravention of international law,[2] has continued over the decade. This has resulted in numerous systematic violations of the human rights of Palestinians. The report documents patterns of systematic discrimination in law, policy and practice, encompassing almost every sphere of life, and examines, in particular, housing, land and property rights and the right to life, security of person and access to justice. These violations have created a coercive environment which is forcing Palestinians to leave their homes and their lands in possible forcible transfer – a grave breach of the Fourth Geneva Convention, which may amount to a war crime[3] – and the ultimate result of the cumulative effect of the settlement enterprise.

3. The findings in the present report are based on direct monitoring and other information gathering conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory and on information provided by government sources, United Nations entities and non-governmental organizations (NGOs). The report should be read in conjunction with other related reports of the Secretary-General and of the High Commissioner for Human Rights submitted to the General Assembly and the Human Rights Council.[4]

II. Legal framework

4. International human rights law and international humanitarian law apply concurrently in the Occupied Palestinian Territory, namely, Gaza and the West Bank, including East Jerusalem, and in the occupied Syrian Golan. This includes the application of the Fourth Geneva Convention, which is binding upon Israel as the occupying Power. A detailed analysis of the applicable legal framework can be found in previous reports of the Secretary-General.[5]

[1] A/HRC/22/63.

[2] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 49.

[3] Ibid., arts. 49 (1) and 147; Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii); International Committee of the Red Cross (ICRC), Database on Customary International Humanitarian Law, rule 129; and A/76/336, paras. 39 and 57.

[4] A/72/564, A/72/565, A/75/376, A/76/336, A/77/493, A/HRC/37/38, A/HRC/37/42, A/HRC/37/43, A/HRC/40/42, A/HRC/43/67, A/HRC/46/65, A/HRC/49/85 and A/HRC/49/25.

[5] A/HRC/34/38 and A/HRC/34/39.

III. Update on settlement activities

A. Settlement expansion

5. During the past 10 years, the settlement population in the occupied West Bank, including East Jerusalem, has grown from 520,000[6] in 2012 to just under 700,000.[7] The population lives in 279 Israeli settlements spread across the West Bank, including 14 settlements in East Jerusalem, with a total population of more than 229,000 persons.[8] Of those settlements, at least 147 are outposts, which are illegal even under Israeli domestic law.[9] The establishment and the expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem, have no legal validity and constitute a flagrant violation of international law. The establishment and expansion of such settlements amount to the transfer by Israel of its population into the Occupied Palestinian Territory, which is prohibited under international humanitarian law. All measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, violate international humanitarian law and a number of Security Council resolutions.[10]

6. Settlement expansion has continued year upon year over the course of the decade. During the present reporting cycle (1 November 2021–31 October 2022), advancement or approval of new settlement plans increased,[11] while the number of tenders decreased.[12] Official data on settlement construction approvals indicated an average quarterly rate of 763 units.[13] On 12 May alone, Israel advanced some 20 plans for the construction of more than 4,000 housing units in Area C settlements, including in particularly sensitive areas across the Green Line.[14] Settlement advancements in and around East Jerusalem also continued, threatening to sever the connection between the southern West Bank and the northern West Bank and further detaching East Jerusalem from the rest of the West Bank. On 5 September 2022, Israel advanced plans for some 700 units in the planned settlement of Givat Hashaked in East Jerusalem and planning processes moved forward for the expansion of the Har Gilo settlement on the lands of the Palestinian village of Al-Walaja, placing over 304 Palestinian people (151 children, 80 men and 73 women) under imminent risk of forced displacement.[15]

Consolidation of settlements and takeover of land and resources

7. Whereas areas under settlement jurisdiction in Area C exceed half a million dunams, accounting for 15.1 per cent of Area C, Israel has expanded de facto control over much larger swathes of the West Bank, including East Jerusalem,[16] through a variety of means. The takeover of land and resources consolidates Israeli presence while severely infringing upon Palestinians' freedom of movement, access to services and livelihoods, in addition to their

[6] A/HRC/22/63, para. 28.

[7] See https://peacenow.org.il/en/settlements-watch/settlements-data/population (465,400 in the West Bank) and https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem (229,377 in East Jerusalem).

[8] Ibid.

[9] Ministry of Foreign Affairs of Israel, "Summary of the opinion concerning unauthorized outposts", 10 March 2005; and A/72/564, para. 62.

[10] *Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004* (www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf), p. 136, and, for example, Security Council resolutions 465 (1980) and 2334 (2016).

[11] Office of the United Nations Special Coordinator for the Middle East Peace Process: 9,280 units were advanced/approved, including 6,340 in East Jerusalem (7,100 in previous period).

[12] Ibid.: tenders were issued for 400 unit (3,600 in previous reporting period).

[13] Ibid.: figures between October 2021 and September 2022.

[14] See https://unsco.unmissions.org/sites/default/files/report_of_the_secretary_general_on_the_implementation_of_scr2334_-_28_september_2022.pdf.

[15] See www.ir-amim.org.il/en/node/2861 and A/HRC/46/65, para. 46.

[16] See https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/over+the+border+2022/Meever+Lagvul_ENG.pdf.

collective right to economic prosperity and the enjoyment of resources,[17] including arable land and water springs.[18]

Declarations of "State land"

8. Through the manipulative use of land laws applicable in the West Bank, Israel has declared more than 750,000 dunams of land in the West Bank as "State land", including lands that would have been classified as private property.[19] Under local laws, land registered as "State land" is intended for public use. Nevertheless, according to Yesh Din, an Israeli human rights organization, 99.76 per cent of the State land allocated for use has been allocated for the benefit of Israeli settlements.[20] Under the Regulations respecting the Laws and Customs of War on Land (the Hague Regulations), the occupying power is obliged to safeguard the capital of government and public properties and administer them in accordance with the rules of usufruct.[21]

Infrastructure

9. Israel has spent billions of dollars on consolidating settlement blocs with networks of so-called bypass roads, which are designed to circumvent the Palestinian presence in the West Bank.[22] A 1997 Israeli planning document explained that separate roads were a preferred planning model because they "provide a better solution for the issue of segregation".[23] Indeed, some roads are only for Israeli use, segregating Jewish and Palestinian travellers.[24] Even when Palestinians are allowed to travel on some roads, they are primarily designed to connect settlements and outposts to each other, to Israel and to Jerusalem. In addition, an extensive system of checkpoints and roadblocks allows Israel to control access to the bypass roads and the main highways in the West Bank.[25] Furthermore, some roads segment Palestinian governorates into isolated enclaves of village clusters,[26] hindering connectivity and restricting Palestinians' movement in the West Bank in a manner that severely infringes upon their freedom of movement and access to livelihoods and services, with negative results. For example, people who experience gender-based violence are not able to access life-saving services and quality care.[27]

10. Israel further consolidates settlements and outposts by providing them with water and sewerage, communications, power, security systems and educational and health care facilities, promoting connectivity and economic development of the settlement enterprise and normalizing the settler presence in the Occupied Palestinian Territory.[28] As a result of the establishment of Israeli infrastructure, the population of the settlements has grown rapidly.[29]

[17] A/77/356.
[18] A/HRC/37/39, para. 52.
[19] See www.btselem.org/sites/default/files/sites/default/files2/publication/200205_land_grab_eng.pdf, p. 51; see also www.btselem.org/sites/default/files/sites/default/files2/201203_under_the_guise_of_legality_eng.pdf, p. 6, and A/77/328, para. 33.
[20] See http://peacenow.org.il/wp-content/uploads/2018/07/Lands_Allocated_to_Palestinians_ENG.pdf.
[21] Regulations respecting the Laws and Customs of War on Land (the Hague Regulations), art. 55.
[22] A/77/328, para. 25.
[23] See www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf, p. 5.
[24] A/77/328, para. 80; see also www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf and https://peacenow.org.il/en/the-roads-boom-in-2020.
[25] See www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf.
[26] See www.jlac.ps/userfiles/Salfit-%20JLAC_pub.pdf and www.jlac.ps/userfiles/Dhar%20Al%20Maleh%20Appeal.pdf; www.jlac.ps/userfiles/Qalqiliya-%20JLAC-%20EU%20feb%202020.pdf.
[27] A/HRC/49/85, para. 10.
[28] A/77/328, para. 25; see also http://peacenow.org.il/wp-content/uploads/2021/03/The-Roads-Boom-in-2020.pdf.
[29] See www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf, p. 5.

While occupation is inherently temporary in nature,[30] Israel continues to invest in and implement permanent infrastructure projects for the settlers. In 2017, the Prime Minister of Israel announced an 800 million shekel plan for bypass roads, including lighting, cellular reception and protection of buses, for the West Bank settlements.[31]

11. Advancement continued during the current reporting cycle, including the Eastern Ring Road, which is planned to bypass East Jerusalem and to connect the settlements south of Jerusalem with the settlements east of Jerusalem in the Ma'ale Adumim area.[32] For that purpose, Israel issued an expropriation order for about 55 dunams of land in the Palestinian village of At-Tur, east of Jerusalem.[33] According to the Israeli organization Peace Now, holders of Palestinian identification will not have access to the road.[34]

Outposts

12. There are currently 147 outposts in the West Bank, 78 of which have been erected since 2012.[35] Of that number, 77 are "farms", 66 of which have been established in the past decade.[36] Although illegal, even under Israeli law, outposts are often strategically placed and play a key role in the takeover of Palestinian land. Israel employs different financial, legal and planning mechanisms to enable the establishment and expansion of outposts.[37] Outpost farms are often centred around a single caravan or a few illegal modular structures, gradually taking over the larger area around them for herding or farming. The resources needed to erect the farms are often minimal, enabling settlers to take over very large areas of land in a short period of time.[38] In 2021, the head of Amana, a settler organization, discussed the intention of expanding outpost farms in Area C, affirming how they are a more efficient tool for seizing land than settlements.[39]

13. Most settler-related violence occurs in the vicinity of outposts and there appears to be a correlation between the expansion of outposts and settler attacks against Palestinians.[40] Israeli security forces play a significant role in ensuring the protection of outposts and settlers.[41] Law enforcement by Israeli security forces is invariably discriminatory, in support of settler communities, including when they attack Palestinians, and against Palestinians attempting to protest against illegal outpost activity[42]. Previous reports[43] have also

[30] Hague Regulations, arts. 43 and 55, and A/76/336, para. 13.
[31] See https://www.israelnationalnews.com/news/237927; see also A/HRC/37/43, para. 18.
[32] See https://peacenow.org.il/en/confiscation-order-for-the-eastern-ring-road-was-issued#:~:text=The%20southern%20part%20of%20the%20Eastern%20Ring%20Road,by%20the%20Israeli%20government%20%28Resolution%203790%29%2C%20see%20below.
[33] A/77/493, para.13.
[34] See https://peacenow.org.il/en/confiscation-order-for-the-eastern-ring-road-was-issued#:~:text=The%20southern%20part%20of%20the%20Eastern%20Ring%20Road,by%20the%20Israeli%20government%20%28Resolution%203790%29%2C%20see%20below.
[35] See https://peacenow.org.il/en/settlements-watch/settlements-data/population.
[36] See a76eb4_9d3dee006d0e4decac505bf432bbd56e.pdf (keremnavot.org), p. 16.
[37] See www.btselem.org/press_releases/20210309_new_report_with_keren_navot_this_is_ours_and_this_too.
[38] See www.btselem.org/press_releases/20210309_new_report_with_keren_navot_this_is_ours_and_this_too.
[39] See www.haaretz.co.il/news/politics/.premium-1.9557640?utm_source=mailchimp&utm_medium=email&utm_content=author-alert&utm_campaign=%D7%94%D7%92%D7%A8%20%D7%A9%D7%99%D7%96%D7%A3&utm_term=20210222-10:52 [in Hebrew].
[40] A/HRC/49/85, para. 40.
[41] A/77/493, para. 49.
[42] See A/77/493, paras. 7–8, and A/HRC/49/85, paras. 40–49.
[43] A/77/493, sect. B, and A/76/336, sect. IV.

documented how outposts are viewed by government officials as a tool to "prevent Palestinian invasions" and acquire Israeli sovereignty over land in Area C.[44]

14. Since 2012, Israel has sought to develop a domestic legal path to enable the retroactive legalization of outposts built without official approval, including those on land privately owned by Palestinians.[45] The 2012 Levy report, commissioned by Israel, provided the legal rationale for the legalization of most unauthorized settlement outposts.[46] This was followed by the publication of a position paper by the Ministry of Foreign Affairs in 2015, according to which the West Bank is not occupied territory and Israel has legitimate claims to it.[47] In 2016 and 2017, the Attorney General issued two legal opinions, allowing for the retroactive legalization of settlement units built on private Palestinian land when built in good faith, based on the assumption that they were built on State land. This resulted in interference with the property of Palestinian landowners, who are protected persons, and ensured the welfare of Israeli residents.[48] In 2018, the Zandberg Committee, a technical team tasked with drafting a regularization plan, formulated unprecedented recommendations intended to legalize thousands of unauthorized structures in the West Bank, including those built on privately owned Palestinian land.[49]

15. While a "regularization law", introduced in 2017 to retroactively legalize outposts built on private Palestinian land and housing units built illegally in existing settlements,[50] was ruled unconstitutional in 2020, the Supreme Court determined that existing legal tools serve the purpose of regularizing, under domestic law, illegal Israeli construction on private Palestinian land. [51] In 2022, the Supreme Court determined that the Mitzpeh Kramim outpost met the threshold of "good faith", despite the fact that the land was known to be privately owned.[52] The decision set a worrying precedent for the retroactive legalization of outposts on private Palestinian land in the West Bank. The establishment of settlements, including outposts, is a flagrant violation of international law, and outposts are also considered illegal under Israeli domestic law.

Areas closed or confiscated for "military purposes"

16. Israel has declared some 1,765 million dunams of land, almost one third of West Bank and over half of Area C, as closed "military areas" for various purposes.[53] The areas include, but are not limited to, seam zone areas, special security areas near settlements and closed military firing zones. In addition, closure and seizure orders issued by the Israel security forces prohibit Palestinian construction and severely curtail Palestinian freedom of movement.

17. Since the 1970s, approximately 18 per cent of the West Bank, nearly 30 per cent of Area C, where some 6,200 Palestinians currently live, has been designated by Israel as closed "military firing zones". Most of that land (78 per cent) is not being used for active military training.[54] Any Palestinian presence in such zones is prohibited without prior coordination with the Israeli authorities, which is rarely granted. Israel prohibits construction and development of Palestinian infrastructure and regularly orders and carries out the demolition and confiscation of Palestinian-owned property in firing zones.[55]

[44] See www.btselem.org/press_releases/20210309_new_report_with_keren_navot_this_is_ours_and_this_too, p. 43.
[45] A/HRC/40/42, para. 14.
[46] A/68/513 and footnote 15.
[47] See www.gov.il/en/departments/general/israeli-settlement-and-international-law.
[48] A/73/410, para. 13, and A/HRC/37/43, para. 17.
[49] A/HRC/31/43, para. 27.
[50] A/HRC/40/42, para. 15.
[51] A/HRC/46/65, para. 16.
[52] See report_of_the_secretary_general_on_the_implementation_of_scr2334_-_28_september_2022.pdf (unmissions.org).
[53] See www.keremnavot.org/_files/ugd/a76eb4_effeae08cbc9492fb589419b6348373c.pdf, p. 9.
[54] See www.keremnavot.org/a-locked-garden, p. 10.
[55] See www.btselem.org/sites/default/files/sites/default/files2/201306_area_c_report_eng.pdf, p. 14.

18. In a decision of 28 February 2022 related to privately owned Palestinian property in Hebron originally requisitioned by Israel security forces but now slated for a new Jewish settlement, the High Court of Justice observed that a "civilian Jewish presence is part of the Israel Defense Forces regional security doctrine in the area". This ruling represents a departure from a landmark ruling of 1979, which recognized that the expropriation of land by military orders for the construction of settlements contravened international law.[56] The new judgment risks leading to the further expropriation of private Palestinian land for settlement expansion on the pretext of ensuring security, which is impermissible under international law.[57]

19. Israel has also declared lands within firing zones as "State land", opening them up to settlement activity. Since the 1980s, over 40 per cent of land in the West Bank that Israel has declared State land is within firing zones.[58] Previous reports have also documented discriminatory law enforcement between Palestinians and settlers in firing zones.[59]

National parks and archaeology

20. Israel has declared 48 "nature reserves" in the West Bank, covering at least 383,600 dunams of land, equivalent to about 7 per cent of the West Bank. Such nature reserves are effectively inaccessible for Palestinians, including those who may own the land.[60] During the present reporting cycle, Israel proceeded with plans to declare a nature reserve on approximately 22,258 dunams of land south of Jericho; some 6,070 dunams is on private Palestinian-owned property. The Nahal Og nature reserve is the largest reserve to be declared in 25 years.[61]

21. The archaeology policy of Israel appears to be another method used to take over land and expand settlements.[62] According to the latest available data from the coordinator of government activities in the occupied territories, in 2019, Israel issued 118 demolition orders and warnings for structures allegedly built on archaeological sites in the West Bank.[63] The figure represents a 162 per cent increase over a period of two years.[64] In some cases, archaeological excavations have preceded the establishment of new Israeli settlements that had not yet received permits.[65]

22. During the reporting cycle, Israeli right-wing settler groups succeeded in transferring the responsibility for archaeological sites in Area C from the Staff Office for Archaeology of the Civil Administration to the Israel Antiquities Authority of the Ministry of Culture of Israel,[66] further politicizing the administration of archaeological sites in the West Bank. The extension of the jurisdiction of Israeli authorities to the occupied territory is inconsistent with international humanitarian law and violates the obligation of Israel as the occupying Power

[56] A/77/328, para. 32.
[57] A/77/493, para. 9.
[58] Information provided by the Office for the Coordination of Humanitarian Affairs (OCHA); see also A/72/564, para. 47; and www.keremnavot.org/a-locked-garden, p. 10.
[59] A/76/336, para. 41; see also www.haaretz.com/israel-news/2021-02-08/ty-article/.premium/israeli-soldiers-expel-palestinians-while-letting-settlers-stay-documents-reveal/0000017f-e8fb-da9b-a1ff-ecffb8d10000; www.haaretz.com/israel-news/.premium-six-lies-about-the-cowboy-outposts-in-the-northern-jordan-valley-1.9539497; and https://www.akevot.org.il/en/news-item/document-revealed-by-akevot-ariel-sharon-instructed-idf-to-create-training-zone-to-displace-palestinians/.
[60] See www.ochaopt.org/content/settlement-expansion-around-israeli-declared-nature-reserve.
[61] See https://unsco.unmissions.org/sites/default/files/sg_report_on_the_implementation_of_scr_2334_-_22_june_2022.pdf.
[62] See https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Menachsim+Archeology/Menachsim+-+Eng+-+Web.pdf.
[63] See https://emekshaveh.org/en/appropriating-the-past-israels-archaeological-practices-in-the-west-bank/.
[64] See www.haaretz.com/israel-news/2020-06-23/ty-article/.premium/when-an-archaeological-find-can-evict-palestinians-from-their-home/0000017f-f484-d887-a7ff-fce402bb0000.
[65] See https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Menachsim+Archeology/Menachsim+-+Eng+-+Web.pdfthe Past, pp. 20–22.
[66] See www.haaretz.com/israel-news/2022-06-08/ty-article/.highlight/under-settler-pressure-israel-extends-antiquities-authoritys-powers-into-west-bank/00000181-42f8-df72-a5cb-c2ffa4660000.

to support the competent national authorities of the occupied territory in safeguarding and preserving its cultural property.[67]

Settlement of title

23. The examination of land ownership claims and land title registration in the West Bank ("settlement of title" process) was halted at the start of the occupation, in line with the rules of international humanitarian law.[68] In 2018, in a reversal of its long-standing position, Israel reinitiated the "settlement of title" process in East Jerusalem,[69] with the procedure largely being implemented in a non-transparent manner,[70] in areas where the State and/or settlers have a particular interest.[71] On 23 June 2022, the process was initiated in two highly sensitive areas in East Jerusalem, Abu Tor, south of the Old City, where the blocs marked for settlement of title cover much of the neighbourhood and is home to hundreds of Palestinian families, and the Umayyad Palace area, a 20-dunam archaeological site below the Al Aqsa Mosque compound.[72] In August, the process was completed in the neighbourhood of Um Haroun in Sheikh Jarrah, formally registering the title of properties under the name of Jews who allegedly owned the land before 1948.[73] As at the end of the reporting period, the registration had begun in 158 blocs throughout East Jerusalem.[74]

24. In November 2020, the Knesset "Subcommittee for Judea and Samaria" recommended the possibility of renewing the settlement of land titles in the West Bank.[75]

B. Impact of settlements on human rights

Housing, land and property rights

25. For decades, Israeli authorities have ordered the demolition of Palestinian homes and property on the grounds that they lacked a building permit, despite the law of occupation prohibiting destruction of property, except for military necessity.[76] From 2012 to 2021, Israel demolished 6,821 Palestinian-owned structures in the West Bank, including East Jerusalem (Area C accounting for 77 per cent; East Jerusalem for 21 per cent), forcibly evicting 9,766 Palestinians (5,036 children, 2,483 men and 2,247 women). Structures demolished included 2,525 residential structures, 1,502 donor-funded structures provided as humanitarian aid and 571 water, sanitation and hygiene structures. Twenty schools were affected by demolition or confiscation, affecting the education of 1,297 children.[77] All but 131 of the total number of demolitions were in Area C or in East Jerusalem, and all but 146 were carried out on the grounds of a lack of Israeli-issued building permits.

26. Alarming levels of demolition continued during the reporting period. Israel demolished 914 Palestinian-owned structures in the West Bank, including East Jerusalem[78]

[67] Hague Convention of 1 March 1954 relating to civil procedure, art. 5.
[68] Hague Regulations, arts. 43 and 55.
[69] A/77/493, para. 11, A/76/336, para. 13, and A/HRC/49/85, para. 11.
[70] A/76/336, para. 13.
[71] See www.ir-amim.org.il/sites/default/files/Settlement%20of%20Title%20in%20East%20Jerusalem%20March%202022.pdf.
[72] See www.haaretz.com/israel-news/2022-06-26/ty-article/israel-moves-to-register-lands-near-al-aqsa-using-funds-earmarked-for-palestinians/00000181-a154-d19e-ab99-f575f89f0000 and https://mailchi.mp/ir-amim/in-a-dramatic-development-israel-initiates-settlement-of-land-title-adjacent-to-al-aqsa-across-abu-thor?e=5dfcd834de.
[73] See www.ir-amim.org.il/sites/default/files/Settlement%20of%20Title%20in%20East%20Jerusalem%20March%202022.pdf.
[74] See www.gov.il/BlobFolder/news/matmedet-3790-2022/he/%D7%95%D7%A2%D7%93%D7%94%20%D7%9E%D7%AA%D7%9E%D7%93%D7%AA%202022.pdfwww.gov.il), p. 55.
[75] A/76/336, para. 13.
[76] Fourth Geneva Convention, art. 53.
[77] Education Cluster Occupied Palestinian Territory.
[78] The number was 967 in the previous reporting period.

(717 in Area C (78 per cent) and 166 (18 per cent) in East Jerusalem, forcibly evicting 1,079 Palestinians, including 521 children, 268 women and 284 men.[79] Demolished structures included 320 residential structures, 138 donor-funded structures provided as humanitarian aid, 50 water, sanitation and hygiene facilities and one school.[80] As of 31 October 2022, legal aid actors were covering at least 4,208 pending demolition and eviction orders against Palestinian structures,[81] with highest number of orders being in East Jerusalem, followed by Ramallah, Bethlehem and Nablus. Destruction and appropriation of property in the occupied territory, unjustified by military necessity and carried out unlawfully and wantonly, is a grave breach of the Fourth Geneva Convention and thus amounts to a war crime.[82] There are currently 56 schools with stop-work orders facing the risk of demolition across the West Bank and East Jerusalem. Such stop-work orders affect the education of an estimated 6,550 students,[83] who also face heightened risk of forced child labour or early marriage,[84] in breach of the obligations of the occupying Power prohibiting the destruction of institutions dedicated to education.[85]

27. Demolitions and ensuing forced evictions result in numerous human rights violations, with a negative impact on rights to adequate housing, water, sanitation, health, education, family life, residency and freedom of movement.[86] Protection risks have been heightened, and the coping capacities of communities affected,[87] with Palestinian women and girls disproportionally affected by distress and trauma.[88]

28. In recent years, Israel has introduced measures limiting the legal recourse for Palestinians in Area C, contributing to a notable deterioration in housing, land and property rights. These measures include Military Order No. 1797 regarding the removal of new structures,[89] allowing the Israeli Civil Administration to remove "new" structures after 96 hours of the issuance of a removal order. According to information from the Office for the Coordination of Humanitarian Affairs (OCHA), the order has been implemented in 158 recorded incidents since it came into effect in 2018 and for 42 structures during the reporting period. Similarly, administrative orders introduced and/or amended in recent years[90] have resulted in a steady increase in the seizure of structures in Area C: from 6 in 2017, 17 in 2018, 27 in 2019, 33 in 2020 and 82 in 2021. During the reporting period, 131 such seizures were recorded.[91]

29. These orders serve to circumvent procedures established under planning legislation, severely restricting the ability of Palestinians to be heard before a judicial body. Further, significant political pressure is being exerted on the Israeli Civil Administration by pro-settlement members of Knesset and leaders of the settler movement to increase the enforcement of demolition orders.[92]

[79] Information provided by OCHA.
[80] Education Cluster Occupied Palestinian Territory.
[81] Norwegian Refugee Council.
[82] See https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949, art. 147.
[83] Education Cluster Occupied Palestinian Territory.
[84] See www.savethechildren.es/sites/default/files/2021-06/Hope_under_the_rubble_STC.pdf.
[85] Fourth Geneva Convention, arts. 49 and 147; Hague Regulations, arts. 46 and 56; and Security Council resolution 1612 (2005).
[86] A/77/493, paras. 26–27, and A/72/564, paras. 25 and 49–50.
[87] A/77/493, para. 65.
[88] See www.globalprotectioncluster.org/sites/default/files/2022-08/opt_protection_analysis_update_westbank_aug2022.pdf; see also CEDAW/C/ISR/CO/6, paras. 32–33.
[89] See www.ochaopt.org/content/west-bank-demolitions-and-displacement-july-august-2022; see also A/HRC/46/65, para. 32.
[90] See www.militarycourtwatch.org/files/server/MO%201651%20.pdf; www.nevo.co.il/law_html/law65/666_038.htm#Seif6; and www.nevo.co.il/law_html/law65/666_038.htm concerning "mobile structures".
[91] Information provided by OCHA.
[92] Knesset Foreign Affairs and Defense Committee "Palestinian takeover of Area C", 29 July 2020 and 13 August 2020.

30. It is clear that Israeli planning and zoning regimes in Area C and East Jerusalem are discriminatory,[93] rendering it almost impossible for Palestinians to obtain building permits.[94] Data from the Israeli Civil Administration made public in December 2021 revealed that fewer than 1 per cent of Palestinian construction permits (24 of 2,550) in Area C had been approved between 2016 and 2020.[95] In contrast, 8,356 permits for Israeli settlement housing units were issued.

31. In occupied East Jerusalem, Israel has zoned only 15 per cent of the area illegally annexed by Israel in 1967 for Palestinian housing needs, compared to 38 per cent allocated for settlement construction.[96] Data provided by the Jerusalem municipality show that while Palestinian people account for 38 per cent of the overall population of Jerusalem, between 1991 and 2018 only 16.5 per cent of building permits were issued for construction in Palestinian neighbourhoods, mainly for small-scale private projects.[97] By contrast, 37.8 per cent of all permits were issued for settlement construction in East Jerusalem. As a result, a third of Palestinian homes in East Jerusalem have been built without the required Israeli permit, which makes them subject to demolition orders.[98]

32. Between 2012 and 2021, Israeli authorities demolished 1,407 Palestinian houses in East Jerusalem. Within the reporting period alone, 166 houses were demolished and 86 were demolished by their owners. Demolitions owing to the lack of building permits appear to be on the increase, with the number of structures demolished in East Jerusalem in 2021 (177) totalling approximately the same as the total over the past four years (2017–2020).[99] Fuelling the recent acceleration in the demolition of newly built Palestinian structures in East Jerusalem is the adoption of amendment 116 to the planning and building law, effective from October 2017, enabling expedited demolitions[100] and further limiting opportunities for legal recourse. The number of Palestinians in East Jerusalem who have been forced to self-demolish their properties is on the rise (16 structures in 2013; 58 in 2019; 89 in 2020; and 101 in 2022). This trend is on the rise since the new regulations came into force in 2018[101] – it is the only way to avoid paying the large fines and charges concomitant with the Israeli municipality carrying out the demolition.[102]

33. The Human Rights Committee has concluded that such "systematic practice of demolitions and forced evictions based on the discriminatory policies have led to the separation of Jewish and Palestinian communities in the Occupied Palestinian Territory, which amounts to racial segregation".[103]

Additional discriminatory laws in East Jerusalem

34. The right to housing for Palestinians in East Jerusalem is further undermined by the Absentees' Property Law,[104] enacted in 1950, which allows the confiscation of property from Palestinians in areas where "the law of the State of Israel applies" if the owner of the property fled or was otherwise outside that area after 27 November 1947.[105] Since the illegal annexation of East Jerusalem under international law,[106] property owned by Palestinians

[93] A/HRC/37/43, paras. 29–32, A/HRC/25/38, paras. 11–14, A/HRC/31/43, paras. 18 and 45, A/HRC/34/38, para. 25, and CERD/C/ISR/CO/14-16, para. 25.
[94] Ibid., para. 26.
[95] See https://www.haaretz.com/israel-news/2021-12-07/ty-article/.premium/demolition-orders-for-palestinians-in-west-banks-area-c-hit-five-year-record/0000017f-f234-d487-abff-f3fef38d0000.
[96] A/HRC/43/67, para. 42.
[97] See https://peacenow.org.il/en/jerusalem-municipal-data-reveals-stark-israeli-palestinian-discrepancy-in-construction-permits-in-jerusalem.
[98] Ibid.
[99] Information provided by OCHA.
[100] A/HRC/43/67, para. 32.
[101] Administrative Offenses Regulations 2018, and Planning and Building Law, art. 254 (9).
[102] A/77/493, para. 17, and www.alhaq.org/advocacy/18827.html.
[103] CCPR/C/ISR/CO/5, para. 42.
[104] See https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/04-Absentees-Property-Law-1950.pdf.
[105] A/75/376, para. 51, and A/70/351, paras. 30 and 31.
[106] A/75/376, para. 51.

residing outside the city has been determined to be "absentee property", which, in some cases, has been transferred or sold to settler organizations.[107] While the Legal and Administrative Matters Law of 1970 permits claims for the restitution of property in East Jerusalem owned by Jewish persons before 1948, it does not allow equivalent Palestinian claims of ownership in West Jerusalem. It is estimated that hundreds of properties have been taken over by settlers in East Jerusalem since the 1980s under the two laws, as well as through archaeological or tourism projects and transactions involving Palestinian property, including fraudulent purchases.[108] By applying the Absentees' Property Law and the Legal and Administrative Matters Law in East Jerusalem, Israel is exceeding the limited legislative authority that an occupying Power may exercise under international humanitarian law. Both laws are seemingly inconsistent with the obligation that private property in occupied territory must be respected and cannot be confiscated.[109] In addition, confiscations under the laws are carried out solely on the basis of the nationality or origin of the owner, rendering such laws inherently discriminatory.

35. Within occupied East Jerusalem, at least 218 Palestinian households, mostly in the neighbourhoods of Sheikh Jarrah and Silwan, are facing the threat of forced eviction, their residents living in constant fear and anxiety, owing to cases filed in Israeli courts, primarily by Israeli settler organizations.[110] The settlement of title procedure coupled with discriminatory legal structure[111] and settlement expansion plans currently under way[112] could cause a significant rise in eviction lawsuits against Palestinians residing in East Jerusalem.

Settlement-related violence

36. Settler violence adversely affects Palestinian society, violating a range of rights.[113] Over the past 10 years, OHCHR has documented how Israeli security forces have not only stood by idly but have actively participated in the violence against Palestinians, including with deadly consequences.[114] The settler presence and violence, which appears designed to terrorize Palestinians as part of a calculated and systematic effort to expand Israeli control beyond the settlement jurisdiction areas, has also reduced Palestinians' access to land and consolidated the presence and expansion of Israeli settlements and outposts.[115] The climate of fear and intimidation has had a serious psychological impact on Palestinians[116] and the increasingly severe level of settler violence is a key component of the coercive environment, increasing their risk of forcible transfer.

37. Over the past 10 years there have been a total of 3,372 incidents of settler violence verified by the United Nations, including 1,222 people injured (922 men, 102 women and 243 children). OHCHR has documented numerous cases of settlers attacking and terrifying women and girls, including pregnant[117] and elderly women, with stones, batons, pepper-spray, Molotov cocktails, dogs and firearms. As an added concern, OHCHR monitoring shows that settler violence has had an impact on women's freedom of movement and has reinforced negative aspects of traditional gender roles in the Palestinian community.[118]

[107] Ibid.; see also https://law.acri.org.il/pdf/unsafe-space-en.pdf, p. 35.
[108] A/75/376, para. 51, A/70/351, paras. 29–36 and 49–51, and A/HRC/34/39, para. 46.
[109] The Hague Regulations, art. 46, and A/75/376, para. 51.
[110] A/HRC/49/85, para. 25.
[111] See https://mailchi.mp/ir-amim/strategic-bloc-of-land-between-east-jerusalem-abu-dis-covertly-transferred-into-state-hands-in-parallel-to-completion-of-land-registration?e=5dfcd834de.
[112] See https://www.ir-amim.org.il/sites/default/files/Settlement%20of%20Title%20in%20East%20Jerusalem%20March%202022.pdf.
[113] A/HRC/40/42, para. 24.
[114] A/77/493, paras. 33–40, A/HRC/49/85, paras. 13–19, A/76/336, paras. 17–23, and A/75/376, para. 17.
[115] A/76/336, para. 19, and A/HRC/40/42, para. 24.
[116] A/HRC/40/42, para. 48.
[117] A/75/376, para. 21.
[118] A/HRC/40/42, paras. 48–49, A/77/493, para. 28, and A/HRC/46/63.

38. During the present reporting period, settler violence further intensified, reaching the highest levels ever recorded by the United Nations.[119] There were 739 incidents of settler violence in the West Bank, including East Jerusalem (502 incidents in the previous period), presenting an 89 per cent increase compared to 2012 when the United Nations recorded 391 incidents. Settlers injured 248 Palestinians (207 men, 19 women and 22 children) and vandalized 10,810 trees and 668 vehicles. The severity of such attacks also intensified. Two Palestinian men were killed by settlers, while two Palestinians boys were killed either by Israel security forces or settlers using firearms simultaneously.

39. Settler violence and intimidation, which peaks during the annual olive harvest, seriously impedes farmers' access to their land and their livelihoods, involves serious physical and psychological harm, which also targets protective-presence volunteers. Violence during the recent harvest season reached an all-time record, with 48 settler attacks involving property damage and 11 incidents resulting in 49 Palestinians injured (45 men, 3 women and 1 boy). During the harvest, 1,400 Palestinian-owned trees were vandalized and approximately 1,000 were harvested by people believed to be Israeli settlers. In addition, 30 Palestinians were injured by the Israeli security forces that intervened following a settler attack – a concerning trend.[120] On 19 October, some 30 Israeli settlers attacked Palestinian farmers and Israeli activists picking olives near Ma'ale Amos settlement, southeast of Bethlehem. Settlers hit a 70-year-old Israeli woman activist with stones and batons, causing broken ribs and a broken hand.

40. Settlement guards appeared to play an active role in violent attacks. On 21 October, four Palestinian men picking fruit from their olive trees in Burin village in Nablus were attacked with stones and teargas by some 20 Israeli settlers from the Givat Ronen/Sneh Ya'akov outpost. Stone-throwing confrontations ensued between local Palestinians and settlers arriving from outposts near the Har Bracha and Yitzhar settlements. When Israeli security forces intervened, an armed man in an Israeli security forces uniform assisted the settlers in throwing teargas canisters at the Palestinian crowd. He was filmed handing a tear gas grenade to a settler and showing him where to aim.[121] The man was later identified as the settlement guard of Har Bracha settlement. On 25 October,[122] Israeli media reported that the guard had been suspended pending a probe by the Israel Defense Forces but he was reinstated shortly afterwards, on 31 October.[123]

41. Settlement guards actively participating in settler attacks have been documented as a trend over the years, including cases of civilian security guards shooting and killing Palestinians with live ammunition alongside settlers and Israeli security forces.[124] In the West Bank, security guards often live in settlements or outposts, identify as settlers and share a related ideology, while being paid for, trained and armed by the Israeli security forces, seemingly blurring the lines of law enforcement powers between them and the settlers.[125] In East Jerusalem settlements, the Ministry of Defence contracts security guards to protect settlers.[126]

42. Violence by settlers and the Israeli security forces has become increasingly interwoven and, over the years, their distinction has become increasingly difficult to discern.[127] Since 2012, OHCHR has documented numerous incidents where settlers were recorded shooting at Palestinians side by side with the Israeli security forces.[128] That trend

[119] OCHA began tracking this behaviour in 2005; see also www.ochaopt.org/content/palestinians-resisting-forcible-transfer-masaffer-yatta#ftn_ref5.

[120] A/77/493, paras. 33–40, A/HRC/49/85, paras. 13–19, A/76/336, paras. 17–23, and A/75/376, para. 17.

[121] See https://twitter.com/Yesh_Din/status/1583459965846818817.

[122] See https://www.haaretz.com/middle-east-news/palestinians/2022-10-26/ty-article/.premium/israeli-army-suspends-official-who-helped-settlers-throw-gas-grenades-on-palestinians/00000184-12bd-df0c-a1dc-b3bfaa230000.

[123] See https://www.haaretz.com/israel-news/2022-10-31/ty-article/.premium/israeli-army-reinstates-official-who-helped-settlers-tear-gas-palestinians/00000184-2d71-dc27-a19c-aff3aea20000.

[124] A/HRC/49/85, paras. 15 and 16.

[125] A/77/493, para. 40.

[126] Ibid.

[127] A/77/493, para. 36.

[128] A/77/493, para. 35, A/76/336, para. 44, A/HRC/49/85, para. 54, and S/2022/504.

continued during the present reporting period. On 29 July, Israeli security forces and settlers, operating side by side, shot and killed a 15-year-old Palestinian boy and injured at least three other Palestinian men who were protesting against settler activities in Al Mughayyir village in Ramallah. The child was shot in the back while running away and later died from his wounds. Eyewitnesses and video footage indicate that the Israeli security forces and the settlers were firing live ammunition simultaneously, making it impossible to determine who fired the lethal shots. In addition to raising concerns about unlawful killing and injury of Palestinians, the incident also highlights the role of the Israeli security forces in participating in and providing security cover for settlers carrying out acts that may amount to criminal offences against Palestinians.

43. The incident demonstrates how the Israeli security forces use force to restrict and suppress Palestinian freedom of expression and assembly when demonstrating against the settlement enterprise and occupation. During the last decade, OHCHR has documented numerous cases of discriminatory law enforcement during demonstrations, including intimidation of protesters and journalists, mass arrests and the use of excessive force against mainly peaceful protesters, as well as the use of lethal force as crowd control measure.[129] In many incidents monitored by OHCHR, the use of firearms by the Israeli security forces appears to have been unnecessary or disproportionate, including using firearms without warning, where there was no threat to life or of serious injury or without first resorting to less extreme means, including less lethal weapons. The use of firearms causing the death of individuals who were not posing a threat to life or serious injury constitutes a violation of the right to life[130] and may be equivalent to extrajudicial execution. In an occupation situation, such actions may also amount to wilful killings under the Fourth Geneva Convention, which is a war crime.[131]

Accountability

44. Over the past 10 years, Israel has failed in its obligation to promptly, effectively and independently investigate and prosecute crimes against Palestinians committed by settlers and related violations by the Israeli security forces and to provide justice to the victims.[132] The Human Rights Committee delivered pointed criticism on the state of Israeli law enforcement in March 2022.[133]

45. Failure to protect Palestinians and deficiencies in the justice system to hold settlers accountable for violence against Palestinians, with particular obstacles to access to justice for women and girls, have been reported previously. Few complaints are submitted by Palestinians owing to distrust of the Israeli legal system and fear of reprisals.[134] Overall, these deficiencies sustain and exacerbate a climate of impunity for settler violence, encouraging the continuation of attacks.[135] Additionally, the above-mentioned attacks against Palestinians by settlers shooting side by side with the Israeli security forces, add to such a climate. Settler violence against Palestinians serves as a method to take over land in the West Bank.[136]

46. Despite some reported steps taken by Israel in the current reporting period, such as establishment of special teams to address ideologically based offences[137] and some public calls for accountability[138], actual accountability measures remain gravely deficient. Little to no information has been made publicly available on investigations into killings of

[129] A/HRC/49/85, sect. IV, A/77/493, para. 33, and A/HRC/49/85, para. 41.

[130] Universal Declaration of Human Rights, arts. 19 and 20; International Covenant on Civil and Political Rights, arts. 6 (1), 9 (1), 19 and 22; Hague Regulations of 1907, art. 46; and Fourth Geneva Convention, art. 27.

[131] See https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949, art. 147.

[132] A/77/493, para. 78 (d), A/77/493, para. 46, A/76/336, para. 26, and A/HRC/49/85, paras. 20–22.

[133] CCPR/C/ISR/CO/5, paras. 24, 26 and 27.

[134] A/76/336, para. 31.

[135] A/77/493, para. 47; A/76/336, para. 31; and A/HRC/49/85, para. 23.

[136] See www.btselem.org/sites/default/files/publications/202111_state_business_eng.pdf.

[137] http://www.gov.il/BlobFolder/dynamiccollectorresultitem/hr-0007/he/human-rights-replay_investigation-and-prosecutionof-offences-against-palestinians.pdf, March 2022.

[138] See www.timesofisrael.com/coalition-members-condemn-settler-attack-with-some-calling-to-raze-outposts/.

Palestinians by settlers, settlement guards or settler-related killings by the Israeli security forces, and obtaining information on status of cases has remained similarly challenging. On 25 August, the State prosecution closed its investigation into the killing of a 27-year-old Palestinian man by a settler on 21 June in the village of Iskaka near the Ariel settlement. Even though the stabbing took place in the presence of the Israeli security forces, the authorities stated that self-defence could not be ruled out.[139] Regarding the events of 28 September 2021, when dozens of settlers entered Umm Fagarah in Masafer Yatta, attacking residents, homes and vandalizing property, injuring several Palestinians, including a toddler, the State prosecutor filed indictments against only two persons.[140] No information is available of further accountability measures into the killing of Palestinians by settlers during the previous reporting period.[141]

47. According to the latest report of the Ministry of Justice on the Israeli investigation and prosecution of "ideologically motivated offences" against Palestinians,[142] 87 investigations were opened against Israeli suspects in 2021 while OCHA documented 585 incidents of settler violence in the same year.[143] Of that number, 49 cases remain under investigation, while 38 have been closed, including 19 indictments reportedly filed. The Ministry of Justice did not provide information on the number of complaints submitted by Palestinians.

48. According to Yesh Din, 92 per cent of settler violence cases that the organization examined between 2005 and 2021 were closed without an indictment, while approximately only 3 per cent of investigations led to convictions.[144] Israelis who harm non-Palestinians in the West Bank are six times more likely to be indicted than if they harmed a Palestinian. From 2018 to 2020, charges were filed in under 4 per cent of settler violence cases.[145] In contrast, between 2018 and April 2021, 96 per cent of investigations of Palestinian violence by the military prosecution ended with a conviction, with 99.6 per cent based on plea deals.[146]

C. Coercive environment and forcible transfer

49. The violations described above, including settlement expansion, discriminatory Israeli land and planning policies and measures, demolitions, forced evictions and systematic and increasingly severe settler violence, both individually and cumulatively, create a context whereby Palestinians are often left with no choice but to leave their places of residence.[147] Any population movement caused either through direct demolition of structures or forced evictions or by the implementation of, or failure to protect from, coercive measures that compel protected persons to move could amount to forcible transfer, a grave breach of the Fourth Geneva Convention, constituting a war crime.[148]

[139] See www.haaretz.com/israel-news/2022-08-25/ty-article/.premium/israel-closes-case-against-settler-suspected-of-fatally-stabbing-palestinian/00000182-d597-d972-a7d6-dd9f49470000.

[140] See www.haaretz.com/israel-news/2022-11-29/ty-article-magazine/.premium/witnesses-werent-questioned-and-cases-were-closed-the-palestinian-villagers-seek-justice/00000184-be27-d05a-a3b4-ff674bb30000.

[141] A/HRC/49/85, para. 22.

[142] http://www.gov.il/BlobFolder/dynamiccollectorresultitem/hr-0007/he/human-rights-replay_investigation-and-prosecutionof-offences-against-palestinians.pdf.

[143] Information provided by OCHA.

[144] See www.yesh-din.org/en/data-sheet-december-2021-law-enforcement-on-israeli-civilians-in-the-west-bank-settler-violence/.

[145] See www.haaretz.com/israel-news/2022-02-07/ty-article-magazine/.premium/charges-are-pressed-in-just-4-of-settler-violence-cases/0000017f-e826-df2c-a1ff-fe77f5090000.

[146] See www.haaretz.com/israel-news/2022-04-25/ty-article-magazine/.highlight/israels-other-justice-system-has-rules-of-its-own/00000180-6566-d824-ad9e-e7664fa10000.

[147] A/HRC/43/67, paras. 41–59.

[148] A/HRC/43/67, paras. 37–40; Fourth Geneva Convention, arts. 49 (1) and 147; Rome Statute, art. 8 (2) (b) (viii); International Covenant on Economic, Social and Cultural Rights, art. 11; and Committee on Economic, Social and Cultural Rights, general comment No.7 (1997).

50. As referenced extensively in the jurisprudence of international criminal tribunals, the prohibition of forcible transfer is to be interpreted broadly[149] and may result from indirect measures,[150] including the creation of a coercive environment, whereby people are forced to leave against their genuine will.[151] In the past decade, the Secretary-General and the High Commissioner have expressed their repeated concern regarding the existence and intensity of a coercive environment in the West Bank, including East Jerusalem. Risk of forcible transfer and concern over actual cases where Palestinians appear to have been forcibly transferred has been reported on[152] with respect to Area C,[153] including the Jordan Valley,[154] the H2 area in Hebron[155] and East Jerusalem.[156] During the reporting period, the following three cases monitored by OHCHR have been of particular concern.

Ras al Tin

51. Ras al Tin is a Palestinian herding community[157] of approximately 35 households (240 people, including 150 children), located in Area C, whose seasonally changing residential and herding areas are located in and next to an area that has been designated as a "firing zone", closed for Israeli military training.[158] The community has unceasingly been subjected to a range of increasing pressures, including demolitions, confiscations of livelihood materials, settler violence and lack of protection from it, and excessive use of force by the Israeli security forces, which, combined, created a coercive environment and presented a risk of forcible transfer for its residents. In 2009, demolition orders were issued against 13 families. In 2015, two homes were demolished, affecting 11 people, including seven children.[159] In 2021, 84 Palestinians, including 53 children, lost their homes when Israeli security forces confiscated 49 structures.[160] According to community members, the Israeli security forces verbally ordered the community, repeatedly, to move to Area B. On 14 June and 6 July 2022, two serious settler attacks occurred; women were particularly affected and several residents were injured. This, combined with the pressures of the past years, including regular harassment by settlers, resulted in 19 households (99 people, including 62 children) deciding to leave the area in July 2022. The families relocated to Kafr Malek village in Area B, where they faced harsh and unsustainable conditions, without access to basic services, such as water, health care, sustained electricity, water and sanitation and hygiene facilities. Further, schools were located at long distances from the village, disproportionally affecting women and children. As of September 2022, OHCHR documented that the families remained in Kafr Malek. Two families who had remained in Ras Al Tin are planning to join them. It appears the families have moved permanently as a result of the accumulation of coercive elements, raising concerns that forcible transfer may have taken place.

Masafer Yatta

52. On 4 May 2022, the High Court of Justice rejected a petition against eviction orders issued to Palestinians belonging to 12 herding communities in the Israeli-designated firing

[149] International Criminal Court, PCNICC/2000/1/Add.2; and International Tribunal for the Former Yugoslavia, Case No. IT-95-9-T, 17 October 2003, para. 130.
[150] A/HRC/43/67, para. 38.
[151] A/HRC/43/67, para. 40, and A/HRC/34/39, para. 42.
[152] A/77/493, paras. 17–27 and 48–76, A/76/336, paras. 37–57, and A/HRC/49/85, paras. 28–29.
[153] A/77/493, paras. 20 and 21, A/HRC/43/67, para. 33, A/HRC/34/39, para. 44, and A/72/564, paras. 36–57.
[154] A/73/410.
[155] A/71/355, A/HRC/43/67 and A/73/410, para. 19.
[156] A/HRC/37/43, A/HRC/43/67 and A/73/410, para. 20.
[157] The community has lived in Ras al Tin since 1988 and has been forced to move several times; see also www.haaretz.com/israel-news/twilight-zone/2022-07-21/ty-article-magazine/.highlight/a-palestinian-tribe-is-uprooted-for-the-seventh-time/00000182-228a-d15a-a197-73bf44770000.
[158] Declared a firing zone in 1967; see also OCHA Humanitarian Report: Ras al Tin, 18 July 2022 (https://www.unocha.org/media-centre/humanitarian-reports).
[159] OCHA Humanitarian Report: Ras al Tin, 18 July 2022.
[160] Ibid.

zone 918 in Masafer Yatta.[161] The petition had been ongoing since 2012.[162] The judgment is inconsistent with international law for its narrow interpretation of the prohibition of forcible transfer to cover only mass transfers and for privileging Israeli military law over international law obligations.[163] With the Israeli security forces now enabled to implement eviction orders and to use the site for active military training, 1,144 residents (282 men, 293 women, 299 boys, 270 girls) are at imminent risk of forced eviction and forcible transfer.[164]

53. Since the court ruling of 4 May, Israel has intensified the coercive environment by carrying out demolitions, issuing demolition and military seizure orders, increasing the military presence and operations and imposing movement restrictions on residents and humanitarian responders, including the establishment of checkpoints and the imposition of detentions, affecting access to education, health care and people's ability to sustain their livelihoods, particularly for female-headed households.[165] Thus far, 25 structures in Khirbet at Tabban have already been demolished, resulting in the forced eviction of 64 people, who now live in tents or shelters provided by the humanitarian community. For some people, this was the third time they had lost their homes in less than a year. A further 35 demolition orders have been issued, affecting 77 structures, including homes. On 18 May, Israeli security forces issued a military seizure order allowing the construction of a two-lane patrol road between Khirbet Bir al 'Idd and communities, which, once complete, threatens to severely hamper the movement of Palestinians and their access to hospitals and other basic services.[166] In June 2022, military training exercises began, resulting in large-scale military deployment and the establishment of more permanent presence of the Israeli security forces through the construction of a military base, with firing ranges emplaced close to inhabited residential areas.[167] On 6 July 2022, the roof of a residential home was damaged by Israeli live ammunition fired during a training exercise while the family was inside the home[168]. The Israeli security forces have begun closely monitoring and restricting the movement of people in the area, even on days when training is not taking place, including by going house to house to photograph residents' faces and check their identification documents.[169] In July, there were several cases of members of the community being stopped and detained for hours at newly established flying checkpoints, even outside military training periods. In addition, representatives of humanitarian organizations and United Nations personnel have been stopped, delayed and their cars seized and confiscated. On 29 July, a military seizure order was issued to construct a checkpoint in At Tuwani that would close off the main access road to Masafer Yatta. On 11 August, Israeli security forces placed concrete blocks at the entrance of At Tuwani in preparation for a road gate, which is considered to be part of a larger checkpoint infrastructure.[170]

54. The Secretary-General and the High Commissioner have repeatedly voiced deep concern regarding the possible forced evictions and forcible transfer of Palestinian families

[161] See https://supreme.court.gov.il/sites/en/Pages/home.aspx; see also, on 2 October 2022, the High Court of Justice of Israel rejected a petition to hold additional hearings, available at https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts/22/440/041/v15&fileName=22041440.V15&type=4 [in Hebrew].

[162] A/76/336, paras. 50 and 51.

[163] A/77/493, para. 19 and A/76/336, paras. 55 and 56; see also www.ohchr.org/en/press-releases/2022/05/un-experts-alarmed-israel-high-court-ruling-masafer-yatta-and-risk-imminent.

[164] A/HRC/49/85, para. 26.

[165] See www.ochaopt.org/content/masafer-yatta-communities-risk-forcible-transfer-june-2022.

[166] Ibid.

[167] OCHA, Humanitarian Report: Masafer Yatta, 17 August 2022 (https://www.unocha.org/media-centre/humanitarian-reports).

[168] See www.ochaopt.org/poc/28-june-18-july-2022 and www.haaretz.com/middle-east-news/palestinians/2022-09-21/ty-article-magazine/.premium/in-the-shadow-of-idf-live-fire-training-life-in-masafer-yatta-has-become-unbearable/00000183-5f7a-d722-abd7-5f7f1e380000.

[169] See www.ochaopt.org/content/masafer-yatta-communities-risk-forcible-transfer-june-2022.

[170] OCHA Humanitarian Report, 17 August 2022 (https://www.unocha.org/media-centre/humanitarian-reports).

from their homes in Masafer Yatta, urging Israeli authorities to stop all military training to allow community members to stay in their homes in safety and dignity.[171]

East Jerusalem

55. In Silwan, on 10 and 11 May 2022, demolitions caused the forcible eviction of 33 people, including 18 children. Approximately 74 Palestinians, including 42 children, remain at risk of impending forced eviction and possible forcible transfer following a demolition order in Wadi Qaddum.[172] In Sheikh Jarrah, tensions have remained high over the past years in the context of several rounds of planned forced evictions. In December 2021, the Salem family received an eviction notice based on a settler's claim.[173] The proposed eviction would displace 12 people, including six children.[174] On 1 March 2022, the Israeli Supreme Court allowed four Sheikh Jarrah families facing eviction orders to stay in their homes as protected tenants until the conclusion of the process of settlement of land title. This ruling may provide a precedent and protect other families similarly facing eviction.

D. Settlements in the occupied Syrian Golan

56. Over the past decade, in the context of the Syrian civil war, Israel has regularly attacked Syrian military personnel and installations and has expanded Israeli settlements on the Golan. Following the recognition of Israeli "sovereignty" over the Golan by the United States of America on 25 March 2019, Israel embarked on an unprecedented plan to double its settler population in the Golan by 2027 and to increase the number of settlements from 34 to 36.[175] As documented in Security Council resolution 497 (1981), the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan is null and void and without international legal effect.

57. Occupied Syrian Golan villages suffer from severe overcrowding. The seizure of lands for Israeli settlements, military zones, nature reserves and commercial activities, including a wind turbine project, continue to limit access of the Syrian population to land and water, in violation of their rights to adequate housing, food and health. The Syrian Government has formally protested the confiscation and appropriation of over six square kilometres of Syrian land for the construction of 42 wind turbines in the villages of Ain El-Hajal, Al Mansura and Al-Thaljiyat, and the imminent confiscation of another four square kilometres of agricultural land to facilitate the construction of another 41 wind turbines in the villages of Madjal Shams, Masada, Buqaata and Ein Qiniya.[176] The Syrian Arab Republic has also expressed concern over the health impacts for its population centres located within 10 kilometres of the 120 metre-tall turbines.

IV. Conclusions and recommendations

58. **The establishment and expansion of settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, authorized or unauthorized under Israeli law, amount to the transfer by Israel of its own civilian population into the territories it occupies, which is prohibited under international humanitarian law,**[177] **as consistently confirmed by the competent United Nations organs, including the International Court**

[171] A/77/493, para. 19, A/76/336, paras. 50–57; see also http://www.ochaopt.org/content/statement-united-nations-resident-and-humanitarian-coordinator-occupied-palestinian-territory-lynn-hastings; www.ohchr.org/en/press-releases/2022/05/un-experts-alarmed-israel-high-court-ruling-masafer-yatta-and-risk-imminent; and https://www.btselem.org/sites/default/files/2022-10/ICC_preventive_intervention_eng.pdf.

[172] See https://www.ir-amim.org.il/en/node/2867.

[173] A/HRC/49/85, para. 32.

[174] A/77/493, para. 25.

[175] See https://www.gov.il/en.

[176] Letter from the Permanent Representative of the Syrian Arab Republic to the United Nations High Commissioner for Human Rights, Michelle Bachelet, 29 July 2022.

[177] Fourth Geneva Convention, art. 49 (6).

of Justice.[178] **Such transfers amount to a war crime that may engage the individual criminal responsibility of those involved.**

59. **The systematic takeover of land through various means, including discriminatory Israeli laws and orders, continues to undergird settlement expansion in the West Bank, including East Jerusalem. The "settlement of titles" is illegal under international law and increases the risk of illegal appropriation of property and of possible forcible transfer.**[179] **Over the past decade there has been a significant shift in the position of the Government of Israel and its institutions – characterized by an increasingly emboldened stance aimed at accelerating control over land and resources and imposing Israeli sovereignty.**

60. **Discriminatory planning policies and practices, demolitions and forced evictions in the Occupied Palestinian Territory, including for the benefit of settler organizations, entail numerous human rights violations and are a key factor in the coercive environment which currently prevails. Displacement and "relocation" to alternative residential areas as a result of such an environment amounts to forcible transfer, contrary to the obligations of Israel under international humanitarian law and international human rights law.**[180]

61. **Settler violence has reached the highest levels ever recorded by the United Nations. Violence by settlers and the Israel security forces has become increasingly interwoven, including cases of settlers shooting side by side with the Israeli security forces.**[181] **Israel has repeatedly failed in its responsibility as the occupying Power to protect Palestinians and their property.**[182] **This contributes to worsening of the coercive environment and discrimination against Palestinians, with a prevailing climate of impunity for settler violence and for use of force by the Israeli security forces.**

62. **The High Commissioner further recalls Security Council resolution 497 (1981), in which the Council decided that the decision of Israel to impose its laws, jurisdiction and administration in the occupied Syrian Golan was null and void and without international legal effect.**

63. **On the basis of the findings presented in the present and previous reports, the High Commissioner recommends that the Israeli authorities:**

(a) **Immediately and completely cease and reverse all settlement development and related activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, in accordance with relevant United Nations resolutions, including Security Council resolutions 497 (1981) and 2334 (2016);**

(b) **Rescind all policies and practices contributing to a coercive environment and/or increasing the risk of forcible transfer of Palestinians;**

(c) **Review planning laws and policies to ensure that they are compliant with the obligations of Israel under international human rights law and international humanitarian law;**

(d) **Refrain from implementing evictions and demolition orders on the basis of discriminatory and unlawful planning policies and practices that may lead to the forcible transfer of Palestinians, affecting women disproportionally;**

(e) **Take all steps necessary to protect the Palestinian population and their property from settler violence and ensure that all incidents of violence by settlers and Israeli security forces against Palestinians and damage to their property are promptly, effectively, thoroughly and transparently investigated, that perpetrators are prosecuted**

[178] *Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136; Security Council resolutions 465 (1980) and 2334 (2016); General Assembly resolutions 71/97 and 72/86; and Human Rights Council resolution 31/36.

[179] *I.C.J. Reports 2004* , p. 136.

[180] Fourth Geneva Convention, art. 49 (6), and Rome Statute, art. 8 (2) (b) (viii).

[181] A/77/493, para. 36, and A/HRC/49/85, paras. 15 and 16.

[182] The Hague Regulations, arts. 43 and 46, and Fourth Geneva Convention, art. 27.

and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies, including adequate compensation, in accordance with international standards;

(f) **Protect the rights to freedom of expression and peaceful assembly of Palestinians, refrain from all undue restriction, including use of force, and create an enabling environment for peaceful protests;**

(g) **End policies and practices within the occupied Syrian Golan that may lead to discrimination against protected persons.**

10. *Encourages* the Government of the Sudan to accelerate the progressive realization of economic, social and cultural rights in the Sudan;

11. *Invites* relevant United Nations bodies and agencies, including the Office of the United Nations High Commissioner for Human Rights, to continue providing support and technical assistance to the Sudan for the implementation of the recommendations of the Group of Experts, and calls upon donors to continue providing financial and technical assistance and required equipment for the improvement of human rights in the Sudan and to continue to provide support for the implementation of the Comprehensive Peace Agreement;

12. *Calls upon* the Government of the Sudan to accelerate the implementation of the Comprehensive Peace Agreement and to establish the remaining commissions, in particular the finalization of the establishment of the national human rights commission, in accordance with the Paris Principles;

13. *Expresses particular concern* at the fact that perpetrators of past and ongoing serious violations of human rights and international humanitarian law in Darfur have not yet been held accountable for their crimes and urges the Government of the Sudan to address urgently this question, by thoroughly investigating all allegations of human rights and international humanitarian law violations, promptly bringing to justice the perpetrators of those violations;

14. *Decides* to review the situation of human rights in the Sudan at its session in September 2008.

40th meeting
27 March 2008
Adopted without a vote. See chapter IV.

7/17. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions which confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States living side by side in peace and security, Palestine and Israel;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its session of March 2009.

40th meeting
27 March 2008
Adopted without a vote. See chapter VII.

9. *Calls upon* the occupying Power, Israel, to lift checkpoints and to open all crossing points and borders in accordance with international agreements;

10. *Urges* all parties concerned to respect the rules of international human rights and humanitarian law and to refrain from violence against civilian populations;

11. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 35 to 4, with 8 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Switzerland, Uruguay, Zambia;

Against:

Canada, Germany, Italy, Netherlands;

Abstaining:

Cameroon, France, Japan, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/20
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) on 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the latest being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009
[Adopted without a vote. See part II, chap. VII.]

10/21
Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

The Human Rights Council,

Recalling its resolution S-9/1 of 12 January 2009,

Recalling also its decision to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the latest aggression, and that it called upon Israel not to obstruct the process of investigation and to fully cooperate with the mission,

United Nations A/HRC/RES/13/6

General Assembly

Distr.: General
14 April 2010

Original: English

Human Rights Council
Thirteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

13/6
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its sixteenth session.

41st meeting
24 March 2010

[Adopted by a recorded vote of 45 to 1. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, France, Gabon, Ghana, Hungary, India, Indonesia, Italy, Japan, Jordan, Kyrgyzstan, Madagascar, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against:

United States of America.]

United Nations A/HRC/RES/16/30

General Assembly

Distr.: General
13 April 2011

Original: English

Human Rights Council
Sixteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

16/30
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its nineteenth session.

48th meeting
25 March 2011

[Adopted by a recorded vote of 45 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, France, Gabon, Ghana, Guatemala, Hungary, Japan, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Pakistan, Poland, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Slovakia, Spain, Switzerland, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia

Against:

United States of America]

United Nations A/HRC/RES/19/15

General Assembly

Distr.: General
10 April 2012

Original: English

Human Rights Council
Nineteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

19/15
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its nineteenth session (A/HRC/19/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue consideration of this question at its twenty-second session.

53rd meeting
22 March 2012

[Adopted by a recorded vote of 46 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Czech Republic, Djibouti, Ecuador, Guatemala, Hungary, India, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Philippines, Poland, Qatar, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, Uganda, Uruguay

Against:

United States of America]

United Nations A/HRC/RES/22/27

General Assembly

Distr.: General
12 April 2013

Original: English

Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/27. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, thereof relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a jus cogens in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and the preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its twenty-fifth session.

50th meeting
22 March 2013

[Adopted by a recorded vote of 46 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America]

United Nations A/HRC/RES/25/27

General Assembly

Distr.: General
11 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

25/27. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

[1] A/CONF.157/23.

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling also the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the region of the Middle East,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Noting the decision of the General Assembly, in its resolution 68/12 of 26 November 2013, to proclaim 2014 the International Year of Solidarity with the Palestinian People, and reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

6. *Decides* to continue the consideration of this question at its twenty-eighth session.

56th meeting
28 March 2014

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

Algeria, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Montenegro, Morocco,

Namibia, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America]

United Nations A/HRC/RES/28/25

General Assembly

Distr.: General
9 April 2015

Original: English

Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

28/25. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, as well as by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

[1] A/CONF.157/23.

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination, which is a right *erga omnes*, and considering that the right to self-determination of the Palestinian people is being further violated by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Notes* that the fragmentation of the Occupied Palestinian Territory undermines the possibility of the Palestinian people realizing their right to self-determination and is incompatible with the purposes and principles of the Charter of the United Nations, and stresses in this regard the need for respect for and the preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

6. *Decides* to continue the consideration of this question at its thirty-first session.

57th meeting
27 March 2015

[Adopted by a recorded vote of 45 to 1, with 1 abstention. The voting was as follows:

In favour:

Albania, Algeria, Argentina, Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, China, Congo, Côte d'Ivoire, Cuba, El Salvador, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Japan, Kazakhstan, Kenya, Latvia, Maldives, Mexico, Montenegro, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Paraguay, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Ghana][*]

[*] The delegation of Ghana subsequently stated that there had been an error in its voting and that it had intended to vote in favour of the draft text.

United Nations A/HRC/RES/31/33

General Assembly

Distr.: General
20 April 2016

Original: English

Human Rights Council
Thirty-first session
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2016

31/33. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

[1] A/CONF.157/23.

Please recycle

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

6. *Decides* to continue the consideration of this question at its thirty-fourth session.

66th meeting
24 March 2016

[Adopted without a vote.]

United Nations A/HRC/RES/34/29

General Assembly

Distr.: General
12 April 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February–24 March 2017
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2017

34/29. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which affirms that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

[1] A/CONF.157/23.

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Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Deeply regrets* the onset of the fiftieth year of the Israeli occupation, calls upon Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and

preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

6. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

7. *Decides* to remain seized of the matter.

58th meeting
24 March 2017

[Adopted by a recorded vote of 43 to 2, with 2 abstentions. The voting was as follows:

In favour:

Albania, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Georgia, Germany, Ghana, Hungary, India, Indonesia, Iraq, Japan, Kenya, Kyrgyzstan, Latvia, Mongolia, Netherlands, Nigeria, Philippines, Portugal, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Slovenia, South Africa, Switzerland, Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Togo, United States of America

Abstaining:

Panama, Paraguay]

United Nations A/HRC/RES/37/34

General Assembly

Distr.: General
13 April 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February–23 March 2018
Agenda item 7

Resolution adopted by the Human Rights Council on 23 March 2018

37/34. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations,

and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at any action taken by any body, governmental or non-governmental, in violation of the General Assembly and Security Council resolutions relevant to Jerusalem;

4. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

5. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

6. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law

by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

7. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

8. *Decides* to remain seized of the matter.

56th meeting
23 March 2018

[Adopted by a recorded vote of 43 to 2, with 1 abstention. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Georgia, Germany, Hungary, Iraq, Japan, Kenya, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Switzerland, Togo, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Australia, United States of America

Abstaining:

Democratic Republic of the Congo]

United Nations A/HRC/RES/40/22

General Assembly

Distr.: General
16 April 2019

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 7

Resolution adopted by the Human Rights Council on 22 March 2019

40/22. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and

emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses* grave concern at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

4. *Expresses* grave concern at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

5. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

6. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

7. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

8. *Decides* to remain seized of the matter.

54th meeting
22 March 2019

[Adopted by a recorded vote of 41 to 3, with 2 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, China, Croatia, Cuba, Czechia, Egypt, Eritrea, Fiji, Hungary, Iceland, India, Iraq, Italy, Japan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Rwanda, Senegal, Slovakia, Somalia, South Africa, Spain, Togo, Tunisia, Ukraine, Uruguay

Against:

Australia, Denmark, United Kingdom of Great Britain and Northern Ireland

Abstaining:

Cameroon, Democratic Republic of the Congo]

United Nations A/HRC/RES/43/33

General Assembly

Distr.: General
3 July 2020

Original: English

Human Rights Council
Forty-third session
24 February–13 March and 15–23 June 2020
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 22 June 2020

43/33. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and

the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict, in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

46th meeting
22 June 2020

[Adopted by a recorded vote of 43 to 2, with 2 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, Czechia, Denmark, Eritrea, Fiji, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Senegal, Slovakia, Somalia, Spain, Sudan, Togo, Ukraine, Uruguay, Venezuela (Bolivarian Republic of)

Against:

Australia, Marshall Islands

Abstaining:

Cameroon, Democratic Republic of the Congo]

United Nations A/HRC/RES/46/25

General Assembly

Distr.: General
1 April 2021

Original: English

Human Rights Council
Forty-sixth session
22 February–24 March 2021
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 24 March 2021

46/25. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 73 years since General Assembly resolution 181 (II) on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict, in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are the result of Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by

Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

51st meeting
24 March 2021

[Adopted by a recorded vote of 42 to 3, with 2 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, China, Côte d'Ivoire, Cuba, Denmark, Eritrea, Fiji, France, Gabon, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Togo, Ukraine, Uruguay, Uzbekistan and Venezuela (Bolivarian Republic of)

Against:

Czechia, Marshall Islands and United Kingdom of Great Britain and Northern Ireland

Abstaining:

Cameroon and Malawi]

United Nations A/HRC/RES/49/28

General Assembly

Distr.: General
11 April 2022

Original: English

Human Rights Council
Forty-ninth session
28 February–1 April 2022
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 1 April 2022

49/28. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of the acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret at the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, result in grave breaches of international humanitarian and serious violations of international human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 55 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 75 years since General Assembly resolution 181 (II) of 29 November 1947 on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and to reverse and redress any impediments to the political independence, sovereignty and territorial integrity of Palestine, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

58th meeting
1 April 2022

[Adopted by a recorded vote of 41 to 3, with 3 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Benin, Bolivia (Plurinational State of), Brazil, China, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, India, Indonesia, Japan, Kazakhstan, Libya, Luxembourg, Malawi, Malaysia, Mauritania, Mexico, Montenegro, Namibia, Nepal, Netherlands, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Ukraine, United Arab Emirates, Uzbekistan, Venezuela (Bolivarian Republic of)

Against:

Marshall Islands, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Cameroon, Honduras, Lithuania]

United Nations A/HRC/RES/52/34

General Assembly

Distr.: General
18 April 2023

Original: English

Human Rights Council
Fifty-second session
27 February–4 April 2023
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 4 April 2023

52/34. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of the acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret at the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, result in grave breaches of international humanitarian law and serious violations of international human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 56 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 76 years since General Assembly resolution 181 (II) of 29 November 1947 on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and to reverse and redress any impediments to the political independence, sovereignty and territorial integrity of Palestine, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from the continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall by Israel, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of the illegal policies and practices of Israel;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

57th meeting
4 April 2023

[Adopted by a recorded vote of 41 to 3, with 3 abstentions. The voting was as follows:

In favour:

Algeria, Argentina, Bangladesh, Belgium, Benin, Bolivia (Plurinational State of), Chile, China, Costa Rica, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Georgia, Germany, Honduras, India, Kazakhstan, Kyrgyzstan, Luxembourg, Malawi, Malaysia, Maldives, Mexico, Montenegro, Morocco, Nepal, Pakistan, Paraguay, Qatar, Senegal, Somalia, South Africa, Sudan, Ukraine, United Arab Emirates, Uzbekistan and Viet Nam

Against:

Czechia, United Kingdom of Great Britain and Northern Ireland and United States of America

Abstaining:

Cameroon, Lithuania and Romania]

10. *Encourages* the Government of the Sudan to accelerate the progressive realization of economic, social and cultural rights in the Sudan;

11. *Invites* relevant United Nations bodies and agencies, including the Office of the United Nations High Commissioner for Human Rights, to continue providing support and technical assistance to the Sudan for the implementation of the recommendations of the Group of Experts, and calls upon donors to continue providing financial and technical assistance and required equipment for the improvement of human rights in the Sudan and to continue to provide support for the implementation of the Comprehensive Peace Agreement;

12. *Calls upon* the Government of the Sudan to accelerate the implementation of the Comprehensive Peace Agreement and to establish the remaining commissions, in particular the finalization of the establishment of the national human rights commission, in accordance with the Paris Principles;

13. *Expresses particular concern* at the fact that perpetrators of past and ongoing serious violations of human rights and international humanitarian law in Darfur have not yet been held accountable for their crimes and urges the Government of the Sudan to address urgently this question, by thoroughly investigating all allegations of human rights and international humanitarian law violations, promptly bringing to justice the perpetrators of those violations;

14. *Decides* to review the situation of human rights in the Sudan at its session in September 2008.

40th meeting
27 March 2008
Adopted without a vote. See chapter IV.

7/17. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions which confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States living side by side in peace and security, Palestine and Israel;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its session of March 2009.

40th meeting
27 March 2008
Adopted without a vote. See chapter VII.

9. *Calls upon* the occupying Power, Israel, to lift checkpoints and to open all crossing points and borders in accordance with international agreements;

10. *Urges* all parties concerned to respect the rules of international human rights and humanitarian law and to refrain from violence against civilian populations;

11. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009

[Adopted by a recorded vote of 35 to 4, with 8 abstentions (see part II, chap. VII). The voting was as follows:

In favour:

Angola, Argentina, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Switzerland, Uruguay, Zambia;

Against:

Canada, Germany, Italy, Netherlands;

Abstaining:

Cameroon, France, Japan, Republic of Korea, Slovakia, Slovenia, Ukraine, United Kingdom of Great Britain and Northern Ireland.]

10/20
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) on 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the latest being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its thirteenth session in March 2010.

43rd meeting
26 March 2009
[Adopted without a vote. See part II, chap. VII.]

10/21
Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip

The Human Rights Council,

Recalling its resolution S-9/1 of 12 January 2009,

Recalling also its decision to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the latest aggression, and that it called upon Israel not to obstruct the process of investigation and to fully cooperate with the mission,

United Nations A/HRC/RES/13/6

General Assembly

Distr.: General
14 April 2010

Original: English

Human Rights Council
Thirteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

13/6
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights (A/CONF.157/23), and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions of the Human Rights Council will be contained in the report of the Council on its thirteenth session (A/HRC/13/56), chap. I.

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Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which being resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter and relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its sixteenth session.

41st meeting
24 March 2010

[Adopted by a recorded vote of 45 to 1. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Cuba, Djibouti, Egypt, France, Gabon, Ghana, Hungary, India, Indonesia, Italy, Japan, Jordan, Kyrgyzstan, Madagascar, Mauritius, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia;

Against:

United States of America.]

United Nations A/HRC/RES/16/30

General Assembly

Distr.: General
13 April 2011

Original: English

Human Rights Council
Sixteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

16/30
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its sixteenth session (A/HRC/16/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its nineteenth session.

48th meeting
25 March 2011

[Adopted by a recorded vote of 45 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Bahrain, Bangladesh, Belgium, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, France, Gabon, Ghana, Guatemala, Hungary, Japan, Jordan, Kyrgyzstan, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Pakistan, Poland, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Slovakia, Spain, Switzerland, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia

Against:

United States of America]

United Nations A/HRC/RES/19/15

General Assembly

Distr.: General
10 April 2012

Original: English

Human Rights Council
Nineteenth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

19/15
Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its nineteenth session (A/HRC/19/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a *jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue consideration of this question at its twenty-second session.

53rd meeting
22 March 2012

[Adopted by a recorded vote of 46 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Czech Republic, Djibouti, Ecuador, Guatemala, Hungary, India, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Philippines, Poland, Qatar, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, Uganda, Uruguay

Against:

United States of America]

United Nations A/HRC/RES/22/27

General Assembly

Distr.: General
12 April 2013

Original: English

Human Rights Council
Twenty-second session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council*

22/27. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, thereof relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its twenty-second session (A/HRC/22/2), chap. I.

[1] A/CONF.157/23.

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, as it is a jus cogens in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and the preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

5. *Decides* to continue the consideration of this question at its twenty-fifth session.

50th meeting
22 March 2013

[Adopted by a recorded vote of 46 to 1, with no abstentions. The voting was as follows:

In favour:

Angola, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, Congo, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, Estonia, Ethiopia, Gabon, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Montenegro, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Republic of Moldova, Romania, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

United States of America]

United Nations A/HRC/RES/25/27

General Assembly

Distr.: General
11 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

25/27. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, as well as all other resolutions that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

[1] A/CONF.157/23.

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination,

Recalling also the resolutions adopted in this regard by the Commission on Human Rights, the last of which was resolution 2005/1 of 7 April 2005,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the region of the Middle East,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Noting the decision of the General Assembly, in its resolution 68/12 of 26 November 2013, to proclaim 2014 the International Year of Solidarity with the Palestinian People, and reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Stresses* the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

6. *Decides* to continue the consideration of this question at its twenty-eighth session.

56th meeting
28 March 2014

[Adopted by a recorded vote of 46 to 1. The voting was as follows:

In favour:

Algeria, Argentina, Austria, Benin, Botswana, Brazil, Burkina Faso, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kenya, Kuwait, Maldives, Mexico, Montenegro, Morocco,

Namibia, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America]

United Nations A/HRC/RES/28/25

General Assembly

Distr.: General
9 April 2015

Original: English

Human Rights Council
Twenty-eighth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council

28/25. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, as well as by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

[1] A/CONF.157/23.

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination, which is a right *erga omnes*, and considering that the right to self-determination of the Palestinian people is being further violated by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Notes* that the fragmentation of the Occupied Palestinian Territory undermines the possibility of the Palestinian people realizing their right to self-determination and is incompatible with the purposes and principles of the Charter of the United Nations, and stresses in this regard the need for respect for and the preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination;

6. *Decides* to continue the consideration of this question at its thirty-first session.

57th meeting
27 March 2015

[Adopted by a recorded vote of 45 to 1, with 1 abstention. The voting was as follows:

In favour:

Albania, Algeria, Argentina, Bangladesh, Bolivia (Plurinational State of), Botswana, Brazil, China, Congo, Côte d'Ivoire, Cuba, El Salvador, Estonia, Ethiopia, France, Gabon, Germany, India, Indonesia, Ireland, Japan, Kazakhstan, Kenya, Latvia, Maldives, Mexico, Montenegro, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Paraguay, Portugal, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Sierra Leone, South Africa, the former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Viet Nam

Against:

United States of America

Abstaining:

Ghana][*]

[*] The delegation of Ghana subsequently stated that there had been an error in its voting and that it had intended to vote in favour of the draft text.

United Nations A/HRC/RES/31/33

General Assembly

Distr.: General
20 April 2016

Original: English

Human Rights Council
Thirty-first session
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2016

31/33. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

[1] A/CONF.157/23.

Please recycle

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

6. *Decides* to continue the consideration of this question at its thirty-fourth session.

66th meeting
24 March 2016

[Adopted without a vote.]

United Nations A/HRC/RES/34/29

General Assembly

Distr.: General
12 April 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February–24 March 2017
Agenda item 7

Resolution adopted by the Human Rights Council on 24 March 2017

34/29. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which affirms that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[1] and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

[1] A/CONF.157/23.

GE.17-05971(E)
1705971

Please recycle

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Taking note of General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Deeply regrets* the onset of the fiftieth year of the Israeli occupation, calls upon Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and

preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

4. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

5. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

6. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

7. *Decides* to remain seized of the matter.

58th meeting
24 March 2017

[Adopted by a recorded vote of 43 to 2, with 2 abstentions. The voting was as follows:

In favour:

Albania, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burundi, China, Congo, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Georgia, Germany, Ghana, Hungary, India, Indonesia, Iraq, Japan, Kenya, Kyrgyzstan, Latvia, Mongolia, Netherlands, Nigeria, Philippines, Portugal, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Slovenia, South Africa, Switzerland, Tunisia, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Togo, United States of America

Abstaining:

Panama, Paraguay]

United Nations A/HRC/RES/37/34

General Assembly

Distr.: General
13 April 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February–23 March 2018
Agenda item 7

Resolution adopted by the Human Rights Council on 23 March 2018

37/34. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations,

and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses grave concern* at any action taken by any body, governmental or non-governmental, in violation of the General Assembly and Security Council resolutions relevant to Jerusalem;

4. *Expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

5. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

6. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law

by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

7. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

8. *Decides* to remain seized of the matter.

56th meeting
23 March 2018

[Adopted by a recorded vote of 43 to 2, with 1 abstention. The voting was as follows:

In favour:

Afghanistan, Angola, Belgium, Brazil, Burundi, Chile, China, Côte d'Ivoire, Croatia, Cuba, Ecuador, Egypt, Ethiopia, Georgia, Germany, Hungary, Iraq, Japan, Kenya, Kyrgyzstan, Mexico, Nepal, Nigeria, Pakistan, Panama, Peru, Philippines, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Switzerland, Togo, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of)

Against:

Australia, United States of America

Abstaining:

Democratic Republic of the Congo]

United Nations A/HRC/RES/40/22

General Assembly

Distr.: General
16 April 2019

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 7

Resolution adopted by the Human Rights Council on 22 March 2019

40/22. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and

emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

3. *Expresses* grave concern at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

4. *Expresses* grave concern at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

5. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

6. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

7. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

8. *Decides* to remain seized of the matter.

54th meeting
22 March 2019

[Adopted by a recorded vote of 41 to 3, with 2 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, China, Croatia, Cuba, Czechia, Egypt, Eritrea, Fiji, Hungary, Iceland, India, Iraq, Italy, Japan, Mexico, Nepal, Nigeria, Pakistan, Peru, Philippines, Qatar, Rwanda, Senegal, Slovakia, Somalia, South Africa, Spain, Togo, Tunisia, Ukraine, Uruguay

Against:

Australia, Denmark, United Kingdom of Great Britain and Northern Ireland

Abstaining:

Cameroon, Democratic Republic of the Congo]

United Nations A/HRC/RES/43/33

General Assembly

Distr.: General
3 July 2020

Original: English

Human Rights Council
Forty-third session
24 February–13 March and 15–23 June 2020
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 22 June 2020

43/33. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and

the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 70 years since the resolution on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict, in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

46th meeting
22 June 2020

[Adopted by a recorded vote of 43 to 2, with 2 abstentions. The voting was as follows:

In favour:

Afghanistan, Angola, Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Brazil, Bulgaria, Burkina Faso, Chile, Czechia, Denmark, Eritrea, Fiji, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Qatar, Republic of Korea, Senegal, Slovakia, Somalia, Spain, Sudan, Togo, Ukraine, Uruguay, Venezuela (Bolivarian Republic of)

Against:

Australia, Marshall Islands

Abstaining:

Cameroon, Democratic Republic of the Congo]

United Nations A/HRC/RES/46/25

General Assembly

Distr.: General
1 April 2021

Original: English

Human Rights Council
Forty-sixth session
22 February–24 March 2021
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 24 March 2021

46/25. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this jus cogens norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret about the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and in the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, results in serious violations of international humanitarian and human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 50 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 73 years since General Assembly resolution 181 (II) on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict, in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and further reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are the result of Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by

Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

51st meeting
24 March 2021

[Adopted by a recorded vote of 42 to 3, with 2 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, China, Côte d'Ivoire, Cuba, Denmark, Eritrea, Fiji, France, Gabon, Germany, India, Indonesia, Italy, Japan, Libya, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Togo, Ukraine, Uruguay, Uzbekistan and Venezuela (Bolivarian Republic of)

Against:

Czechia, Marshall Islands and United Kingdom of Great Britain and Northern Ireland

Abstaining:

Cameroon and Malawi]

United Nations A/HRC/RES/49/28

General Assembly

Distr.: General
11 April 2022

Original: English

Human Rights Council
Forty-ninth session
28 February–1 April 2022
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 1 April 2022

49/28. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of the acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret at the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, result in grave breaches of international humanitarian and serious violations of international human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 55 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 75 years since General Assembly resolution 181 (II) of 29 November 1947 on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and to reverse and redress any impediments to the political independence, sovereignty and territorial integrity of Palestine, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from Israel's continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of Israel's illegal policies and practices;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

58th meeting
1 April 2022

[Adopted by a recorded vote of 41 to 3, with 3 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Benin, Bolivia (Plurinational State of), Brazil, China, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Germany, India, Indonesia, Japan, Kazakhstan, Libya, Luxembourg, Malawi, Malaysia, Mauritania, Mexico, Montenegro, Namibia, Nepal, Netherlands, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Ukraine, United Arab Emirates, Uzbekistan, Venezuela (Bolivarian Republic of)

Against:

Marshall Islands, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

Cameroon, Honduras, Lithuania]

United Nations A/HRC/RES/52/34

General Assembly

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18 April 2023

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Human Rights Council
Fifty-second session
27 February–4 April 2023
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Resolution adopted by the Human Rights Council on 4 April 2023

52/34. Right of the Palestinian people to self-determination

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, reaffirming the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970, and affirming the inadmissibility of the acquisition of territory resulting from the threat or use of force,

Guided also by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the International Covenant on Civil and Political Rights, which affirm that all peoples have the right to self-determination,

Guided further by the International Covenants on Human Rights, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular article 1 thereof, and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights, and in particular Part I, paragraphs 2 and 3, relating to the right of self-determination of all peoples, and especially those subject to foreign occupation,

Recalling General Assembly resolutions 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948, and all other relevant United Nations resolutions, including those adopted by the Assembly, the Commission on Human Rights and the Human Rights Council, that confirm and define the inalienable rights of the Palestinian people, particularly their right to self-determination,

Recalling also Security Council resolutions 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,

Recalling further General Assembly resolution 67/19 of 29 November 2012,

Reaffirming the right of the Palestinian people to self-determination in accordance with the provisions of the Charter, relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-

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determination as an international principle and as a right of all peoples in the world, and emphasizing that this *jus cogens* norm of international law is a basic prerequisite for achieving a just, lasting and comprehensive peace in the Middle East,

Deploring the plight of millions of Palestine refugees and displaced persons who have been uprooted from their homes, and expressing deep regret at the fact that more than half of the Palestinian people continue to live in exile in refugee camps throughout the region and the diaspora,

Affirming the applicability of the principle of permanent sovereignty over natural resources to the Palestinian situation as an integral component of the right to self-determination,

Recalling the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the right to self-determination of the Palestinian people, which is a right *erga omnes*, is severely impeded by Israel, the occupying Power, through the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, which, together with the Israeli settlement enterprise and measures previously taken, result in grave breaches of international humanitarian law and serious violations of international human rights law, including the forcible transfer of Palestinians and Israeli acquisition of Palestinian land,

Considering that the right to self-determination of the Palestinian people is being violated further by Israel through the existence and ongoing expansion of settlements in the Occupied Palestinian Territory, including East Jerusalem,

Noting that the failure to bring the occupation to an end after 56 years heightens the international responsibility to uphold the human rights of the Palestinian people, and expressing its deep regret that the question of Palestine remains unresolved 76 years since General Assembly resolution 181 (II) of 29 November 1947 on partition,

Reaffirming that the United Nations will continue to be engaged on the question of Palestine until the question is resolved in all its aspects in accordance with international law,

1. *Reaffirms* the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine;

2. *Also reaffirms* the need to achieve a just, comprehensive and lasting peaceful solution to the Israeli-Palestinian conflict in conformity with international law and other internationally agreed parameters, including all relevant United Nations resolutions;

3. *Calls upon* Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and to reverse and redress any impediments to the political independence, sovereignty and territorial integrity of Palestine, and reaffirms its support for the solution of two States, Palestine and Israel, living side by side in peace and security;

4. *Expresses grave concern* at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem;

5. *Also expresses grave concern* at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from the continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall by Israel, stresses that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasizes in this regard the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem;

6. *Confirms* that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination;

7. *Calls upon* all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also calls upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of the illegal policies and practices of Israel;

8. *Urges* all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right;

9. *Decides* to remain seized of the matter.

57th meeting
4 April 2023

[Adopted by a recorded vote of 41 to 3, with 3 abstentions. The voting was as follows:

In favour:

Algeria, Argentina, Bangladesh, Belgium, Benin, Bolivia (Plurinational State of), Chile, China, Costa Rica, Côte d'Ivoire, Cuba, Eritrea, Finland, France, Gabon, Gambia, Georgia, Germany, Honduras, India, Kazakhstan, Kyrgyzstan, Luxembourg, Malawi, Malaysia, Maldives, Mexico, Montenegro, Morocco, Nepal, Pakistan, Paraguay, Qatar, Senegal, Somalia, South Africa, Sudan, Ukraine, United Arab Emirates, Uzbekistan and Viet Nam

Against:

Czechia, United Kingdom of Great Britain and Northern Ireland and United States of America

Abstaining:

Cameroon, Lithuania and Romania]

UNITED NATIONS

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General Assembly

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23 February 2007

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HUMAN RIGHTS COUNCIL
Fourth session
Item 2 of the provisional agenda

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

The issue of Palestinian pregnant women giving birth at Israeli checkpoints

Report of the High Commissioner for Human Rights*

1. The Human Rights Council, in its decision 2/102 of 6 October 2006, requested the High Commissioner for Human Rights to "continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". On the current issue of Palestinian pregnant women giving birth at Israeli checkpoints, a report was submitted by the High Commissioner to the sixtieth session of the General Assembly (see A/60/324) pursuant to Commission on Human Rights resolution 2005/7 of 14 April 2005. The information in the report remains relevant and has been complemented by a note submitted by the Secretariat to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/28). The Office of the United Nations High Commissioner for Human Rights (OHCHR) understands decision 2/102 as preserving the previous annual reporting cycle in respect of the issue of Palestinian pregnant women giving birth at Israeli checkpoints, until otherwise decided by the Council. The current report to the Human Rights Council accordingly addresses developments in respect of this issue since the last report submitted to the Commission on Human Rights.

2. On 9 January 2007, the Secretary-General addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which he indicated that he would appreciate receiving any comments or observations that they might wish to submit following Commission resolution 2005/7, the

* The report is submitted after the deadline so as to reflect the most recent information.

subsequent report submitted by the High Commissioner to the General Assembly at its sixtieth session, and the note submitted by the Secretariat to the Commission on Human Rights at its sixty-second session on the issue of Palestinian pregnant women giving birth at Israeli checkpoints.

3. On 6 February 2007, OHCHR received a report from the Permanent Observer Mission of Palestine[1], compiled by the Palestinian Ministry of Health, indicating that since the Al Aqsa intifada in September 2000, Israel had intensified its military occupation of the Occupied Palestinian Territory (OPT) through obstacles and checkpoints at the entry of Palestinian cities and villages, impeding seriously the mobility of civilians. These restrictions imposed on the liberty of movement of Palestinian people were perceived as a form of collective punishment and constitute a violation of article 33 of the Fourth Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949, which forbids collective penalties and intimidation measures, and of article 12 of the International Covenant on Civil and Political Rights, which guarantees to everyone the right to liberty of movement and freedom to choose his/her residence. The Israeli policy of segregation led to the splitting of the Gaza Strip and the West Bank respectively into 3 and 43 isolated areas or units.

4. According to the Information Health Centre of the Palestinian Ministry of Health, from 2000 to 2006, 69 cases of Palestinian pregnant women giving birth at Israeli checkpoints had been recorded with peaks reached in 2001 (18 cases), in 2002 (24 cases), in 2003 (8 cases) and in 2004 (9 cases). Of these, 45 took place in the West Bank (out of which 11 cases occurred in Nablus and 9 cases in Ramallah), while 14 cases were registered in Gaza. In 2005, only three cases were reported in the West Bank and Gaza, while two cases occurred in the West Bank and none in Gaza in 2006.

5. As a result of the checkpoints, 10 per cent of pregnant women who wished to give birth in a hospital had been delayed on the road between two to four hours before reaching health facilities, while 6 per cent of them had spent more than four hours for the same journey. Before the intifada, the average time to reach health facilities was 15 to 30 minutes. These hazardous conditions were mainly attributed to impediments faced by ambulances and medical teams when trying to transport women in labour through checkpoints, and to inspections or attacks perpetrated by Israeli forces against ambulances and their patients.

6. According to the figures provided in the same report, 35 newborn babies had died at checkpoints as their mothers did not receive the urgent care required by their condition and five women lost their lives while giving birth. In addition, six pregnant women had been injured at checkpoints as a result of beating, shooting and use of toxic gas by Israeli soldiers. Mention was made of the case of a pregnant woman who had been targeted in her ninth month of pregnancy at a checkpoint by Israeli military, while she was accompanied by her husband and her father. The woman received a wound in her shoulder and the father was injured in the chest; her husband, however, died as a result of multiple gunshot wounds. Most pregnant women belonged to the

[1] This report was received in Arabic and the following information is based on an unofficial translation.

age groups 21-25 (17 cases), 26-30 (16 cases), 31-35 (15 cases), and 36-40 (9 cases). The fear of such hardships led a significant number of Palestinian pregnant women to choose to give birth at home (with an increase by 8.2 per cent of home deliveries).

7. At the time of preparation of the present report, no reply has been received from the Permanent Mission of Israel.

8. OHCHR also addressed letters dated 9 January 2007 to the following United Nations entities and specialized agencies represented in the OPT: Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), United Nations Development Fund for Women (UNIFEM), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), World Food Programme (WFP) and World Health Organization (WHO).

9. Replies were received in late January and early February 2007 from UNSCO, UNRWA transmitting statistics from WHO and the Palestinian Red Crescent Society (PRCS), as well as from UNICEF, UNIFEM and UNFPA. UNSCO indicated that it had no specific contribution to make on the subject. UNRWA mentioned that it did not keep statistics on the issue of Palestinian pregnant women at Israeli checkpoints and that the field staff consulted had no direct knowledge of any cases in 2005 or 2006. The two tables of figures transmitted by WHO are based on the statistics provided by the Information Health Centre of the Palestinian Ministry of Health (see paragraph 4 above). The information given by PRCS noted 10 cases of deliveries in ambulances between January and May 2005 at the El-Toufah checkpoint in the Gaza Strip, which was later dismantled by Israeli forces when they withdrew from Gaza. All the deliveries occurred within delays ranging from one and a half hours to two hours.

10. UNICEF indicated that it had no additional comments or observations, except that it remained determined to promote and protect all human rights and fundamental freedoms of the Palestinian women and their children, in particular unobstructed and timely access to health facilities.

11. UNIFEM noted that other United Nations agencies working in the OPT had already reported comprehensively on the issue of Palestinian pregnant women giving birth at Israeli checkpoints, and focused its contribution on the question of the treatment of pregnant Palestinian female prisoners in Israeli prisons and detention centres.

12. UNFPA expressed deep concern about recent reports of delays at Israeli checkpoints and women in labour, and reiterated the universal right of pregnant women to have access to health care, including delivery, in complex humanitarian situations such as in the OPT. Delays of pregnant women at checkpoints and other blockades had resulted in forced roadside births, and even in the death of some women (68 women, according to Palestinian Ministry of Health statistical reports have in the last six years given birth at a checkpoint, with 34 miscarriages) and

infants.[2] According to 2006 Ministry of Health statistics, there were currently an estimated 117,000 pregnant women in the OPT, including around 18,000 who suffered from difficult pregnancy and birth due to a lack of appropriate and timely antenatal, delivery and post-natal care. In fact, inadequate medical care during pregnancy was the third cause of mortality among Palestinian women of reproductive age.

13. UNFPA thus urged that civilians with urgent needs should have access to health facilities, and that humanitarian organizations be allowed to work freely to alleviate the suffering of the Palestinian people, especially women and children. In this regard, UNFPA had been helping Palestinian women to avoid distress, including from delays at checkpoints. Key interventions included training of health personnel in emergency obstetric care; equipping trained health-care personnel with delivery kits to enable them to provide more effective service delivery in their respective communities; facilitation of the formation of community support teams to assist health providers and to raise community awareness on the availability of delivery services; and procurement of medications and supplies to ensure the continuity of maternal services.

14. The latest Israeli military incursions into the Gaza Strip, which started on 28 June 2006, had compounded the suffering of the Palestinian population in general and women and young people in particular. General damage to infrastructure, power grids and communication services jeopardized provision of adequate health services. UNFPA was concerned about the negative impact of such damage on maternal outcome, including death. In Gaza, the inability to refer properly emergency cases outside of the Strip had been observed as a factor related to maternal death in a recent Ministry of Health descriptive study supported by UNFPA (*Maternal Death Study*, Ministry of Health, December 2006).

15. Through its network with the Ministry of Health and civil society organizations in Palestine, UNFPA continued to work with its partners on the provision of essential emergency services and supplies, including the restoration of health facilities, as well as psychosocial and clinical services. UNFPA also raised the issue that any birth at a checkpoint or inability to refer a pregnant woman as a result of a military barrier that resulted in birth, death or disability was a breach of human and reproductive rights.

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[2] There is one unit of difference vis-à-vis the statistics submitted by the Permanent Observer Mission of Palestine which mention 69 pregnant women delayed at checkpoints and 35 newborn babies.

UNITED NATIONS **A**

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1 February 2008

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HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 2

ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL

The issue of Palestinian pregnant women giving birth at Israeli checkpoints

Report of the High Commissioner for Human Rights

1. The Human Rights Council, in its decision 2/102, requested the United Nations High Commissioner for Human Rights to "continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". In its resolution 2005/7, the Commission on Human Rights requested the High Commissioner to report on the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals. The Office of the High Commissioner ("the Office") understands decision 2/102 as preserving the previous annual reporting cycle in respect of this issue, until otherwise decided by the Council. The present report to the Council accordingly addresses the developments that have occurred since the last report on this issue was submitted to the Council at its fourth session.[1]

2. On 20 November 2007, the Secretary-General addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which he indicated that he would appreciate receiving any comments or observations that they might wish to submit following Commission resolution 2005/7 and the most recent report submitted by the High Commissioner on the issue of Palestinian pregnant women giving birth at Israeli checkpoints.[1]

[1] A/HRC/4/57.

3. On 11 December 2007, the Office received a reply from the Permanent Observer Mission of Palestine indicating that the Israeli practices described in a report compiled by the Palestinian Ministry of Health in early 2007 persist. It also indicates that the number of cases of Palestinian pregnant women giving birth at Israeli checkpoints recorded in that report (69 cases) remains the same. The above-mentioned Israeli practices and cases of deliveries at checkpoints were described in detail in the previous report of the High Commissioner.[1]

4. At the time of writing, no reply had been received from the Permanent Mission of Israel.

5. In order to gather information on the issue, the Office also wrote on 6 November 2007 to the following United Nations entities and specialized agencies represented in the Occupied Palestinian Territory: the Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), the United Nations Development Fund for Women (UNIFEM), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the World Food Programme (WFP) and the World Health Organization (WHO).

6. Replies were received on 23 November 2007 from UNRWA and WHO. Both indicate that since all internal Israeli Defense Force (IDF) checkpoints were dismantled in Gaza in 2005, there were no cases of pregnant women giving birth at checkpoints in Gaza during the reporting period. In addition, WHO reports that since there was no referral for pregnancy-related conditions from Gaza to outside hospitals, no delivery was reported at the Erez checkpoint (currently the only checkpoint where patients can exit Gaza). Neither UNRWA nor WHO replies contain information concerning deliveries at checkpoints in the West Bank. However, on 3 January 2008, OHCHR received information from B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, concerning two cases of deliveries of Palestinian women. Both women had been forced to give birth in their respective cars following the refusal of the Israeli soldiers guarding a gate north of the village of 'Azzun 'Atmah, which is cut off from the rest of the West Bank by the Wall, to allow them to pass to get to a hospital in nearby Qalqiliya. A first case occurred on 12 December 2007, in which the delivery took place in the car after a delay of over half an hour at the gate. In the other case, which took place on 15 December 2007, a Palestinian woman from the village began to deliver in her car at 4.30 a.m., following a delay of more than one and half hours at the gate.

7. WHO further reports that, while the number of Palestinian women giving birth at checkpoints is an important indicator, it is not sufficient to assess the accessibility of adequate medical services for pregnant women, the changing patterns of behaviour in response to mobility restrictions and their implications for the right to health. According to studies referred to by WHO,[2] restricted mobility and increasing poverty have resulted in difficult situations for

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[2] Laura Wick, *Birth at the Checkpoint, the Home or the Hospital? Adapting to the Changing Reality in Palestine*, Institute of Community and Public Health, Birzeit University, 15 June 2002; Rita Giacaman et al., "The Politics of Childbirth in the Context of Conflict: Policies or de facto Practices?", *Health Policy*, vol. 72, issue 2, May 2005, pp. 129-139; Laura Wick, "Childbirth

Palestinian pregnant women and limited access to health care. Closures (roadblocks and checkpoints) continue to have economic, medical and psychosocial implications for Palestinian pregnant women as follows:

(a) Unpredictable access to maternity services due to restrictions on movement is a determinant in medical decisions on induced labour and caesarean sections and it also discourages women from seeking quality post-natal care;

(b) Obstetricians at West Bank hospitals run by the Palestinian Authority (PA) report that complications have increased due to late arrivals after delays at checkpoints and late referrals from private hospitals for caesarean operations free of charge;

(c) Mobility restrictions impede continuity of medical care throughout the cycle of pregnancy (prenatal care, a hospital for delivery and post-natal care may not be accessible in the same location) and thus the development of a relationship of trust between medical staff and patients;

(d) Palestinian pregnant women and their families live with anxiety and stress, especially during the last period of pregnancy, of not being assured that they will be able to reach a maternity facility and to return home. Transport between the home and the hospital is a constant concern;

(e) Studies indicate that physical accessibility to services, in addition to their availability and affordability, is a factor in Palestinian women's choice of place of birth. According to a Palestinian Central Bureau of Statistics (PCBS) survey carried out in 2004, 20 per cent of women interviewed reported that their childbirth location was not the preferred place of delivery; of those, 13.7 per cent stated that access was impeded by IDF measures;

(f) A drastic change in birth location patterns is reported even if this means a lower standard of health care, e.g. an increase in births attended at home or in doctors' clinics. While eliminating the need for displacement, home births involve high risks if not supported by emergency obstetric care and the ability to access a hospital when needed. In the Occupied Palestinian Territory, emergency obstetric care is limited and access constitutes a vital problem with many roads blocked;

(g) Changes in utilization patterns have also had an impact on the quality of services: the higher caseloads in some maternity hospitals were generally not accompanied by an increase in the number of health providers putting further strain on PA hospitals already suffering from understaffing and overcrowding;

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in Palestine", *International Journal of Gynecology and Obstetrics*, vol. 89, issue 2, May 2005, pp. 174-178; Rita Giacaman et al., "The Limitations on Choice: Palestinian Women's Childbirth Location, Dissatisfaction with the Place of Birth and Determinants", *European Journal of Public Health*, vol. 17, No. 1, February 2007, first published online 23 June 2006.

(h) In order to avoid having access to a maternity facility delayed or denied, pregnant women are reported to move to relatives living in towns (most of the childbirth infrastructure in the Occupied Palestinian Territory is located in urban-based hospitals) a few weeks before the expected delivery;

(i) Mobility restrictions also disrupt social relations depriving pregnant women of psychosocial support by the wider family, which in Palestinian culture and society is especially important. Close family members are not able to accompany pregnant women to hospital or often arrive late.

8. WHO further reports that according to data published in April 2007 by PCBS, the infant mortality rate has slightly increased from 24.2/1,000 live births in 2004 to 25.3/1,000 live births in 2006. The under-five mortality rate has not changed from 2004 to 2006, which is 28.2/1,000 live births.

9. UNRWA reports scarce medical facilities in Gaza, where 7 out of 17 incubators for newborn babies have not been duly maintained due to the lack of spare parts in the local market, which appears to have resulted in a decline in health standards among newborns during the reporting period. According to UNRWA, the number of infant deaths at Gaza's main hospitals - Shifa hospital, Gaza paediatric hospital and the Gaza European hospital - was on average 20 per cent higher during the period of January-October 2007 than during the corresponding period in 2006. UNRWA also expresses concern over the significant delays of the process applicable for Gazans who require permits from the Israeli authorities to exit Gaza through the Erez crossing to receive necessary medical treatment in hospitals outside Gaza. Referring to WHO statistics indicating that it has become more difficult for Gazan patients to receive an exit permit, UNRWA reports that while 89.4 per cent of patients who applied were granted a permit between January and May 2007, during October 2007, only 77.1 per cent of applicants received permits. Long delays are particularly detrimental for patients whose conditions are critical and necessitate immediate treatment outside Gaza.

10. With regard to pregnant women in Gaza, UNRWA reports that health facilities in Gaza can provide treatment to most high-risk pregnancy women. Therefore, the number of high-risk pregnancy cases referred to hospitals in Israel or east Jerusalem from either health centres of the Ministry of Health or health centres operated by UNRWA is not high. Since February 2007, UNRWA reports that it has referred five pregnant women in need of tertiary care to Israeli hospitals. Among these, four cases resulted in maternal mortality.

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HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 2

ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL

The issue of Palestinian pregnant women giving birth at Israeli checkpoints: report of the High Commissioner for Human Rights

1. The Human Rights Council, in its decision 2/102 of 6 October 2006, requested the Secretary-General and the High Commissioner for Human Rights to "continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". In its resolution 2005/7 of 14 April 2005, the Commission on Human Rights requested the High Commissioner to report on "the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals".

2. The Office of the High Commissioner for Human Rights (OHCHR) understands decision 2/102 as preserving the previous annual reporting cycle in respect of this issue, until otherwise decided by the Council. The present report to the Council addresses the developments that have occurred since the submission of the last report on this issue (A/HRC/7/44).

3. On 6 November 2008, the High Commissioner addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which she indicated that she would appreciate receiving comments or observations that they might wish to submit following Commission resolution 2005/7 and the most recent report (ibid.) submitted by the High Commissioner on the issue of Palestinian pregnant women giving birth at Israeli checkpoints.

4. At the time of writing, no reply had been received from either Mission.

5. In order to gather information on the issue, OHCHR also wrote on 7 November 2008 to the following United Nations entities and specialized agencies represented in the occupied Palestinian territory: the Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO).

6. Replies were received on 13 November 2008 from UNICEF, on 26 November 2008 from the UNRWA Gaza Field Office, on 1 December 2008 from WHO, on 3 December 2008 from OCHA, on 10 December 2008 from the UNRWA West Bank Field Office and 13 December 2008 from UNFPA and UNIFEM.

7. The United Nations does not maintain a systematic monitoring and reporting mechanism on the issue of Palestinian women giving birth at Israeli checkpoints. UNRWA Gaza and West Bank Field Offices reported that they do not monitor the issue. OCHA noted that births at checkpoints are not an indicator that it monitors or records systematically. Nevertheless, OCHA in its reply mentioned that it reports on births at checkpoints on an ad hoc basis when a casualty results from the incident (i.e., injury or death) in its Protection of Civilians Weekly Reports. In this regard, OCHA pointed out that these reports are not comprehensive as its field staff may not be receiving information on every incident.

8. It should also be noted that limiting the scope of the issue to births at checkpoints fails to account for the consequences of the entire closure regime imposed on the occupied Palestinian territory (e.g., the closure of Gaza, the Wall, as well as other impediments to the freedom of movement of Palestinians, such as roadblocks, trenches, earth mounds, etc.), which severely impact on the daily lives of Palestinian women. The entire closure regime leaves Palestinian women particularly vulnerable with regard to their health-related needs and rights, posing severe difficulties for them in accessing necessary health-care services during childbirth.

9. Impediments to accessing health-care services due to movement restrictions were highlighted in the information provided by WHO. From 25 to 29 July 2008, alongside several military operations, the Israeli Defence Forces (IDF) severely restricted Palestinian movement throughout the Hebron Governorate in the southern West Bank. Restrictions included the closure of two major junctions, Al Fawwar and Al Fahs, for an average of four hours a day. The closure of Al Fawwar junction blocked the only access point for some 150,000 people to Hebron City, while the closure of Al Fahs prevented commercial trucks from entering the industrial zone in Hebron/H2 from accessing Road 60.[1]

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[1] OCHA, Protection of Civilians Weekly Report, 23-29 July 2008, 4 August 2008; see www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_270_2008_07_29_english.pdf.

10. On 27 July 2008, the IDF closed the Beit Kahil Bridge with an earth mound for one day, effectively cutting off the population of Beit Kahil, Tarqumiya and Idhna (with a combined population of 60,000) from Hebron City. Consequently, a 24-year-old woman from Tarqumiya was forced to give birth in a car while waiting for an ambulance to transport her to a hospital.[2]

11. In the same location, a similar incident occurred on 28 August 2008. A WHO mental-health team witnessed and reported that, due to an earth mound, the IDF closed the only accessible road to the community centre. A woman had to deliver in her husband's car since they could not pass the obstacle to reach the hospital on time due to the closure of the road.

12. Another incident involved a 21-year-old woman, married with one child, resident of Qusra in the Nablus District. On 4 September 2008, seven months pregnant, she started to bleed severely. At close to 1 a.m., she and her husband left for the nearest hospital in Nablus, but Israeli soldiers did not permit them to pass through the Huwara checkpoint because they did not have the requisite permit to cross by car. As a result, she delivered at the checkpoint a stillborn baby.[3]

13. In January 2009, a 25-year-old pregnant woman from Al A'sawiya (Jerusalem) was delayed by soldiers at Zayem checkpoint, which controls access to East Jerusalem through the Barrier. The woman, who held a Jerusalem ID and was travelling in a car with Israeli plates, informed the soldiers upon arrival that she was in labour. According to the woman, she was delayed for two hours, during which her waters broke. After being allowed through, she delivered in the car while en route to the hospital, where she was rushed into the emergency room.

14. Movement restrictions impact on the lives of Palestinian women not only during childbirth, but also during pre- and post-natal care. In that regard, the situation of the villages of Azzun Atmeh in the Qalqiliya District and Barta' Al Sharqiya in the Jenin District has been highlighted by WHO. In Azzun Atmeh, a village completely surrounded by the Wall whose only access is through a gate guarded by the IDF, the main obstacles impeding access to quality health care and affecting the regular provision of health services is the presence of the Wall and the search procedures that the residents, including patients, are subject to upon entering and leaving the village. Accessing secondary health-care services, especially while the gate is closed, means an added risk of the deterioration of health status in urgent cases and pregnant women. The risk of unattended delivery is also compounded by the fact that no midwife is available in Azzun Atmeh.

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[2] Ibid.

[3] Naheel 'Awni 'Abd a-Rahim Abu Rideh gave her testimony to the Israeli human rights organisation B'Tselem; see www.btselem.org/english/testimonies/20080904_Nahil_Ridah_Ridah_forced_to_give_birth_at_checkpoint.asp.

15. Barta' Al Sharqiya is a totally enclosed enclave in the Jenin District in the West Bank, where entry and exit to other districts in the West Bank are accessible through two gates.[4] Accessing secondary health-care services, especially after the gates are closed (from 9 p.m. to 5 a.m.) is a complicated process. This can pose a life-threatening risk for patients who need urgent lifesaving treatment. Special coordination with the Israeli soldiers at the gates is required for ambulances and patients entering or exiting Barta' Al Sharqiya. This often results in delays in transporting patients and potentially leads to health complications. Moreover, no drugs or vaccinations are allowed into the village without prior coordination with the Israeli soldiers. UNRWA used to provide mobile clinic services but has been facing problems in entering the village due to Israeli search procedures at the entrance gate.

16. According to UNFPA and UNIFEM, an estimated 2,500 births per year face difficulties en route to a delivery facility. Many Palestinian women have developed various higher-risk coping mechanisms in reaction to movement restrictions and for fear of being unable to cross Israeli checkpoints in a timely manner to reach health-care services. Consequently, birth location patterns have been affected drastically. The trend is reported to occur even if it results in a lower standard of health care (e.g., births attended at home or in doctors' clinics). The risks presented by checkpoints, road closures and other obstacles are reported to have led to an increase of 8.2 per cent in home deliveries, further compounding the risk to women's health and to their babies. The Palestinian Ministry of Health has assessed the proportion of deliveries outside health facilities as high as 13.2 per cent.

17. To conclude, the critical impact of the closure regime (e.g., the Wall, checkpoints, road closures, earth mounds, etc.) on Palestinian women's access to adequate prenatal, natal and post-natal medical care remains a matter of serious concern, impairing the fulfilment of the right of everyone to the highest attainable standard of physical and mental health.[5] It should also be

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[4] Barta' and Shaked.

[5] This right is protected in the Universal Declaration of Human Rights, art. 25, as well as in a number of international conventions to which Israel is party, including the International Covenant on Economic, Social and Cultural Rights, art. 12; the International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (iv); the Convention on the Elimination of All Forms of Discrimination against Women, art. 12; and the Convention on the Rights of the Child, art. 24. The position of United Nations human rights treaty bodies is that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the OPT, to the extent that it continues to exercise jurisdiction in those territories (see A/HRC/8/17). The International Court of Justice adopted a similar position in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, paras. 102-113. The ICJ also noted that Israel's obligations under the International Covenant on Economic, Social and Cultural Rights include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities" (para. 112).

noted that Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture.[6] Finally it is reiterated that the issue of pregnant Palestinian women giving birth at Israeli checkpoints must be understood within the context of the broader regime of the Israeli occupation and associated restrictions on movement, impacting as they do on all aspects of life in the occupied territories.

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[6] Committee against Torture conclusions and recommendations: Israel (A/57/44, paras. 47-53). See also CAT/C/PER/CO/4, in which the Committee against Torture stated that, where a State party had failed to take steps to prevent acts that put women's physical and mental health at grave risk, it constituted cruel and inhuman treatment.

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Report of the United Nations High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints*

* Late submission.

1. In its decision 2/102, the Human Rights Council requested the Secretary-General and the United Nations High Commissioner for Human Rights to "continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". In its resolution 2005/7, the Commission on Human Rights requested the High Commissioner to report on "the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals".

2. The present report to the Council addresses the developments that have occurred since the last report on this issue was submitted to the Council at its tenth session (A/HRC/10/35).

3. On 12 November 2009, the Office of the High Commissioner for Human Rights (OHCHR) addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which it indicated that it would appreciate receiving comments or observations on the basis of Commission resolution 2005/7 and the most recent report submitted by the High Commissioner on the issue of Palestinian pregnant women giving birth at Israeli checkpoints.

4. At the time of finalization of this report, no reply had been received from either Mission.

5. In order to gather information on the issue, OHCHR also wrote on 12 November 2009 to the following United Nations entities and specialized agencies represented in the occupied Palestinian territory: the Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO).

6. Replies were received on 20 November 2009 from UNICEF, on 23 November 2009 from UNIFEM and on 24 November 2009 from UNFPA.

7. The United Nations does not maintain a specific monitoring and reporting mechanism on the issue of Palestinian women giving birth at Israeli checkpoints. The most recent known case was that of a 25-year-old woman from Al A'sawiya (Jerusalem) in January 2009, reported on by OHCHR in its last report on this issue.[1]

8. According to information provided by UNFPA, it was the assessment of the Palestinian Ministry of Health (MOH) that the absence of births at checkpoints since January 2009 was due to recent measures taken by the Palestinian Authority, including the opening of three new maternity clinics at Qalqiliya, Salfit and Yatha, as well as the training of midwives to assist births in hard-to-reach places in cases of emergency. The MOH also stated that it did not collect information regarding delays suffered at checkpoints by ambulances (or private vehicles) transporting women in labour.

9. The Permanent Mission of Israel has indicated that the absence of births at checkpoints was due to measures that the Israeli authorities have taken to resolve the issue of women giving birth at checkpoints. OHCHR has no independent confirmation of what measures were put in place.

[1] A/HRC/10/35, para. 13.

10. In its response provided to OHCHR, UNIFEM expressed deep concern regarding women living in villages where difficulties in accessing medical facilities are more acute due to both the higher number of checkpoints separating villages from hospitals and the lack of hospitals in nearby rural areas. Even if a village is only a few kilometres from town, the journey can take hours due to the large number of checkpoints, the lack of public transportation and the inadequate conditions of the roads, which make such a journey impossible should labour occur at night.

11. The village of Azzun ‘Atma, which was highlighted in a report issued in 2009 by OCHA, illustrates the problem. It is a community of 2,000 residents located between the Wall and the Green Line in the Qalqiliya governorate and thus located in the so-called “seam area”. The only method of access to the rest of the West Bank is through a checkpoint controlled by the Israeli Defense Forces (IDF), which closes daily from 10 p.m. to 6 a.m. The opening hours are clearly inadequate for expectant mothers in labour. OCHA notes that, “On average, 50 babies are born in Azzun ‘Atma annually. There is no hospital or 24-hour medical service available, only a basic primary health-care clinic which operates for 2 hours a day, twice a week. To ensure access to proper medical care, most women leave the village a month before delivery and relocate to relatives’ homes outside the community, often returning during the day to look after their families. Between January and early June 2009, 33 babies were born: 20 were delivered outside Azzun ‘Atma. The remaining 13 babies were delivered at home, none attended by a trained midwife or a doctor.” [2]

12. UNIFEM cites information received from MOH stating that the amount of time Palestinians spend waiting at border crossings has increased dramatically since the beginning of the second intifada, and that in many cases women are forced, when the delivery approaches, whenever possible and with the support of the extended family, to move to the town closest to the hospital.

13. The Wall and its associated regime significantly restrict the freedom of movement of Palestinians within the West Bank as well as between East Jerusalem and the West Bank. More detailed information on the restrictions on freedom of movement of Palestinians in the West Bank and East Jerusalem is presented in the report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem.[3] That report includes information about travel on hundreds of kilometres of roads in the West Bank which continues to be prohibited or sharply curtailed for Palestinians (with no prohibition for vehicles with Israeli license plates). According to information compiled by OCHA, while some “movement obstacles” (primarily earth mounds) were removed in the West Bank during September 2009, at the beginning of November 2009, there were a total of 579 closure obstacles in the West Bank, including 69 permanently staffed checkpoints, 21 “partial checkpoints” (staffed on an ad hoc basis), and 488 unstaffed obstacles (not including 8 Green Line checkpoints).[4]

14. As reported by OCHA, “… the area between the Barrier and the Green Line was declared closed by military order in October 2003. Approximately 10,000 Palestinians in 15 communities, and a number of isolated families, reside in the closed area. Those aged 16 and above require permanent resident permits from the Israeli authorities to continue to live

[2] OHCHA, *Five Years After the International Court of Justice Advisory Opinion, a Summary of the Humanitarian Impact of the Barrier*, July 2009, p. 17. See http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

[3] A/64/517, paras. 21–28.

[4] OCHA notes that this number is down from 619 at the end of August 2009. OCHA, The Humanitarian Monitor, September 2009, p. 6, and October 2009, p. 7.

in the closed area. Israeli citizens and the settlers living in the area, tourists, or persons of Jewish origin are exempt from this regulation … few health and education services are available between the Barrier and the Green Line … Children, patients and workers have to pass through the Barrier checkpoints to reach schools, medical facilities and workplaces and to maintain family and social relations."[5] Because of the long delays and closure at night in Barta'a enclave, Nazlat Issa, Sheika, Khirbet Jubara, Arab al Ramadin al Shamali, Alfie Menashe Enclave, Azzun 'Atma, N'aman and Beit Yatir, pregnant women often leave these closed areas before delivery.[6]

15. In a press release on 15 January 2009, UNFPA stated that, during the Israeli operation "Cast Lead" in the Gaza Strip, continuing violence and displacement presented serious risks to more than 40,000 pregnant women in Gaza. UNFPA stated that a "lack of access to critical health services, including emergency obstetric care, could mean the difference between life and death for many women and their babies. In normal circumstances, hundreds of pregnant women require care by qualified health-care providers every day in Gaza and 30 women on average undergo a Caesarean section — a procedure not readily available because of the conflict. Stress, trauma and poor nutrition could also result in life-threatening complications for the estimated 41,000 women who are likely to be pregnant at any time in Gaza."

16. Particularly relevant to the issue of pregnant women at checkpoints are the obligations set out in the Fourth Geneva Convention calling for Parties to guarantee special protection to pregnant women and mothers of small children, who, according to article 38 (5), "shall benefit by any preferential treatment to the same extent as the nationals of the State concerned" and, according to article 16, "… expectant mothers, shall be the object of particular protection and respect". The Convention on the Elimination of All Forms of Discrimination against Women, in article 12, paragraph 2, also calls on States parties to ensure access for women to appropriate services in connection with pregnancy.

17. In its concluding observations regarding the fourth periodic report of Israel on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture stated that it was "seriously concerned at the many allegations provided to the Committee from non-governmental sources on degrading treatment at checkpoints, undue delays and denial of entry, including for persons with urgent health needs. The State party should ensure that such controls are conducted in accordance with the Convention."[7]

Conclusions and recommendations

18. **As pointed out in the previous report to the Council on this issue, limiting the scope of this report to births at checkpoints fails to take into account the consequences of the entire closure regime imposed on the Occupied Palestinian Territory (OPT). The issue is best examined in the broader context of the severe restrictions on freedom of movement imposed by Israel on Palestinians in the OPT, and the wide range of rights that Palestinians are unable to exercise due to these restrictions.**

19. **OHCHR submitted its first periodic report on the implementation of resolution S-9/1, on the grave violations of human rights in the Occupied Palestinian Territory,**

[5] Five years after the International Court of Justice Advisory Opinion, a summary, OHCHA-oPt, July 2009, p. 16. http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

[6] Ibid., p. 19.

[7] CAT/C/ISR/CO/4, para. 31.

to the Council at its twelfth regular session,[8] and a further report on the follow-up to the ninth and twelfth special sessions of the Human Rights Council to the current session of the Council.[9] Both reports contain detailed information on the restrictions on freedom of movement and the human rights violations that stem from these restrictions.

20. **The number of reported cases of births at checkpoints appears to have declined in recent years, to the extent that there has been no case reported since January 2009.**

21. **OHCHR had previously interpreted decision 2/102 as extending previous Commission of Human Rights reports and providing for an annual reporting cycle. This interpretation had not received any objections to date, and the Office's interpretation was thus deemed to have received the tacit approval of Member States. However, an objection has been placed on the record this year, and in the context of this specific report. OHCHR has thus further reviewed the said decision, and concludes that with it, the Human Rights Council sought to fill a technical gap by ensuring that reports which were deemed to be submitted to the 62nd session of the Human Rights Commission would be extended by one year, to be submitted to the subsequent substantive Human Rights Council session. With this transition period over, and the objection now on the record to the previous interpretation of annual reporting cycles, if the Human Rights Council wishes to see a continuation of this reporting mandate, a new Human Rights Council resolution or decision on the matter should be tabled. Pending any such resolution, OHCHR will not file any further reports specific to this matter, save that it will cover the issue in its periodic reports.**

[8] A/HRC/12/37.

[9] A/HRC/13/54.